

## Future progress and prospects of the smuggling of Migrants Protocol

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**ABSTRACT:** The Smuggling of Migrants Protocol, adopted in 2000 and effective since 2004, is a key international legal framework aimed at combating migrant smuggling as a form of transnational organized crime. Its objectives include preventing smuggling, prosecuting offenders, protecting the rights of smuggled individuals, and fostering international cooperation. While prosecution and repression remain central to the Protocol, its balanced approach also emphasizes the importance of safeguarding migrant rights and facilitating state collaboration. This article critically examines the Protocol's implementation, with a focus on the European Union as a case study. It explores how states have generally applied the Protocol with a predominant focus on prosecution and repression, often sidelining its objectives related to protection and cooperation. In so doing, the article demonstrates how the neglect of the Protocol's protection objectives has exacerbated migrant vulnerabilities and often produced unintended criminogenic effects, fuelling exploitative practices and sustaining demand for smuggling services. The article calls for a more balanced approach that integrates effective prosecution and prevention measures with greater emphasis on protection and international cooperation. It suggests that evidence-based policies, expanded legal migration pathways, and rights-based governance are essential to dismantling smuggling networks while safeguarding migrants. While it remains uncertain whether such a balance can fully address all challenges, prioritizing protection alongside enforcement represents a necessary step toward achieving the Protocol's broader objectives and fostering more effective and humane migration governance.

Keywords:

- Smuggling of Migrants Protocol
- Transnational Organized Crime
- Criminalization
- Migrant Protection
- Human Trafficking

### 1. INTRODUCTION

Adopted in 2000 and entering into force in 2004, the Smuggling of Migrants Protocol represents a landmark effort to address migrant smuggling as a form of transnational organized crime.<sup>1</sup> As of January 2025, with 151 parties, including 150 states and the European Union (EU), the Protocol remains one of the most widely ratified international legal instruments in this area.<sup>2</sup> Its primary objectives – preventing and combatting smuggling of migrants, protecting the rights of smuggled individuals, and fostering cooperation among states – offer a comprehensive framework for addressing a complex and evolving global challenge.

Two decades after its adoption, the Protocol's implementation reveals significant challenges. Predominantly security-driven measures, such as border militarization and externalized migration control, have overshadowed its broader objectives, often exacerbating

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<sup>1</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Migrants Protocol) (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507.

<sup>2</sup> *United Nations Treaty Collection* <<https://treaties.un.org/Pages/Home.aspx?clang=en>> accessed 15 July 2025.

the vulnerabilities of smuggled migrants and undermining the Protocol's spirit. These practices raise critical questions about the effectiveness of current anti-smuggling strategies in dismantling organized crime networks, facilitating meaningful international cooperation, and addressing the root causes of irregular migration.

This article critically examines the Protocol's application, focusing on the interplay between its stated goals and the realities of its implementation. Using the EU's approach as a case study, it explores both achievements and limitations in addressing smuggling. Moreover, it considers whether emerging consensus within the international community signals a shift toward recalibrating strategies to better align with the Protocol's vision—one that balances criminal justice measures with rights protection, prevention, and cooperation.

## 2. UNDERSTANDING THE SMUGGLING OF MIGRANTS PROTOCOL

### 2.1 Definition of Smuggling of Migrants and Objectives of the Protocol

In 2000, the international community came to an agreement to define and criminalize smuggling of migrants as the procurement of the illegal entry into a territory of another person with the aim of making a financial or other material profit.<sup>3</sup> The so-called 'profit element' in the Smuggling of Migrants Protocol mirrors the wording used in the definition of an organized crime group contained in the United Nations Convention against Transnational Organized Crime,<sup>4</sup> that the Protocol supplements. To ensure a comprehensive response and address the various methods smugglers may exploit, the Protocol also includes provisions for the criminalization of enabling irregular stay (when done for profit) and document fraud used to facilitate irregular entry or stay.

Crucially, states have agreed, within the framework of the Protocol and the Convention, to focus their efforts on preventing and addressing the facilitation of irregular migration for profit. This distinction is significant, as the international framework specifically targets the profit motive behind smuggling, rather than the simple act of assisting someone to cross a border.

Although the Protocol is primarily a criminal justice instrument of which the main feature is to provide a definition of, and provide for the criminalization of smuggling of migrants, its objectives are not limited to prosecuting smugglers.<sup>5</sup> They also include prevention of the crime – with few concrete measures offered by the Protocol that rather relate to migration issues such as border management and document security, as well as the protection of the rights of the persons who are smuggled. The measures provided by the Protocol to fulfil the protection objective consist of (1) addressing some context specific to smuggling of migrants: recognizing a set of aggravating circumstances to smuggling, such as when the right to life and safety of the persons who are smuggled has been breached,<sup>6</sup> or taking into account the risks associated with smuggling at sea;<sup>7</sup> and (2) reminding of the application of some fundamental principles (*non-refoulement*) and international human rights, humanitarian law, and refugee law instruments.<sup>8</sup> In this sense, the Protocol does not create new protection obligations, but

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<sup>3</sup> Smuggling of Migrants Protocol, arts 3 and 6(1).

<sup>4</sup> United Nations Convention against Transnational Organized Crime (UNTOC) (adopted 15 November 2000, entry into force 29 September 2003) 2225 UNTS 209, art 2:

'Organized criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

<sup>5</sup> Smuggling of Migrants Protocol, art 2.

<sup>6</sup> *ibid*, art 6(3).

<sup>7</sup> *ibid*, art 9.

<sup>8</sup> *ibid*, art 16.

safeguards to clarify that existing obligations must be upheld by states where they implement counter smuggling measures.

A further purpose of the Protocol is to promote cooperation among states when they realize the two other objectives relating to preventing and combating smuggling of migrants. This echoes the UNTOC objective that is to ‘promote cooperation to prevent and combat transnational organized crime more effectively.’<sup>9</sup> Indeed, by its very nature, smuggling of migrants is a transnational crime that requires joint efforts across borders.

## 2.2 Implementation and Outcomes Since Adoption

Despite being widely ratified since its adoption in 2000,<sup>10</sup> the implementation of the Protocol across states has varied. In some cases, national laws and provisions that pre-date ratification of the Protocol continue to apply, while in others new legislation has been adopted after ratification to implement the Protocol provisions. There are very few cases of specific and comprehensive laws passed to transpose its obligations into national law.

Research indicates that states parties to the Protocol commonly criminalize the facilitation of illegal entry or the smuggling of migrants.<sup>11</sup> But about one third of all national legislation addressing these conducts does not refer to the profit element, either as a constitutive element of the crime, or an aggravation to the facilitation of illegal entry.<sup>12</sup> While one may argue that, in line with art 34(3) of the United Nations Convention against Transnational Organized Crime (UNTOC), states parties ‘may adopt more strict or severe measures’ than those prescribed by the Convention and its Protocols, and recognizing that it is the prerogative of sovereign states to choose to sanction illegal entry and stay in their territory and the facilitation thereof, this is beyond the scope of the Protocol.<sup>13</sup>

These variations in legislation are influenced by a variety of factors, including political considerations, challenges in securing evidence against smuggling rings, trade-offs involving international development funding, and the position of states along smuggling routes. For instance, in South Asia, political sensitivities regarding sovereignty and migration, coupled with lower international pressure to align with global standards, have contributed to a lower rate of Protocol ratification and less emphasis on incorporating the profit element into domestic legislation. Conversely, in Latin America, greater engagement with international human rights frameworks, stronger regional cooperation, and higher dependency on development aid conditioned on compliance with international norms have encouraged broader ratification of the Protocol and more faithful incorporation of its profit requirement into national laws.<sup>14</sup> These approaches shape the legal frameworks that enable national criminal justice actors-law enforcement, prosecutors, and judges to act within the purpose for which these laws were enacted. Deviations in the way offences are defined in domestic law may reduce the evidentiary burden but can also lead to unintended consequences. For example, when the law omits the profit element from the smuggling of migrants offence, in the absence of other legal safeguards humanitarian actors who have no intent to profit financially from assisting migrants and would

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<sup>9</sup> UNTOC, art 1.

<sup>10</sup> 152 states parties (including the EU) as of 19 December 2024  
<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=en)>.

<sup>11</sup> Anne Gallagher, ‘Whatever Happened to the Migrant Smuggling Protocol?’ [2017] Migration Research Leaders’ Syndicate 105; UNODC, ‘Global Study on Smuggling of Migrants 2018’ (2018).

<sup>12</sup> UNODC, ‘Sharing Electronic Resources and Laws on Crime Portal (*SHERLOC*)’  
<<https://sherloc.unodc.org/cld/v3/sherloc/legdb/index.html?lng=en#/crimeTypes>> accessed 2 July 2025.

<sup>13</sup> UNODC, ‘Legislative Guide for the Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime’ (2005), paras 32 and 55.

<sup>14</sup> UNODC, *SHERLOC* (n 12).

potentially help them crossing a border while doing so (as may be the case in search and rescue operations and disembarkation) may be charged with facilitation of illegal entry.

The legal framework of the EU on migrant smuggling underscores this tension. The EU is the only regional organization that is party to the Protocol, along with its Member States (except Ireland). Like many states, the EU already had legislation addressing irregular migration and its facilitation prior to becoming a party to the Protocol. The so-called Facilitation Directive,<sup>15</sup> binding on all EU Member States, criminalizes the facilitation of illegal entry and stay without requiring that the facilitator's motivation be financial or material profit.<sup>16</sup>

To safeguard individuals and organizations providing assistance to migrants and refugees on humanitarian grounds from criminal liability, the Facilitation Proposal currently under consideration allows for the introduction of a humanitarian exemption. In principle, this clause offers a necessary balance, given that under the current legislation, for example, EU humanitarian organizations have often found themselves being charged with smuggling. In practice however, organizations are still submitted to harassment, intimidation, or become the target of fines – for example, Italian authorities confiscated a vessel owned by the Italian non-governmental organization (NGO) Mediterranean Saving Humans, imposing a EUR 300,000 fine for entering the port of Lampedusa; A number of volunteers have received restraining orders to prevent them from coming to the places where asylum seekers arrive.<sup>17</sup> As a result, rather than serving to safeguard humanitarian actors and uphold migrants' rights, this ambiguity has created significant obstacles to realizing the protection objectives enshrined in the Protocol.

This regional variation underscores the broader challenges in aligning national laws with the Protocol's core principles of prevention, prosecution, protection, and cooperation. Without addressing these discrepancies (particularly the disregard for the profit element and the inconsistent application of humanitarian safeguards), implementation efforts risk perpetuating unintended consequences that undermine both the spirit and the letter of the Protocol.

### 3. CONSEQUENCES AND CHALLENGES IN APPLYING THE PROTOCOL

#### 3.1 From Criminalizing Smuggling to Criminalizing Migration

Practice has shown that many states have chosen to respond to smuggling by broadly criminalizing irregular migration and its facilitation.<sup>18</sup> In adopting this approach, these states effectively deviate from the Protocol's core requirements and the definition of smuggling of migrants, which centres on the pursuit of financial or other material benefit. By doing so, they shift the focus away from profit-driven smuggling networks and instead treat the migrant as an offender simply because they have breached laws governing entry and stay. Although the Protocol does not explicitly prohibit this stance,<sup>19</sup> such an expansion of criminal liability beyond profit-oriented scenarios lowers the threshold for criminalization.

In effect, this broad framing makes it possible to penalize a wide range of actions and motivations linked to irregular entry and stay, including conduct not intended to secure any

<sup>15</sup> Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [2002] OJ L328/17.

<sup>16</sup> It should be noted that the current status is under review and may be subject to change.

<sup>17</sup> Directorate-General for Internal Policies, 'Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants' PE 536.490; See also Sergio Carrera and others, *Policing Humanitarianism: EU Policies against Human Smuggling and Their Impact on Civil Society* (Bloomsbury Publishing 2019).

<sup>18</sup> UNODC, 'Issue Paper: The Concept of "Financial or Other Material Benefit" in the Smuggling of Migrants Protocol' (2017)

<[UNODC Issue Paper The Profit Element in the Smuggling of Migrants Protocol.pdf](#)>

<sup>19</sup> See Smuggling of Migrants Protocol, art 6(4): 'Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.'

financial or material gain. While the absence of profit may result in lesser penalties, it does not prevent criminal charges from being brought in the first place. Despite the protections existing in the Protocol, this shift infringes on their rights to asylum and non-refoulement, but also may seem to be in contradiction with the Protocol clause that exempts migrants for being charged for their own smuggling.<sup>20</sup> This position cements a broad, punitive framework that not only sidelines the Protocol's profit element but also risks entrenching a view of irregular migrants themselves as offenders, rather than individuals in vulnerable situations who deserve protection.

If the application of the Protocol has deviated from its core principles – thereby encouraging the broad criminalization of irregular migration – the question arises: what are the consequences for those engaged in smuggling and for the migrants who rely on their services?

To gauge the impact of states' implementation, one would need to examine whether smuggling of migrants has declined over the past 20 years, whether it has become less deadly, whether it generates lower profits for criminal groups, and whether these groups have been dissuaded from continuing such activities. It is also necessary to consider whether enhanced cooperation among states has played a role in any observed changes. In other words, did these measures genuinely prevent smuggling of migrants, support the prosecution of profit-driven transnational organized criminal groups, lead to the freezing of their criminal assets, foster more effective cooperation under the UNTOC framework, and ultimately uphold the rights of smuggled persons?

In practice, while national statistics on legal and irregular entries and stays are readily available, reliable and comparable data on smuggling of migrants remains scarce. Information on trends and criminal justice responses is limited.<sup>21</sup> Such gaps challenge the capacity to assess the effectiveness of anti-smuggling measures: whether they truly reduced smuggling, increased the detection and prosecution of smugglers, enabled authorities to target illicit financial flows, and improved international cooperation and migrant protection.

Nonetheless, while exact impacts are difficult to measure, many studies converge on the finding that the widespread criminalization of irregular migration has tended to erode migrant protection and has done little to curtail the smuggling of migrants, if not altogether contributed to sustaining the demand for such illicit services.<sup>22</sup>

### 3.2 Broader Implications of Criminalizing Irregular Migration

States have increasingly curbed legal channels of mobility, restricted access to social benefits, and resorted more frequently to detention and deportation. These measures have markedly undermined the right to seek asylum and enjoy non-refoulement protection.

Nearly every EU Member State, for instance, has criminalized irregular entry, often imposing prison sentences.<sup>23</sup> Studies, for example, note how in the United States the past two

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<sup>20</sup> Smuggling of Migrants Protocol, art 5: 'Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol'.

<sup>21</sup> Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, COM/2023/755 final, 8 <[IMMC.COM%282023%29755%20final.ENG.xhtml.1\\_EN\\_ACT\\_part1\\_v6.docx](#)> accessed 2 July 2025.

<sup>22</sup> Luigi Achilli, Antje Missbach and Soledad Álvarez-Velasco (eds), 'Migration and Crime in a Divided World: Strategies, Perceptions, and Struggles' (2024) 709(1) *Annals of the American Academy of Political and Social Science* 8; Carrera and others (n 17); Lina Vosyliute and Carmine Conte, 'Crackdown on NGOs Assisting Refugees and Other Migrants' (ReSOMA, 2019).

<sup>23</sup> European Union Agency for Fundamental Rights, 'Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them' (2014) <<https://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>> accessed 1 July 2025.

decades have seen a steep increase in the prosecution of ‘entry-related offenses,’ with tens of thousands of migrants charged annually.<sup>24</sup>

A growing body of research has also highlighted how this approach to irregular migration has forced migrants onto more perilous routes. As legal avenues narrow and border defences tighten, migrants increasingly undertake dangerous journeys across seas and deserts, where the likelihood of abuse and death rises significantly.<sup>25</sup> Reports from the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions have noted that certain state policies, including the excessive use of force and measures that exacerbate these risks, may have contributed to the unlawful deaths of migrants and refugees.<sup>26</sup>

As borders are militarized and controlled more aggressively,<sup>27</sup> smugglers adapt by attempting to avoid detection—often at the expense of migrant safety. They may opt for lengthier, more hazardous routes; depart from unsafe embarkation points; abandon migrants to navigate difficult journeys alone with only rudimentary Global Positioning System (GPS) equipment; and desert their ‘cargo’ on unseaworthy vessels. These tactics intensify the protection risks that migrants face.<sup>28</sup>

Additional harm arises from the criminalization of humanitarian organizations. Despite the Protocol’s intent, several EU Member States have arrested and prosecuted NGOs and their personnel who engage in life-saving search-and-rescue operations at sea, charging them with smuggling and related offences.<sup>29</sup> Since 2017, for instance, Italian authorities have consistently employed such measures against civil society organizations operating in the Mediterranean. Studies show that this practice has persisted across administrations, regardless of their political orientation, resulting in evolving restrictions placed on non-governmental rescuers and further exacerbating the precarious conditions confronting migrants seeking safety and protection.<sup>30</sup>

A related concern is the lack of effective criminal justice responses when smuggled migrants are subjected to aggravated forms of smuggling – such as inhuman or degrading treatment, or threats to their lives and safety. Although art 16 of the Smuggling of Migrants Protocol calls for the protection and assistance of those who have experienced such abuses, many hesitate to approach authorities for fear that their irregular status will lead to their own criminalization. Moreover, only around 40 per cent of countries impose higher, aggravated penalties for inhuman treatment during smuggling, and about one-third do not even consider endangerment of life or safety as an aggravating factor. Outside of a few prosecutions in certain destination countries, there is little evidence of criminal cases being brought in transit locations – including North Africa and Central America – despite widespread abuse along well-

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<sup>24</sup> Sarah P Lockhart, ‘Multilateral Protocols on Trafficking and Smuggling’ in Luigi Achilli and David Kyle (eds) *Global Human Smuggling: Buying Freedom in a Retreating World* (Johns Hopkins University Press 2023) 118.

<sup>25</sup> Tekalign Ayalew Mengiste, ‘Refugee Protections from Below: Smuggling in the Eritrea-Ethiopia Context’ (2018) 676 *Annals of the American Academy of Political and Social Science* 57; Tugba Basaran, ‘Security, Law, Borders: Spaces of Exclusion’ (2008) 2 *International Political Sociology* 339; Jason De León, *The Land of Open Graves: Living and Dying on the Migrant Trail*, vol 36 (University of California Press 2015).

<sup>26</sup> UNCHR, ‘Unlawful Death of Refugees and Migrants: Note by the Secretary-General-Report of the Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Executions’ (Press release, 15 August 2017) UN Doc A/72/335 <<https://www.ohchr.org/en/documents/thematic-reports/a72335-unlawful-death-refugees-and-migrants-note-secretary-general>> accessed 1 July 2025.

<sup>27</sup> Catherine Besteman, ‘Militarized Global Apartheid’ (2019) 60 *Current Anthropology* S26.

<sup>28</sup> Luigi Achilli and David Kyle (eds), *Global Human Smuggling: Buying Freedom in a Retreating World* (Johns Hopkins University Press 2023); UNODC, ‘Global Study on Smuggling of Migrants’ (n 11).

<sup>29</sup> Liz Fekete, ‘Migrants, Borders and the Criminalisation of Solidarity in the EU’ (2018) 59 *Race & Class* 65.

<sup>30</sup> Federico Alagna and Eugenio Cusumano, ‘Varieties of Criminalization: Italy’s Evolving Approach to Policing Sea Rescue NGOs’ [2023] *Contemporary Italian Politics* 1.

documented routes. This impunity is perpetuated by both practical barriers and the fear of prosecution that discourages migrants from coming forward.<sup>31</sup>

Finally, the criminalization of migration has at times produced unintended criminogenic effects, inadvertently fuelling the very criminal phenomena it aims to suppress.<sup>32</sup> In Niger, for instance, patterns of mobility between the Sahel and North Africa were historically irregular but not clandestine. Local authorities oversaw, and often informally taxed, trans-Saharan journeys without characterizing them as smuggling operations. However, Europe saw these movements as potential steps toward migration to Europe. In response to pressure from European actors, Niger's authorities intensified border controls. This external influence transformed previously open and loosely regulated systems into clandestine and more dangerous operations, as local mobility, once considered routine, became criminalized under the new migration control framework.<sup>33</sup> The resulting criminalization increased both human and financial costs and effectively created a new class of so-called 'smugglers,' directly shaped by the very migration policies intended to deter them.

## 4. CURRENT STRATEGIES AND POLICY APPROACHES

### 4.1 Recent International Initiatives

The shortcomings of past implementations of the Smuggling of Migrants Protocol have made clear the urgent need for a more holistic approach that goes beyond mere enforcement. This involves integrating protection and preventive measures into migration governance. By addressing the structural drivers of irregular migration and prioritizing human rights, such a strategy would align more closely with the Protocol's original vision and objectives, ensuring that anti-smuggling efforts do not inadvertently harm those they are meant to protect. In the following sections, this article examines how states have sought to address these limitations by attempting to embrace a more comprehensive understanding of the Protocol. Specifically, the focus is on the strategies developed by the EU and its Member States to operationalize a more holistic approach, analyzing both their design and practical application.

The urgency of implementing a multidimensional preventive strategy to protect migrant lives was underscored in international discussions, culminating in the New York Declaration and the subsequent Global Compact on Migration.<sup>34</sup> These agreements reaffirm the international community's commitment to developing comprehensive approaches to migration. In his third report on the implementation of the Global Compact on Migration, presented to the General Assembly on 5 December 2024,<sup>35</sup> the UN Secretary-General, António Guterres, highlighted the role of policy choices and the lack of safe and regular pathways in the deaths and disappearances of migrants. Among the recommendations were the establishment of independent review bodies to assess the impact of legal frameworks and policies, mitigate risks to migrants' lives, and repeal measures that prevent or criminalize humanitarian assistance.

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<sup>31</sup> UNODC, 'Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response' (2021) <[https://www.unodc.org/documents/human-trafficking/2021/Aggravated\\_SOM\\_and\\_Gender.pdf](https://www.unodc.org/documents/human-trafficking/2021/Aggravated_SOM_and_Gender.pdf)> accessed 1 July 2025.

<sup>32</sup> Sheldon Zhang, Gabriella Sanchez and Luigi Achilli, 'Crimes of Solidarity in Mobility: Alternative Views on Migrant Smuggling' (2018) 676 *Annals of the American Academy of Political and Social Science* 6; Bridget Anderson and Andrijasevic Rutvica, 'Sex, Slaves and Citizens: The Politics of Anti-Trafficking' (2008) 40 *Soundings* 135.

<sup>33</sup> Julien Brachet, 'Manufacturing Smugglers: From Irregular to Clandestine Mobility in the Sahara' (2018) 676 *Annals of the American Academy of Political and Social Science* 16.

<sup>34</sup> UNGA Res 71/1 (17 December 1996) UN Doc A/RES/71/1; UNGA Res 73/195 (December 19, 2018) UN Doc A/RES/73/195 <<https://undocs.org/A/RES/73/195>> accessed 1 July 2025.

<sup>35</sup> 'Global Compact for Safe, Orderly and Regular Migration, Report of the Secretary General' (5 December 2024) UN Doc A/79/590 <[https://reliefweb.int/attachments/3465851d-49e4-4284-9a75-ddf63eb45fc6/SG\\_Report\\_GCMpdf.pdf](https://reliefweb.int/attachments/3465851d-49e4-4284-9a75-ddf63eb45fc6/SG_Report_GCMpdf.pdf)> accessed 1 July 2025.

Guterres also underscored the need for justice, accountability, and redress for state and non-state actors responsible for endangering migrants' lives or violating their rights, calling for independent, impartial, and thorough investigations into such cases.

At the EU level, after years of development, the Pact on Migration and Asylum entered into force in June 2024 (and will enter into application after two years), alongside a package of regulations providing a common EU system for migration management.<sup>36</sup> This package includes provisions for border management, asylum procedures, solidarity mechanisms among Member States, and the integration of migration policies into international partnerships. The Pact seeks to fight migrant smuggling through strategic partnerships while promoting legal migration pathways. Emphasizing a 'whole-of-route approach,' the Pact aims to dismantle the 'business model' of smugglers through enhanced international cooperation and coordinated actions across Member States. However, its full implementation is scheduled to begin in 2026, following the adoption of national action plans by Member States.

Concurrently, the EU launched a Global Alliance to Counter Smuggling in November 2023,<sup>37</sup> while the G7 – a group of seven of the world's largest advanced economies – introduced its Coalition to Prevent and Counter the Smuggling of Migrants at its Summit in June 2024,<sup>38</sup> accompanied by an Action Plan adopted in October 2024.<sup>39</sup> Both initiatives adopt a multi-layered approach aligned with the international legal framework set by the Smuggling of Migrants Protocol. They emphasize prevention, strengthened criminal justice cooperation, and measures to combat exploitation and abuse while protecting migrants' rights.

Notably, both the EU and G7 have increasingly recognized the need to address the root causes of irregular migration and the importance of creating legal migration pathways as a central preventive strategy. Given that G7 and EU Member States are primary destinations for irregular migration, this commitment entails closer collaboration with countries of origin and transit. Such cooperation includes boosting development programs through equitable and mutually beneficial partnerships, particularly in the context of economic development.

In advancing evidence-based responses, both initiatives highlight the importance of improving data collection and understanding the specific dynamics of smuggling of migrants. Enhanced data collection frameworks that incorporate the right parameters to link actions with results could significantly improve policy effectiveness. Additionally, identifying best practices in addressing smuggling and trafficking in persons in a holistic and rights-based manner – through collaboration with international organizations and civil society – will be essential to monitoring the impact of anti-smuggling measures and promoting successful approaches.

While the G7 Action Plan presents concrete measures to advance the initiative, these measures remain somewhat limited in scope. The Plan, adopted in October 2024, focuses primarily on enhancing information-sharing among G7 countries, improving the exchange of best practices, and strengthening cooperation with key third countries. However, it largely reiterates existing commitments without introducing binding obligations, significant new funding mechanisms, or comprehensive preventive strategies addressing root causes of

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<sup>36</sup> EU Commission: Migration and Home Affairs, 'Pact on Migration and Asylum' (21 May 2024) <[https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en)> accessed 1 July 2025.

<sup>37</sup> Global Alliance to Counter Migrant Smuggling, *Call to Action on a Global Alliance to Counter Migrant Smuggling* (EU 2025) <[https://home-affairs.ec.europa.eu/document/download/60f6cc08-c7ee-46db-bee5-689562d34436\\_en?filename=Call-to-action-global-alliance-to-counter-migrant-smuggling\\_en\\_1.pdf](https://home-affairs.ec.europa.eu/document/download/60f6cc08-c7ee-46db-bee5-689562d34436_en?filename=Call-to-action-global-alliance-to-counter-migrant-smuggling_en_1.pdf)> accessed 1 July 2025.

<sup>38</sup> G7, 'Apulia G7 Leaders Communiqué' (G7 Italia, 2024) <<https://www.g7italy.it/wp-content/uploads/Apulia-G7-Leaders-Communique.pdf>> accessed 1 July 2025.

<sup>39</sup> G7 Italia, 'ANNEX A: G7 Action Plan to Prevent and Counter the Smuggling of Migrants' (G7 Interior and Security Ministers' Meeting Mirabella Eclano, 2–4 October 2024) 1 <<https://www.g7italy.it/wp-content/uploads/Action-Plan-Anti-Smuggling-G7-FINAL.pdf>> accessed 1 July 2025.

irregular migration. Moreover, while it establishes an implementation review mechanism through the G7 Roma-Lyon Group (originally created to address terrorism and organized crime), the Plan does not outline specific benchmarks or accountability tools to systematically assess Member States' progress. In contrast, the EU initiative remains at an even earlier stage, with no confirmed specific priorities or operational framework. This is expected to evolve through the work of technical expert groups and periodic political-level reviews.

#### 4.2 Theory versus Practice: Europe and the Consolidation of an Offshoring Paradigm

On paper, the EU's new approach appears to offer a more holistic application of the Smuggling of Migrants Protocol. It promises to move beyond a narrow focus on security, aspiring to deliver a more resilient, humane, and effective migration and asylum system.<sup>40</sup> EU migration strategies emphasize a range of measures, including enhanced humanitarian action to save lives at sea, development initiatives aimed at addressing the root causes of migration, and reforms to EU asylum policies to assist frontline member states in managing high volumes of arrivals during migration 'crises.' By adopting a broader perspective on migration routes and analyzing the patterns and profiles of migrants throughout their journeys, this approach aims to combat migrant smuggling while simultaneously enhancing the protection of smuggled individuals' rights.

While the EU's ambitious plan has yet to be fully implemented, there is reason for scepticism. Past efforts to enhance migrant protection have often failed to materialize as envisioned. Reports indicate that many similar measures in previous strategies were either poorly implemented or neglected altogether.<sup>41</sup> Institutional inertia and path dependency have played a significant role in this failure, as Europe has tended to reproduce established policy patterns, whereby earlier decisions – such as the prioritization of security and border control – have constrained and shaped subsequent responses, making shifts toward protection-oriented approaches more difficult over time.<sup>42</sup> This backslide has been further reinforced by dominant narratives that oversimplify migration dynamics, equating human smuggling, migrant exploitation, and irregular migration in a misleading equation.<sup>43</sup> EU policymakers have persistently portrayed transnational smuggling networks as the primary drivers of irregular migration, blaming them for the precarious journeys and tragedies endured by migrants and refugees in transit. This narrative assumes that curbing smuggling will both protect migrants and contain irregular migration, but it ignores the absence of safe, legal migration pathways as a key factor driving demand for smuggling services.

As this discourse evolved, it facilitated the reframing of migration containment as externalized border control. The fight against migrant smuggling has not only become streamlined into policy but has also redefined the EU's broader approach to migration and its engagement with third countries, particularly in North Africa and the Sahel.<sup>44</sup> Agreements under the EU Migration Partnership Framework explicitly tie development aid to partner

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<sup>40</sup> Stefania Panebianco, 'Towards a Human and Humane Approach? The EU Discourse on Migration amidst the Covid-19 Crisis' (2021) 56 *The International Spectator* 19.

<sup>41</sup> Oxfam, 'An Emergency for Whom? The EU Emergency Trust Fund for Africa: Migratory Routes and Development Aid in Africa' (Oxfam 2017).

<sup>42</sup> Eugenio Cusumano and Marianne Riddervold, 'Failing through: European Migration Governance across the Central Mediterranean' (2023) 49 *Journal of Ethnic and Migration Studies* 3024.

<sup>43</sup> Luigi Achilli, 'The "Good" Smuggler: The Ethics and Morals of Human Smuggling among Syrians' (2018) 676 *Annals of the American Academy of Political and Social Science* 77; Violeta Moreno-Lax, 'The EU Humanitarian Border and the Securitization of Human Rights: The 'Rescue-through-interdiction/Rescue-without-protection' Paradigm' (2018) 56 *Journal of Common Market Studies* 119.

<sup>44</sup> Luca Raineri, 'Smuggling Migrants from Africa to Europe: Threat, Resource, or Bargaining Chip?' in Luigi Achilli and David Kyle (eds), *Global Human Smuggling: Buying Freedom in a Retreating World* (John Hopkins University Press 2023) 249.

countries' commitment to combat smuggling, measured through reductions in migration flows and increased arrests. These policies reveal the EU's focus on enhancing borders, building security-sector capacity, and criminalizing smugglers, often at the expense of addressing the structural drivers of migration or prioritizing protection measures. In the logic of their proponents, these measures are designed to simultaneously ensure the security of destination states and the safety of migrants by reducing migratory pressures, ending perilous Mediterranean crossings, and creating a more 'orderly' migration system. Increased operational risks and financial barriers are expected to act as deterrents for smugglers, while for migrants, the rising costs and dangers of accessing smuggling networks are presumed to make irregular routes to Europe less viable.

As EU borders have increasingly become sites of externalization policies, a range of securitization measures has been activated to make border crossings more difficult and to criminalize irregular migration *tout-court*. These measures include investments in high-tech border security systems, the construction of walls and fences, and the negotiation of readmission agreements with origin and transit countries.<sup>45</sup> Yet the effectiveness of these policies remains deeply questionable. Despite extensive investments and securitization efforts, unauthorized migration flows and smuggling networks persist.<sup>46</sup>

What is particularly significant, however, is that the actual implementation of these policies, despite rhetorical commitments to protection, continues to reflect a persistent disregard for the core tenets of the Smuggling of Migrants Protocol. By focusing narrowly on enforcement and securitization, the EU has shifted away from other equally important foundational principles of the Protocol: protection, prevention, and safeguarding migrants' rights. This approach has further entrenched a system that undermines the very objectives it claims to pursue, exacerbating the vulnerabilities of migrants while doing little to dismantle the smuggling networks it seeks to combat.

## 5. FUTURE TRENDS AND POTENTIAL DEVELOPMENTS IN MIGRANT SMUGGLING

Given the plurality of actors and the complex mechanisms that shape migration governance, predicting future trends in the application of the Smuggling Protocol remains challenging. This uncertainty reflects the ongoing tension between the prosecution and the protection objectives of the Protocol, along with other protection requirements from international law. However, if the current trajectory continues – where security-based measures overwhelmingly dominate – the prospects for effectively addressing smuggling of migrants appear grim. Policy approaches overwhelmingly focused on the implementation of security-focused strategies have consistently demonstrated limited success in curbing migrant smuggling. Instead, they often exacerbate protection risks for migrants while having little to no long-term impact on migration flows.

If the current course of security-driven approaches – with its corollary of border militarization and the externalization of migration control – continues, it will likely further criminalize irregular migration and blur the boundaries between migrant smuggling and human trafficking. Numerous testimonies have documented cases where migrants were coerced or deceived into situations of trafficking or forced to carry illicit goods, including drugs, as part

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<sup>45</sup> Achilli and Kyle (n 28).

<sup>46</sup> Raineri (n 44); Ahmet İçduygu, 'Migrant Smuggling across the EU-Turkey Border: Structural, Institutional, and Agency-Based Factors' in Luigi Achilli and David Kyle (eds), *Global Human Smuggling: Buying Freedom in a Retreating World* (John Hopkins University Press 2023) 152.

of their journeys.<sup>47</sup> Scholars focusing on the alleged convergence of trafficking in persons and smuggling of migrants along the Central Mediterranean route have condemned the devastating consequences of the EU's anti-smuggling policies. This convergence manifests in multiple ways, including the sexual exploitation of Sub-Saharan women,<sup>48</sup> their labour-based exploitation in private homes and detention centres in Libya, the exacerbation of debt bondage among migrants transiting Chad and Sudan,<sup>49</sup> and the increase in kidnappings and extortion targeting smuggled migrants in Niger and Mali.<sup>50</sup> These outcomes underscore the gap between the Smuggling Protocol's call for safeguarding migrants' rights and the reality of policies that have significantly increased protection risks for migrants. By systematically curtailing migrants' agency within a restrictive policy environment, anti-smuggling measures will likely entrench vulnerabilities and facilitate new forms of exploitation.

Libya provides a particularly striking example of this dynamic. The EU–Libya partnership has come under intense scrutiny for fostering suspected collaborations between criminal groups involved in smuggling and trafficking to prevent migrants from reaching Europe.<sup>51</sup> Scholars attribute these collaborations to Libya's complex post-revolutionary political economy, in which militias that emerged from the civil war vie for control over economic activities, including smuggling of migrants.<sup>52</sup> In this volatile context, EU funds aimed at curbing migration presented lucrative opportunities. Local militias and other key players in Libya's smuggling economy adapted by aligning themselves with international anti-smuggling efforts, not as a genuine commitment but as a strategic manoeuvre to secure funding and consolidate power. By co-opting EU material and financial resources, these groups sought to legitimize their role while continuing exploitative practices against migrants.<sup>53</sup>

This adaptation did not lead to the end of smuggling of migrants; rather, it shifted its focus, further intertwining migrant smuggling and human trafficking while embedding both within Europe's externalization measures in North Africa.<sup>54</sup> As one humanitarian activist in Libya noted, 'the same people may be involved in both smuggling migrants out of Libya and exploiting them within the country.'<sup>55</sup> While some studies argue these groups operate as highly organized criminal networks, systematically exploiting migrants, others caution against overstating their cohesion, pointing instead to ad hoc, opportunistic activities driven by

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<sup>47</sup> Simón Pedro Izcarra Palacios, 'Violencia Postestructural: Migrantes Centroamericanos y Cáteles de La Droga En México' [2016] *Revista de Estudios Sociales* 12; Jeremy Slack, 'Captive Bodies: Migrant Kidnapping and Deportation in Mexico' (2016) 48 *Area* 271.

<sup>48</sup> Mark Micallef, Rupert Horsley and Alexandre Bish, 'The Human Conveyor Belt Broken: Assessing the Collapse of the Human-Smuggling Industry in Libya and the Central Sahel' (GI-TOC and Clingendael, March 2019) <<https://globalinitiative.net/analysis/the-human-conveyor-belt-broken-2/>> accessed 1 July 2025.

<sup>49</sup> Jérôme Tubiana, Clotilde Warin and Gaffar Mohammad Saeneen, *Multilateral Damage: The Impact of EU Migration Policies on Central Saharan Routes* (Clingendael, Netherlands Institute of International Relations 2018) <<https://www.clingendael.org/publication/impact-eu-migration-policies-central-saharan-routes>> accessed 1 July 2025.

<sup>50</sup> Fransje Molenaar, Jérôme Tubiana and Clotilde Waring, 'Caught in the Middle: A Human Rights and Peace-Building Approach to Migration Governance in the Sahel' (Clingendael 2018).

<sup>51</sup> Yasha Maccanico, 'Anti-Migration Cooperation between the EU, Italy and Libya: Some Truths. Statewatch' (Statewatch 2020), <<https://www.statewatch.org/media/documents/analyses/no-356-some-truths-about-libya.pdf>> accessed 1 July 2025; UNHCR, 'Operational Data Portal: Mediterranean Situation' (2023) <<https://data2.unhcr.org/en/situations/mediterranean>> accessed 1 July 2025.

<sup>52</sup> Raineri (n 44).

<sup>53</sup> *ibid.*

<sup>54</sup> Luigi Achilli, 'The Missing Link: The Role of Criminal Groups in Migration Governance' [2024] *Journal of Ethnic and Migration Studies* 1.

<sup>55</sup> *ibid.* 7.

individual actors.<sup>56</sup> Regardless of the degree of organization, Libya has become the epicentre of a thriving market for migrant containment, fuelled in part by the substantial funds channelled through EU initiatives.<sup>57</sup>

The overlap between smuggling of migrants and trafficking in persons in Libya underscores how securitized anti-smuggling policies have not only failed to dismantle criminal networks but have, in many cases, incentivized their evolution. Rather than addressing the structural drivers of irregular migration, these policies have contributed to the flourishing of exploitative practices, raising serious concerns about their long-term implications for both crime control and migrant protection.

While migrants' vulnerability to exploitation is undoubtedly a significant factor in the blurring between smuggling and trafficking, it is important not to overemphasize migrants' passivity. Some scholars argue that it is, in fact, migrants' agency – rather than its absence – that often explains instances of illicit market convergence. For example, Gabriela Sanchez posits that migrants sometimes engage in self-exploitation as a temporary strategy to cope with the precariousness of their status in Libya.<sup>58</sup> Her study reveals how Libya's conflict economy and widespread economic scarcity influence migrants to accept highly exploitative work arrangements, either to eliminate migration debts or simply to secure basic necessities such as accommodation. This perspective is echoed in other research,<sup>59</sup> which shows that migrants' choices to participate in forced labour or sex trafficking often emerge from complex individual decisions rather than straightforward coercion.

For instance, migrants along the Eastern Mediterranean route often form social bonds with smugglers, acquaintances, or even family members to access critical services. However, these same relationships can blur the lines between solidarity and exploitation. As the International Centre for Migration Policy Development (ICMPD) notes,<sup>60</sup> displaced families in Syria often face exploitation from within their own communities, navigating a precarious balance between survival and abuse. Similarly, Afghan migrants reluctantly join smuggling networks as a last resort to escape conflict,<sup>61</sup> while unaccompanied minors in Lebanon have been forced into exploitative labour as a means of financing their onward journeys or supporting families left behind.<sup>62</sup>

These forms of exploitation underscore that criminal phenomena tied to irregular migration are not solely products of organized crime but also of migrants' resilience in the face of restrictive policies. The convergence of smuggling, trafficking, and other illicit activities is better understood not as the result of sprawling criminal enterprises but as the outcome of numerous small-scale, pragmatic interactions. In this context, migrants gain vital forms of capital – social, financial, or in-kind – that serve as lifelines, enabling them to navigate hostile

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<sup>56</sup> Gabriella Sanchez, 'Migrant Smuggling in the Libyan Context: Re-Examining the Evidence' in Philippe Fargues and Marzia Rango (eds), *Migration in West and North Africa and across the Mediterranean: trends, risks, development and governance* (IOM GMDAC 2020).

<sup>57</sup> Nadia Al-Dayel, Aaron Anfinson and Graeme Anfinson, 'Captivity, Migration, and Power in Libya' (2023) 9 *Journal of Human Trafficking* 280; Maccanico (n 51); Moreno-Lax (n 43).

<sup>58</sup> Sanchez (n 56).

<sup>59</sup> Sine Plambech, 'Between "Victims" and "Criminals": Rescue, Deportation, and Everyday Violence among Nigerian Migrants' (2014) 21 *Social Politics* 382.

<sup>60</sup> ICMPD, 'Targeting Vulnerabilities. The Impact of the Syrian War and Refugee Situation on Trafficking in Persons' (International Centre for Migration Policy Development 2015) <[https://www.icmpd.org/fileadmin/ICMPD-Website/Anti-Trafficking/Targeting\\_Vulnerabilities\\_EN\\_SOFT\\_.pdf](https://www.icmpd.org/fileadmin/ICMPD-Website/Anti-Trafficking/Targeting_Vulnerabilities_EN_SOFT_.pdf)> accessed 1 July 2025.

<sup>61</sup> Alessandro Monsutti, *War and Migration: Social Networks and Economic Strategies of the Hazaras of Afghanistan* (Routledge 2005).

<sup>62</sup> Luigi Achilli, '"Markets of Dispossession": How Unaccompanied Minors Navigate Their Criminalization in Lebanon' (2024) 709 *Annals of the American Academy of Political and Social Science* 126.

environments even as these choices place them in significant danger.<sup>63</sup> By systematically excluding migrants from legal pathways and access to protection, states inadvertently foster environments where exploitation and criminalized survival strategies thrive. This dynamic complicates simplistic narratives of victimhood and agency, illustrating how migrants, far from being passive victims, actively shape and participate in these markets of dispossession, even as they bear the brunt of the risks involved.

In sum, unless current security-driven strategies are recalibrated to align more closely with the Smuggling of Migrants Protocol's emphasis on safeguarding the rights of migrants and protecting them from abuse, ill-treatment and exploitation, future trends are likely to follow the same troubling trajectory. Restrictive measures and insufficient legal pathways will continue to bolster exploitative markets, entrenching the convergence of smuggling and trafficking.

## 6. CONCLUSION

The Smuggling of Migrants Protocol remains a vital instrument, yet its implementation has often fallen short of its foundational principles.<sup>64</sup> While the Protocol requires to balance prosecution and repression with protection and international cooperation, states have generally ignored the latter, leading to unintended consequences that exacerbate the very issues the Protocol seeks to address. The criminalization of irregular migration and humanitarian assistance, the militarization of borders, and the externalization of migration controls have not only failed to dismantle smuggling networks but have also deepened migrants' vulnerabilities and contributed to the flourishing of exploitative markets.

The criminalization of smuggling and the increased reliance on law enforcement as a deterrent have reshaped the incentives for individual migrants and those who help them cross borders. These measures bind trafficking in persons and smuggling of migrants together, as enforcement both increases the demand for smuggling services and drives up their cost, heightening the risk that migrants may become victims of trafficking.

It is uncertain whether a more balanced implementation of the Protocol, one not solely centred on prosecution, will ultimately prevent the criminalization of migrants, given that prosecution and repression remain central elements of the agreement. However, adopting such balance would be a positive first step.

Looking ahead, the international community must prioritize a more balanced approach to migration governance. This requires renewed commitment to all the Protocol's original objectives, strengthening and improving accessibility to legal migration pathways, safeguarding migrant rights, and fostering equitable cooperation with origin and transit countries. By promoting evidence-based policies, improving data collection, and addressing the structural drivers of irregular migration, states can better align their efforts with both the spirit and letter of the Protocol. Ultimately, facilitating safer and more regulated migration does not signify states' loss of control; on the contrary, it enhances their ability to manage migration effectively. Shifting away from punitive measures and embracing solutions grounded in protection and prevention should be the priority.

There is margin for some hope. After years of broadly criminalizing the facilitation of irregular migration and fortifying external borders, particularly in the EU, new policy developments suggest a growing recognition that a predominantly unilateral, repressive approach by destination countries has neither ended irregular migration nor curtailed the involvement of criminal groups. On the contrary, these challenges persist. Consequently, new initiatives have emerged that acknowledge the need for increased legal pathways, address the

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<sup>63</sup> Luigi Achilli and Gabriella Sanchez (eds), 'Migration, Smuggling and the Illicit Global Economy' (2021) 3(1) *Public Anthropologist*.

<sup>64</sup> Ranieri (n 44).

root causes of irregular migration and its facilitation, and reaffirm the centrality of international law, including the UNTOC and its Protocols, as well as human rights and refugee law.

Current discussions on revising the Facilitation Directive to align it more closely with the Protocol's profit requirement could offer an opportunity to harmonize legal responses within the region with international law.<sup>65</sup> However, debates remain ongoing, with concerns that some EU proposals risk further deviating from the Protocol's spirit.<sup>66</sup> The proposed Facilitation Directive revision, while introducing humanitarian exemptions in principle, still grants Member States wide discretion to define smuggling and impose sanctions. This latitude risks sustaining broad criminalization frameworks that could encompass humanitarian actors, family members, and migrants themselves, even when no financial or material benefit is involved. Furthermore, the Proposal does not establish clear accountability or data transparency mechanisms, raising additional concerns about compliance with the Protocol's objectives and the safeguarding of migrants' rights. The next critical step will be to closely monitor how these commitments are put into practice.

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<sup>65</sup> Document Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA 15916/1/24 REV 1 <<https://data.consilium.europa.eu/doc/document/ST-15916-2024-REV-1/en/pdf>> accessed 1 July 2025.

<sup>66</sup> Gabriella Sanchez, 'The Facilitation Proposal: Assessing the EU's Response to the Smuggling of Migrants' (Sieps 2025) <[https://www.sieps.se/media/qedbmd5f/2025\\_6epa.pdf](https://www.sieps.se/media/qedbmd5f/2025_6epa.pdf)> accessed 1 July 2025.