

Expert Roundtable on the EU's Facilitation Directive: An opportunity to rethink EU Counter-smuggling responses

with the participation of



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Key messages to EU policymakers

1

Addressing migrant smuggling is a shared objective. A human rights based approach to countering smuggling is nonetheless essential, to ensure responses contribute to a better protection of lives and rights of people on the move, instead of exacerbating human rights risks and situations of vulnerability, in line with States' commitments under the Global Compact on Migration.

2

When driven by false assumptions and influenced by dehumanising narratives around migration, counter-smuggling responses inadvertently lead to making smuggling even more profitable and further expose people on the move to human rights violations, discrimination and victimisation. Strengthening the collection and use of disaggregated data on smuggling dynamics and on the actual impact of responses on the ground is essential to design effective, proportionate and rights-compliant measures.

3

Current counter-smuggling approaches need to be revised to ensure they are effective in targeting criminal networks and addressing smuggling-related corruption, and to avoid negative impacts on smuggled migrants, their families, or those acting in solidarity with them, at odds with international obligations and human rights law.

4

The ongoing revision of the EU Facilitation Directive is a key opportunity to set a model for facilitation laws across EU Member States, candidate and partner countries which are fully aligned with international and human rights standards, provide legal certainty, minimise risks for the misuse of facilitation provisions to prosecute migration as a crime and contribute to a more enabling environment for solidarity and humanitarian assistance in a context of shrinking civic space.

5

The facilitation offence under EU legislation should be narrowed to target those who intentionally and materially benefit from smuggling, whether financially or through other forms of gain, and criminalisation should be accompanied by provisions on the assistance and protection of smuggled migrants whose lives or safety are endangered, consistently with the UN Protocol Against the Smuggling of Migrants.

6

The revised EU Directive should include a binding humanitarian exemption clause to ensure that migrants, refugees, civil society organisations, or human rights defenders who facilitate their own journeys or those of others - for humanitarian reasons or on the basis of close family ties - cannot be criminalised, and to counter the chilling effect and legal uncertainty caused by unjust investigations and prosecutions.

7

Criminal justice efforts to counter smuggling must be accompanied by the expansion of safe, predictable and accessible regular migration pathways. This is the most effective, realistic, and humane strategy to undercut the business model of smuggling networks, while preventing and addressing vulnerabilities in migration.