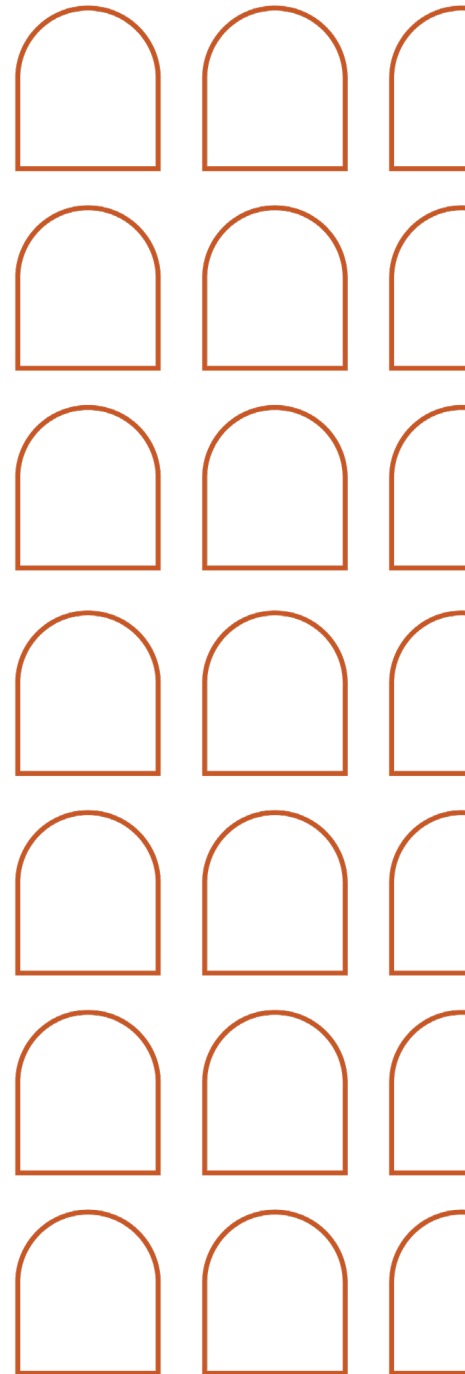STG Policy Papers

POLICY ANALYSIS

UNDERSTANDING THE FUTURE OF EUROPEAN UNION COUNTER-SMUGGLING POLICY

THE RENEWED EU ACTION PLAN AGAINST MIGRANT SMUGGLING (2021-2025)

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EXECUTIVE SUMMARY

Political contention surrounding 'irregular migration' in recent years has instigated national and multilateral government authorities to develop new transnational approaches to counter-smuggling policy. Contemporary migration movements result from disparate catalysts, extending far beyond direct personal persecution, thereby rendering existing asylum policies ill-equipped to accommodate modern mixed migration movements. This article argues that European Union (EU) approaches to counter-smuggling policy prioritise preventing spontaneous arrivals and restricting individuals' access to humanitarian protection systems. By reviewing trends from the past five years of European counter-smuggling policy, this research develops a prognosis for the priorities and effects of future EU counter-smuggling policies based on the Renewed EU Action Plan Against Migrant Smuggling (2021-2025). The analysis herein identifies that future European Union counter-smuggling policy will prioritise digital smuggling, data collection and exchange, externalisation via third country partners, addressing the state-led instrumentalisation of migration, and increasing return operations. Situating these priorities in the broader context of recent EU migration policy indicates a continuing shift towards dynamics of containment and exclusion.

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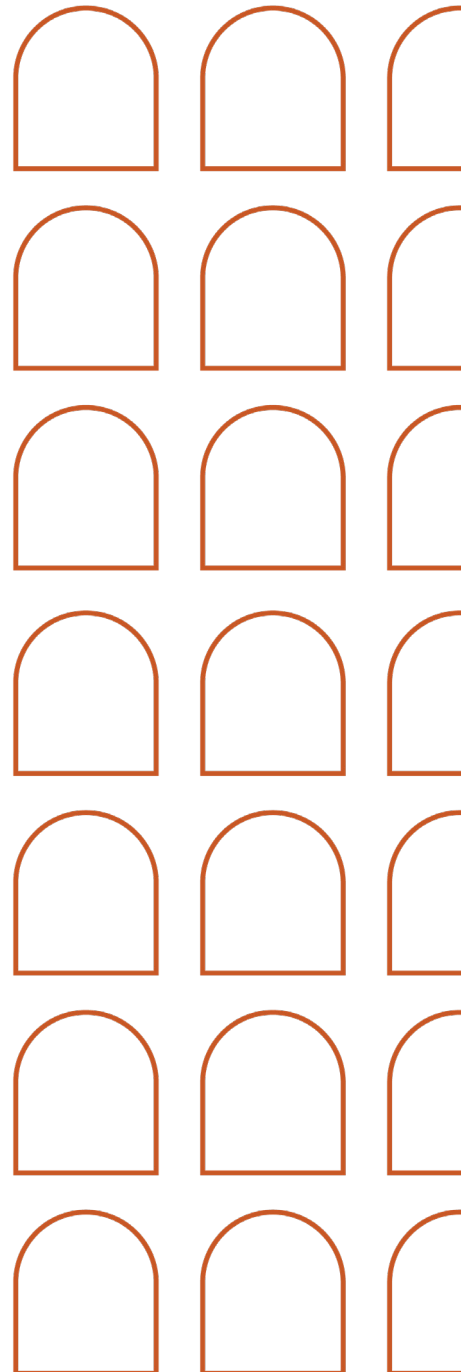
1. INTRODUCTION

European counter-smuggling policy entered its newest phase on September 29th, 2021, with the release of the European Commission's Renewed Action Plan Against Migrant Smuggling (2021-2025). Reviewing past EU counter-smuggling policy reveals such policies' serious negative impacts on communities in countries of origin, transit, and destination. These negative impacts demand a deeper evaluation of contemporary policy priorities. This research identifies five major policy priorities in the Renewed Action Plan that are anticipated to persist future EU counter-smuggling efforts, including emphases on addressing digital smuggling, heightening data collection, expanding third country partnerships, preventing the state-led instrumentalisation of migration, and increasing return operations. By situating these five trends in the current political landscape and comparing them to past policies, this research clarifies a fuller spectrum of counter-smuggling policies' impacts. This knowledge will enable policymakers, civil society stakeholders, and academic observers to promote policies which prioritise the safety and wellbeing of not only irregular and smuggled migrants, but also of affected local communities in countries of origin, transit, and destination.

The structure of the article is as follows. Section 2 compares the official narratives of migrant smuggling found in EU documentation with recent scholarly evidence. Section 3 provides a broad overview of the legal and political landscape surrounding EU counter-smuggling policy. Section 4 describes the five identified key priorities expected to continue in future EU counter-smuggling policy, and evaluates the risks and necessary considerations for each of these priorities based on their historical implementation. Finally, Section 5 provides recommendations on best practices to safeguard individuals' rights and wellbeing, should the predicted future EU counter-smuggling policy priorities prove accurate.

2. THE MARKET FOR HUMAN SMUGGLING SERVICES

The Renewed EU Action Plan Against Migrant Smuggling (2021-2025) repeatedly portrays the existence of smuggling services as a core driver of irregular migration. The Renewed Action Plan lists "disinformation and the false narrative of smugglers" as one of the main causes sustaining the demand for smuggling services when combined with the socio-economic hardship in some countries of origin and the perception of better opportunities in the European Union. Yet, the Renewed Action Plan fails to recognise how the inequitable accessibility of existing regular migration pathways into Europe can co-create demand for smuggling services. This exclusionary dynamic is clear in the Renewed Action Plan's mention of 'legal pathways' to migration only twice: once when paired with the need for "strengthening [partner countries'] border and migration management capacities", and again when referencing "attracting skills and talent to Europe". Instead of reflexively analysing how the demand for human smuggling services arises from the paucity of accessible pathways to regular migration, the Renewed Action Plan continues to rely on a simplistic narrative that blame "misinformation campaigns" by smugglers.

When reviewing empirical evidence from the Mixed Migration Centre (MMC), this narrative is demonstrably false. Interviews with 3,406 migrants in Niger and Mali proved that smugglers influenced the decision to migrate in only 5% of migrants interviewed in Niger, and only 6% in Mali. Interviews with 665 Afghan refugees in Europe proved that smugglers were the largest influence in only 3% of their decisions to migrate.

Instead, many individuals decide to migrate alone, or relying on assistance from their relatives and friends. Human smuggling is predominantly organised around individuals' social contacts, stemming from relationships formed in their familial, geographic, ethnic, or religious communities, among others. The actors involved in the market for human smuggling

provide their clientele with a desired service by enabling them to circumvent geographic or political barriers to their movement. Smuggling's existence as a tradable service makes its exchange akin to many other legally traded services, with variation in the type, cost, and quality of services offered, yet the illicit nature of the market prevents the regulatory oversight that protects customers interacting with regular service markets.

The Renewed Action Plan does encouragingly recommending that counter-smuggling partnerships with third countries include efforts "taking into account their specific situation, including the socio-economic aspects of smuggling for local communities" for the mutual benefit of all parties. Yet, this focus on the community dynamics of smuggling also risks drawing greater policing and prosecutorial attention to the "much wider range of activities in the countries of origin, transit and destination" that provide for irregular migrants' everyday needs in such communities.

This heightened risk of great prosecution stems from the Renewed Action Plan's larger narrative focus on the criminality of human smuggling, consistently linking it human trafficking and terrorism. The Renewed Action Plan relies on data from security services to depict human smuggling as 'poly-criminal', rather than drawing evidence from affected communities. The Renewed Action Plan uses this as justification to promote counter-smuggling "synergies with actions aimed at fighting all forms of crime, terrorism and violent extremism" and to call for greater research on "the links between migrant smuggling and other criminal areas, such as trafficking in human beings, drug trafficking and terrorism".

Despite political actors depicting it as otherwise, the market for human smuggling services is not exclusively dominated by organised criminal entities. Although some organised criminal actors can be present in any illicit market, many of the service providers in the market for human smuggling are normal economic actors who become involved in the provision of smuggling services in response to heightened demand in their region. The

provision of human smuggling services is also typically not hierarchically organised, sharply contrasting with mafia-like organised crime entities. The division of labour between actors evolves out of convenience and necessity. When any form of hierarchy exists, it results from some actors possessing a greater number of social contacts to other smuggling service providers, allowing them to occupy a larger role in organising irregular journeys. These features allow the market for human smuggling to flexibly expand and contract based on vacillations in the demand for smuggling services, indicating that attempts to 'close' certain migration routes will instead only result in the diversion of individuals to alternative paths where the market will expand to meet their increased demand.

Despite such overwhelming scholarly evidence, the Renewed Action Plan continues to narrowly portray smugglers as the sole source of risk for irregular migrants, with no recognition of European policies' own role in shaping the dynamics in the market for smuggling services. While the Renewed Action Plan contains a vague commitment to "to ensure that the fundamental rights of migrants are fully protected," it neglects to recognise the ways in which EU and Member State security services also violate irregular migrants' fundamental rights. Instead, the Renewed Action Plan blames smuggling service providers for all deaths in the Mediterranean without mentioning Member States' laws that inhibit Search and Rescue Activities. Although it states that "the fundamental rights of migrants are often gravely violated and migrants are often unable to seek help due to their irregular status," the Renewed Action Plan includes no improved mechanism for migrants to access justice and report abuse at the hands of Member States' or partner-countries' border security personnel.

The Renewed Action Plan mirrors the previous 2015-2020 Action Plan's depiction of human smuggling as highly profit-motivated. While profit is undoubtedly a motivating factor for some actors providing smuggling services, it must also be recognised that some actors providing smuggling services are motivated by solidarity with members of their own

communities. Furthermore, while violence and exploitation sometimes occurs in the market for human smuggling due to its unregulated nature, evidence indicates that such cases should be considered outliers rather than the norm. Correcting such inaccurate depictions of the market for human smuggling is crucial, as such depictions are persistently used as grounds for expanding security approaches already proven ineffective at eliminating irregular migration. The only durable counter-smuggling strategy is eliminating the market for smuggling services' raison d'être by opening new accessible pathways to regular migration.

Human smuggling service providers' intimate integration into the social fabric of local communities demands that any policy attempts to curtail their use must also acknowledge its own role both in affecting the dynamics of communities in countries of origin, transit, and destination, and in shaping the interactions that take place in the market for human smuggling services. Future counter-smuggling policy must therefore first prioritise the protection of human life and dignity before it prioritises the protection of sovereign borders.

3. THE LEGAL LANDSCAPE OF EUROPEAN ASYLUM AND COUNTER-SMUGGLING POLICY

Modern European migration policy rests on a foundation of first classifying individuals into differentiated categories based on the criteria of different migration pathways. This categorisation is an attempt to make the nuanced catalysts for migration readable in the eyes of the state by simplifying the myriad individual circumstances leading to migration down to a single element. The core distinction in this process of categorisation falls between 'economic migrants,' deemed to exercise greater agency when selecting to migrate and thus exclusively have access to limited regular pathways to labour migration (such as the European Union's Blue Card Directive and Seasonal Workers Directive) and 'forced migrants,' whose right to humanitarian protection is enshrined in international law due to their diminished agency when selecting to leave their home country. Yet, the agency

exercised in migration decisions is not a simple binary and should instead be understood as a continuum, with levels of agency fluctuating based on individuals' unique circumstances. Even within the same community, individuals may exercise radically different agency due to distinguishing characteristics such as political affiliation or sexual orientation. Further ambiguity exists in the case of individuals who are fleeing internecine social unrest, political instability, famine, or the effects of global climate change, to name just a few. The inability of existing policies to adequately accommodate these diverse circumstances of migration artificially constructs the concept of 'irregular migration'. Without sufficient alternative migration pathways, accessing asylum systems may be the only remaining viable option for individuals whose circumstances do not neatly conform to the criteria dictating existing migration pathways.

Multiple legal mechanisms in the European Union can provide individuals with protection once they reach Member States' territory. The Treaty on the Functioning of the European Union (TFEU) envisions a Common European Asylum System (CEAS). Article 78 of the TFEU outlines that the CEAS will entail collective European approaches to "…a common policy on asylum, subsidiary protection and temporary protection…". European approaches to both subsidiary and temporary protection are further explained in European Parliament and Council directives. Although these legal instruments are undeniably important in ensuring that individuals can access protection, they fail to address how individuals reach Member States' territory. As a result, irregular migration and human smuggling remain highly stigmatised, despite their necessity in enabling some individuals to access protection.

From a legal perspective, individuals who are seeking international humanitarian protection cannot be punished for irregularly crossing national borders. A prerequisite for membership to the European Union is signing the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Article 31 of the convention explicitly states that all forced migrants are entitled to the right to

asylum, regardless of their mode of entry, and that they cannot be punished for 'illegally' entering a country in order to seek protection. Internationally, Article 14 of the United Nations Universal Declaration of Human Rights protects all individuals' right to cross national borders and seek asylum. Within the European Union Charter of Fundamental Rights, Article 18 enshrines individuals' right to claim asylum within the territory of Member States. Articles 3 and 4 of the 2016 Schengen Borders Code further explain that border controls must not be used to impede the movement of "… refugees and persons requesting international protection, in particular as regards non-refoulement," and reiterates Member States' obligation to uphold the 1951 Refugee Convention. Finally, it is explicitly stated in Article 5 of the UNODC Protocol against the Smuggling of Migrants that "migrants shall not become liable to criminal prosecution…" for having purchased smuggling services. Despite this strong legal basis for individuals to claim international protection, including if their transit to EU Member States involves the purchase of human smuggling services, recent trends in European migration policy indicate a desire to prevent individuals from ever reaching Europe's border and exercising that right to asylum.

Discord between Member States represents the main obstacle for the European Union migration policy. In 2015 and 2016, nine different reforms were introduced, none of which were implemented by the European Council before 2020 due to a legislative preference for unanimity, thus gridlocking collective European migration and asylum policy. This inability to reach a consensus and take action on reforming migration and asylum measures results in the European Union assuming a more active role on broadly politically palatable endeavours to deter migration. Finally, in 2020, the European Commission unveiled its New Pact on Migration and Asylum, which included a package of proposed legislative reforms specifically tailored to garner greater support from reluctant Member States. The New Pact was widely criticised due to its invention of 'flexible solidarity,' which would allow Member States to forgo their resettlement obligations

in favour of sponsoring the return operations removing asylum applicants deemed ineligible from the European Union. Furthermore, the New Pact's Amended Proposal for an Asylum Procedures Regulation (APR) includes the expanded implementation of Asylum Border Procedures, and would create Accelerated Examination Procedures applicants from source nations with an aggregate acceptance rate below 20% (and below 75% in force majeure situations). Such policies prioritise certain Member States' goals of decreasing migration rates potentially at the expense of the individual adjudication of unique asylum claims.

Counter-smuggling policies enact broad ripple effects. We must gain insights from their previous implementation to more deeply understand the impact that they will exert not only on the market for human smuggling, but also on migration-affected communities in the global diaspora, countries of origin, and transit nations. Situating the Renewed Action Plan Against Migrant Smuggling (2021-2025) in a broader history of European Union counter-smuggling policy enables us to better anticipate how such policies will affect migrant communities and to prepare ourselves to advocate for policies that prioritise migrants' wellbeing.

4. THE FIVE MAIN POLICY PRIORITIES OF FUTURE EU COUNTER-SMUGGLING OPERATIONS

By revisiting past European counter-smuggling actions and evaluating their similarities to the initiatives proposed in the European Commission's Renewed Action Plan Against Migrant Smuggling (2021-2025), five key policy objectives emerge: curtailing 'digital smuggling;' enhancing European data collection and sharing capabilities; expanding the role of third countries in external migration management; counteracting the state-led instrumentalisation of migration; and relying on return operations as a perceived deterrent of irregular migration. Evaluating each of these five trends enables a deeper understanding of both their history and their anticipated impacts.

4.1. Digital Smuggling

As the attention paid by European actors and agencies to human smuggling grew in the years since 2015, so too has the attention paid to the role of modern communications technology and social media in irregular migration, which the EU terms 'digital smuggling.' The Renewed Action Plan identifies 'digital smuggling' as the use of "…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". In order to address these activities, the Renewed Action Plan recommends that the European Border and Coastguard Agency (Frontex) and Europol expand their social media monitoring capacity to "disrupt migrant smuggling networks involved in digital smuggling". The two organisations already prioritise counteracting irregular migrants' and smugglers' use of digital platforms with broad impunity, as clearly illustrated by their report on the Digitalisation of Migrant Smuggling. This report aims to provide EU Member States and third countries with information to expand their existing social media monitoring efforts in order to both prevent human smuggling and impede irregular migration.

Informed by such social media monitoring, the Renewed Action Plan outlines that "law enforcement and judicial authorities should develop new targeted actions", some of which include "information and awareness raising campaigns in key partner countries, to inform potential migrants about the risks of smuggling". So far implemented in 16 countries and the Western Balkans, these campaigns cannot be expected to provide good faith efforts to better inform migrants, as a European Commission's Study on Best Practices in Irregular Migration Awareness Campaigns found that "higher self-perceived knowledge of the risks correlated with survey respondents being more likely to think that irregular migration was more achievable". Thus, instead of working to increase migrants' ability to make accurately informed decisions,

the new focus on 'digital smuggling' risks removing information that enables migrants to avoid danger.

The European Data Protection Supervisor (EDPS) already strongly admonished European agencies' approaches to addressing 'digital smuggling' through social media monitoring. In Case 2018-1083, the EDPS stated that "EASO has no legal basis to perform social media monitoring of asylum and migration routes, smuggling offers and the discourse among social media community users on key issues" and delineated that the collection of information on migrant smuggling "falls out of the scope of EASO's mandate". Yet, the June 2021 agreement to upgrade the European Asylum Support Office (EASO) into a fully-fledged European Union Agency for Asylum (EUAA) may expand its mandate to now specifically include social media monitoring.

When viewed in their broader context, these developments indicate that the focus on social media content will likely continue to grow in coming years. The EUROPOL EMSC dedicated a section in their 2020 Activity Report entitled "Migrant Smuggling Enablers in the Online Environment" to the ways in which social media channels are used to share information amongst diaspora communities. They wrote that "messaging apps such as Telegram or WhatsApp are also used for organising mass migrant movements and generally ease and anonymise the communication…". The European Parliamentary Research Service (EPRS) also writes in their briefing entitled "Understanding EU Action against Migrant Smuggling" that human smuggling service providers "…increasingly use digital messaging services that offer encrypted communication and allow for real-time information exchange". Based on these indicators, it is highly likely that future European counter-smuggling policy will remain focused on restricting migrants' ability to access information about the market for human smuggling on digital platforms.

This intensified focus on digital content builds off a foundation established in recent years. In the 2015-2020 Action Plan, the European Commission outlined one of its priorities

as the "*Monitoring of internet content and development of knowledge-base*" and writes that "…closer cooperation with internet services providers and social media should be established". These priorities were in part pursued by EUROPOL's EU Internal Referral Unit, operating within the European Counter-Terrorism Centre (ECTC), which endeavours to remove content related to human smuggling from digital platforms. The Renewed Action Plan for 2021-2025 now recommends the expansion of such activities. These initiatives illustrate the misperception that access to information about human smuggling and irregular migration on social media platforms serves as a catalyst for migration, despite robust evidence from largescale surveys with irregular migrants in multiple countries demonstrating that social media content encouraged less than 5% of decisions to migrate.

Any policy that removes information available to irregular migrants must consider its ancillary impact on the safety of those same individuals. When discussing how it perceives digital content to facilitate irregular migration, the EPRS states that "…migrants use the internet and social media in particular at pre-departure stage and during their journey, for example to make informed decisions about smugglers and routes". The core of this statement is indeed correct, as digital information from diaspora, kinship, and community networks contributes to informing the decisions of individuals engaging in irregular journeys. Yet, rather than portraying this information as a catalyst of irregular migration, policymakers must acknowledge the ways in which this information provides a governing logic to the otherwise unregulated human smuggling space. This information, broadly referred to as 'social capital', enables individuals to avoid potentially dangerous situations by communicating the reputation of different smuggling service providers. It is important to recognise that social capital functioned to inform and protect migrants prior to the proliferation of communications technology and social media, and that its current presence on digital platforms now enhances individuals' ability to access its protective benefits. This digitally-accessible

social capital should also not be assumed to provide a perfect roadmap facilitating irregular migration – it cannot eliminate the risks inherent to such movements, and the information that it provides can be inaccurate in some cases. Thus, future European counter-smuggling policy focusing on 'digital smuggling' must ensure that information concerning the reputation of smuggling service providers is not removed, as its removal would engender new risks by limiting individuals' ability to make informed decisions.

4.2. Data Collection and Exchange

The second policy priority demonstrated by the Renewed Action Plan Against Migrant Smuggling (2021-2025) that will continue to guide future EU counter-smuggling strategies is the expansion of joint data collection initiatives and the integration of systems facilitating the exchange of national data related to migration. This includes the continued sharing of operational information between Europol and Frontex through Europol's Information Clearing House. Data related to maritime border surveillance and counter-smuggling is also exchanged between upwards of 300 EU and national authorities through the Common Information Sharing Environment (CISE), with the aim to expand this data exchange in 2022 and 2023. The day after the Renewed Action Plan's release, the European Court of Auditors released its Special Report on Europol Support to fight Migrant Smuggling, which stated that Europol needed to prioritise the its use of available external data sources. Sensitive operational data that Europol accesses is exchanged through the Secured Information Exchange Network Application (SIENA), with the volume of data exchanged through SIENA increasing by 68% between 2016 and 2019, contributing to more than doubling the total number of Europol cases related to migrant smuggling during the same period.

Counter-smuggling data collection efforts by EU operations in third nations are in part facilitated by the Africa-Frontex Intelligence Community and Common Security and Defence Policy (CSDP) missions, such as EU Capacity

Building Mission (EUCAP) Sahel and EU Border Assistance Mission (EUBAM) Libya. A not-yet-public 'Mini-concept on possible civilian CSDP efforts to address security challenges linked to irregular migration' will likely facilitate further data transfers. The expanded exchange of CSDP data is envisioned to "to gradually raise the level of the sensitivity of the shared data, going from the strategic level to more operational and tactical levels", therefore potentially including the personal data of suspected smugglers and irregular migrants. In 2017, a letter of understanding facilitated the exchange of non-operational information related to "illegal immigrant smuggling" between the 15 military and civilian CSDP missions and Eurojust, in line with the European Council's recommendation for "enhancing information and data sharing within the EU, between Member States, JHA agencies, and CSDP missions and operations, as well as with international partners".

The exchange of counter-smuggling data also extends beyond EU operations, to include data exchange with third countries. The Renewed Action Plan referencing that the European Multidisciplinary Platform Against Criminal Threats (EMPACT) "improved the criminal intelligence, information exchange and operational cooperation among Member States and with third partners". EMPACT transformed into a permanent EU security instrument in February 2021, and lists "cooperation with non-EU partners" as one of the strategic goals for its current cycle. The Renewed Action Plan references that data exchange with non-EU partners already occurs with "Western Balkan partners in EMPACT's Operational Action Plan on the facilitation of irregular migration". Furthermore, in 2018, the signing of the Prüm Agreement for South-East Europe extended the 2005 Prüm Convention's automatic exchange of DNA and fingerprint data to the non-EU states of Albania, Northern Macedonia, Serbia, and Montenegro, including data collected from irregular migrants. Europol also has operational agreements facilitating data exchange signed with 17 non-EU countries, and in 2018 it received authorization to open negotiations with eight "priority non-EU countries" located in the Middle East and

North Africa, including Morocco, Algeria, Tunisia, Egypt, Lebanon, Israel, Jordan, and Turkey.

Released the same day as the Renewed Action Plan, the European Commission's Report on Migration and Asylum indicates that this prioritisation of data exchange will continue in future counter-smuggling policies, stating that "the Commission is also developing model provisions to harmonise the exchange of information between Member States and third countries within the European Border Surveillance System (EUROSUR) framework". To achieve this goal, the Renewed Action Plan "calls upon Frontex, Europol and Eurojust to further support cooperation with partner countries to combat digital smuggling and international investigations and prosecution". This includes data exchange between Member States and non-EU partners through the network of Immigration Liaison Officers working in third countries, the 2019 recast of which included the creation of a new web-based information exchange platform to facilitate such exchanges.

Legally, counter-smuggling policies' expanded data collection and data exchange encounters significant issues. The EDPS Strategy for 2020-2024 clearly delineates:
Data protection is one of the last lines of defence for vulnerable individuals, such as migrants and asylum seekers approaching EU external borders. Although the EU has accumulated a patchwork of measures in the areas of police and judicial cooperation and border management, the legal framework remains fragmented, creating unnecessary discrepancies.
Article 45 of the General Data Protection Regulation (GDPR) provides conditions for transferring personal data to third countries, which requires no special authorization if the European Commission already issued a decision affirming the adequacy of that country's data protection. Yet, only two of the 17 nations that Europol signed operational agreements with have recognised adequacy decisions, and only one of the eight nations authorised for negotiations in 2018 has an adequacy decision. The EDPS cautioned in its comments on working arrangements between

Frontex and third countries that data transfers to third countries without adequacy decisions should only occur "through the provision of appropriate safeguards and on the condition that enforceable rights and effective legal remedies are available for individuals", and recommends that data transfers should be suspended if such safeguards are absent. Yet, the 2019 recast of the European network of Immigration Liaison Officers states that "as an exception from the requirement for an adequacy decision or appropriate safeguards, the transfer of personal data to third-country authorities under this Regulation should be allowed for implementing the return policy of the Union," illustrating the prioritization of returns over respect for migrants' personal data.

When the collection and exchange of data involves information from social media monitoring, the Renewed Action Plan lauds that the e-Evidence Package, proposed in 2018, includes strong safeguards, yet three years later this package is still not adopted. The supervisory role of the EDPS over Europol also remains incomplete, with the EDPS noting in its March 2021 Opinion on the Proposal for Amendment of the Europol Regulation that it currently lacks the legal power over Europol to order that it changes its data processing operations, impose administrative fines, or order the suspension of data transfers to a third country in cases of non-compliance. All of these powers were endowed to the EDPS in the 2018 Regulation (EC) No 2018/1725 (EUDPS). Without such legislative protections and supervisory powers, data transferred to third countries may result in repercussions for individuals fleeing state persecution.

The Renewed Action Plan specifically emphasises the use of artificial intelligence to expand data collection on human smuggling and to "enable turning data into rapidly actionable information in a more efficient manner". The EDPS already recommended that Frontex data exchange agreements with third countries include "a prohibition of using automated processing of personal data". The use of artificial intelligence and other forms of algorithmic decision making

seriously increases the risks of racial profiling and bias in law enforcement, with the Office of the United Nations High Commissioner for Human Rights strongly advising against its use. Furthermore, the use of artificial intelligence in data collection could violate the GDPR, given that there would be no protection against the automatic processing of EU citizens' data.

Data collection efforts also broadly risk supporting mistaken conceptions of 'evidence-based policy' that weaponise raw migration numbers as a political fear-mongering tactic. In many ways, the collection, centralization, and standardization of migrants' biometric data heralds their entrance into systems designed to exercise state control over the physical location of their bodies. Policy makers should devote special attention to ensuring that any expanded data collection and exchange efforts related to smuggled migrants will not be used to influence the evaluation of their claim for humanitarian protection. Recent proposed legislation in the United Kingdom criminalising irregular migration, even when associated with asylum applications, and preventing irregular and smuggled migrants from applying for protection indicates that EU policymakers would better protect migrants' fundamental rights by legally delimiting the permissible uses of any collected data on migration. Furthermore, in order to safeguard individuals' internationally recognised right to move irregularly in order to claim asylum, all European Union institutions and EU Member States must make a firm commitment not to share migration data with national authorities seeking to use such data to restrict irregular migrants' access to protection systems.

4.3. Externalisation via Third Country Partners

The third key policy priority demonstrated by the Renewed Action Plan is continued expansion of third countries' role in achieving EU migration goals. Intersecting with each of its other priorities, the Renewed Action Plan emphasises working with 'partner countries' to enhance their migration management and law enforcement operations. The Renewed Action Plan adopts calls for "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". The form that such coordination will take are "Anti-Smuggling Operational Partnerships with partner countries along migratory routes, as part of the comprehensive, balanced, tailor-made and mutually beneficial migration partnerships", yet implied meaning of such a 'mutual benefit' remains containing potential irregular migration toward the European Union. Furthermore, the European Council noted in its June 2021 Conclusions that these tailored partnerships will be "an integral part of the European Union's external action". Yet, relying heavily on migration partnerships with third countries as leverage for greater counter-smuggling cooperation risks replicating the same existing inequitable migration mechanisms for 'preferred' classes of migrants that serve as a catalyst for the expansion of smuggling activity.

The Renewed Action Plan continues to prioritise security cooperation with third countries over cooperation to develop more inclusive and accessible regular migration pathways. It lauds the recent implementation of "Common Operational Partnerships [that] facilitated joint actions and provided capacity building for law enforcement and judicial authorities in partner countries". It further emphasises the success of the Africa-Frontex Intelligence Community in 30 African nations, with special attention paid to "the increase of analytical, preventive and operational capacities in the fight against migrant smuggling, in particular through Risk Analysis Cells". Similar strategies that rely on external partners to interdict on Europe's behalf in efforts to 'close' migration routes and prevent individuals migrating irregularly from ever accessing asylum systems will likely remain at the core of future EU counter-smuggling policy.

Recent European Union approaches to migration centre on this same use of third country partnerships to externalise its migration management and counter-smuggling policy. Based on EU Commissioner for Home Affairs Ylva Johansson's visits in the past year to Albania, Bosnia and Herzegovina, Mauritania,

Morocco, and Tunisia, and her recent meetings with representatives of the governments of Albania, Bosnia and Herzegovina, Libya, Morocco, Serbia, Tunisia, and Turkey, the absence of expanded third country partnerships from future EU counter-smuggling policy is almost unthinkable. Frontex also signed status agreements with Albania, Montenegro, and Serbia, with another status agreement in progress with Bosnia and Herzegovina, and new working arrangements between Frontex and The Republic of Guinea and Georgia developed in 2020. These nations will therefore likely be priorities for the Renewed Action Plan's planned "Anti-Smuggling Operational Partnerships", which will be financed by the approximately €8 billion earmarked for use on migration policy partnerships with third countries in the Neighbourhood, Development and International Cooperation Instrument (NDICI). The operationalization of third country partnerships to curtail human smuggling and reduce irregular arrivals to Europe is intimately linked with the expansion of return operations and the constriction of eligibility requirements for humanitarian protection mechanisms, as elucidated in the following section. Understanding these links demands first examining the history and impact of the externalisation of European migration management policy.

The externalisation of European efforts to counter irregular migration is not a new phenomenon, but its implementation expanded in recent years to pervade multiple policy channels. For example, cooperation between Spain and Morocco to prevent migrants' departures dates back to the turn of the 21st century, financing the expansion of Moroccan border enforcement apparatuses. Combatting irregular migration was also discussed at the 2006 Rabat Process and 2015 Khartoum Process intergovernmental dialogues. Agreements between European and third countries, including Algeria, Egypt, Libya, and Tunisia proliferated during this timeframe. This externalisation of European migration management policy expanded beyond direct security accords to include the use of development instruments, such as the European Neighbourhood Policy (ENP),

to finance capacity building programs for third country migration and border control authorities. The 2015 European Agenda on Security emphasises cooperation with third countries to counteract human smuggling and prioritises the "…deployment of security experts…" to both ENP nations "…and other targeted non-EU countries…". The 2015-2020 Action Plan Against Migrant Smuggling immediately reiterates "…cooperation against the smuggling of migrants inside the EU and with third countries as a priority in the fight against organised crime networks" in its third sentence, again illustrating its centrality to European counter-smuggling policy. The European Council repeated in its June 2018 Conclusions the need to expand partnerships and cooperation with nations in the Western Balkans and Africa. Accomplishing these priorities involved expanding the role of Frontex beyond the EU's borders, with the recent creation of Frontex Liaison Offices (FLOs) in Turkey, Niger, Serbia, Senegal, and Albania, with a sixth FLO in Ukraine pending deployment. In November of 2021, the Council of the EU Working Party on External Aspects of Asylum and Migration held discussions on new partnership agreements with Niger, Nigeria, and Iraq.

During the years that the 2015-2020 Action Plan Against Migrant Smuggling was in effect, the EU-Turkey Statement, the European Union Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa (EUTF for Africa) and the Migration Partnership Framework (MPF) all combined the provision of financial support with the enhancement of third countries' border control capacities. These priorities of past initiatives foreshadow the way in which future EU counter-smuggling policy will rely heavily on third countries as implementing partners.

In November 2015, EU Member States convened with 35 African nations to develop the Joint Valletta Action Plan, uniting the use of development funds with efforts to combat irregular migration, human smuggling, and human trafficking. At the Valletta Summit, the EUTF for Africa was announced, codifying the use of development funding to leverage the EU's African partners into acting as the forward guard of European migration management. The EUTF for Africa now includes cooperation with 26 of the African nations present at the Valletta Summit through both country-specific and regional projects. The primary goals for the dispersal of its development funds are not only to spur economic growth in countries of origin, but also to enhance border enforcement capabilities in majority transit nations. Indeed the European Commission stated in its September 2021 Report on Migration and Asylum that "border management has also been a major theme of the North of Africa window of the EU Emergency Trust Fund for Africa, supporting provision of training and equipment in Libya, Morocco and Tunisia, and this will continue after the expiry of the Trust Fund". On March 18th, 2016, the European Union and Turkey released a joint statement outlining their intent to return to Turkey all individuals deemed ineligible for asylum who travelled irregularly from Turkey to the Greek islands in exchange for the resettlement of UN-recognised Syrian refugees from Turkey to the EU. The Statement additionally created incentives for Turkish cooperation by including a roadmap for EU visa liberalisation for Turkish citizens and a total of €6 billion in financial support for Turkey. Finally, in June 2016, the European Union launched the MPF with the designated priority of Mali, Niger, Senegal, Nigeria, and Ethiopia, continuing to expand the role of third countries in counter-smuggling policy in exchange for development financing. All five progress reports on the MPF's implementation focus on the success of third country migration management efforts and highlight areas where migration flows continue as targets for future action to combat irregular migration.

The continued prioritisation of externalising the European Union's migration management through counter-smuggling partnerships and other agreements relies on a logic of containment. By restricting the movement of individuals seeking protection, not only do EU Member States shirk their international legal obligations, but they also risk exacerbating the insecurity that these individuals face. Indeed,

without adequate safeguards or guarantees from third country partners, this externalisation also endangers the respect for migrants' fundamental rights.

4.4. Addressing the Instrumentalisation of Migration by State Actors

The Renewed Action Plan's new focus on the "state-led instrumentalisation of migration" indicates the fourth priority of future EU counter-smuggling policy. After European Council first noted in its Conclusions on June 25th, 2021, that the EU Council "rejects any attempt by third countries to instrumentalise migrants for political purposes", the Renewed Action Plan now attributes specific blame to the Belarusian government. It also more clearly defines the state-led instrumentalisation of migration as "facilitating irregular migration and using human beings to create pressure at the EU's external borders" and "using migratory flows as a tool for political purposes". European Commission President Ursula von der Leyen, the European Parliament, and the European Council all condemn this action as a "hybrid attack" on the EU.

The Renewed Action Plan depicts that "migrant smugglers have taken advantage of the situation, notably of the actions of the Belarusian authorities, offering illicit services and on-line guidance to migrants" and the Slovenian Presidency of the Council of the European Union released a Statement on the situation calling on countries to "ensure that civil aviation is not instrumentalised by the international smugglers' networks". Yet, it is important to note that the many of those reaching Europe's borders from Belarus enter Belarus legally without the help of smuggling service providers. Due to relaxed tourist visa regulations, individuals were able to organise their journeys through Belarusian and third country travel agencies.

The efficacy of European institutional responses to this situation is unclear. The Renewed Action Plan references responding to the state-led instrumentalisation of migration by "financial assistance to help Lithuania address short-term needs to ensure dignified reception conditions to migrants used for political purposes", amounting to a total of €36.7 million. Lithuania also requested a Rapid Border Intervention, resulting in the deployment of 103 Frontex officers to Lithuania and Latvia, with 56 EASO experts also deployed to support Lithuania and 10 EASO experts to support Latvia. Lithuania received further support from the newly expanded Union Civil Protection Mechanism, with responses from 18 Member States and Norway. The European Commission also identified "providing technical and operational guidance on return procedures" as a key way in which it supported Lithuania. The Renewed Action Plan lists "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" as its strategies for addressing this issue. It also cites the EU Migration Preparedness and Crisis Management Network (Blueprint network) as a way to coordinate Member States' responses to the instrumentalisation of migration. In its "toolbox to respond to a migration crisis", the legislation creating the Blueprint Network references both supporting EU neighbouring countries to "improve their reception capacities and better manage migration flows, in particular protecting the borders and fighting against migrant smuggling, and enhance return cooperation" and supporting the creation of "additional safe corridors and resettlement schemes in relevant third countries of origin, transit and/or destination". European pressure on Iraq resulted in the Iraqi Civil Aviation Authority temporarily suspending all direct flights between Iraq and Minsk. These actions illustrate the continued prioritisation of containing irregular migration and preventing individuals from reaching the EU.

By focusing on these priorities, the Renewed Action Plan fails to address the ways in which anti-immigrant politics in EU Member States co-create the phenomenon of irregular migration. Moreover, policies recently enacted by Poland, Lithuania, and Latvia demonstrate the disruptive power of the instrumentalisation of migration in the absence of EU-wide efforts to resettle individuals caught in the middle of such larger political tensions.

In Poland, 15,000 troops were deployed on the border to Belarus in October, increasing drastically from the 3,000 in September and 6,000 in October. New Polish legislation passed will facilitate the creation of a more robust border wall. It also facilitates the immediate removal of any individual who enters irregularly that border personnel deem 'ineligible' for asylum without the full civilian evaluation of their asylum claim, in what civil society actors term 'pushbacks' that may violate the principle of *non-refoulement*. The UNHCR criticised that this legislation prevents effective access to asylum in Poland and "de facto two categories of asylum seekers and penalising those who have crossed the border irregularly" based on "on a misapplication of article 31 of the Geneva Convention", violating the principle of *non-penalisation*. In Lithuania, new border wall construction also began in reaction. New legislation progressively restricted asylum access in Lithuania, first by mandating applicants' detention during fast tracked asylum processing, then by prohibiting asylum applications except at official border crossings or at Lithuanian foreign diplomatic missions, or when entering Lithuanian territory regularly with a visa. Proposed legislation would further allow individuals' detention for up to 18 months and would create separate classes of 'asylum seekers' and 'illegal migrants. These amendments to Lithuanian asylum law create the legal precedent for the collective pushback of individuals entering Lithuania irregularly without assessing their claim for asylum. The UNHCR commented that asylum applicants' detention without adequate safeguards was "likely at variance with international law", later adding that "imposing a blanket measure to preclude the admission of refugees or asylum-seekers without measures to protect against *refoulement* would not meet international standards, even in times of emergency". Lastly, unanimously approved measures allowing the Latvian military and police personnel to also deploy to support its border guards.

These reactions stand at odds with nations' international legal obligations and display a callous disregard for individuals' safety. Media reports indicate that eight individuals died while stranded in limbo between Belarus' and Poland's national borders with, suffering from hypothermia in the harsh weather conditions and without access to food, clean water, or shelter. Frontex Fundamental Rights Monitors also recorded a significant number of Serious Incident Reports at the Lithuanian Border, wherein migrants' fundamental rights were violated. In response, the IOM and UNHCR jointly stated in September that "political disagreement on responsibilities must never result in the loss of life, forfeiting States' international obligations and commitments".

The European Court of Human Rights (ECHR) responded by issuing interim measures requiring both Polish and Latvian authorities to provide "food, water, clothing, adequate medical care and, if possible, temporary shelter" to asylum applicants, and advising Lithuanian authorities that "the applicants should not be removed to Belarus". Still, the political discord that this instrumentalisation of migration caused between Member States and the European Commission, with 12 EU Member States calling on the Commission to provide funding for new "physical barriers" on the EU's external borders, indicates the likely continued use of such strategies by malign actors in the future.

Despite the Renewed Action Plan repeatedly describing the state-led instrumentalisation of migration as a "new phenomenon", reviewing numerous previous events illustrates how the EU's priorities of restricting access to its asylum systems and preventing individuals from reaching its border co-create the potential for states to weaponise their migration policy against the EU, seriously imperilling migrants' wellbeing. European efforts to externalise counter-smuggling and migration management policy predicated some third country actors' use of migrants' lives and wellbeing as a political bargaining chip. In late February 2020, protesting perceived insufficient European support and 'burden sharing,' Turkish authorities ceased to impede and in some cases even encouraged roughly 13,000 individuals' irregular movement from Turkey into Greece and Bulgaria. This prompted the deployment of two new Frontex

operations, 'Rapid Border Intervention Aegean 2020' and 'Rapid Border Intervention Evros 2020,' and Greek authorities responded by entirely suspending asylum applications and expanding the use of extralegal pushbacks. In May 2021, Moroccan authorities responded to Spain's allowance of President Brahim Ghali of the Sahrawi Arab Democratic Republic (Western Sahara) to receive medical treatment within Spanish territory by loosening their migration management efforts to allow 12,000 individuals to cross into the Spanish enclave of Ceuta. These events illustrate how the European externalisation of migration management and counter-smuggling responsibilities to third countries is neither politically solvent nor durable.

Recognising Europe's prioritization of third country migration partnerships allows both state dignitaries and non-state actors to operationalise such political objectives to their advantage. Niger's 2011-2021 President Mahamadou Issoufou and Mali's 2013-2020 President Ibrahim Boubacar Keïta both likened their nations to dams holding back the tide of migration from Europe in recent years when discussing receiving European support. On the sub-state level, European counter-smuggling priorities can reshape local political economies and spark intercommunal violence. In the Libyan region of Fezzan in 2017, one local group postured itself as closing the Southern Libyan border and combatting human smuggling in an effort to secure material support from the European Union and the Libyan National Army. This caused conflict with alternative groups reliant on the facilitation of migration for their livelihoods. In early 2018, further groups in the region used counter-smuggling priorities as a pretence for violent efforts to assert control over certain localities. In Niger, the implementation of Law 2015-36 with European support, which criminalised all economic activity related to migration, resulted in groups involved the facilitation of migration with closer ties to local authorities in the north leveraging their connections to enact the selective prosecution of their competitors, exacerbating existing intercommunal tension.

Individually, each of these examples

demonstrates how counter-smuggling policies can enact unintended consequences. Together, all of these examples compound to indicate a European prioritisation of restricting migration at the cost of communities' welfare and stability create a structural vulnerability in EU migration policy. If left unaddressed, actors may exploit this vulnerability for their own advantage at the price of individuals' wellbeing, making addressing the state-led instrumentalisation of migration a likely priority for future counter-smuggling policy.

4.5. Return Operations

The fifth and final significant priority indicated by the Renewed Action plan and recent European migration management and counter-smuggling policy is the expansion of return operations repatriating irregular migrants and rejected asylum applicants deemed ineligible for protection. The perception that return operations will function as a deterrent to irregular migration and human smuggling persists in the Renewed Action Plan Against Migrant Smuggling (2021-2025). The Renewed Action Plan argues that return operations contribute to "reducing the incentives for irregular migration". It references that 'sustainable reintegration' can offer "new start to people who return to their countries of origin", yet without rectifying the underlying catalysts for individuals' departure, policymakers should expect individuals to depart on migration journeys once again.

While the Renewed Action Plan references that Migration Partnerships under the New Pact 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", such initiatives should not be made contingent on supporting expanded return operations. Just days before the Renewed Action Plan's release, a report from the Slovenian Presidency of the Council of the European Union to the Strategic Committee on Immigration, Frontiers and Asylum highlighted strategies for increasing return operations, stating that "return policy has been recognised

as one of the priority areas of cooperation with third countries". The Renewed Action Plan mentions return operations when discussing dialogues between the EU and both African partners and Turkey, indicating its centrality to future European migration policy.

Institutionally, the established structures facilitating return operations expanded in recent years. In 2017, the European Commission released its [Renewed Action Plan on a More Effective Return Policy in the European Union](), which expanded the funding made available for return related actions to both Member States and third countries. In 2019, the [recast Regulation on the Creation of a European Network of Immigration Liaison Officers]() continued the deployment of European staff to third countries, facilitating returns through initiatives such as the [European Return Liaison Officers Network](). The [New Pact on Migration and Asylum]() in September 2020 appointed a new EU Return Coordinator. It also outlined a further expansion of Frontex's role in returns, creating the position of Deputy Executive Director for Returns. The European Commission released its first ever [EU Strategy on Voluntary Return and Reintegration]() in April 2021, and the Renewed Action Plan identifies voluntary returns to Iraq as a model strategy for counteracting state-led instrumentalisation of irregular migration. The EU Strategy also contributes to the securitisation of return operations, planning that Frontex would take control over the operations of the European Return and Reintegration Network (ERRIN). The text of the EU Strategy states that "the success of any return policy is often measured by the number of those that actually return to their country of origin". Future European counter-smuggling action will therefore prioritise increasing such numbers, the gross majority of which ([82%]()) are forced returns.

The New [Pact on Migration and Asylum]() shares the misperception that return operations will deter irregular migration, stating that the return of denied asylum applicants would "… eliminate the risks of unauthorised movements and send a clear signal to smugglers". This same emphasis on expedited processing and removal is central to the [amended APR]()

[proposal](). In combination with the [recast Return Directive]() and the new [Screening Regulation](), the proposal would create a new pre-entry phase of asylum processing, which would increase the potential for migrants returns by encapsulating both immediate return procedures and returns associated with the negative decisions under the proposed Asylum Border Procedure. The European Parliamentary Research Services [identifies]() that the main goal of the recast Return Directive itself is increasing European return rates. Reviewing the increasing centrality of removal operations to European migration policy suggests their probable heightened use in future EU counter-smuggling policy.

Readmission agreements enduringly serve as a cornerstone of EU approaches to migration management. The EU signed binding [readmission agreements]() with 17 countries and territories between 2004 and 2014, in addition to six legally non-binding readmission arrangements. In 2015, the focus on such agreements as a policy instrument continued with the unveiling of the [Joint Valletta Action Plan]() and the [European Agenda on Migration](), with emphasis placed on deterring irregular migration and expanding return agreements with third countries. The March 2016 [EU-Turkey Statement]() likewise demonstrates the continued focus on using returns as punishment for irregular migration, and these same strategies continued in the June 2016 launch of the Migration Partnership Framework (MPF). The MPF designated Mali, Niger, Senegal, Nigeria, and Ethiopia as priority nations, and the [European Council delineated]() the goal of the MPF as "…stemming the flows and improving return rates…" of irregular migrants. This focus on return agreements played a largely performative function, endeavouring to enact [quick and demonstrable]() results, in contrast with the lack of immediate results yielded by the longer-term projects of the EUTF for Africa.

The [2015-2020 Action Plan Against Migrant Smuggling]() included that "…the Commission will propose to amend the Frontex legal basis to strengthen its role on return," and indeed, the reformed [Frontex mandate]() in 2016 created a permanent reserve of vehicles and border guards and added return

operations to the Agency's functions. In 2019, the Frontex mandate expanded once again, aiming to create a standing corps of 10,000 operational staff that it states are "required to effectively address existing and future operational needs for border and return operations". While the mandate aims to reach this number of operational staff by 2027, the European Commission states in its September 2021 Report on Migration and Asylum that "recruitment and training of the standing corps need to be accelerated".

This growth in Frontex operational staff coincides with a ballooning number of people returned by Frontex operations, which increased by more than fourfold from 3,576 in 2015 to 15,850 in 2019. Even during the widespread travel restrictions associated with the COVID-19 pandemic, Frontex still facilitated 11,933 returns using both charter and scheduled flights. The European Commission commended that by September 2021, the volume of Frontex coordinated returns was "broadly double the activity that took place in 2020".

The increasing prevalence of European return operations and their persistent centrality in migration management policies conveys the incorrect belief that increased return rates would deter aggregate migration. Indeed, return operations can constitute an additional obstacle to individuals leaving untenable circumstances. After already having invested greatly, circumvented numerous obstacles, and endured potential hardships associated with irregular migration, there is no guarantee that returned individuals will abrogate their journeys instead of continuing their efforts to reach safety and stability. Instead, increased return rates can heighten the risk of individuals with limited funds becoming stranded en route because they lack the needed financial resources to continue their journeys. Such policies therefore risk contributing to the higher rates of debt-bonded migration, kidnaping, and human trafficking. The European Commission envisions that EASO's planned upgrade to become the fully-fledged EUAA will enable it to "introduce extra guarantees and measures

to ensure compliance with fundamental rights". In fulfilling such goals, the new EUAA should also take a more active role in analysing the potential impacts of the return of asylum applicants deemed ineligible for protection. Even in cases where the European Union is unwilling to provide individuals with access to asylum apparatuses, its policymakers must carefully consider if their return operations will place individuals at aggravated risk.

5. CONCLUSION AND RECOMMENDATIONS

Analysing the Renewed EU Action Plan Against Migrant Smuggling (2021-2025) in the context of recent EU migration policies indicates that future EU counter-smuggling policy will pay special attention to digital smuggling, data collection and exchange, expanded third country partnerships, addressing the state-led instrumentalisation of migration, and increasing return operations. Each of these five policy priorities carries associated risks for migrant populations seeking to claim their legally guaranteed right to seek asylum. European Union policymakers would be well advised to respond to these serious risks by recognising the following policy recommendations:

- **Digital Smuggling:** The Renewed Action Plan's efforts to curtail social media content related to the facilitation of irregular migration must neither remove information informing potential migrants about safe routes of passage and places to stay, nor remove information regarding the trustworthiness or risks of certain smuggling service providers. This information enables irregular migrants to make informed decisions. There is no evidence that social media alone can catalyse or entice greater irregular migration.
- **Data Collection and Exchange:** Any collection and exchange of information regarding the identity of irregular migrants must not be used to dehumanise migrants or to limit individuals' access to asylum systems. All individuals, regardless of their mode of migration, have a right to seek asylum in the EU. Furthermore, strict safeguards must be implemented that delimit the precise circumstances for the transfer of personal data to third countries and the parameters for such data's use. Data protection authorities must exercise the full power to halt such transfers to third countries if these safeguards are not adhered to.
- **Externalisation via Third country Partners:** The EU's expanded collaboration with third country partners through "Anti-Smuggling Operational Partnerships" under the Renewed Action Plan must include detailed human rights impact analyses and analyses of the impact on local political economies where such policies will be implemented. This analysis cannot be carried out in the aggregate and must be conducted on a case-by-case basis for all affected communities in each implementing country. Careful considerations must be made to ensure that third country partners' migration management activities do not impede individuals' right to seek asylum.
- **Addressing the Instrumentalisation of Migration by State Actors:** Individuals caught in the middle of geopolitical tension cannot bear the burden of political actors' disagreements. When reacting to the instrumentalisation of migration, the EU's first priority must be the protection of individuals' fundamental rights and ensuring that all individuals are in a safe and tenable situation while their claims to asylum are processed. Such asylum claims must be thoroughly evaluated on an individual, case-by-case basis by a civilian member of government. Collective expulsions risk violation the principle of *non-refoulement*, and relying on security service members to adjudicate asylum claims limits applicants' access to justice.
- **Return Operations:** Return operations must not be used as a deterrent to irregular migration and human smuggling. Instead, the most effective way to simultaneously reduce irregular migration and to enhance the safety of migration is to open accessible regular migration pathways. Such systems would endow state authorities with greater awareness of migration flows into and out of their sovereign territory.

EU policymakers would find value in listening to stakeholders such as local communities,

implementing partners, and humanitarian organizations to both avoid the negative ancillary effects of the aforementioned policy approaches, and to prioritise the safety and wellbeing of migrants and asylum seekers. These consultations must be substantive and comprehensive, rather than symbolic and performative. Creating counter-smuggling policy that prioritises the safety and wellbeing of irregular migrants requires reorienting longstanding policy positions and listening to members of affected communities so that future counter-smuggling policy avoids repeating past mistakes.

The Renewed Action Plan includes limited encouraging policy examples. These include "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", in addition to "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". Yet, while these are indeed positive goals, they concurrently maintain the prioritisation of containment over mobility. Policies whose success is measured by deterring aggregate migration will consistently fail due to both the constant emergence of new catalysts for migration, and individuals' adaptability when facing new obstacles to their mobility. Without creating adequate opportunities to access regular migration pathways, both irregular migration and the market for human smuggling services will persist.

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