



## Resolution 2568 (2024)<sup>1</sup>

Provisional version

# A shared European approach to address migrant smuggling

Parliamentary Assembly

1. Referring to the [Reykjavik Declaration](#) and the renewed commitment by the Heads of State and Government during the 4th Summit to fight against the smuggling of migrants, the Parliamentary Assembly considers that the smuggling of migrants is a transnational criminal activity challenging States' sovereign right to control their borders and increasing the vulnerability of people on the move.
2. The Assembly considers that one of the keys to combating migrant smuggling is to make the business of smugglers unprofitable and to increase effective access to safe and legal pathways for labour migration, family reunion, and people seeking international protection. A State-led approach should aim to regulate and protect human mobility on the one hand, while enhancing the means dedicated to investigating and sanctioning organised cross-border criminal groups involved in the smuggling of migrants, on the other.
3. The Assembly believes that an effective strategy against the smuggling of migrants should involve a multidisciplinary approach across competent administrations within and across member States. Equally, co-operation between source, transit and destination countries of migration movement should be structured around a response covering both the criminal and human aspects, aiming to address the drivers of migrant smuggling through information campaigns and an effective increase of safe and legal migration pathways, and at the same time to protect the fundamental rights of people on the move, including smuggled migrants.
4. The Assembly highlights that the migrant smuggling is a transnational crime and that only through international co-ordination and co-operation will source, transit and destination countries be able to ensure that the response to this crime is rooted in the rule of law and international human rights frameworks, thus allowing to defend both States' sovereign right to control their borders and the rights of people on the move.
5. The Assembly welcomes the fact that the vast majority of States across the globe have endorsed the [Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime](#) (the "Palermo Protocol"), which provides for the harmonisation of legislations through an internationally recognised definition, according to which migrant smuggling is "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Article 3).
6. The Assembly considers that any initiatives taken by the Council of Europe, including through the adoption of a regional instrument on the issue of migrant smuggling, should not aim to create new crimes but should instead complement the Palermo Protocol, facilitating its unambiguous and consistent interpretation in the light of the challenges faced today.
7. The Assembly recalls that the crime of migrant smuggling is not equal in nature to irregular border crossing. Moreover, pursuant to Article 31 of the [United Nations Convention relating to the Status of Refugees](#), States shall not impose penalties, on account of their irregular entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory

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1. *Assembly debate* on 1 October 2024 (27th sitting) (see [Doc. 16032](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Lord Simon Russell). *Text adopted by the Assembly* on 1 October 2024 (27th sitting). See also [Recommendation 2283 \(2024\)](#).



without authorisation, provided they present themselves without delay to the authorities and show good cause for their irregular entry or presence. The need for international protection of each person should be examined in a fair and individualised manner. States should also not impose penalties on individuals who were coerced into committing an illegal act pursuant to Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

8. The Assembly highlights that migrant smuggling and trafficking in human beings are different and distinct in nature. The Assembly warns against conflating these two crimes, which hinders the ability of States to provide an effective response and to put an end to these criminal activities.

9. The Assembly notes, with concern, the lack of consistency in the legislation of member States aimed at combating the smuggling of migrants, which can lead to negative human rights consequences. It recalls that laws or actions relating to migrant smuggling should never be used to intimidate or criminalise migrants and migrants' rights defenders. Such practices do not increase the efficiency of policy action to prevent and tackle the crime of migrant smuggling and moreover put the rights enshrined in the European Convention on Human Rights (ETS No. 5) at risk, in particular Article 11 and Article 3, for instance when they result in the obstruction of humanitarian assistance.

10. The Assembly reiterates its view as expressed in [Resolution 2323 \(2020\)](#) and [Recommendation 2171 \(2020\)](#) "Concerted action against human trafficking and the smuggling of migrants" that a Council of Europe instrument would usefully complement the international standards set in the Palermo Protocol, and recommends that a strict definition be adopted and transposed into domestic law by member States with a view to ensuring as much consistency as possible in the understanding and interpretation of this crime. Such an instrument should in particular:

10.1. comply with the definition of the crime of migrant smuggling and the scope of criminalisation as defined in Articles 3 and 6 of the Palermo Protocol, including aggravating circumstances;

10.2. acknowledge the heterogeneous profile of people involved in the perpetration or the facilitation of the crime of migrant smuggling and the necessity to prosecute perpetrators according to a proportionate, gradual and nuanced approach to criminal sanctions;

10.3. recall that the "procurement" of illegal entry is not tantamount to crossing a border irregularly and that the crime of migrant smuggling necessarily involves that the smuggler is making a material or non-material profit;

10.4. expressly state that migrants are not the perpetrators of the crime of smuggling and that reducing or waiving the smuggling fee in return for facilitating the unauthorised crossing of a border should not be considered as a criminal act committed by the smuggled migrant if this was done under coercion or threat, or if they are found to be in need of a form of protection (refugee, person in need of humanitarian protection, person at risk of being a victim of trafficking, victim of trafficking);

10.5. clarify that people in need of protection should never be criminalised or administratively sanctioned for crossing a border unauthorised pursuant to Article 31 of the United Nations Convention relating to the Status of Refugees and Article 26 of the European Convention on Action against Trafficking in Human Beings;

10.6. explicitly exempt humanitarian assistance and any support to migrants in accessing their fundamental rights from any form of criminal liability, when such acts are conducted without seeking any financial benefit;

10.7. clarify that member States are legally bound by the obligation to protect and safeguard the right to leave any country, including one's own, as enshrined in Article 2 of Protocol No. 4 to the European Convention on Human Rights (ETS No. 46), and in Article 12 of the [International Covenant on Civil and Political Rights](#).

11. The Assembly recognises the particularly complex challenges associated with the investigation and sanctioning of migrant smugglers and strongly recommends that European co-operation efforts be primarily geared towards the strengthening of criminal justice efforts to address migrant smuggling in a way that disrupts the criminal organisations and removes the financial incentive for this crime. In this respect, the Assembly welcomes the establishment of the Council of Europe Network of Prosecutors on Migrant Smuggling and the co-operation between this network and the Focus group on migrant smuggling of the European Union Agency for Criminal Justice Cooperation (Eurojust).

12. The Assembly takes note of the dense fabric of regional and international co-operation initiatives already involved in supporting member States and their international partners to combat the smuggling of migrants. It is convinced that such co-operation would strongly benefit from the engagement of Council of Europe member States through a jointly agreed definition. The Assembly suggests that such definition be mainstreamed in the use and in the monitoring of standards such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198); the European Convention on Mutual Assistance in Criminal Matters and its additional protocols (ETS Nos. 30, 99 and 182); the Criminal and Civil Law Conventions on Corruption (ETS Nos. 173 and 174), the Convention on Cybercrime (ETS No. 185) and the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its amending Protocol (ETS No. 108 and CETS No. 223, “Convention 108+”).

13. The Assembly stresses the obligation of member States to protect the fundamental rights of smuggled migrants, including children, whose vulnerability may be heightened during their passage through smuggling channels.

13.1. Council of Europe instruments should be fully used in the context of border management and in the context of migration policies, in particular the Convention on Action against Trafficking in Human Beings, the European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (ETS No. 126), the Convention on Preventing and Combating Violence Against Women and Domestic Violence (CETS No. 210), and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);

13.2. The Assembly reiterates the obligations deriving from the European Social Charter in its original version (ETS No. 35) and the European Convention on the Legal Status of Migrant Workers (ETS No. 93) providing for the protection of migrant workers who are nationals of a contracting party, in particular in its Articles 4 and 5. It also reiterates the Recommendation CM/Rec(2022)211 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation and the importance of ensuring that labour inspections are carried out to ensure that all migrants, including migrant workers, are treated with dignity;

13.3. On the protection of smuggled migrants, the Assembly also reiterates the relevance of the Conventions of the International Labour Organization, in particular the Migrant Workers (Supplementary Provisions) Convention (No.143), on the Abolition of Forced Labour Convention (No. 105), and of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Assembly strongly encourages member States to ratify these conventions.

14. The Assembly stresses the important strategic role of the European Union. It considers that the harmonisation of norms along commonly shared human-rights standards is paramount, not only for the sake of coherence between the laws of the European Union member States which are also members of the Council of Europe, but also because of the influence which European Union law exerts on non-European Union member States, especially in the field of migration and border management. Moreover, such norms should conform to the Council of Europe standards and it is paramount that the Council of Europe is proactive in enhancing co-ordination with the European Union on this front.

15. In the context of the recent proposal by the European Commission to revise the so-called “Facilitators Package”, the Assembly warns against the excessively large scope of the crimes falling under the definition of migrant smuggling contained in the proposed Directive intended to replace Directive 2002/90/EC. This exacerbates the risk of inconsistency across European States with regard to their understanding and interpretation of what the crime of migrant smuggling should and should not entail.

16. The Assembly endorses the concerns expressed by the European Data Protection Supervisor on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings (Opinion 4/2024). It agrees with the Supervisor that the proposal fails to demonstrate its alignment with international data protection and fundamental rights standards, with a potential to lead to the adoption of conflicting norms in European Union member States bound by the Council of Europe norms. The Assembly considers that this proposal may be premature and touches on policy areas which are broader than the issue of migrant smuggling. It recommends that discussions on this piece of legislation be disconnected from the discussions around the revision of the Directive 2002/90/EC.