



International Committee on the Rights of Sex Workers in Europe Submission on the 2021-2025 EU action plan against migrant smuggling

March 2021

About the contributor

The International Committee on the Rights of Sex Workers in Europe (ICRSE) is a sex worker-led network representing more than 100 organisations led by or providing services to sex workers in 31 countries in Europe and Central Asia, as well as 200 individuals including sex workers, academics, trade unionists, human rights advocates, and women's rights and LGBT rights activists. ICRSE opposes the criminalisation of sex work and calls for the removal of all punitive laws and regulations regarding and related to sex work as a necessary step to ensure that governments uphold the human rights of sex workers.

Restrictive migration policies create situations in which human rights violations are more likely to occur. State policies that increase border control and surveillance, and reduce opportunities for safe and regular migration, overuse criminal justice response to migration, have created a market for irregular migration, due to increased reliance on smugglers and more dangerous and expensive routes. This increases risks of situations of debt bondage, forced labour and trafficking, as well as endangering lives.

There is a strong interrelation between human trafficking and migrant smuggling, although both phenomena are clearly distinguished in international definitions. It is usually unclear during the action of transportation or border crossing whether the relationship with the person facilitating border crossing will have the nature of smuggling- and thus will end in the destination country or whether it will continue and will lead to exploitation, forced labour or trafficking. It has been documented by numerous NGOs, international organisations and media that many migrants who aim to enter Europe have experienced abuse and severe exploitation already during their migration/transportation. In such instances, the line between migrant smuggling and human trafficking can be significantly blurred. Therefore the Action Plan against migrant smuggling should have strong linkages to the **EU Anti-Trafficking Strategy and provide safeguards for vulnerable groups and people who became victims of different kinds of human rights violations en route, including by offering residence permits for humanitarian purposes.**

ICRSE Headquarters, Van Diemenstraat 194, 1013 CP Amsterdam, Netherlands
<http://www.sexworkeurope.org> info@sexworkeurope.org



Similarly to the Palermo Protocol, the Protocol on Migrant Smuggling complements the 2000 UN Convention on Transnational Organized Crime. The UN Protocol requires financial or other material benefit for migrant smuggling in order to be considered a crime. However, EU law allows Member States to keep the broad definition of smuggling, where the financial benefit requirement is not part of the base crime, but only as an aggravating circumstance. Furthermore, it lacks the inclusion of specific safeguards for victims of smuggling. For example, the Facilitation of Entry is criminal in Italy, Greece, the UK and Hungary and in the majority of EU Member States, even without intent to gain profit. Additionally, the exemption of humanitarian actors from criminalisation is only optional for EU Member States, although the Action Plan against migrant smuggling 2015-2020 included a commitment by the Commission to make a proposal in 2016 to “improve the existing EU legal framework [...] avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress”. As an effect, this has led to increased policing of humanitarian actors and civil society organisations that assist migrants. Besides civil society organisations, property owners and those who provide accommodation for undocumented migrants are also at risk of criminal liability for facilitating irregular stay. In certain Member States, the implementation of the Facilitation Directive is perceived to contribute to the social exclusion of both irregular and regular migrants. This has been defined as the “criminalisation of solidarity” by civil society organisations and human rights activists in recent years. **Therefore EU Action Plan on Migrant Smuggling should integrate recommendations of the Fundamental Rights Agency (2014) report *Criminalisation of migrants in an irregular situation and of persons engaging with them*.**

The highly criminalized and punitive environment for both undocumented migrants and services providers, exclusion from formal economy and inability to access state support leads many those most vulnerable undocumented migrants such as women, trans-gender and young men and boys to sell sex in order to survive. Hostile policy environment, conflation, inconsistent and discriminatory application of laws criminalising human trafficking, smuggling and aspects of sex work put undocumented migrant sex workers at high risk of violence, including homicides, severe exploitation and human trafficking. Migrant sex workers who support each other for their safety, who organize themselves to protect themselves from violence, exploitation or violent clients, similarly those who provide accommodation to sex workers, also risk prosecution for human trafficking, migrant smuggling and brothel-keeping. The EU Action Plan on Migrant Smuggling should therefore include strong human rights considerations and safeguards. **The EU Action Plan on migrant smuggling should provide strong linkages to EU Strategy on Victims of Crime as well as to the EU Gender Equality Strategy.**