

EMN INFORM

Addressing facilitation of irregular migration by boats departing from North-Africa

1. INTRODUCTION

This EMN Inform summarises the main findings of the EMN Ad-Hoc Query (AHQ) on *Measures implemented / planned by EU Mediterranean Member States to prevent irregular migration by means of boats departing from North-Africa*.¹ The AHQ gathered existing evidence on the facilitation of irregular migration by sea to the European Union perpetrated by facilitators (affiliated, or not, to organised criminal groups (OCGs), focussing specifically on the sea route from North Africa. Evidence collected was complemented by desk analysis and literature review.

2. KEY POINTS TO NOTE

- ★ Smuggling of migrants by sea constitutes a pressing humanitarian and political issue, while remaining a rather under-reported area of research.
- ★ The main objective of international and EU legal instruments is to fight against smugglers who profit from the situation of immigrants, rather than to target immigrants themselves.
- ★ *Modus operandi* are diversified, depending on political, economic and geographical factors. Itineraries evolve rapidly in response to competitive smuggling networks, national policies or border controls.
- ★ Given the clandestine nature of smuggling, data are only indicative of the scale of the phenomenon: however, trends or surges in the number of arrivals testify to the trans-nationality of this crime as well as the relevance of the Route from North-Africa.

¹ EMN Ad-Hoc Query No 562 on Measures implemented / planned by EU Mediterranean Member States to prevent irregular migration by means of boats departing from North-Africa. Contributions were received from EL, ES, FR, IT, MT and PT, CY and SI reported that no such cases were encountered. Data are updated to June 2014, with the exception of EL whose data refer to August 2014.

3. INTERNATIONAL AND EU LEGAL FRAMEWORK

Under international law, facilitation of irregular migration ("migrant smuggling") refers to the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the unauthorised entry of a person into a Member State of which the person is not a national or a permanent resident.² The EU legal framework on smuggling (so-called "Facilitators Package") comprises the following instruments:

- ★ Directive 2002/90/EC defining the infringement of "facilitation of unauthorised entry, transit and residence";
- ★ Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

EU law criminalises the intentional facilitation of unauthorised entry and transit as well as, when conducted for the purposes of financial gain, residence.

A complementary EU legal instrument in this context is Directive 2004/81/EC whose provisions may be extended to migrant victims of smuggling who cooperate with the competent authorities.³

² Source: EMN Glossary 2.0 - UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against transnational organised crime as approved by Council Decision 2006/616/EC

³ Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings is applied by nine Member States (AT, BE, CZ, LU, MT, PT, RO, SE) to third-country nationals who have been victims of smuggling.

4. BACKGROUND AND CONTEXT

Migrant smuggling is a growing global phenomenon that exposes thousands of migrants to unacceptable risks and challenges the integrity of transnational borders. Professional smugglers, often linked to organised criminal groups (OCGs) use land, sea and air routes (or a combination of them). Their itineraries can evolve rapidly due to competitive smuggling networks and their capacity to adapt to changing national policies and border controls mechanisms.⁴ The United Nations Office on Drugs and Crime (UNODC) recognises that, while migrant smuggling does not always involve organized criminal groups and it is theoretically possible to travel clandestinely from North Africa to Europe without the support of smugglers, this is very difficult to manage in practice.⁵

It is estimated that 80% of irregular migration from Africa is "facilitated", while its composition may vary to include also people in need of international protection fleeing conflict zones or persecutions.⁶ Unlike trafficking in human beings, migrant smuggling does not usually involve 'coercion', given it generally takes place with the consent of the person willing to move. However, the act of smuggling itself may be dangerous and violent, at times under inhumane travelling conditions, and often results in severe human rights violations.

5. SCALE OF THE PHENOMENON

How many third-country nationals are smuggled via the Central Mediterranean route?

An overall estimate of smuggling of migrants from North-Africa has not yet been made. However, it is reported that many thousands of migrants cross the Mediterranean in particularly risky conditions which have often cost the lives of many.⁷ The probability of dying at sea has constantly increased by 3% in recent years.⁸ According to Frontex⁹ in the third quarter of 2013 detections of illegal border-crossing in the Central Mediterranean rose to levels comparable with those last seen during the initial stages of the 2011 Arab Spring; this figure is accompanied by stable, if

not decreasing, number of detected facilitators.¹⁰ Europol¹¹ estimates that a total of 17,000 irregular immigrants have been smuggled by organised criminal networks (OCGs) from the North-African coasts.

In 2013, Spain reported the apprehension of 3,237 irregular third-country nationals smuggled by sea, while in Italy there were 4,323 only during the last quarter of the year. In France, only 11 migrants were apprehended. In 2014, 227 smuggled immigrants from North-Africa were so far rescued in Malta, 448 in Spain, 506 in Greece¹² and 59,474 in Italy¹³.

Where do smuggled migrants come from?

Italy provided a breakdown of data by migrants' nationality: though up to 2013, data are indicative of the reduction of the consequences of the Arab Spring (Tunisia), while a steep increase in the number of Syrians fleeing from the civil war and of Eritreans coming from the Horn of Africa are already notable. The rest confirms the existence of a systemic inflow.

Table 3.1 Nationalities of smuggled migrants (including asylum seekers) to Italy

Third-country nationals (including asylum seekers)	2011	2012	2013
Afghanistan	2,175	1,741	n/a
Egypt	1,989	1,221	2,728
Eritrea	n/a	1,431	9,834
Pakistan	1,423	1,248	1,753
Syria	n/a	582	11,307
Somalia	1,092	2,180	3,263
Tunisia	28,047	2,268	833

What regions/areas are mostly concerned?

In terms of geographical distribution of apprehensions, in 2013 in Spain 94% of irregular immigrants were intercepted at the Strait of Gibraltar, Mediterranean and Ceuta and Melilla (while the rest in the Canary Islands); these proportions were confirmed in 2014, with only 9% of apprehensions in the Canary Islands. Interestingly, Italy provided information not only by regions of arrivals, but also by gender and age (table below). While 89% of events happen in Sicily, there are evident signs of an increase in landings on the coasts of Apulia. Nearly 77% of third-country nationals

⁴ International Centre for Migration Policy Development (ICMPD) – The East Africa Migration Routes Report (2007)

⁵ http://www.unodc.org/documents/human-trafficking/Migrant_smuggling_in_North_Africa_June_2010_ebook_E_09-87293.pdf

⁶ The Global Initiative against Transnational Organised Crime – Smuggled Futures: The dangerous path of the migrant from Africa to Europe (2014).

⁷ According to Fortress Europe (August 2014), at least 21,344 people have lost their lives in the Mediterranean since 1988 (2,352 in 2011, 590 in 2012, 801 in 2013 and at least 1,991 in 2014), of which 7,515 on the route from Egypt, Libya and Tunisia to Italy and Malta. The data is compiled by extensive review of international media reports (<http://fortresseurope.blogspot.it/p/la-fortezza.html>).

IOM figures for 2012 and 2013 available at: <http://www.iom.int/files/live/sites/iom/files/pbn/docs/behind-numbers.html>

⁸ Migration Policy Centre (MPC) - Is what we hear about migration really true? Questioning eight stereotypes (2014)

⁹ http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q3_2013.pdf

¹⁰ This decline may in part be due to a shift towards the abuse of legal channels and document fraud to mimic legal entry to the EU, which results in facilitators being able to operate remotely and inconspicuously rather than accompanying migrants during high-risk activities such as illegal border-crossing (Frontex FRAN Q3 2013).

¹¹ https://www.europol.europa.eu/sites/default/files/publications/socta_2013.pdf

¹² This represents only the 0.2% of the total number of irregular third-country nationals smuggled by sea. The vast majority of the 22,717 immigrants apprehended in 2014 by the Greek authorities departed from the neighbouring Turkish coasts.

¹³ 41,603 were rescued during 229 events of the Italy-led initiative Mare Nostrum and 8,379 during 64 events of the Frontex-coordinated operations Hermes and Aeneas.

are male, while minors (14%) exceed the number of women (9%).

Table 3.2 Arrivals to Italy by gender and age (1st semester 2014)

Region	Male	Female	Minor	Total
Calabria	990	207	287	1,484
Apulia	4,195	271	368	4,834
Sardinia	17	0	0	17
Sicily	40,603	4,991	7545	53,139
Total	45,805	5,469	8,200	59,474

6. MODUS OPERANDI

Given the clandestine nature of the crime, *modus operandi* and patterns in migrant smuggling are extremely diversified, depending on political, economic, geographical, technical and logistic factors and involve a plethora of actors.¹⁴ Migrant smuggling by sea often occurs as part of a wider smuggling process, which involves land and/or air movements. They range from simple to complex, from safe to dangerous and from cheap to very costly:¹⁵ cheaper services may be sold to poorer “clients” who may be transported at higher personal risk and with a lower chance of success.¹⁶

The boats used may often sail without a flag, a name or any sort of documentation, while the owners of the boats remain unidentified and, therefore, never investigated or prosecuted. Smugglers may also embark several vessels to depart simultaneously with the intention of saturating operational resources, confident that migrants will be intercepted, and rescued, by the authorities of recipient countries.¹⁷

What kind of boats to smugglers use?

Migrant smuggling by sea happens aboard different boats, ranging from small rubber dinghies up to medium-size wooden fishing boats.¹⁸ This is indicative of the ability of smugglers to diversify patterns. However, the final choice depends on the resources available to migrants, the length of the journey, the boats provided by/to smugglers and their availability at a given time and place. The size of the vessels has changed over the years: small-size dinghies and boats initially served the purpose of short journeys for small groups of migrants, while, due to more efficient patrolling systems and the enforcement of bilateral agreements, larger boats with a higher carrying

capacity are needed for longer trips to circumnavigate controls.¹⁹

During the first semester of 2014, the Italian authorities apprehended 137 boats (compared to only 17 during the last quarter of 2013), while confiscating only 3. 59 events concerned merchant ships, with over 10,000 persons rescued. These were normally large size boats, with a capacity of several hundred people. In a few cases (concerning Adriatic or Ionic arrivals) this may happen aboard private yachts or sailing boats (so-called “luxury smuggling”).²⁰ Out of the four cases originating from North-Africa to Greece in 2014, two fishing vessels were abandoned adrift at high seas, one was found ashore in south Crete (and confiscated) and one sunk. In France on 11 migrants smuggled aboard of cargo ships to the port of Marseille.

Smuggling to Spain happens instead by small-size vessels. Boats arriving to the Canary Islands are in 70% of the cases *cayucos* or *pateras* (used by local Moroccan, Mauritanian or Senegalese fishermen), and in 30% of the cases inflatable or rigid-hull inflatable. In 2014, they all have been *pateras*. For the rest of Spain sea border sections, 57% were inflatable, small-size rubber boats with an average of 7 people on board, 19% *pateras* and 24% inflatable, rigid hull inflatable or fiberglass boats. The average number of occupants per boat was 11 in 2013 and 16 in 2014.

What are the main hubs for migrant smuggling?

Studies of smuggling by sea may provide only a general outline of its evolution:²¹ developments are characterized by the increase in coastal countries’ importance as hubs and the gradual professionalization of the smugglers who started to make profit arranging the services. Information received, though limited, shows that in the first five months of 2014²² boats to Italy departed mainly from Libya (214) and to a much lesser extent from Tunisia (17), Egypt (9), Greece (9), Turkey (5) and Algeria (1). These data confirm the main relevance of the Central Mediterranean route.²³

Table 4.1 Landings to Italy by country of departure and by number of TCNs disembarked

Country	2012		2013	
	Landings	TCNs	Landings	TCNs
Algeria	1	4	2	24
Egypt	19	1,401	80	9,215
Greece	89	2,782	59	1,892
Libya	51	5,087	230	27,314
Morocco	-	-	1	7

¹⁹ Smuggling of migrants into, through and from North Africa – A thematic review and annotated bibliography of recent publications (UNODC, 2010)

²⁰ <http://frontex.europa.eu/feature-stories/luxury-smuggling-qt6qxS>

²¹ http://www.unodc.org/documents/human-trafficking/Migrant_smuggling_in_North_Africa_June_2010_ebook_E_09-87293.pdf

²² Data of 19 May 2014

²³ As reported by Frontex, in 2013, around 70% of the arrivals via sea in Europe have happened following the Central Mediterranean Route, starting from Libya and heading to Italy, against 12% along the Western Route and 18% of the Eastern Route.

¹⁴ UNODC Issues Papers on Migrants smuggling by air (2010) and Migrant smuggling by sea (2011).

¹⁵ <http://www.unodc.org/toc/en/crimes/migrant-smuggling.html>

¹⁶ http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf

¹⁷ UNODC Toolkit to Combat Smuggling of Migrants Tool 1 - Understanding the smuggling of migrants (2010)

¹⁸ http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2013.pdf

Montenegro	-	-	1	8
Syria	-	-	13	1,480
Tunisia	112	2,294	68	908
Turkey	26	1,699	29	2,077
Totale	298	13,267	483	42,925

Can a direct correlation between facilitation and fishing industry be drawn?

Smuggled migrants portrayed by media aboard fishing vessels could suggest that fishers or elements of the fishing industry are involved in migrant smuggling operations.²⁴ There may be instances of members of the fishing industry (entrepreneurs and employees) accepting bribes or being recruited to facilitate migrant smuggling into Europe, but there is no suggestion that this is an organized activity by the fishing industry.²⁵ According to the IMO Maritime Safety Committee (MSC) fishing vessels are not frequently used; when they are, they seem to be part of larger smuggling operations.²⁶ Migrant smugglers who do not want to be intercepted may favour fishing vessels as they have a natural reason to be at sea, recruit professional fishermen for their seafaring skills²⁷ and/or use their own boats to transport migrants out to sea (so-called "mother-boat" modus operandi).²⁸ In North African towns where boats are lost to smuggling, fishermen themselves become vulnerable to smugglers as either smuggled migrants due to their financial loss,²⁹ captains of smuggling vessels or even smugglers.³⁰

Evidence collected on the experience of smugglers on the route to Europe via the Canary Islands³¹ seems to confirm such approaches³². According to EL, ES and MT, facilitators normally escape controls as they are rarely amongst smuggled immigrants. Normally a collaborator (or smuggled immigrants themselves) becomes the pilot of the boat. In some cases they may have a background as fishermen, but this is not consistently confirmed or evidence based.

May the EU fishing quota have influenced this pattern?

The global economic downturn may be seen as a driver for irregular migration. Interestingly, it cannot be excluded either that, in coastal towns, the depletion of fish stocks and stricter quota systems are leading

some non-EU fishermen to take on the role of transporters in migrant smuggling operations to make a living³³ or pushing them out of the market and making them emigrate illegally to the EU.³⁴ Depleted fish stocks and fishing quota restrictions might have led to an oversupply of fishing vessels available to be used to facilitate migrant smuggling. According to Spain, there might be an indirect correlation (though not evidenced): *pateras* and *cayucos* are normally only registered at local level, and have no flag. There is lack of international records of fishing vessel ownership,³⁵ which means that smugglers can use fishing vessels for clandestine activities without being identified.

7. MEASURES TO FIGHT MIGRANT SMUGGLING BY SEA

Some of the measures set out by the EU's Communication³⁶ on the Work of the Task Force Mediterranean (TFM)³⁷ aim to reduce irregular migration to prevent further deaths of migrants willing to reach Europe by crossing the Mediterranean.

Spain reported on specific measures (being planned or implemented) aimed at stopping the provision / use of boats to smugglers in North Africa, namely:

- ★ Joint investigation teams in countries of departure to dismantle smuggling organizations.
- ★ Joint patrolling of the coast to prevent departures.
- ★ Joint patrolling territorial waters of countries of departure, helping law enforcement agencies to prevent unseaworthy boats from departing.
- ★ Reinforcing third countries' border control systems providing equipment and training

According to Malta, only initiatives taken in North Africa could possibly deter boats from departing, including the use of technical equipment such as patrol boats, surveillance equipment, drones and vehicles equipped with radar. The training of the personnel in carrying surveillance duties as well as personnel who can be deployed on intelligence duties with a view to suppress smuggling and to uncover criminal networks is considered mostly relevant. Coupled with such initiatives, there should also be better education and employment opportunities, in both countries of origin and transit, for persons who generally migrate.

8. FURTHER INFORMATION

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²⁴ The 7th International Forum on Illegal, Unreported and Unregulated (IUU) Fishing (2012) addressed the role of organised crime in the fishing industry, with reference also to the practice of smuggling.

²⁵ http://www.unodc.org/documents/human-trafficking/2013/The_Role_Of_Corruption_in_the_Smuggling_of_Migrants_Issue_Paper_UNODC_2013.pdf

²⁶ http://www.imo.org/blast/mainframemenu.asp?topic_id=397

²⁷ http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf

²⁸ http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q3_2013.pdf#

²⁹ http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf

³⁰ <http://www.cespi.it/WP/WP43-Traffico-Monzini.pdf>

³¹ https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Report_SOM_West_Africa_EU.pdf

³² http://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/We st_Africa_TOC_MIGRANTS.pdf

³³ https://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf

³⁴ http://trade.ec.europa.eu/doclib/docs/2008/august/tradoc_140019.pdf

³⁵ https://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf

³⁶ COM(2013) 869 final http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf

³⁷ TFM was set up following the JHA Council of 7th – 8th October 2013.