



## CROATIAN EMN PRESIDENCY e-CONFERENCE

### Challenges of Irregular Migration on the Eastern Mediterranean – Western Balkan Route in the time of COVID-19

24 June 2020

This report summarises discussions from the e-Conference “*Challenges of Irregular Migration on the Eastern Mediterranean – Western Balkan Route in the time of COVID-19*”, organised under the Croatian Presidency of the Council of the European Union by the Croatian Contact Point of the European Migration Network (EMN).

Support materials, including the event’s concept note, PowerPoint presentations delivered during the day are available on the [e-Conference webpage](#).

#### **Summary of the event**

The e-Conference “**Challenges of Irregular Migration on the Eastern Mediterranean – Western Balkan Route in the time of COVID-19**” took place as a webinar, and aimed to share knowledge, experience and views among representatives from Member States, EU institutions and international organisations on future challenges and solutions for dealing with irregular migration into the EU in the time of COVID-19. The emphasis was on the Eastern Mediterranean – Western Balkan Route but also on the link to the challenges of irregular migration and migrant smuggling in the EU in general.

The event was Chaired by the EMN Croatia Coordinator, **Ms Lidija Pentavec**, while panel discussions were moderated by **Professor Goranka Novak Lalić**.

#### **Outlook of irregular migration on the Eastern Mediterranean and Western Balkan Route in the time of COVID-19**

In his opening remarks, **Mr Zoran Ničeno**, noted that the Eastern Mediterranean - Western Balkan route has for many years been one of the main entry paths into Europe. Migration pressure remained high with large number of migrants travelling through this corridor. The spread of the COVID-19 pandemic had halted the number of entries, but evidence showed that the migration pressure has intensified again, and increasing numbers of migrants were expected to cross into the EU. Also, the reinforced border control and difficult terrain have led to a growing number of migrants becoming stranded in the region and, as a consequence, a sharp increase for smuggling services is present. The whole migration perspective demands a comprehensive approach to migration and activities related to irregular migrants need to be aligned with international and EU standards of fundamental rights protection.

**Mr Johannes Luchner**, reflected that in 2019, Europe had faced fewer arrivals at the EU borders overall, however, the numbers of arrivals from the Eastern Mediterranean and Western Balkans routes had increased and had accounted for 46% of migrant arrivals in the EU. The spread of the COVID-19 virus had slowed down asylum, resettlement and return procedures; and had placed additional pressure on reception and detention facilities. On request of the EU Member States, the European Commission was playing a

coordination and guidance role. The speaker also noted the work of the EMN in this context, which had been monitoring impacts in order to provide information to policymakers.

Mr Luchner noted that the Commission's new Pact on Migration and Asylum was to be adopted soon. The aim of the Pact was to find a fair and effective way of fostering solidarity amongst Member States, with legal migration a key priority. There was a need also for a reformed and sustainable common asylum system, with asylum and return procedures needing to operate seamlessly - Member States must provide support for granting asylum plus ensure the return of those whose applications were unfounded. Protection of the EU external borders was also a key priority, and the EU would continue to support those Member States of first entry, thus the interoperability of border systems would be crucial. The Pact envisaged strengthening partnerships with countries of transit and return, increase the fight against human smuggling, foster return and open new legal pathways for migration. The aimed to embed a migration policy in full respect of fundamental rights, human dignity, freedom and solidarity, which were at the core of EU values and commitments.

### ***General overview of the Eastern Mediterranean – Western Balkan Route***

The context for the first panel of the e-Conference was the continuing issue of high migration pressure on the Eastern Mediterranean and the Western Balkans. The restrictive measures adopted in response to the COVID-19 pandemic had exacerbated difficulties in delivering humanitarian assistance to vulnerable irregular migrants travelling along this route. The European Commission provided guidance on how to ensure unhindered continuation of asylum and return procedures during the health crisis.

**Mr Carsten Simon** (Head of Risk Analysis Unit of FRONTEX) highlighted the close links between the Eastern Mediterranean and the Western Balkans routes. In 2019, some 75 000 migrant arrivals were recorded on the Eastern Mediterranean land and sea routes to Greece and Bulgaria, the majority to the Eastern Aegean Islands. A total of around 79 000 illegal border crossings by non-regional migrants were reported on the Western Balkans route in 2019. Arrival levels were sustained in the first quarter of 2021. The adoption of restrictive measures in response to the COVID-19 pandemic considerably reduced migrants' mobility and pressure at the border until mid-May. A re-routing of migrants was observed resulting for instance in an increased number of asylum requests in Kosovo\*. However, Turkey continued to host several millions of people displaced mostly from Syria. While they experienced travel restrictions during the pandemic, it was expected that the pressure to move onwards would soon resume. Increased migration pressure was already recorded at the North Macedonian and Albanian borders, following the lifting of travel restrictions in the second half of May 2020.

**Ms Naile Busemann** (Regional Protection Coordinator for the Western Balkans of the International Committee of the Red Cross (ICRC)) highlighted the humanitarian perspective of some of the consequences the COVID19 pandemic and restrictive measures adopted to limit its spread entailed for migrants in an irregular situation. The pandemic was an example how challenges on the migratory route could exacerbate already existing vulnerabilities or create new ones. Restrictive measures included the closure of borders, the suspension of the asylum procedures, encampment and movement restrictions in closed settings. In some situations, the measures led to migrants spending longer periods of time in inadequate boats or in overcrowded centres and having reduced access to support services and economic activities. At times, tensions and violence in the centres and camps had increased; this was in part a consequence of a general feeling of uncertainty regarding their future prospects (including legal status), and in part a result of the reduced space and resources which had escalated conflictual relations among different ethnic groups. The ICRC enumerated some of the measures put in place by MS to mitigate the impact of the adopted restrictions (e.g. online asylum applications, extension of residence permits).

In conclusion, the ICRC recalled that even in emergency situations measures needed to comply with international law. They should be regularly reviewed and lifted once their grounds, legal basis or necessity cease. It was recommended to consider specific needs of migrants in national response plans and to ensure access to essential services and reliable information. Immigration detention was to be used only as a measure of last resort and family unity and contact would need to be guaranteed at all times.

Mr **Francisco Gaztelu Mezquiriz** (Head of the Irregular Migration and Return Policy Unit, DG HOME, European Commission) discussed the guidelines published by the European Commission to support Member

States in running asylum and migration procedures during the sanitary crisis. Specifically concerning return, the Commission guidelines had covered all aspects of the return procedure. Return operations would follow specific protocols to ensure safety for the migrants and the personnel involved. In the planning of return flights, cooperation with third countries was recommended. In the pre-return activities, several recommendations were advanced including: the extension of the period for voluntary return; the preferential use of alternative to detention; the respect of specific protocols in detention facilities on social distancing, quarantine, and access to healthcare for detainees.

Mr Mezquiriz stressed the future importance of reinforcing cooperation with third countries through the conclusion of readmission agreements and through cooperation on prevention of irregular migration and dismantle smuggling networks. The return system would also benefit from stronger border return procedures and from increased detention capacities. Mr Mezquiriz also highlighted the critical role of Frontex in improving the effectiveness of return operations.

### ***EU engagement to prevent and fight migrant smuggling***

The second panel evidenced that the smuggling activities in the Western Balkans were conducted by well organised criminal networks using means that subjected migrants to high risks. This criminal activity was hard to eradicate, as it was a highly profitable with relatively low detection risks. Cooperation with third countries was essential to implement a cross-cutting, holistic and structured response to turn the smuggling of migrants on the Western Balkan route into a high risk – low profit business.

**Mr Dejan Dretar** (Head of Organised Crime Unit, Criminal Police Directorate, Ministry of the Interior, Republic of Croatia), presented statistical data on smuggling, noting that during the first five months of 2020, the reporting of criminal offences had decreased by 24%. Illegal border crossings were usually done on foot or by car. The crossings were extremely dangerous for the migrants, especially when concealed in specially designed hiding places in cars and vans, cargo planes and in sealed containers; the smugglers were less concerned about the well-being of the migrants than about the financial viability of the smuggling activities. Smugglers were ready to constantly adapt and change their approaches to circumvent controls; this made the network difficult to trace. When victims of smuggling were detected a key challenge was to identifying their status as economic migrants or as potential asylum seekers, as often they were travelling without identity documents.

**Mr Alvaro Rodriguez Gaya** (Head of Strategy and Outreach, EUROPOL (EMSC)) highlighted that migrant smuggling was in the top three criminal areas (out of 25) according to Europol's data. Migrant smuggling activities had continued to be reported to Europol during the COVID-19 crisis. The speaker reiterated the point that smuggling was a very profitable business. The benefits were generally reinvested in real estate projects in third countries, therefore strong external actions and cooperation with third countries was essential to tackle the smugglers' networks. To this end, Europol had established cooperation arrangements with Western Balkans countries and sought to develop similar cooperation with African countries too, although some challenges were identified due to limited institutional capacities. At EU level, Frontex and Interpol were the key actors to facilitate links between operations and investigations. Some national activities were also started as the [Western Balkan Task Force](#), which was initiated by Austria. Western Balkan Task Force presents regional initiatives designed to improve information and intelligence exchange both at strategic and at law enforcement level. Mr Gaya stressed the importance of cooperation between the Western Balkans' law enforcement agencies with EU Member States.

Mr **Francisco Gaztelu Mezquiriz** (Head of Irregular Migration and Return Policy Unit, DG HOME, European Commission) stressed that the fight against smuggling would be prioritised by the Commission under the new Migration Pact. The EU action plan also had an important focus on anti-smuggling, especially on operational cooperation, exchange of information, and cooperation with third countries. Three key tools were considered critical to the Commission's actions. Firstly, the Common Operational Partnerships (COP) which brought together small teams of law enforcement experts from all partners, including third countries; the COPs so far have focussed on Africa, but they had been opened up to the Western Balkans and other routes. Secondly, prevention and information campaigns which would create counter-narratives to those of the smugglers. Finally, the Immigration Liaisons Officers (ILO), especially in Western Balkans, who were helping to build stronger relations with national authorities in third countries.

## ***Protection and promotion of fundamental rights in the context of irregular migration***

The last panel focused on the key fundamental rights at stake in border controls and procedures; these especially related to ensuring protection from *refoulement* and mass expulsion; access to international protection; and the right to life and security. Recent changes in the jurisprudence of the European Court of Human Rights (ECHR) had opened-up a new understanding of States' obligations on border procedures, especially regarding push-backs. In practice, the enforcement of human rights safeguards fell mostly on border guards, who would benefit from practical guidance on these issues in their day-to-day work.

**Ms Iris Goldner Lang** (Professor in Law at the Faculty of Law of the University of Zagreb) argued that there is a clear link between the political and practical reactions to the attempt of thousands of migrant to cross the Greek-Turkish border in February and March 2020, on the one hand, and the behavior of the two European courts and the 2015/2016 Western Balkans route, on the other hand. She maintained that the developments at the Greek-Turkish border can only be understood as the result of the interaction of Member States' experience of the 2015/2016 Western Balkans route and their fear of its reoccurrence, Member States' fear of turning into hotspots, the Luxembourg Court's decisions on the EU-Turkey Statement and the ECHR's decision in *N.D. and N.T.* In contrast with its previous jurisprudence, in its judgement in [N.D and N.T versus Spain](#), the European Court of Human Rights concluded that the expulsion of irregular migrants without an individual assessment of their situation was not in breach of the prohibition of mass expulsion (art. 4, additional Protocol 4 ECHR), if two conditions were met: that the state provided "genuine and effective access to means of legal entry, in particular border procedures for those who have arrived at the border" and that there was an "absence of cogent reasons why the applicant did not make use of official entry procedures, which were based on objective facts for which the respondent state was responsible".

In this context, questions were raised regarding future evolutions on the prohibition of push-back at border crossings: would the Strasbourg Court reconfirm this new approach in future judgements, for instance if it were to decide on a case related to the facts at the Turkish-Greek border? What criteria would the Court develop in future decisions to define mass arrivals or to assess the level of security threat? And would the Court of Justice of the European Union follow this same approach if confronted with a similar situation?

**Mr Tamas Molnar** (legal research officer at the European Union Agency for Fundamental Rights (FRA)) highlighted that the practical implementation of human rights obligations fell largely on the officers operating at border crossing points and along the green borders. Therefore, the FRA prepared a practical guidance entitled "Border control at external land borders and fundamental rights" targeting specifically border-management staff in the European Union. The guidance tool list ten 'do-s' and 'don't-s' to support border officials in the implementation of the fundamental rights safeguards of the Schengen Borders Code (Regulation (EU) No. 2016/399) and related EU law instruments in their daily work, when carrying out controls at external land borders. The guidance was published at the end of July (see <https://fra.europa.eu/en/publication/2020/border-controls-and-fundamental-rights-external-land-borders>) and later on other further translations to other EU official languages might follow.

### ***Concluding remarks***

**Mr Magnus Ovilius** (Head of Agencies and Networks Coordination Sector and Chair of the European Migration Network, DG HOME, European Commission) concluded by noting that the one key word for migration and for migrants was 'predictability'. If a person comes to Europe, they should have the right to claim asylum; if they come with a job offer, they should expect a residence permit; if they come irregularly, they should expect to be returned. The outcome should be predictable.

People were still on the move even during the pandemic. Smuggling had not disappeared in the lockdown, and more people would be likely to cross to Europe over summer, from countries where COVID-19 was still prevalent, and where health service were less developed.

Capacity building in the Member States and information exchange, all remained important for the future. The Commission supported better cooperation with the countries of the Western Balkans, and other third countries, irrespective of their link to the EU, and the speaker noted that enhanced cooperation could also take place in the future through the engagement of Western Balkans countries in the European Migration

Network. It was essential that the EU's values and principles were defended and shared with third countries, whilst tackling irregularity and opening legal pathways. It was also important that the EU and Member States continued to learn from their practises; whilst the new EU Migration Pact would provide the framework for the future, the Member States would still need to apply what they had learned through their past experience.