EQUINOX
INITIATIVE FOR RACIAL JUSTICE

Towards a safer migration system:

Ending the criminalisation of migration & solidarity

Equinox's position on the EU Facilitator's Package

We're a queer, feminist, racialised-led organisation working towards societies of care, not control.

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EQUINOX
INITIATIVE FOR RACIAL JUSTICE

This paper outlines the position of Equinox Initiative for Racial Justice on the EU's Facilitators Package. We hold that any policy response to the issue of smuggling must reverse the harmful criminalisation of migration embedded in the Facilitators Package approach, and instead explore avenues to address the root causes of harm in migration routes.

'Smuggling' as a phenomenon is a symptom of the EU's inhumane approach to migration. The EU's punitive turn in migration control, characterised by increasing resources, legislation and enforcement mechanisms deployed to criminalise movement, has contributed to a vast increase in violent and exploitative methods used against the practice of movement to Europe. The proposed reform of the 2002 Facilitator's Directive exemplifies the use of anti-smuggling legislation by Member States to criminalise solidarity with migrants and migration itself, inadvertently supporting the business model of smugglers.

Our position highlights the detrimental impact of further criminalising migration through the Facilitation Directive and Europol Regulation, texts which endanger refugees, asylum seekers, human rights defenders, and those acting in solidarity with migrants.

We call for the decriminalisation of migration and facilitation, the protection of the right to seek asylum, and the reallocation of EU funding towards care and protection needs of migrants rather than law enforcement, detention centres, and surveillance.

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SUMMARY

Equinox's recommendations on the EU Facilitator's Package: Towards a safer migration system

To ensure a safer migration system, we recommend:

- A policy shift from racialised criminalisation of migrants **toward safety, protection and justice**;
- **Full legal protection** against discrimination for migrants;
- The **decriminalisation** of migration and those supporting movement;
- **Defunding of violent borders** and the **reallocation of resources** to meet the needs of people on the move.

Facilitation Directive recommendations

Align the definition of 'migrant smuggling' with internationally recognised frameworks

Existing UN protocols define the charge of 'migrant smuggling' as an action with clear financial gain. EU law must reflect this in order to avoid this legislation being used to criminalise migrants and asylum seekers, as well as human rights actors who assist them.

Decriminalise migration and humanitarian assistance

The final text must include clear and explicit provisions for the full decriminalisation of migration, all forms of assistance to family members, and delivery of all forms of humanitarian assistance.

Remove harsh punitive sentences likely to be applied to migrants, civil society or humanitarian actors

The final text must remove provisions for harsh punitive sentences most likely to be applied to migrants themselves, including deportations, to reduce structural violence against migrants, and a carceral regime based on deterrence instead of protection.

Decrease police powers and resources

The final text must remove all references to increased funding, resources or powers for law enforcement authorities to prevent the over-surveillance and over-policing of migrants and racialised people[1], avoid legitimising criminal law responses to migration and diverting resources away from alternative approaches.

[1] Equinox uses "racialised people" expansively to include all those who have been subjected to different processes of racialisation. We include, but do not limit this to, people of African, Arabic, Asian, and Latin-American descent, Roma and Sinti people, Sámi people, and those that are racialised as a result of their perceived membership to Muslim, Jewish and other religious communities. We also include those who self-define with terms such as 'Black' and 'people of colour'.

Europol Regulation recommendations

The proposed Europol Regulation should be fully rejected in its entirety

The Europol Regulation is a clear overstep in EU competency in law enforcement, as well as a complete erosion of fundamental rights in the name of criminalisation of migration, at great human and financial cost.

BACKGROUND

The Facilitators Package is amongst the punitive turn in EU Migration policy.

Since the so-called 'migration crisis' in 2015, the EU has committed itself to a policy of deterrence, aggression and incarceration against asylum seekers and migrants arriving in Europe.

This has created a 'Fortress Europe' that controls and militarises its borders to prevent, control and criminalise movements across and between them.

The continued criminalisation of people on the move accompanied by discriminatory political rhetoric has blurred the lines between criminality and identity. It creates an environment that encourages the use of race and ethnicity as proxies for nationality and migration status - and therefore also criminality.

EU migration policy has essentially codified discrimination into a tool for migration management, leading to widespread racial discrimination and violence against racialised communities at the hands of border forces and local law enforcement.

The latest legislation falling under EU Migration and Asylum policies, the Facilitator's Package, is an attempt to formalise the existing criminalisation of migrants, refugees, asylum seekers, as well as NGOs and individuals who act in solidarity with them, under the guise of fighting people-smuggling.

Facilitators Package

In September 2020, the European Commission proposed a new Migration and Asylum Pact with the aim of creating a common European framework for managing migration flows. In its final form, the Pact effectively abolishes the right to seek asylum in the EU, criminalises people on the move, and increases rates of violence, racial profiling and detention at the EU's external borders and beyond.

Since its adoption in April 2024, made up of laws such as the Schengen Borders Code Reform, the Migration and Asylum Pact has legitimised and mandated more racial profiling, more data collection, more detention, more deportations, more digital surveillance infrastructure, and more racialised suspicion embedded in migration processes. All of this increases the exposure of migrants and racialised people moving through the migration process to harm, surveillance and

discrimination, as well as continuing the harmful conflation between migration and criminality.

It has set a precedent by cementing the criminalisation of migration as a standard policy approach, paving the way for similar laws in the future - most recently in the Facilitation Package.

The **new Facilitation Package** presented in November 2023 further criminalises migration and acts of solidarity with migrants, using the fight against people smugglers as pretext for police power grabs and punitive laws that target migrants and humanitarian actors.

The Package consists of:

- **A proposed 'Facilitation Directive'** (updating legislation from 2002) that will lay down rules to prevent and counter the facilitation of unauthorised entry, travel and presence in the EU.

- **An accompanying 'Europol Regulation'** that will reinforce police cooperation and Europol's role in the fight against migrant smuggling.

Neither proposal was accompanied by an impact assessment.

The package also calls for the creation of a **global alliance against migrant smuggling**.

The Facilitator's Package ignores the impact of the EU's current Migration and Asylum rules which have created the conditions for smuggling to thrive by diminishing safe and legal routes. It relies on heavy policing and racial profiling that are proven to be ineffective, inaccurate and discriminatory, expanding police powers and budgets under the pretext of countering migrant smuggling - rewarding law enforcement authorities known for systemic human rights violations and reiterating a false narrative of a migration 'crisis' that can only be tackled through criminalisation.

The European Commission is expanding the definition of criminal activity in the migration context to include the 'facilitation' of illegal entry - criminalising and penalising migrants and asylum-seekers, and diminishing legal safeguards for humanitarian workers who support them (e.g. Search and Rescue operations). At the same time, it expands police and surveillance powers (through Europol and Frontex) to ensure the enforcement of these new rules with no impact assessment on the impact of these new powers on fundamental rights.

This package cannot be understood separately to the previous Migration and Asylum Pact nor any new EU legislation that will follow it on "returns" procedures

and the detention and deportation of migrants, refugees and asylum-seekers. The insidious presentation of the two legislative acts in the Facilitator's Package is an attempt to obscure the connections between it and other EU migration policy actions to this effect. Despite claiming so, the package is not an instrument for protecting migrants; in reality, it is another cog building up system where large scale and indiscriminate criminalisation of migrants necessitates, justifies and legally retrofits mass EU detention and forced returns - including recent attempts to mainstream[2,3,4] the Italy-Albania model of offshore detention and deportation centres.[5]

Rather than account through reparation and providing safe routes, the EU has implemented a punitive response to migration steeped in violence, securitisation, detention and deportation.

The Facilitators Package is another step towards codifying a carceral approach to migration that requires the increased militarisation of borders, and a heightened risk of violence, racism and discrimination.

[2] Opening remarks by President von der Leyen at the joint press conference with President Michel following the meeting of the European Council of 17 October 2024
[3] EU Commission poised to propose migrant 'return hubs' in legislation, Euronews
[4] Letter from European Commission President von der Leyen to EU leaders ahead of the October 2024 EU Council meeting
[5] What is the Italy-Albania asylum deal? Resceu

FACILITATION DIRECTIVE: RECOMMENDATIONS TOWARDS A SAFER MIGRATION SYSTEM

The Facilitation Directive[6] lays down rules purported to prevent and counter the facilitation of unauthorised entry, travel and presence in the EU. It aims to "effectively prosecute organised criminal networks."

However, the proposed Directive includes provisions that:

- Obscure a clear legal definition of migrant smuggling against UN standards (Recital 7, Art. 2 and 3);
- Criminalise migrants, humanitarian actors, people of conscience, and so-called acts of "public instigation" of third-country nationals to enter, transit across or stay in the territory of any Member State (Recital 24, Art. 3, 5, 6, 7, 8);
- Encourage punitive criminal law responses that target migrants, humanitarian actors, acts of solidarity in the migration context, including violent and unsafe deportations (Recital 11, Art. 6);
- Encourage increased funding of repressive and invasive police powers and tools that disproportionately target migrants and racialised people (Recital 24, Art. 15 and 16);
- Weaken the possibility of humanitarian exemptions with only non-binding (Recital 7) and implicit (Art. 3) references to humanitarian assistance, leaving room for the criminalisation of NGOs, civil society and human rights defenders working to support migrants, refugees or asylum seekers.

The Facilitation Directive, insofar as it expands the definition of criminal activity in the migration context to include the 'facilitation' of illegal entry, results in the criminalisation of migrants on the people on the move, encourages racial profiling and violence against migrants, and also increases the likelihood that family members, humanitarian workers and solidarity organisers are criminalised.

It also does not address the issues created by the original 2002 legislation on Facilitation, which UNHCR says "caused the unjust penalisation of asylum-seekers and refugees on account of irregular entry and the criminalisation of those providing humanitarian assistance or otherwise acting for humanitarian reasons in certain Member States."

[6] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA

The proposed Directive:

- Does not meet its own stated objective nor its own stated scope
- Does not improve the existing legislation from 2002 on facilitation
- Fails to target organised crime
- Actively endangers and criminalises migrants, refugees, asylum seekers, and humanitarian actors instead
- Does not comply with existing EU obligations under the UN Protocol against the Smuggling of Migrants or the UN 1951 Refugee Convention.

In order to reverse the trend of discrimination, violence and prevent harmful criminalisation of migrants and supporters created by existing EU legislation, we recommend that legislators address the issues listed below.

The Commission's proposal risks criminalising migrants and NGOs

Recommendation 1: Align the definition of 'migrant smuggling' with internationally recognised frameworks

Without clearly defining smuggling as a criminal act with financial or material gain, the Directive undermines the standard set by existing international law and EU/Member State commitments. It also leaves room for the increasing criminalisation of human rights defenders, civil society and persons of conscience, in direct contradiction of the UN Declaration on Human Rights Defenders, as well as EU principles.

EU legislators must:

- Amend Recital 7, which broadens the definition of migrant smuggling beyond UN standards and risks criminalising migrants and humanitarian actors without an explicit humanitarian exemption
- Amend Article 2 by adding a clear definition of migrant smuggling that is conditional on proven financial gain, in alignment with UN standards
- Amend the Article 3(1) definition of migrant smuggling, to clearly require that any crime of migrant smuggling is conditional on financial benefit, in alignment with UN standards
- Remove Article 3(1)(b) criminalising facilitation based on a vague notion of ''causing serious harm"
- Remove Article 3(2) broadening facilitation to include "public instigation", which risks infringing on the free speech and assistance capacities of humanitarian actors

The UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) defines 'smuggling of migrants' as "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" (Art. 3a). It also clearly states that **migrants cannot become liable to criminal prosecution** for having moved through forced routes (Art. 5), and **the scope of the Protocol clearly targets organised criminal activity** and not the actions of migrants or human rights defenders (Art. 4).

In Recital (7) the proposal outlines that 'It is appropriate to provide for criminal liability where there is a link to a financial or material benefit, or where migrants are highly likely to be subjected to serious harm. These elements will **usually** not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs.'

However in many cases it is likely that third-country nationals or humanitarian assistance will be implicated or connected to conditions of serious harm in transit by the very nature of the dangerous conditions in which search and rescue or assistance takes place.

As such it is necessary to **remove Article 3(1)(b)**, and **amend Article 3** to ensure an explicit exemption to the criminal offence as outlined in the next section.

The UN High Commissioner for Refugees also found "serious grounds for concern" on the lack of legal obligation for Member States to implement humanitarian exemptions and protect migrants, refugees and asylum seekers from being criminalised.[7]

Without clearly defining smuggling as a criminal act with financial or material gain, the Directive undermines the standard set by existing international law and EU/Member State commitments. It also leaves room for the increasing criminalisation of human rights defenders, civil society and persons of conscience, in direct contradiction of the UN Declaration on Human Rights Defenders, as well as EU principles.

[7] UNHCR Comments on the Commission proposal for a Facilitation Directive (Anti-Smuggling Directive) - COM (2023) 755, 14 March 2023

Amendment 1: Recital 7 must be amended to reflect the international standard definition of migrant smuggling.

Commission proposal	Equinox amendment
(7) It is appropriate to provide for criminal liability where there is a link to a financial or material benefit, or where migrants are highly likely to be subjected to serious harm. These elements will usually not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs. Third-country nationals should not become criminally liable for having been the subject to such criminal offences. Moreover, it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.	(7) It is appropriate to provide for criminal liability where there is a link to a financial ~~***or material***~~ benefit~~***, or where migrants are highly likely to be subjected to serious harm***~~. These elements ~~***will usually should***~~ not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs. Third-country nationals should not become criminally liable for having been the subject to such criminal offences. Moreover, it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.

The definition of migrant smuggling conditional on receiving financial compensation is undermined by the inclusion of situations where migrants are highly likely to be subjected to serious harm, which targets migrants as well as search and rescue operations and other humanitarian acts assisting people on the move. This vague and broad definition for criminal liability also dilutes international UN standards on combating migrant smuggling, and goes beyond the stated scope of the Directive.

There must also be a clear and absolute humanitarian exemption that does not include family, organised humanitarian assistance or individual acts of solidarity in criminal liability.

Amendment 2: Article 2 should be amended to include a clear definition of migrant smuggling that is aligned with international legal standards.

Commission proposal	Equinox amendment
Article 2 Definitions For the purposes of this Directive, the following definitions apply: 1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the right of free movement under Union law as defined in Article 2, point 5, of Regulation (EU) 2016/399 of the European Parliament and of the Council; 2. 'unaccompanied minor' means a third-country national below the age of 18 years who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person, including a minor who is left unaccompanied after he or she has entered the territory of the Member States; 3. 'legal person' means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.	Article 2 Definitions For the purposes of this Directive, the following definitions apply: 1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the right of free movement under Union law as defined in Article 2, point 5, of Regulation (EU) 2016/399 of the European Parliament and of the Council; 2. 'unaccompanied minor' means a third-country national below the age of 18 years who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person, including a minor who is left unaccompanied after he or she has entered the territory of the Member States; 3. 'legal person' means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations***;*** ***4. 'smuggling' in the context of migration means receiving explicit financial or material benefit for the illegal entry of a person into a State. It does not apply to individual acts of entry, transit or stay of third country nationals, provision of support to family members, or the provision of assistance by humanitarian actors.***

There should be absolute proof of financial gain in order to be charged with smuggling.

The Parliament must a) add a clear definition of migrant smuggling to Article 2 requiring that any crime of migrant smuggling is conditional on financial or material benefit, reflecting existing UN Protocols, and b) amend the definition of migrant smuggling in Article 3(1) of the Directive.

Amendment 3: Article 3 must be amended to reflect internationally agreed legal definitions of migrant smuggling

Commission proposal	Equinox amendment
Article 3 Criminal offences 1.Member States shall ensure that intentionally assisting a third-country national to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence where: a) the person who carries out the conduct requests, receives or accepts, directly or indirectly, a financial or material benefit, or a promise thereof, or carries out the conduct in order to obtain such a benefit; or b) there is a high likelihood of causing serious harm to a person. 2. Member States shall ensure that publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence.	Article 3 Criminal offences 1.Member States shall ensure that intentionally assisting a third-country national to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence where~~:~~ ~~*a)*~~ the person who carries out the conduct ~~*requests,*~~ receives ~~*or accepts,*~~ directly or indirectly, a financial ~~*or material*~~ benefit~~*, or a promise thereof, or carries out the conduct in order to obtain such a benefit; or*~~ ~~*b) there is a high likelihood of causing serious harm to a person.*~~ ~~*2.Member States shall ensure that publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence.*~~ ***2. Criminal offences outlined in Article 1 shall not extend to the following activities:*** ***(a) acts itself of entry, transit and stay of third-country nationals themselves;*** ***(b) the provision of shelter, food, legal aid and advice, medical care, information and transportation, monitoring and reporting of human rights abuses, as well as civil disobedience and advocacy for policy change.***

Article 3 must be amended to reflect internationally agreed legal definitions of migrant smuggling and reduce the scope for the criminalisation of migrants and humanitarian actors.

Article 3.1 (b) criminalises facilitation based on a vague notion of ''causing serious harm" which is a) vague and b) not aligned with the international legal definition

of migrant smuggling, leaving the door open for the unfair criminalisation of migrants.

Article 3.2 on "public instigation" must be removed, as it risks infringing on the free speech and assistance capacities of humanitarian actors.

Article 3.2 must instead include a clear and explicit definition of what acts fall outside the scope of criminal offences to avoid the inadvertent criminalisation of migrants and those assisting them.

Recommendation 2: Decriminalise migration & humanitarian assistance

The final text must include clear and explicit provisions for the full decriminalisation of migration, all forms of assistance to family members, and delivery of all forms of humanitarian assistance.

EU legislators must:

- Reject Article 5, which broadens the crime of 'people smuggling' to incitement, aiding, abetting and attempting facilitation, directly targeting migrants and human rights defenders;
- Remove all references to 'incitement' of facilitation of entry or stay or 'public instigation' to stop the criminalisation of acts of solidarity by human rights defenders or information sharing by individuals;
- Remove all references that criminalise the act of migration, assisting migration, or providing humanitarian aid.

The Commission proposal makes clear that 'it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.' (Recital 7).

To ensure this Directive is not used to further criminalise movement or the assistance of people in need, the final text must include broad and explicit, comprehensive non-criminalisation provisions to cover all movement and humanitarian and human rights activities. This includes explicitly excluding from scope of criminal offences in Article 5 the following:

> (a) any activity that involves the act movement itself or assistance to family members; or

(b) any activity that includes provision of shelter, food, legal aid and advice, medical care, information and transportation, monitoring and reporting of human rights abuses, as well as civil disobedience and advocacy for policy change.

The text must remove all references to 'incitement' or 'public instigation' which would undermine the rights and responsibilities of human rights defenders and civil society to operate in support of migrants, refugees and asylum seekers. The vagueness of this offence leaves a wide scope of interpretation that puts migrants and humanitarian actors at risk of criminalisation for a wide range of conduct, including discussing migration, critiquing EU and national policy, or information-sharing.

This would preserve the scope of the revised Directive to organised criminal activity instead of scapegoating human rights defenders. It also protects the freedom of speech of ordinary people sharing information on fundamental rights with migrants, including refugees and asylum seekers, and promoting their rights.

Amendment 4: Article 5 should be removed to avoid the criminalisation of humanitarian actors, and individual acts of solidarity with migrants.

Commission proposal	Equinox amendment
Article 5 Incitement, aiding and abetting, and attempt Member States shall ensure that inciting, aiding and abetting and attempting to commit any of the criminal offences referred to in Article 3(1) and Article 4 are punishable as criminal offences.	~~***Article 5***~~ ~~***Incitement, aiding and abetting, and attempt***~~ ~~***Member States shall ensure that inciting, aiding and abetting and attempting to commit any of the criminal offences referred to in Article 3(1) and Article 4 are punishable as criminal offences.***~~

Article 5 should be removed to avoid the criminalisation of humanitarian actors, and individual acts of solidarity with migrants.

This would align the text with the UN legal definition of 'smuggling of migrants', while avoiding any confusion on the potential criminalisation of migrants, those who assist them, and those who advocate for them.

The Commission's proposal targets and punishes migrants and humanitarian actors instead of organised crime

Recommendation 3: Remove harsh punitive sentences likely to be applied to migrants, civil society or humanitarian actors

The final text must remove provisions for harsh punitive sentences most likely to be applied to migrants themselves, including deportations, to reduce structural violence against migrants, and a carceral regime based on deterrence instead of protection.

EU legislators must:

- Amend Recital 11 to remove references to deportations as a punitive measure in direct contradiction with the Recital's initial requirement for "proportionate" penalties;
- Remove Article 6 (b) encouraging deportations of individuals for or after time served;
- Remove Article 6 (c) that encourages entry bans as a punitive measure that by necessity requires deportation to third countries;
- Remove Article 7 & 8 to avoid the criminalisation of migrants, humanitarian actors, and individual acts of solidarity with migrants;

The text of this legislation clarifies that it is '*not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.*' However, Article 6 outlines a series of 'criminal and non-criminal' sanctions that includes, as outlined in Article 6(5), deportation.

Deportation as an added punitive measure during or after sentencing promotes a double-standard approach that specifically targets migrants, refugees, asylum seekers and those with precarious status, undermining their right to protection. Thus, despite explicitly stating that the criminalisation of migrants themselves is out of scope of the regulation, these penalties included are specific to, and therefore disproportionately target, migrants themselves.

The UN High Commissioner for Refugees comments on the proposed Facilitation Directive outline the obligation to protect the principle of non-refoulement, including under the UN Protocol against Migrant Smuggling. We echo their recommendation "not to introduce criminal offences related to smuggling or facilitation of irregular entry, transit or stay that would have a wider scope than those contained in the Smuggling Protocol and might have the unintended effect of penalising persons exercising the fundamental right to seek and enjoy asylum".[8]

Amendment 5: Specific allusions to a certain type of punishment for the crime of migrant smuggling should be removed from Recital 11.

Commission proposal	Equinox amendment
(11) Penalties for the criminal offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Accessory measures are often effective and, therefore, should be also available in criminal proceedings. Considering the possible risk to public policy and public security that they may pose, third-country nationals who committed the offences defined in this Directive should be subject to return in accordance with Directive 2008/115/EC of the European Parliament and of the Council 43 or in accordance with national law where Member States have made use of Article 2(2), point (b), of that Directive, either after having served the prison sentence in a Member State or in view of serving the prison sentence, or part of it, in a third country, without prejudice to more favourable provisions applicable by virtue of Union or national law; furthermore, without prejudice to more favourable provisions applicable by virtue of Union or national law, those third-country nationals should be prohibited to re-enter the territory of the Member States for an appropriate period of time to be determined on a case-by-case basis, and that can reach 10 years in the most serious cases. This should not affect the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.	(11) Penalties for the criminal offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Accessory measures are often effective and, therefore, should be also available in criminal proceedings. ~~*Considering the possible risk to public policy and public security that they may pose, third-country nationals who committed the offences defined in this Directive should be subject to return in accordance with Directive 2008/115/EC of the European Parliament and of the Council 43 or in accordance with national law where Member States have made use of Article 2(2), point (b), of that Directive, either after having served the prison sentence in a Member State or in view of serving the prison sentence, or part of it, in a third country, without prejudice to more favourable provisions applicable by virtue of Union or national law; furthermore, without prejudice to more favourable provisions applicable by virtue of Union or national law, those third-country nationals should be prohibited to re-enter the territory of the Member States for an appropriate period of time to be determined on a case-by-case basis, and that can reach 10 years in the most serious cases. This should not affect the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.*~~

[8] UNHCR Comments on the Commission proposal for a Facilitation Directive (Anti-Smuggling Directive) - COM (2023) 755, 14 March 2023

Specific allusions to a certain type of punishment for the crime of migrant smuggling should be removed from Recital 11.

The aim of recitals, to provide general guidance for legal interpretation by Member States, is diminished by the inclusion of specific instructions on the use of deportations as a punitive measure which a) oversteps EU competencies in this area, b) normalises the use of violent returns procedures under criminal law as a prima facie response to migration and c) ignores the safety considerations of individuals deported back to home countries experiencing war, violence, famine, political or personal persecution.

Amendment 6: Remove Article 6.5 (b) so as to not provide for penalties that further the criminalisation of migrants

Commission proposal	Equinox amendment
Article 6	Article 6
Penalties for natural persons	Penalties for natural persons
1.Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal penalties.	1.Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal penalties.
2.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum term of imprisonment of at least three years.	2.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum term of imprisonment of at least three years.
3.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4, points (a) to (d) are punishable by a maximum term of imprisonment of at least ten years.	3.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4, points (a) to (d) are punishable by a maximum term of imprisonment of at least ten years.
4.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4 point (e), including attempts to commit the criminal offence referred to in that provision, are punishable by a maximum term of imprisonment of at least fifteen years.	4.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4 point (e), including attempts to commit the criminal offence referred to in that provision, are punishable by a maximum term of imprisonment of at least fifteen years.
5.In addition to criminal penalties imposed in accordance with paragraphs 1 to 4, Member States shall take the necessary measures to ensure that natural persons that have been convicted of committing one of the criminal offences referred to in Articles 3, 4 and 5 may be subject to criminal or non-criminal sanctions or measures imposed by a competent authority, including:	5.In addition to criminal penalties imposed in accordance with paragraphs 1 to 4, Member States shall take the necessary measures to ensure that natural persons that have been convicted of committing one of the criminal offences referred to in Articles 3, 4 and 5 may be subject to criminal or non-criminal sanctions or measures imposed by a competent authority, including:
	(a) withdrawal of permits or authorisations to

(a) withdrawal of permits or authorisations to pursue activities which have resulted in committing the criminal offence, or prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the criminal offence was committed;	pursue activities which have resulted in committing the criminal offence, or prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the criminal offence was committed;
(b) return after the enforcement of the penalty in a Member State, or to serve the penalty imposed, or part of it, in the third country of return, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;	~~***(b) return after the enforcement of the penalty in a Member State, or to serve the penalty imposed, or part of it, in the third country of return, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;***~~
(c) prohibition to enter and stay on the territory of the Member States for an appropriate period of maximum 10 years, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;	~~***(c) prohibition to enter and stay on the territory of the Member States for an appropriate period of maximum 10 years, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;***~~
(d) exclusions from access to public funding, including tender procedures, grants and concessions;	~~***(d)***~~ ***(b)*** exclusions from access to public funding, including tender procedures, grants and concessions;
(e) fines;	~~***(e)***~~ ***(c)*** fines;
(f) freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.	~~***(f)***~~ ***(d)*** freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.

The proposal should remove Article 6.5 (b) so as to not provide for penalties that further the likelihood of criminalising migrants themselves, which is outside the objective of this legislation.

Further, there is no mention of safety considerations of individuals deported back to home countries experiencing war, violence, famine, political or personal persecution.

Including such a broad provision for deportations as a standard punitive measure further enshrines this harmful practice in EU migration procedures in general, and contributes to the construction of a deadly fortress Europe and a racialised regime of control, punishment and violence against migrants, refugees and asylum seekers.

Article 6.5 (c) must similarly be deleted, as a "prohibition to enter and stay on the territory" is an entry ban *de facto* accompanied by an obligation of return and therefore deportation.

Amendment 7: Articles 7 & 8 should be deleted to avoid the criminalisation of migrants & those acting in solidarity with migrants.

Articles 7 & 8 should be deleted to avoid the criminalisation of migrants, humanitarian actors, and individual acts of solidarity with migrants.

The broad scope for the liability of legal persons to be criminalised under this article, and the severity of potential punishment, is a clear risk to NGO workers in migration assistance, search and rescue, and other similar activities.

Commission proposal	Equinox amendment
Article 7 Liability of legal persons 1.Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; (c) an authority to exercise control within the legal person. 2.Member States shall also take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the criminal offences referred to in Articles 3, 4 and 5 for the benefit of that legal person by a person under its authority. 3.Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of, inciters of, or accessories in the criminal offences referred to in Articles 3, 4 and 5.	~~*Article 7*~~ ~~*Liability of legal persons*~~ ~~*1.Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*~~ ~~*(a) a power of representation of the legal person;*~~ ~~*(b) an authority to take decisions on behalf of the legal person;*~~ ~~*(c) an authority to exercise control within the legal person.*~~ ~~*2.Member States shall also take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the criminal offences referred to in Articles 3, 4 and 5 for the benefit of that legal person by a person under its authority.*~~ ~~*3.Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of, inciters of, or accessories in the criminal offences referred to in Articles 3, 4 and 5.*~~
Article 8 Sanctions for legal persons 1.Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is subject to effective, proportionate and dissuasive sanctions. 2.Member States shall take the necessary measures to ensure that sanctions or measures for legal persons liable pursuant to Article 7 for the criminal offences referred to	~~*Article 8*~~ ~~*Sanctions for legal persons*~~ ~~*1.Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is subject to effective, proportionate and dissuasive sanctions.*~~ ~~*2.Member States shall take the necessary measures to ensure that sanctions or measures for legal persons liable pursuant*~~

in Articles 3, 4 and 5 may include:

(a) criminal or non-criminal fines;

(b) exclusion from entitlement to public benefits, aid or subsidies;

(c) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;

(d) temporary or permanent disqualification from the practice of commercial activities;

(e) placing under judicial supervision;

(f) judicial winding-up;

(g) temporary or permanent closure of establishments which have been used for committing the criminal offence;

(h) withdrawal of permits and authorisations to pursue activities which have resulted in committing the criminal offence;

60(i) freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.

3.The amount of criminal or non-criminal fines shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:

(a) 3% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 3;

(b) 5% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, points (a) to (d);

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~~*to Article 7 for the criminal offences referred to in Articles 3, 4 and 5 may include:*~~

~~*(a) criminal or non-criminal fines;*~~

~~*(b) exclusion from entitlement to public benefits, aid or subsidies;*~~

~~*(c) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;*~~

~~*(d) temporary or permanent disqualification from the practice of commercial activities;*~~

~~*(e) placing under judicial supervision;*~~

~~*(f) judicial winding-up;*~~

~~*(g) temporary or permanent closure of establishments which have been used for committing the criminal offence;*~~

~~*(h) withdrawal of permits and authorisations to pursue activities which have resulted in committing the criminal offence;*~~

~~*60(i) freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.*~~

~~*3.The amount of criminal or non-criminal fines shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:*~~

~~*(a) 3% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 3;*~~

~~*(b) 5% of the total worldwide turnover of*~~

(c) 6% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, point (e).

4.When providing for criminal or non-criminal fines pursuant to paragraph 3, Member States may provide for rules applicable in cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision.

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~~*the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, points (a) to (d);*~~

~~*(c) 6% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, point (e).*~~

~~*4.When providing for criminal or non-criminal fines pursuant to paragraph 3, Member States may provide for rules applicable in cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision.*~~

The Commission's proposal funds violent and ineffective criminal law responses to migration

Recommendation 4: Decrease the remit of punitive police powers and resources

The final text must remove references to increased funding, resources or powers for law enforcement authorities to prevent the discriminatory over-surveillance and over-policing of migrants and racialised people, and avoid legitimising criminal law responses to migration.

EU legislators must:

- Reject Recital 24 encouraging Member States to make available expansive and invasive investigative tools that go beyond the purported aims of the Directive;
- Reject Article 15 encouraging specialised training for law enforcement on implementation of the Directive;
- Reject Article 16 removing the mandate for "special investigative tools" for law enforcement.

The continued inclusion of provisions for police funding only result in increased resourcing and legitimacy of punitive, criminalisation responses that fail to address the protection needs of migrants, refugees and asylum seekers.

We therefore echo the call of the **UN Special Rapporteur on the situation of human rights defenders** to remove the mandate for "special investigative tools" and the full rejection of Article 16, which risks increasing existing cases of over-surveillance of racialised people and human rights defenders, as well as undermining international and EU rights to privacy and data protection.

Likewise, we call on the EU to reject calls for financial investment in 'specialised training' for law enforcement - EU and national budgets must instead be reallocated towards increasing the capacities of legal, humanitarian and welfare services to meet the needs of migrants.

Amendment 8: Recital 24 should be deleted as it increases the capacity of EU and national institutions to criminalise migration and humanitarian actors.

Commission proposal	Equinox amendment
(24) To ensure successful enforcement, Member States should make available effective investigative tools for the criminal offences referred to in this Directive, such as those included in their national law for combating organised crime or other serious crimes, including for instance the interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the criminal offences under investigation should justify the use of these investigative tools. The right to the protection of personal data should be respected.	~~*(24) To ensure successful enforcement, Member States should make available effective investigative tools for the criminal offences referred to in this Directive, such as those included in their national law for combating organised crime or other serious crimes, including for instance the interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the criminal offences under investigation should justify the use of these investigative tools. The right to the protection of personal data should be respected.*~~

Recital 24 should be deleted as it increases the capacity of EU and national institutions to criminalise migration and humanitarian actors.

It encourages the use of expansive and invasive investigative tools that have already been used to criminalise migrants as well as human rights defenders, likely violating the privacy of both.

Furthermore, any allocation of additional financial or personnel resources towards law enforcement authorities or judiciary legitimises the use of criminal law against migrants and migration. It also takes away resources from being used towards administrative and humanitarian policies to safeguard migrants and humanitarian actors.

Amendment 9: Article 15 should be removed to avoid further criminalisation of migrants and EU overstep in Member State competence.

Commission proposal	Equinox amendment
Article 15 Training 1.Member States shall take the necessary measures to ensure adequate resources for and the provision of specialised training at regular intervals for the members of the law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of criminal offences referred to in Articles 3, 4 and 5. 2.Without prejudice to judicial independence, Member States shall take the necessary measures to ensure that specialised regular training is provided to judges, prosecutors, law enforcement and judicial staff and competent authorities' staff involved in criminal proceedings and investigations with respect to the objectives of this Directive.	~~*Article 15*~~ ~~*Training*~~ ~~*1.Member States shall take the necessary measures to ensure adequate resources for and the provision of specialised training at regular intervals for the members of the law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of criminal offences referred to in Articles 3, 4 and 5.*~~ ~~*2.Without prejudice to judicial independence, Member States shall take the necessary measures to ensure that specialised regular training is provided to judges, prosecutors, law enforcement and judicial staff and competent authorities' staff involved in criminal proceedings and investigations with respect to the objectives of this Directive.*~~

Article 15 should be removed to avoid a) further criminalisation of racialised people and migrants and b) avoid EU overstep in an area of Member State competence.

Any allocation of further financial or personnel resources towards law enforcement authorities or judiciary legitimises the use of criminal law against migrants and migration, and increases the capacity of EU and national institutions to criminalise migration and humanitarian actors. It takes away resources from being used towards administrative and humanitarian policies to safeguard migrants and humanitarian actors.

Amendment 10: Article 16 should remove the mandate for "special investigative tools" for law enforcement.

Commission proposal	Equinox amendment
Article 16 Investigative tools Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting criminal offences referred to in Articles 3, 4 and 5. Where appropriate, these tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases.	~~*Article 16*~~ ~~*Investigative tools*~~ ~~*Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting criminal offences referred to in Articles 3, 4 and 5. Where appropriate, these tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases.*~~

The use of "special investigative tools… used in countering organised crime or other serious crime" serves to conflate migration with trafficking and smuggling, risking the criminalisation of migrants without countering organised smugglers operating for financial gain, and risking increased violations against the right of migrants and asylum seekers to move, and the increased over-policing and surveillance of racialised people at the external borders and beyond.

EUROPOL REGULATION: RECOMMENDATIONS TOWARDS A SAFER MIGRATION SYSTEM.

The Europol Regulation[9] frames reinforced law enforcement cooperation between Europol and national law enforcement authorities as 'necessary' due to the cross-border nature of smuggling.

The Regulation includes provisions for:

- Enhancing cooperation and information sharing (including personal data) between Europol and third countries
- Europol to deploy officers on national territory, upon request of EU Member States, to provide analytical, operational, technical, forensic and financial support
- Specialised Member State services to "counter migrant smuggling and human trafficking".

According to Statewatch, the purported aims of these proposals to fight 'migrant smuggling and human trafficking' hide a concerted effort to give Europol extensive new operational and investigative powers "in relation to all crimes for which it is competent".

Most concerningly, the Regulation represents the continued dangerous overlap between administrative and criminal law to criminalise migration and justify the imposition of sanctions. It conflates 'migrant smuggling' with 'human trafficking', which already has its own separate Directive.

The proposal was not accompanied by any fundamental rights impact assessments.

Equinox calls for the full rejection of the Europol Regulation reform in its entirety.

Any increase in administrative, operational, and political power of national and EU law enforcement agencies is a guaranteed road to the increased criminalisation,

[9] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

over-surveillance, profiling and violence against racialised people, including third country nationals, at the EU's external borders and beyond.

The Europol Regulation reform is a false solution to a problem that EU policy has created.

Despite emphasising it has no legal competence in policing and law enforcement, the EU has continued to establish and fund certain agencies strongly related to law enforcement, such as Europol, Frontex, CEPOL, and Eurojust. Several of these agencies' policies consistently contribute to harming racialised people at Europe's borders.

The Europol Regulation is a clear overstep in EU competency in law enforcement, as well as a complete erosion of fundamental rights in the name of criminalisation of migration, at great human and financial cost. **It must therefore be rejected in its entirety, for the following reasons.**

Unlawful extension of police power

The proposed Europol Regulation is misleadingly presented as a strengthening of the agency's powers solely in the area of fighting migrant smuggling and human trafficking.

However, as Statewatch notes, in reality it is a vast extension of the agency's powers beyond the scope and purpose of combating the smuggling of migrants or tackling organised crime.

The proposal includes an amendment (Art. 9) to the original Regulation that defines an 'operational taskforce' as a coordination mechanism for Member States and their authorities to carry out joint investigations into "a crime falling within the scope of Europol's objectives" - that is, not limited to the supposed scope of the Regulation to combat the specific problem of migrant smuggling.

The European Data Protection Supervisor, in its official opinion on the draft Regulation, echoes this concern:

> *"Moreover, some of the envisaged measures e.g. on biometric data, or operational support by Europol on the territory of Member States, do not seem to be directly and specifically linked to migrant smuggling but concern the activities of Europol more horizontally."*
>
> **EDPS Opinion 4/2024,** 23 January 2024

In general, the proposal is a clear attempt to widen the scope and powers of Europol and other EU agencies, including Frontex.

More specifically, new "non-coercive investigative powers" will be given to Europol staff and experts while deployed on the territory of Member States under

proposed amendments to Article 5 of the original regulation (contained in Article 9 of the new proposal).

Not only will these new powers overstep EU competences in the area of law enforcement, but as these powers include data processing of sensitive information, raise serious questions about the responsibility for and proportionality of data collection and processing.

Data protection considerations and mass surveillance

The Europol Regulation attempts to bypass legal protection safeguards and case-by-case decision making with wholesale and mandatory information sharing between Europol and national law enforcement agencies, including the collection and spread of personal and biometric data.

The proposal's third objective, as outlined in the Explanatory Memorandum, involves "improving information sharing on migrant smuggling and trafficking in human beings", including by "exchanging personal data". This will be achieved through "**strengthen[ing] Member States' obligations to share information, including biometrics… with Europol"**, with provisions for potential personal data transfers to third countries. Here, Europol will be tasked with processing biometric data "in support" of Member States.

The proposed Regulation text further underlines the obligation of Member States to share all relevant information connected with criminal investigations into migrant smuggling and trafficking "as soon as possible with Europol and other Member States" (Art. 7.2, 8.1, 8.2).

The widespread scope of the Regulation, alongside calls for increased information exchange with third countries with known human rights violations by EU and national agencies, and third countries, effectively legitimises unlawful data collection based on racial profiling with no protection for migrants or accountability mechanisms for law enforcement.

The European Data Protection Supervisor denounced the Commission's failure to assess the Europol Regulation's potential impact on fundamental rights in this area, calling it "deeply worrying" as regards the protection of sensitive biometric data and the vulnerability of migrants whose data is collected and processed by Europol, and shared with other agencies.

Additionally, **the EDPS raises serious questions about**:

- The increased processing of biometric data, including facial recognition, fingerprints and DNA profiles

Buried in the legislative financial statement accompanying the Proposal is significantly more detail outlining the type of personal biometric data collected, and the possibility of this data being shared with other EU agencies and programmes beyond the scope of combating migrant smuggling. The EDPS notes a worrying lack of quality control regarding the circumstances under which

personal data is collected (proportionality and necessity), the data itself, how it is processed, and how it is shared.

- The proposal's objective to strengthen ties between Europol and Frontex (EU Border and Coast Guard Agency)

The EDPS notes a lack of clarity surrounding the role and scope of Frontex both in the proposed Europol Regulation as well as the European Borders and Coast Guard (EBCG) Regulation.

> *"The EDPS therefore recommends further clarifying and circumscribing the role of Frontex in the fight against migrant smuggling and traffic in human being [sic], in order to avoid Frontex being turned de facto into a law enforcement agency."*
>
> **EDPS Opinion 4/2024**, 23 January 2024

The indirect increase of powers to Frontex through this proposed Regulation not only legitimises an agency with a well-documented history of human rights abuses and data protection violations against migrants and NGOs, but reiterates the EU's mission to criminalise migration.

- Data transfers to third countries

The proposal's provision for sharing personal data with third countries is in contradiction to the general legal rules of personal data transfers to third countries or international agencies - risking an increase of systemic, large-scale data transfers with no safeguards and a move away from current norms of personal information sharing as the exception. This is a clear indicator of a heightened risk to the fundamental privacy rights of migrants.

Increased resourcing for punishment approaches to protection issues

The Commission's proposal describes the budgetary implications in the explanatory memorandum of the Regulation; these changes will require EUR 50 million for Europol under the MFF, as well as 50 additional staff. This is on top of existing allocations foreseen from 2021 – 2027 totalling EUR 178 million and an increase of 160 Temporary Agents.

As Statewatch notes, the increase in resources and powers in personal data processing for Europol is not matched by funds for the EDPS to carry out its data protection supervisory role.[10]

[10] "There is no parallel increase in budget or staff planned for the EDPS, which is the external supervisory authority for data protection at the agency." – Statewatch, Feb 2024

Vast amounts of the EU budget continues to pour into criminalisation and policing in the name of fighting 'smuggling' – a necessity created by the EU's shrinking of proper asylum procedures. Rather than protecting marginalised people, it will only increase the violence and discrimination racialised communities already face at the hands of over-policing, over-surveillance, and racial profiling. The lack of impact assessment on the impact of this new legislation on fundamental rights, and the lack of provision for safeguarding capacities or accountability mechanisms is in direct contradiction of the EU's own Better Regulation guidelines.

This is clearly a proposal based on suspicion and criminalisation rather than care or concern for migrants, refugees or asylum seekers, that will not only fail in its objective to fight smuggling but actively harm those it purports to protect.

Resources should instead be reallocated towards building a migration and asylum system based on the protection needs of the most vulnerable people, as well as full legal protection against discrimination for migrants, refugees and asylum seekers.

CONCLUSION: REVERSING THE EU'S PUNITIVE TURN IN MIGRATION

In order to address the root causes of smuggling and align its own human rights obligations, the EU must first review its hostile border and migration policies. All legislation and policy areas using criminal law instead of administrative law as a response to migration - including discrimination, detention and deportation - must be dismantled.

Instead, policies should be centred around providing safety, protection, and justice rather than relying on racialised criminalisation and suspicion of migrants. The EU must offer full protection to people on the move regardless of race, ethnicity, nationality or migration status.

The EU's own Anti-Racism Action Plan acknowledges that racism and discrimination within law enforcement authorities is a persistent, structural issue within the European Union. A European Commission study of the limitations of the Race Equality Directive to protect against discrimination based on race or ethnicity **found that "discrimination... by law enforcement, constitutes the main area outside the material scope of the Race Equality Directive."**[11]

Increased budgets for law enforcement (including specialised training, diversity training or hiring) are therefore guaranteed to lead to increased rates of violence and discrimination against racialised people, migrants, refugees, and asylum seekers.

Following a systemic lack of accountability for deaths and violence by national law enforcement authorities as well as the EU's own Border and Coast Guard Agency (Frontex), the European Commission should instead present a proposal for reallocation of law enforcement funding to other social needs.

Imagining a migration response without racism requires shifting resources away from punishment, surveillance, control and criminalisation toward safety, protection, needs and justice.

EU Migration and Asylum policy must immediately de-fund tools of structural violence like Europol, Frontex and national border forces - and reallocate resources to meet the needs of people on the move.

[11] Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin, European Commission, July 2022

ANNEX OF AMENDMENTS

Commission proposal	Equinox proposal	Justification
(7) It is appropriate to provide for criminal liability where there is a link to a financial or material benefit, or where migrants are highly likely to be subjected to serious harm. These elements will usually not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs. Third-country nationals should not become criminally liable for having been the subject to such criminal offences. Moreover, it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.	(7) It is appropriate to provide for criminal liability where there is a link to a financial ~~***or material***~~ benefit~~***, or where migrants are highly likely to be subjected to serious harm***~~. These elements ~~***will usually***~~ ***should*** not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs. Third-country nationals should not become criminally liable for having been the subject to such criminal offences. Moreover, it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.	**Recital 7 must be amended to reflect the international standard definition of migrant smuggling**. The definition of migrant smuggling conditional on receiving financial compensation is undermined by the inclusion of situations where migrants are highly likely to be subjected to serious harm, which targets migrants as well as search and rescue operations and other humanitarian acts assisting people on the move. This vague and broad definition for criminal liability also dilutes international UN standards on combating migrant smuggling, and goes beyond the stated scope of the Directive. There must also be a clear and absolute humanitarian exemption that does not include family, organised humanitarian assistance or individual acts of solidarity in criminal liability.
(11) Penalties for the criminal offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Accessory measures are often effective and,	(11) Penalties for the criminal offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Accessory measures are often effective and,	**Specific allusions to a certain type of punishment for the crime of migrant smuggling should be removed from Recital 11.** The aim of recitals, to provide general guidance for legal interpretation by Member States, is diminished by the inclusion of specific instructions on the use of deportations as a

therefore, should be also available in criminal proceedings. Considering the possible risk to public policy and public security that they may pose, third-country nationals who committed the offences defined in this Directive should be subject to return in accordance with Directive 2008/115/EC of the European Parliament and of the Council 43 or in accordance with national law where Member States have made use of Article 2(2), point (b), of that Directive, either after having served the prison sentence in a Member State or in view of serving the prison sentence, or part of it, in a third country, without prejudice to more favourable provisions applicable by virtue of Union or national law; furthermore, without prejudice to more favourable provisions applicable by virtue of Union or national law, those third-country nationals should be prohibited to re-enter the territory of the Member States for an appropriate period of time to be determined on a case-by-case basis, and that can reach 10 years in the most serious cases. This should not affect the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.	therefore, should be also available in criminal proceedings. ~~***Considering the possible risk to public policy and public security that they may pose, third-country nationals who committed the offences defined in this Directive should be subject to return in accordance with Directive 2008/115/EC of the European Parliament and of the Council 43 or in accordance with national law where Member States have made use of Article 2(2), point (b), of that Directive, either after having served the prison sentence in a Member State or in view of serving the prison sentence, or part of it, in a third country, without prejudice to more favourable provisions applicable by virtue of Union or national law; furthermore, without prejudice to more favourable provisions applicable by virtue of Union or national law, those third-country nationals should be prohibited to re-enter the territory of the Member States for an appropriate period of time to be determined on a case-by-case basis, and that can reach 10 years in the most serious cases. This should not affect the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.***~~	punitive measure which a) oversteps EU competencies in this area, b) normalises the use of violent returns procedures under criminal law as a prima facie response to migration and c) ignores the safety considerations of individuals deported back to home countries experiencing war, violence, famine, political or personal persecution.
(24) To ensure successful enforcement, Member States should make available effective investigative tools for the criminal offences referred to in this Directive, such as those included in their national law for combating organised crime or other serious crimes, including for instance the interception of communications, covert surveillance including electronic surveillance, monitoring of bank	~~***(24) To ensure successful enforcement, Member States should make available effective investigative tools for the criminal offences referred to in this Directive, such as those included in their national law for combating organised crime or other serious crimes, including for instance the interception of communications, covert surveillance including electronic surveillance, monitoring of bank***~~	**Recital 24 should be deleted as it increases the capacity of EU and national institutions to criminalise migration and humanitarian actors.** It encourages the use of expansive and invasive investigative tools that have already been used to criminalise migrants as well as human rights defenders, likely violating the privacy of both.

accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the criminal offences under investigation should justify the use of these investigative tools. The right to the protection of personal data should be respected.	~~***accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the criminal offences under investigation should justify the use of these investigative tools. The right to the protection of personal data should be respected.***~~	Furthermore, any allocation of additional financial or personnel resources towards law enforcement authorities or judiciary legitimises the use of criminal law against migrants and migration. It also takes away resources from being used towards administrative and humanitarian policies to safeguard migrants and humanitarian actors.
Article 2 Definitions For the purposes of this Directive, the following definitions apply: 1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the right of free movement under Union law as defined in Article 2, point 5, of Regulation (EU) 2016/399 of the European Parliament and of the Council; 2. 'unaccompanied minor' means a third-country national below the age of 18 years who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;	Article 2 Definitions For the purposes of this Directive, the following definitions apply: 1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the right of free movement under Union law as defined in Article 2, point 5, of Regulation (EU) 2016/399 of the European Parliament and of the Council; 2. 'unaccompanied minor' means a third-country national below the age of 18 years who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;	**Article 2 should be amended to include a clear definition of migrant smuggling that is aligned with international legal standards.** There should be absolute proof of financial gain in order to be charged with smuggling. The Parliament must a) add a clear definition of migrant smuggling to Article 2 requiring that any crime of migrant smuggling is conditional on financial or material benefit, reflecting existing UN Protocols, and b) amend the definition of migrant smuggling in Article 3(1) of the Directive.

3. ‘legal person’ means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.	3. ‘legal person’ means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations***;*** ***4. ‘smuggling’ in the context of migration means receiving explicit financial benefit for the illegal entry of a person into a State. It does not apply to individual acts of entry, transit or stay of third country nationals, provision of support to family members, or the provision of assistance by humanitarian actors.***	
Article 3 Criminal offences 1.Member States shall ensure that intentionally assisting a third-country national to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence where: a) the person who carries out the conduct requests, receives or accepts, directly or indirectly, a financial or material benefit, or a promise thereof, or carries out the conduct in order to obtain such a benefit; or b) there is a high likelihood of causing serious harm to a person. 2.Member States shall ensure that publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any	Article 3 Criminal offences 1.Member States shall ensure that intentionally assisting a third-country national to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence where***:*** ***~~a)~~*** the person who carries out the conduct ***~~requests,~~*** receives ***~~or accepts,~~*** directly or indirectly, a financial ***~~or material~~*** benefit***~~, or a promise thereof, or carries out the conduct in order to obtain such a benefit; or~~*** ***~~b) there is a high likelihood of causing serious harm to a person.~~*** ***~~2.Member States shall ensure that publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any~~***	**Article 3 must be amended to reflect internationally agreed legal definitions of migrant smuggling and reduce the scope for the criminalisation of migrants and humanitarian actors.** **Article 3.1 (a)** must be amended to align with existing international legal definitions of migrant smuggling to make sure the charges will only apply to organised criminal activity **Article 3.1 (b)** criminalises facilitation based on a vague notion of ''causing serious harm'' which is a) vague and b) not aligned with the international legal definition of migrant smuggling, leaving the door open for the unfair criminalisation of migrants. **Article 3.2** on “public instigation” must be removed, as it risks infringing on the free speech and assistance capacities of humanitarian actors. Article 3.2 must instead include a clear and

Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence.	~~***Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence.***~~ ***2. Criminal offences outlined in Article 1 shall not extend to the following activities:*** ***(c) acts itself of entry, transit and stay of third-country nationals themselves;*** ***(d) the provision of shelter, food, legal aid and advice, medical care, information and transportation, monitoring and reporting of human rights abuses, as well as civil disobedience and advocacy for policy change.***	explicit definition of what acts fall outside the scope of criminal offences to avoid the inadvertent criminalisation of migrants and those assisting them.
Article 5 Incitement, aiding and abetting, and attempt Member States shall ensure that inciting, aiding and abetting and attempting to commit any of the criminal offences referred to in Article 3(1) and Article 4 are punishable as criminal offences.	~~***Article 5***~~ ~~***Incitement, aiding and abetting, and attempt***~~ ~~***Member States shall ensure that inciting, aiding and abetting and attempting to commit any of the criminal offences referred to in Article 3(1) and Article 4 are punishable as criminal offences.***~~	**Article 5 should be removed to avoid the criminalisation of humanitarian actors, and individual acts of solidarity with migrants.** This would align the text with the UN legal definition of 'smuggling of migrants', while avoiding any confusion on the potential criminalisation of migrants, those who assist them, and those who advocate for them.
Article 6 Penalties for natural persons 1.Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive	Article 6 Penalties for natural persons 1.Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal	**The proposal should remove Article 6.5 (b) so as to not provide for penalties that further the likelihood of criminalising migrants themselves, which is outside the objective of this legislation.** Further, there is no mention of safety considerations of individuals deported back to

criminal penalties. 2.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum term of imprisonment of at least three years. 3.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4, points (a) to (d) are punishable by a maximum term of imprisonment of at least ten years. 4.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4 point (e), including attempts to commit the criminal offence referred to in that provision, are punishable by a maximum term of imprisonment of at least fifteen years. 5.In addition to criminal penalties imposed in accordance with paragraphs 1 to 4, Member States shall take the necessary measures to ensure that natural persons that have been convicted of committing one of the criminal offences referred to in Articles 3, 4 and 5 may be subject to criminal or non-criminal sanctions or measures imposed by a competent authority, including: (a) withdrawal of permits or authorisations to pursue activities which have resulted in committing the criminal offence, or prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the criminal offence was committed;	penalties. 2.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum term of imprisonment of at least three years. 3.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4, points (a) to (d) are punishable by a maximum term of imprisonment of at least ten years. 4.Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4 point (e), including attempts to commit the criminal offence referred to in that provision, are punishable by a maximum term of imprisonment of at least fifteen years. 5.In addition to criminal penalties imposed in accordance with paragraphs 1 to 4, Member States shall take the necessary measures to ensure that natural persons that have been convicted of committing one of the criminal offences referred to in Articles 3, 4 and 5 may be subject to criminal or non-criminal sanctions or measures imposed by a competent authority, including: (a) withdrawal of permits or authorisations to pursue activities which have resulted in committing the criminal offence, or prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the criminal offence was committed; ~~***(b) return after the enforcement of the penalty in a Member State, or to serve the penalty***~~	home countries experiencing war, violence, famine, political or personal persecution. Including such a broad provision for deportations as a standard punitive measure further enshrines this harmful practice in EU migration procedures in general, and contributes to the construction of a deadly fortress Europe and a racialised regime of control, punishment and violence against migrants, refugees and asylum seekers. **Article 6.5 (c) must similarly be deleted**, as a "prohibition to enter and stay on the territory" is an entry ban *de facto* accompanied by an obligation of return and therefore deportation.

(b) return after the enforcement of the penalty in a Member State, or to serve the penalty imposed, or part of it, in the third country of return, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law; (c) prohibition to enter and stay on the territory of the Member States for an appropriate period of maximum 10 years, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law; (d) exclusions from access to public funding, including tender procedures, grants and concessions; (e) fines; (f) freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.	~~*imposed, or part of it, in the third country of return, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;*~~ ~~*(c) prohibition to enter and stay on the territory of the Member States for an appropriate period of maximum 10 years, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;*~~ ~~*(d)*~~ ***(b)*** exclusions from access to public funding, including tender procedures, grants and concessions; ~~*(e)*~~ ***(c)*** fines; ~~*(f)*~~ ***(d)*** freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.	
Article 7 Liability of legal persons 1.Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based	~~*Article 7*~~ ~~*Liability of legal persons*~~ ~~*1.Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based*~~	**Article 7 should be deleted to avoid the criminalisation of humanitarian actors.** The broad scope for the liability of legal persons to be criminalised under this article, and the severity of potential punishment, is a clear risk to NGOs in migration assistance, search and rescue, and other similar activities. Their capacity to deliver life-saving aid will be diminished, risking more deaths of migrants, instead of targeting organised crime.

on: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; (c) an authority to exercise control within the legal person. 2.Member States shall also take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the criminal offences referred to in Articles 3, 4 and 5 for the benefit of that legal person by a person under its authority. 3.Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of, inciters of, or accessories in the criminal offences referred to in Articles 3, 4 and 5.	~~***on:***~~ ~~***(a) a power of representation of the legal person;***~~ ~~***(b) an authority to take decisions on behalf of the legal person;***~~ ~~***(c) an authority to exercise control within the legal person.***~~ ~~***2.Member States shall also take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the criminal offences referred to in Articles 3, 4 and 5 for the benefit of that legal person by a person under its authority.***~~ ~~***3.Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of, inciters of, or accessories in the criminal offences referred to in Articles 3, 4 and 5.***~~	
Article 8 Sanctions for legal persons 1.Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is subject to effective, proportionate and dissuasive sanctions. 2.Member States shall take the necessary measures to ensure that sanctions or measures	~~***Article 8***~~ ~~***Sanctions for legal persons***~~ ~~***1.Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is subject to effective, proportionate and dissuasive sanctions.***~~ ~~***2.Member States shall take the necessary***	**Article 8 should be deleted to avoid the criminalisation of humanitarian actors.** The broad scope for the liability of legal persons to be criminalised under this article, and the severity of potential punishment, is a clear risk to NGOs in migration assistance, search and rescue, and other similar activities. Their capacity to deliver life-saving aid will be diminished, risking more deaths of migrants, instead of targeting organised crime.

for legal persons liable pursuant to Article 7 for the criminal offences referred to in Articles 3, 4 and 5 may include: (a) criminal or non-criminal fines; (b) exclusion from entitlement to public benefits, aid or subsidies; (c) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions; (d) temporary or permanent disqualification from the practice of commercial activities; (e) placing under judicial supervision; (f) judicial winding-up; (g) temporary or permanent closure of establishments which have been used for committing the criminal offence; (h) withdrawal of permits and authorisations to pursue activities which have resulted in committing the criminal offence; 60(i) freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council. 3.The amount of criminal or non-criminal fines shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the	~~***measures to ensure that sanctions or measures for legal persons liable pursuant to Article 7 for the criminal offences referred to in Articles 3, 4 and 5 may include:***~~ ~~***(a) criminal or non-criminal fines;***~~ ~~***(b) exclusion from entitlement to public benefits, aid or subsidies;***~~ ~~***(c) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;***~~ ~~***(d) temporary or permanent disqualification from the practice of commercial activities;***~~ ~~***(e) placing under judicial supervision;***~~ ~~***(f) judicial winding-up;***~~ ~~***(g) temporary or permanent closure of establishments which have been used for committing the criminal offence;***~~ ~~***(h) withdrawal of permits and authorisations to pursue activities which have resulted in committing the criminal offence;***~~ ~~***60(i) freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.***~~ ~~***3.The amount of criminal or non-criminal fines shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person***~~	

necessary measures to ensure that the maximum level of such fines is not less than: (a) 3% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 3; (b) 5% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, points (a) to (d); (c) 6% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, point (e). 4.When providing for criminal or non-criminal fines pursuant to paragraph 3, Member States may provide for rules applicable in cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision.	~~*concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:*~~ ~~*(a) 3% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 3;*~~ ~~*(b) 5% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, points (a) to (d);*~~ ~~*(c) 6% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, point (e).*~~ ~~*4.When providing for criminal or non-criminal fines pursuant to paragraph 3, Member States may provide for rules applicable in cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision.*~~	
Article 15	~~*Article 15*~~	**Article 15 should be removed to avoid a) further criminalisation of racialised people**

Training 1.Member States shall take the necessary measures to ensure adequate resources for and the provision of specialised training at regular intervals for the members of the law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of criminal offences referred to in Articles 3, 4 and 5. 2.Without prejudice to judicial independence, Member States shall take the necessary measures to ensure that specialised regular training is provided to judges, prosecutors, law enforcement and judicial staff and competent authorities' staff involved in criminal proceedings and investigations with respect to the objectives of this Directive.	~~***Training***~~ ~~***1.Member States shall take the necessary measures to ensure adequate resources for and the provision of specialised training at regular intervals for the members of the law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of criminal offences referred to in Articles 3, 4 and 5.***~~ ~~***2.Without prejudice to judicial independence, Member States shall take the necessary measures to ensure that specialised regular training is provided to judges, prosecutors, law enforcement and judicial staff and competent authorities' staff involved in criminal proceedings and investigations with respect to the objectives of this Directive.***~~	**and migrants and b) avoid EU overstep in an area of Member State competence.** Any allocation of further financial or personnel resources towards law enforcement authorities or judiciary legitimises the use of criminal law against migrants and migration, and increases the capacity of EU and national institutions to criminalise migration and humanitarian actors. It takes away resources from being used towards administrative and humanitarian policies to safeguard migrants and humanitarian actors.
Article 16 Investigative tools Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting criminal offences referred to in Articles 3, 4 and 5. Where appropriate, these tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases.	~~***Article 16***~~ ~~***Investigative tools***~~ ~~***Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting criminal offences referred to in Articles 3, 4 and 5. Where appropriate, these tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases.***~~	**Article 16 should be removed to avoid a) further criminalisation of racialised people and migrants and b) avoid EU overstep in an area of Member State competence.** The use of "special investigative tools... used in countering organised crime or other serious crime" serves to conflate migration with trafficking and smuggling, risking the criminalisation of migrants without countering organised smugglers operating for financial gain, and risking increased violations against the right of migrants and asylum seekers to move, and the increased over-policing and surveillance of racialised people at the external borders and beyond.