

Measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the European Union

2021/0387(COD) - 23/11/2021 - Legislative proposal

PURPOSE: to prevent and counter the use of commercial means of transport to facilitate or engage in the commission of smuggling of migrants or trafficking in persons.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the instrumentalisation of migrants, whereby State actors facilitate irregular migration for political purposes is an increasingly worrying phenomenon, which may involve the **smuggling of migrants or trafficking of persons in relation to illegal entry into the territory of the Union**, thereby endangering the lives and security of those people, while posing a security threat to the borders of the Union.

Such illegal activities very often rely on different means and modes of transport, making it necessary to target transport operators in preventing and countering these activities. The EU and the Member States are parties to several **UN Conventions and Protocols** aimed at combating transnational organised crime, smuggling of migrants and trafficking in human beings.

Several **sectoral initiatives** have already been taken at international level in this area, such as the International Civil Aviation Organization (ICAO), the International Air Transport Association (IATA), the International Maritime Organization (IMO) or the International Chamber of Shipping (ICS). In several, however, in some cases such policies are not in place or not well implemented.

CONTENT: the proposed regulation provides a legal framework for the Union to adopt measures that should be taken against transport operators, **covering all modes of transport** (air, sea, inland waterway, rail and road), involved in the smuggling of migrants or trafficking in persons.

Scope of application

In concrete terms, the proposal sets out the measures that should be taken to prevent or restrict the activities of transport operators who, in relation to the illegal entry of such migrants and persons into the territory of the Union, either:

- use transport means in the commission of smuggling of migrants or trafficking in persons; or
- with knowledge of either the aim and general criminal activity of an organised criminal group active in smuggling of migrants or trafficking in persons or of its intention to commit those crimes take an active part in the criminal activities of such a group; or

- organise, direct, aid, abet, facilitate or counsel the commission of smuggling of migrants or trafficking in persons involving an organised criminal group.

Measures concerning transport operators

Where a transport operator facilitates or engages in the smuggling of migrants or trafficking in persons, the Commission could, by means of immediately applicable implementing acts, decide to take measures against it. The measures to be imposed should be appropriate and proportionate to the circumstances of each case.

Such measures should include, in particular:

- preventing any further expansion of or limitation of current transport operations;
- suspending licences or authorisations granted under Union law;
- suspend the right to fly over the EU, transit through its territory or call at EU ports;
- suspend rights to refuel or carry out maintenance within the Union; or
- suspend the right to provide transport services from, to or within the Union.

The period of application of these measures should not exceed one year. They should be reviewed, if necessary, and could be renewed.

Right to be heard

Before adopting any of the above measures, the Commission should ensure, while taking into account the urgency, that the transport operator concerned is given the right to be heard. The transport operator could be required to cease without delay any activity related to trafficking in human beings or smuggling of migrants.

Before taking any measures against transport operators established in third countries, the Commission should consult the competent authorities of the country concerned with a view to coordinating their actions.

Measures taken against transport operators under the Regulation should be made public.