

Main Research Findings of ESRC Project on The Effects of EU's Anti-Smuggling Policies on Civil Society Actors

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Picture of arrest of rescuers in Lesvos, January 2016. Photo: ©Team Humanity.

I. What is the research project about?

The project has examined how European Union (EU) policies aimed at countering migrant smuggling have affected **civil society actors'** activities in the provision of humanitarian assistance and access to rights to irregular migrants and asylum seekers. It explores the effects of EU laws, policies, and agencies' operations in **anti-migrant smuggling** actions and their implementation. The research covered the cases of **Italy, Greece, Hungary and the UK**, where new type of policies emerged in the context of the so-called **'European refugee humanitarian crisis'** since 2015. The Study also examined the political pressures and practical challenges arising for **national border and coast guards and judicial authorities in effectively implementing anti-human smuggling policies.**

The effects of EU and national policies that criminalize the **facilitation of entry and residence** of irregular immigrants extend beyond cases where civil society actors have faced actual prosecutions or administrative penalties when assisting irregular immigrants and asylum seekers. We use the notion **'policing the mobility society'** to capture wider set of punitive and restrictive dynamics that directly or indirectly follow from **EU's anti-smuggling policies.** The evidence gathered during this research elaborates on the EU anti-migrant smuggling policies being intentionally or (un)intentionally translated

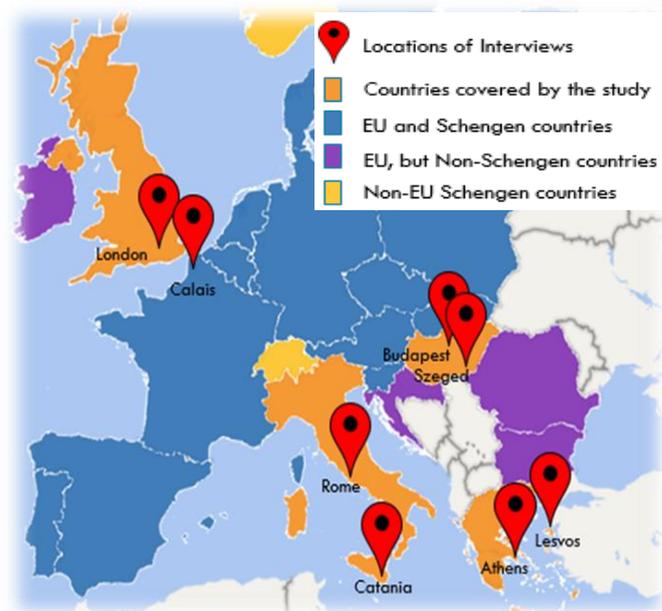
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into policing civil society actors and citizens movements, especially those monitoring States' performance in implementing migration practices and mobilising for the access to rights.

II. How was the research conducted?

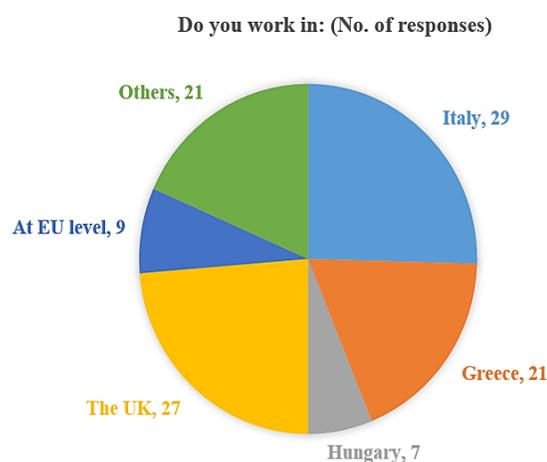
The project run from September 2016 until November 2017. It was coordinated by Queen Mary University London in cooperation with **CEPS** and **PICUM**. The research covered **Greece, Hungary, Italy and the UK** (Figure 1 below), where a total **89 semi-structured interviews** were conducted. The online survey has gathered more than **110 respondents** representing different **civil society actors** mainly from the four countries covered (See Figure 2). In addition, **civil society focus group discussion** took place on 11th of May 2017 in Brussels. An additional **closed-door discussion** was organised with **coastguards, law enforcement and judicial actors** on 21st of September 2017 also in Brussels.

Figure 1. Mapping countries covered and their neighbours



Source: Author, 2017.

Figure 2. Survey respondents



Source: CSAs Online Survey, 2017.

III. What are the main issues in the EU's Approach to Human Smuggling?

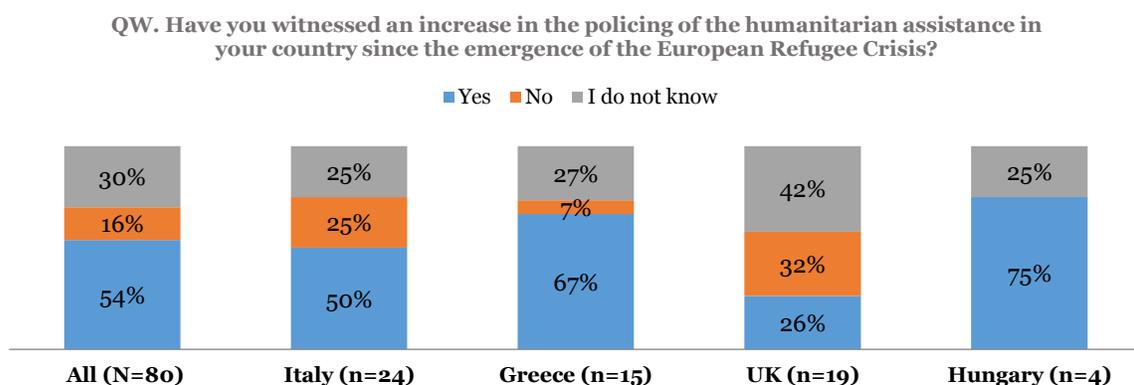
- **'Migrant smuggling' has been framed as a top political priority for the EU in the European Migration Agenda and in response to the 2015-2017 'European Refugee Crisis'.** The implementation of this policy raises important ethical, legal and practical challenges in the implementation phase for **national border and judicial practitioners**, particularly at times of applying and maintain traditional criminal justice standards and guarantees. 'Anti-Smuggling Policies' are often confused and wrongly tailored as 'Irregular Migration Management Policies'.
- **The 2002 EUs Facilitators Package does not require a 'Financial or other Material Benefit' requirement** for 'migrant smuggling' to be considered a crime. The Package **falls short of existing UN standards under the Protocol against the Smuggling of Migrants**. EU law allows Member States to keep the **broad definition of smuggling**, where the financial benefit requirement is not part of the base crime, but only as aggravating circumstance. For example, the **Facilitation of Entry** is criminal in Italy, Greece, the UK and Hungary and in majority of EU Member States, even **without intent to gain profit**.

- **The EU Facilitators Package also contains an optional clause for Member States to exempt humanitarian actors from criminalisation.** Directive 2002/90 contains an **Article 1.2** which is **of facultative nature** and allows Member States to decide whether civil society actors and family members will be exempted from criminal punishment.

IV. Who are the Agencies and Actors Tackling ‘Migrant Smuggling’ in the EU?

- EU ‘migrant smuggling’ policies are characterized by a **multi-actor setting**. EU agencies have been tailored or (re)designed for **preventing and investigating** migrant smuggling. **FRONTEX’s** mandate has been expanded under the European Border and Coast Guard, and its **Joint Operations Triton** and **Poseidon** have been also enhanced. **Europol** has established a special **European Migrant Smuggling Centre**. EU-led military operation **EUNAVFOR MED Sophia** was established to dismantle migrant smuggling business and destroy detected vessels. None of these actors covers the former Italian-led Mare Nostrum Operation and a Search and Rescue (SAR) legal mandate.
- Within the **EU Hotspot approach Frontex, Europol and EASO officers were deployed in Italy and Greece with a focus on registration and identification of immigrants, asylum seekers and potential smugglers.** National and EU judicial practitioners expressed that a traditional criminal justice approach in countering smuggling has not been ensured, but rather one focused on preventive policing and information sharing. Gathering **‘intelligence’ and information was not the most effective and efficient way to bring ‘evidence’** that could be used before courts to substantiate actual prosecutions. A key finding is a surprisingly **low number of prosecutions of smugglers despite the political priority given to this phenomenon.**
- **More than half** of online survey civil society respondents **witnessed an increase in policing of their activities since 2015, which has influenced their operational spaces negatively.** The Survey shows a particular increase in Greece, where there is a high EU presence (See Figure 3 below). Interviews revealed that ‘the EU-Turkey Statement’ was a turning point in these processes.

Figure 3. CSAs witnessing increase in policing



Source: CSAs Online Survey, 2017. *Hungarian survey received only 4 responses thus, it is not representative.

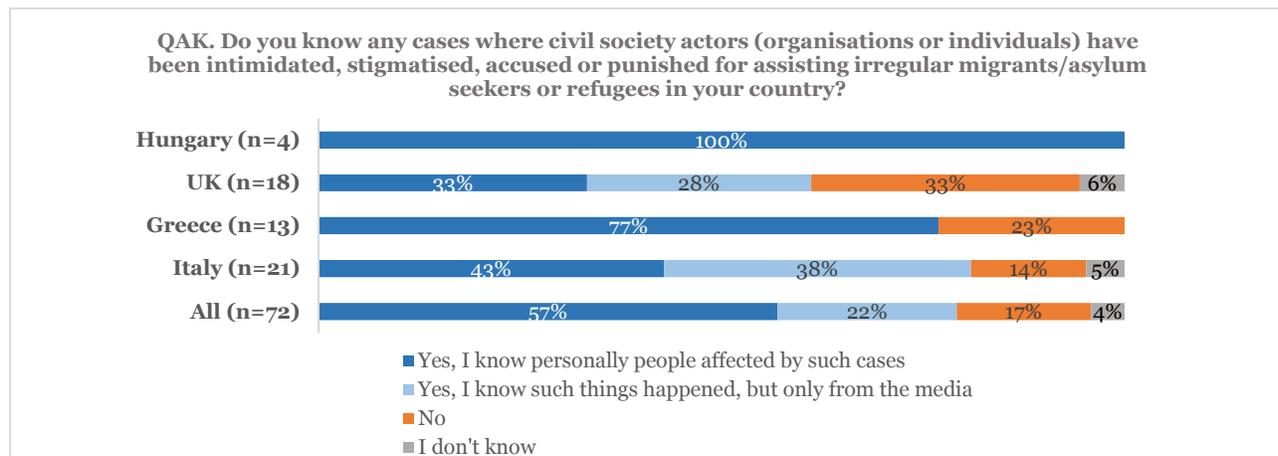
V. What are the effects on civil society actors?

- Measuring the effects of EU anti-smuggling laws and policies **cannot be limited to a ‘criminalisation’ or number of prosecutions and sentencing.** Our research demonstrates the existence of **three faces or modalities of ‘policing the mobility society’** in the EU Member States under investigation: intimidation and suspicion, disciplining and formal criminalisation.
- Experiences of **increased proximity of policing of humanitarian actors have led organisations and individuals to change and adapt their practices and services, and face**

increasing restrictions and requirements to conduct their activities. The respondents reported that they knew **personally** cases of policing, were more likely translated into a change in their organisations/ volunteering work and humanitarian assistance (See Figure 4).

- **The nature of civil society actors in the EU has changed during the crisis.** The interviews and online survey suggests that whereas some actors became more self-restrained due to a potential **negative images, access to funding or even safety of their personnel**, others became more politically active in advocacy at national, EU and international levels.
- The civil society focus group revealed that suspicion and accusations of CSAs is negatively **impacting social trust**. Interviews revealed that experiences of intimidation, suspicion and disciplining which challenges also the **trust in criminal justice system**. The chilling effect and stigmatization was also visible, with some civil society constraining themselves in **monitoring human rights**.

Figure 4. Awareness and proximity of policing by country



Source: CSAs Online Survey, 2017. *Hungarian survey received only 4 responses thus, it is not representative.

VI. Which ways forward? Policy Recommendations



- **EU law should be in line with UN standards.** The criterion of **'financial gain or other material benefit'** should be a requirement to establish a base crime both in terms of **facilitation of entry/transit and stay** across the EU.
- **The EU Facilitators Package should be amended accordingly.** It should also include an **obligatory prohibition** of criminalisation of **civil society actors**.



- The work of **EU agencies** should be focused on a **criminal justice-led approach** in countering 'migrant smuggling', instead of 'preventative policing' approach. Priority should be given to developing **Joint Investigation Teams** which are compatible with the **standards** laid down in the **European Investigation Order**.
- **EUNAVFOR MED SOPHIA** and other **EU-led Operations** should be subject of a report by the **European Court of Auditors** so as to evaluate the **value added** and **efficiency & effectiveness** in addressing **'migrant smuggling'**, and of the **European Ombudsperson** – if they are in line with **EU's fundamental rights**.



- The EU should develop **Guidelines for Implementing Firewalls between civil society and law enforcement** which guarantees humanitarian assistance and access to justice.
- An **EU Civil Society Shadow Reporting or Complaints Mechanism** should feed into the assessment of EU Democracy, Rule of Law and Fundamental Rights Mechanism, and the work of EU Agencies in countering smuggling and migration/border management policies.
- The EU should establish a **direct funding scheme for watchdog civil society** monitoring human rights by migrants and refugees and to monitor their treatment by relevant national and EU agencies in the context of border controls/surveillance and expulsions.