

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 Lesbos, January 2016. Photocredit: 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 types of policies emerged from 2015 onwards in the context of the so-called **'European humanitarian refugee crisis'**. 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**.

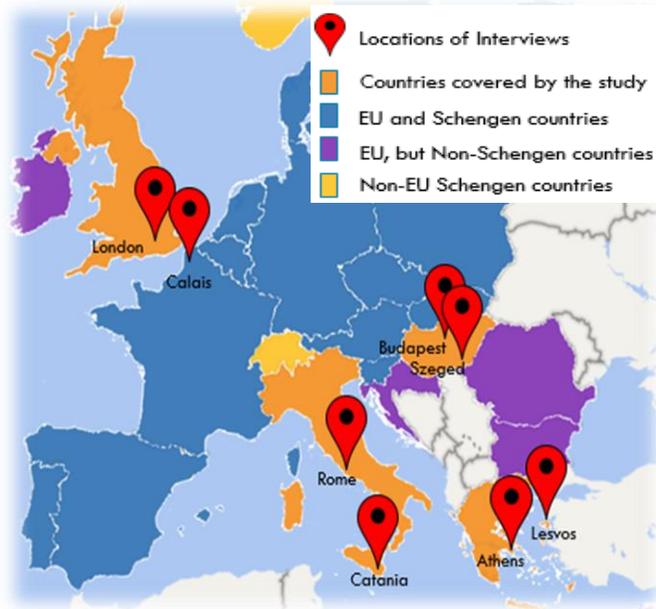
The effects of EU and national policies that criminalize the **facilitation of entry and residence** of irregular immigrants extend beyond cases where civil society actors have faced actual prosecutions or administrative penalties when assisting irregular immigrants and asylum seekers. We use the notion **'policing the mobility society'** to capture the wider set of punitive and restrictive dynamics that directly or indirectly follow from the **EU's anti-smuggling policies**. The evidence gathered during this research shows that the EU anti-migrant smuggling policies are intentionally or (un)intentionally having the impact of policing the movements of civil society actors' and citizens, especially those monitoring the implementation of States' migration practices and mobilising for migrants' access to their rights.

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II. How was the research conducted?

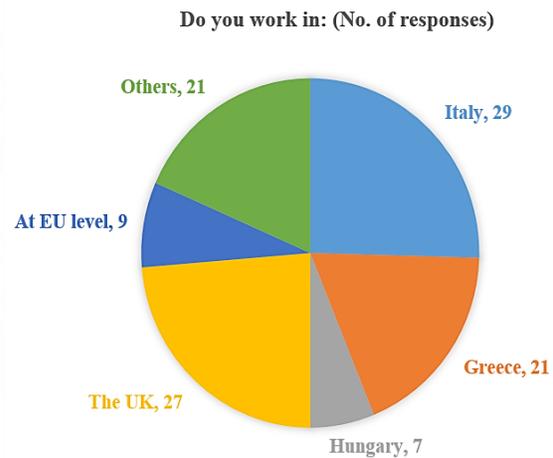
The project ran from September 2016 until November 2017. It was coordinated by Queen Mary University London in cooperation with **CEPS** and the Platform for International Cooperation on Undocumented migration (**PICUM**). The research covered **Greece, Hungary, Italy** and **the UK** (Figure 1 below), where a total of **89 semi-structured interviews** were conducted. An online survey gathered more than **110 responses** representing different **civil society actors** mainly from the four countries covered (See Figure 2). In addition, a **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: Authors, 2017.

Figure 2. Survey respondents



Source: CSAs Online Survey, 2017.

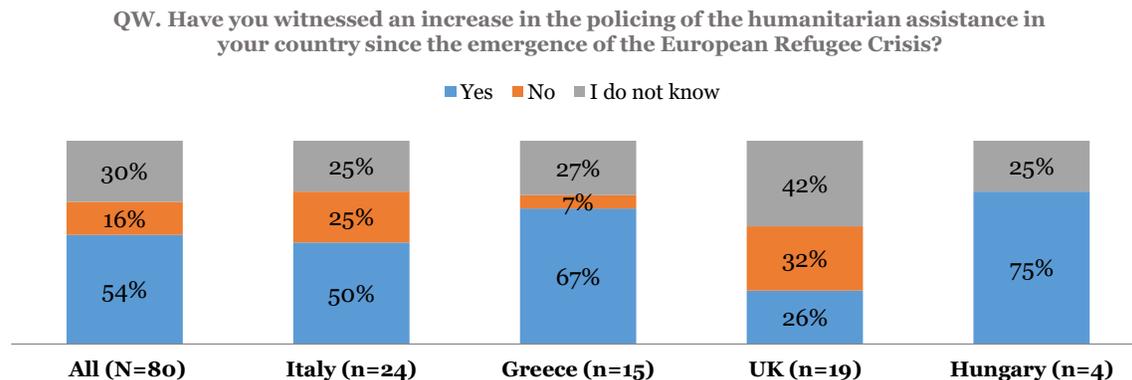
III. What are the Priorities of the EU's Approach to Human Smuggling?

- **'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 humanitarian refugee crisis'.** This policy raises important ethical, legal and practical challenges in the implementation phase for **national border and judicial practitioners**, particularly where they are required to apply and maintain traditional criminal justice standards and guarantees. 'Anti-Smuggling Policies' are often confused and wrongly tailored as 'Irregular Migration Management Policies'.
- **The 2002 EU 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 an 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 a **multi-actor field**. 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 enhanced. **Europol** has established a special **European Migrant Smuggling Centre**. EU-led military operation **EUNAVFOR MED Sophia** was established to dismantle the migrant smuggling business and destroy detected vessels. None of these actors have covered 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** tasked with the **registration and identification of immigrants, asylum seekers and potential smugglers**. National and EU judicial practitioners expressed the view that rather than focusing on a traditional criminal justice approach to countering smuggling, these operations centred rather 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 prosecutions. A key finding is the **surprisingly low number of prosecutions of smugglers despite the political priority given to this phenomenon**.
- **More than half** of online survey civil society respondents have **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



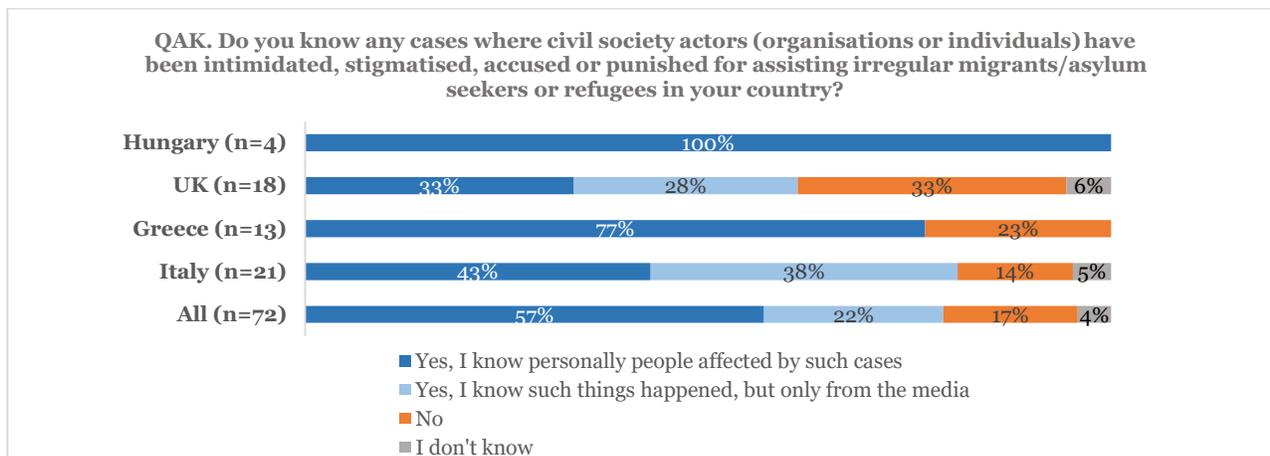
Source: CSAs Online Survey, 2017. *Hungarian survey received only 7 responses in total and 4 responses for this specific question thus, it is not representative.

V. What are the effects on civil society actors?

- Measuring the effects of EU anti-smuggling laws and policies **cannot be limited to a number of prosecutions and sentences**. 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 they have **faced increasing restrictions and requirements in conducting their activities**. Respondents who knew personally of cases of policing were more likely to change their humanitarian practices (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 the criminalisation of **civil society actors acting with humanitarian intent** to assist migrants and refugees.



- The work of **EU agencies** should be focused on a **criminal justice-led approach** to countering ‘migrant smuggling’ instead of a ‘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 the subject of a report by the **European Court of Auditors** and **European Ombudsperson** so as to evaluate their **value added, efficiency and effectiveness** in addressing ‘migrant smuggling’ as well as **to assess** if they are in line with **the EU’s fundamental rights**.



- The EU should develop **Guidelines for Implementing Firewalls between civil society and law enforcement** which guarantee humanitarian assistance and access to justice for migrants.

- An **EU Civil Society Shadow Reporting or Complaints Mechanism** should feed into the assessment of the EU Democracy, Rule of Law and Fundamental Rights Mechanism and the work of EU Agencies involved in countering smuggling and migration/border management policies.

- The EU should establish a **direct funding scheme for a civil society watchdog** to monitor the human rights of migrants and refugees and their treatment by relevant national and EU agencies in the context of border controls/surveillance and expulsions.