

EUROJUST

European Union Agency for
Criminal Justice Cooperation

Legal definition of migrant smuggling and/or facilitation of irregular migration

An overview of EU legislation

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Criminal justice across borders




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The information for this document was provided by the members of the Focus Group on Migrant Smuggling and the National Desks of Eurojust. Translations of national legislation may not be official.


Austria (AT)

<p>AUSTRIA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>(1) Any person who promotes the unlawful entry into or transit through a Member State of the European Union or a neighbouring state of Austria of a foreigner with the intention of unlawfully enriching himself or a third party by means of a payment made therefor shall be punished by the court with imprisonment for not more than two years.</p> <p>(2) A person who has already been convicted of trafficking within the meaning of subsection 1 within the last five years shall be punished by imprisonment for not more than three years. A conviction shall also be deemed to be one by a foreign court in proceedings in accordance with the principles of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.</p> <p>(3) Whoever commits the act under para. 1 Commercially (Section 70 of the Criminal Code), 2. in relation to at least three strangers, or 3. in a manner that puts the stranger in an agonizing state for a prolonged period of time, especially during transportation, shall be punished by the court with imprisonment from six months to five years.</p> <p>(4) A person who commits the act under subsection (1) as a member of a criminal organization or in such a manner as to endanger the life of the alien to whom the criminal act relates shall be punished by the court with imprisonment for a term of one to ten years.</p> <p>(5) Aliens whose unlawful entry or transit is furthered by the act shall not be punished as participants (Section 12 of the Criminal Code). Their return or deportation may be delayed if and as long as this is necessary in order to interrogate them on the facts of the case.</p> <p>(6) In case of imminent danger, the organs of the public security service shall be authorized to temporarily seize objects carried by the offender or means of transport or containers used for the commission of the offence in order to secure confiscation (Section 19a of the Criminal Code), forfeiture (Sections 20 to 20c of the Criminal Code) or confiscation (Section 26 of the Criminal Code). The cargo of the means of transport may be handed over to the owner of the registration or his representative. The court shall be notified immediately of the measures taken.</p> <p>(7) Paragraphs 1 to 4 shall apply to criminal offences committed abroad, irrespective of the criminal laws of the place where the offence was committed, if Austrian interests have been harmed by the offence.</p>
<p><i>Legal Basis</i></p>
<p>§ 114 Aliens Police Act</p>
<p><i>Penalties</i></p>
<p>See in definitions</p>

Comments

None

Belgium (BE)

<p>BELGIUM</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>The offence of migrant smuggling involves contributing, by any means whatsoever, directly or through an intermediary, to the entry, transit or residence of a person who is not a national of a Member State of the European Union into the territory of a Member State of the European Union or of a State party to an international agreement on the crossing of external borders which is binding on Belgium, in violation of the laws of that State, with a view to obtaining, directly or indirectly, a pecuniary advantage.</p> <p><i>Attempting</i> to commit the offence referred to in the first paragraph shall be punishable by imprisonment of one year to three years and by a fine of one hundred to one thousand euros.</p> <p>The fine is applied as many times as there are victims.</p> <p><u>Aggravating circumstances</u></p> <p><u>Article 77quater</u></p> <p>1° where the offence was committed towards a minor;</p> <p>2° where the offence was committed by taking advantage of the particularly vulnerable situation in which a person finds himself as a result of his illegal or precarious administrative situation, his precarious social situation or as a result of pregnancy, illness or a physical or mental deficiency or inadequacy, in such a way that the person concerned has in fact no other real and acceptable choice but to be abused;</p> <p>3° where the offence was committed by direct or indirect use of fraudulent practices, violence, threats or any form of coercion;</p> <p>4° where the victim's life has been endangered deliberately or through gross negligence;</p> <p><u>Article 77quinquies</u></p> <p>1° resulting in the death of a person</p> <p>2° where an act of participation in the main or ancillary activities of a criminal organisation, regardless of whether or not the guilty party has the status of leading person.</p>
<p><i>Legal Basis</i></p>
<p>Law of 15 December 1980- Law on access to the territory, residence, settlement and removal of foreign nationals, Article 77bis</p>
<p><i>Penalties</i></p>
<p>Imprisonment from 1 year to 5 years and a fine of 500 to 50 000 Euro.</p> <p>For attempt: imprisonment from 1 to 3 years and a fine of 100-1000 Euro</p> <p>Art 77quater : imprisonment from 10 to 15 years and a fine of 1000- 100 000 Euro</p> <p>Art 77 quinquies: imprisonment from 15 to 20 years and a fine of 1000 -150 000 Euro</p>

Comments

In most of our cases of migrant smuggling we also have the following crimes: use of false documents, money laundering, criminal organisation.

Bulgaria (BG)

BULGARIA



Definition of Migrant Smuggling and/or Facilitation of Irregular Migration

PENAL CODE

Art. 280. (Amend. and suppl., SG 28/82; revoked SG 37/89; New SG 62/97) (1) (amend. - SG 74/15) Whosoever takes across the border of the country individuals or groups of people without permit of the respective bodies of the authority or, though by a permit but not at the places determined for that purpose, shall be punished by imprisonment of one to six years and a fine of five thousand to twenty thousand levs.

(2) (amend. - SG 74/15) The penalty shall be imprisonment of one to ten years, a fine of ten thousand to thirty thousand levs and a confiscation of a part or the whole property of the perpetrator if:

1. a person who has not accomplished 16 years of age has been taken across the border;
2. the transfer has taken place without the consent of the person;
3. the person transferred across the border is not a Bulgarian citizen;
4. motor, air or other vehicle has been used;
5. (amend. - SG 74/15) the transfer has been organised by a group or organisation;
6. (new - SG 27/09) the transfer was carried out in a way, which was dangerous to the life of the transferred persons.

(3) (new - SG 74/15) The penalty shall be imprisonment of three to twelve years, a fine of ten thousand to thirty thousand levs and confiscation of a part or the entire property of the perpetrator, where the act was committed with the participation of an official, who took advantage of his official capacity.

(4) (prev. text of Para 03, suppl. - SG 74/15) In the cases of para 2, item 4 the vehicle shall be seized in favour of the state if it was owned by the perpetrator or was voluntarily provided to him.

Art. 281. (1) (Amend., SG 28/82; revoked SG 37/89; new - SG 27/09; prev. text of Art. 281, amend. and suppl. - SG 74/15) Whoever, with the purpose of obtaining for himself or for somebody else property benefit, illegally assists a foreigner to reside or move into the country contrary to the law, shall be punished by imprisonment of up to five years and a fine from three thousand to ten thousand levs.


(2) (new - SG 74/15) The penalty shall be imprisonment of one to six years and a fine of five thousand to twenty thousand levs, where the act was:

1. committed by using a motor, air or other transportation vehicle;
2. organised by a group or an organisation;
3. committed in a life-threatening manner for the person;
4. committed with regard to a person under the age of 16;
5. committed with regard to more than one person.

(3) (new - SG 74/15) In the cases of Para 2, Item 1, the vehicle shall be seized in favour of the state, if it was owned by the perpetrator or was voluntarily provided to him

<i>Legal Basis</i>
Penal Code
<i>Penalties</i>
<p>Imprisonment of one to six years and a fine of five thousand to twenty thousand levs – Art. 280, par. 1</p> <p>Be imprisonment of one to ten years, a fine of ten thousand to thirty thousand levs and a confiscation of a part or the whole property – Art. 280, par. 2</p> <p>Imprisonment of three to twelve years, a fine of ten thousand to thirty thousand levs and confiscation of a part or the entire property of the perpetrator – Art. 280, par. 3</p> <p>In the cases of paragraph 2, item 4, the vehicle shall be seized in favour of the state if it was owned by the perpetrator or was voluntarily provided to him – Art. 280, par. 4</p> <p>Imprisonment of up to five years and a fine from three thousand to ten thousand levs – Art. 281, par. 1</p> <p>Imprisonment of one to six years and a fine of five thousand to twenty thousand levs - Art. 281, par. 2</p> <p>The vehicle shall be seized in favour of the state, if it was owned by the perpetrator or was voluntarily provided to him - Art. 281, par. 3</p>
<i>Comments</i>
None

Croatia (HR)

CROATIA 
<i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i>
No information received
<i>Legal Basis</i>
<i>Penalties</i>
<i>Comments</i>

Cyprus (CY)

<p>CYPRUS</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>19A.-(1) A person who, with intent and with the aim of obtaining profit, assists a third-country national to enter or transit through the territory of the Republic or of any other Member State, in violation of this Law or the relevant legislation of that Member State, respectively, commits a criminal offence and, if convicted, shall be punished with imprisonment not exceeding fifteen (15) years or with a fine not exceeding one hundred thousand euros (€100,000) or both of these penalties.</p> <p>(2) A person who, with intent and with the aim of making a profit, assists a third-country national in order to reside in the Republic or in another Member State, in violation of the provisions of this Law or the relevant legislation of that Member State, respectively, commits a criminal offence and, in case of conviction, shall be punished with imprisonment not exceeding fifteen (15) years or with a fine not exceeding one hundred fifty thousand euros (€150.000) or with both of these penalties.</p> <p>(3) In adjudicating on the offences referred to in subsections (1) and (2) and imposing the sentence, the Court shall regard the following circumstances as aggravating in relation to the offence committed:</p> <p>(a) The offence was committed in the context of the activities of a criminal organisation within the meaning of Article 63B of the Criminal Code.</p> <p>(b) The commission of the offence endangered the lives of the third-country nationals against whom it was directed.</p>
<p><i>Legal Basis</i></p>
<p>Aliens and Immigration Law Cap. 105</p>
<p><i>Penalties</i></p>
<p>See definition</p>
<p><i>Comments</i></p>

Czech Republic (CZ)

CZECH REPUBLIC



Definition of Migrant Smuggling and/or Facilitation of Irregular Migration

Section 340 Organizing and Facilitation of Unauthorized Crossing of State Border

(1) Whoever organizes for another unauthorized crossing of a state border or whoever facilitates or enables another to cross a state border without authorization or facilitates or assists another after crossing a state border in transportation through the territory of the Czech Republic or whoever organizes such transportation, will be sentenced to imprisonment for up to two years or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for six months to five years, to confiscation of assets or to a pecuniary penalty, if he

- a) commits the act referred to in sub-section (1) as a member of an organized group,
- b) exposes another person to inhumane or humiliating treatment by such an act,
- c) commits such an act for payment,
- d) commits such an act repeatedly, or
- e) commits such an act with the intention to conceal or facilitate commission of another criminal act.

(3) An offender will be sentenced to imprisonment for two to eight years or to confiscation of assets, if he

- a) commits the act referred to in sub-section (1) as a member of an organized group an for payment,
- b) exposes another person to risk of death by such an act,
- c) causes grievous bodily harm by such an act,
- d) gains for himself or for another substantial profit by such an act,
- e) commits such an act with a weapon, or
- f) commits such an act in a state of national peril or a state of war.

(4) An offender will be sentenced to imprisonment for five to twelve years, eventually in parallel to this sentence also to confiscation of assets, if he

- a) causes death by the act referred to in sub-section (1),
- b) causes grievous bodily harm of at least two persons by such an act,
- c) gains for himself or for another extensive profit by such an act,
- d) commits such an act as a soldier in a state of national peril or a state of war.

(5) Preparation is criminal.

Section 341 Assisting in Unauthorized Stay in the Territory of the Czech Republic

(1) Whoever assists another person in unauthorized stay in the territory of the Czech Republic with the intention to gain material or other profit, will be sentenced to imprisonment for up to one year or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for up to three years, if he


- a) organizes the act referred to in sub-section (1),
- b) commits such an act as a member of an organized group,
- c) commits such an act repeatedly, or
- d) commits such an act with the intention to conceal or facilitate commission of another criminal act.

(3) An offender will be sentenced to imprisonment for six months to five years, to confiscation of assets or to a pecuniary penalty, if he


- a) gains for himself or for another substantial profit by the act referred to in sub-section (1), or

<p>b) commits such an act in a state of national peril or a state of war.</p> <p>(4) An offender will be sentenced to imprisonment for two to eight years, eventually in parallel to this sentence also to confiscation of assets, if he</p> <p>a) gains for himself or for another extensive profit by the act referred to in sub-section (1), or</p> <p>b) commits such an act as a soldier in a state of national peril or a state of war.</p>
<i>Legal Basis</i>
Criminal Code
<i>Penalties</i>
<p>Section 340 - imprisonment up to 2 year or prohibition of activity (extended if commits like a member of organized group; exposes another person to inhumane or humiliating treatment; exposes another person to risk of death; causes grievous bodily harm; gains substantial profit; commits with a weapon; commits in a state of national peril or a state of war; causes death; causes grievous bodily harm; gains extensive profit; commits as a soldier in a state of national peril or a state of war).</p> <p>Section 341 – Imprisonment up to 1 year or prohibition of activity (extended if organizes the act; commits like a member of organized group; commits repeatedly; commits with the intention to conceal or facilitate commission of another criminal act; gains substantial profit; commits in a state of national peril or a state of war; gains extensive profit; commits as a soldier in a state of national peril or a state of war).</p>
<i>Comments</i>
<p>There has been an amendment of the Czech Criminal Code – Section 341a, which is in force since 1.7.2023. The provision states that:</p> <p>protection under § 339 to 341 shall also be granted to a State which is a Member State of the European Union or which applies the Schengen Borders Code in full.</p>

Denmark (DK)


<p>DENMARK</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Definitions of Migrant Smuggling according to the Aliens Act and according to the Criminal Code if the Migrant Smuggling is under aggravating circumstances, see Legal Basis.</p>
<p><i>Legal Basis</i></p>
<p>Migrant Smuggling according to Aliens Act section 59 a: <i>'(1) A person who brings an alien to Denmark will be punished with a fine in case upon his entry into Denmark or while in transit in a Danish airport the alien is not in possession of the requisite travel document and visa. 131</i> <i>(2) The provision of subsection (1) does not apply to entry from a Schengen State unless the Minister for Immigration and Integration has decided that subsection (1) must be applicable in connection with entry control introduced at the border according to Article 25 of the Schengen Borders Code read with section 38(2) of this Act.'</i></p> <p>According to Aliens Act section 59 (8): <i>'A person is liable to a fine or imprisonment for up to two years if he intentionally assists an alien in entering or transiting through Denmark illegally.'</i></p> <p>Migrant Smuggling under aggravating circumstances according to the Criminal Code 125 a: <i>'Any person who is guilty of migrant smuggling undersection 59(8)(i)-(v) of the Aliens Act for the purpose of gain and in other particularly aggravating circumstances is sentenced to imprisonment for a term not exceeding eight years. Especially situations endangering the lives of others or offences committed in a systematic or organised manner are considered particularly aggravating circumstances.'</i></p>
<p><i>Penalties</i></p>
<p>The penalties for Migrant Smuggling according to the Aliens Act section 59 (8) can be a fine or imprisonment for up to two years.</p> <p>Example: Supreme Court case (U2018.442H) of 4 October 2017 where the penalty was imprisonment for 30 days for assisting a cousin from Germany to Denmark.</p> <p>The penalties for Migrant Smuggling under aggravating circumstances according to the Criminal Code section 125 a can be imprisonment up to eight years.</p> <p>Example: High Court Case (TfK2016.217) of 26 October 2015 where the penalty was imprisonment for 6 months for organised migrant smuggling with a financial gain for illegal entry to Denmark of 6 persons.</p>
<p><i>Comments</i></p>
<p>None</p>

Estonia (EE)


<p>ESTONIA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Illegal crossing of the state border or temporary border line of the Republic of Estonia, illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia, aiding the stay of aliens in Estonia without a legal basis for the purpose of proprietary benefits.</p>
<p><i>Legal Basis</i></p>
<p>Penal Code</p> <p>§ 2374. Malicious entry into the Republic of Estonia</p> <p>(1) Illegal crossing of the Estonian state border or temporary border line by an alien, if:</p> <ol style="list-style-type: none"> 1) committed in order to conceal another criminal offence against the state in the Republic of Estonia; 2) it involves violence, depriving a person of liberty, threat to use force or restrict the liberty of the person; or 3) property has been damaged or destroyed for the purpose of facilitating illegal border crossing; <p>is punishable by one to five years' imprisonment.</p> <p>(2) The same act if:</p> <ol style="list-style-type: none"> 1) committed when carrying a weapon, object used as a weapon, explosive, explosive device or radiation source; (2) committed by hiding of the face with a cover or mask or in any other manner which prevents identification; or 3) it involved a danger to human life; <p>is punishable by three to ten years' imprisonment.</p> <p>§ 258. Illegal crossing of state border or temporary border line of Republic of Estonia</p> <p>(1) Illegal crossing of the state border or temporary border line of the Republic of Estonia if the act does not contain the necessary elements of an offence provided for in § 237⁴ of this Code and was committed:</p> <ol style="list-style-type: none"> 1) in disregard of a stop signal or order given by a police officer; 2) by a group; or 3) by a means of transport in a location not intended for crossing; <p>is punishable by a pecuniary punishment or up to one year's imprisonment. (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.</p> <p>§ 259. Illegal transportation of aliens across state border or temporary border line of Republic of Estonia</p> <p>(1) Illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia is punishable by a pecuniary punishment or up to three years' imprisonment.</p> <p>(2) The same act, if committed by placing or leaving an alien in a situation which is life-threatening or likely to cause serious damage to the health of the alien, is punishable by a pecuniary punishment or by one to seven years' imprisonment.</p> <p>(3) An act provided for in subsection 1 or 2 of this section, if committed by a legal person, is punishable by a pecuniary punishment.</p> <p>§ 259¹. Facilitation of stay in Estonia without legal basis</p> <p>(1) Aiding the stay of aliens in Estonia without a legal basis for the purpose of proprietary benefits if the act does not contain the necessary elements of an offence provided for in §§ 133, 133¹, 175, 259 or 260¹ of this Code, is punishable by a pecuniary punishment or up to one year's imprisonment.</p>

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
<i>Penalties</i>
Pecuniary punishment or up to 10 year's of imprisonment
<i>Comments</i>
None


Finland (FI)

<p>FINLAND</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>A person who</p> <ol style="list-style-type: none"> 1) brings or attempts to bring to Finland or through Finland to another country an alien who does not have a travel document, visa, residence permit or other document equated with a travel document required for entry into the country, 2) brings or attempts to bring to Finland or through Finland to another country an alien whose document referred to in paragraph 1 is false, forged, issued to another person or received from an authority on the basis of false or misleading information with relevance for issuing the document, or by bribing the authority or through violent resistance to a public official, 3) arranges or brokers transportation to Finland to an alien referred to in paragraph 1 or 2, or 4) gives to another person a document referred to in paragraph 2 to be used for entry into the country. <p>An act does not constitute facilitation of illegal entry if it, when assessed as a whole, is deemed to have been committed for acceptable reasons, especially when taking into consideration the perpetrator’s humanitarian motives or motives related to close family relations and the circumstances affecting the safety of the alien in his or her home country or country of permanent residence.</p>
<p><i>Legal Basis</i></p>
<p>Criminal Code Chapter 17 Section 8 and 8a</p>
<p><i>Penalties</i></p>
<p>A fine or imprisonment for at most two years.</p> <p>Aggravated facilitation of illegal entry: Imprisonment for at least four months and at most six years</p>
<p><i>Comments</i></p>
<p>None</p>

France (FR)

<p>FRANCE</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Facilitating the unauthorised entry, movement or residence of a foreigner in France (L.823-1) or in a State party to the Schengen Convention (L.823-2 1°) or in a state party to the protocol against the smuggling of migrants annexed to the united nations convention against transnational organized crime (L.823-2 2°)</p>
<p><i>Legal Basis</i></p>
<p>Code de l'entrée et du séjour des étrangers et du droit d'asile'</p>
<p><i>Penalties</i></p>
<p>Five years' imprisonment and a fine of €30,000 the two above, if 1° Are committed as part of an organised criminal group ; or 2° Are committed in circumstances that directly expose foreign nationals to an immediate risk of death or injury likely to result in permanent mutilation or disability; 3° Have the effect of subjecting foreign nationals to living, transport, work or accommodation conditions that are incompatible with human dignity; 4° Are committed using an authorisation or permit to travel in the reserved area of an aerodrome or port; 5° Have the effect of removing foreign minors from their family or traditional environment. (L.823-3) Ten years' imprisonment and a fine of €750,000</p>
<p><i>Comments</i></p>
<p>Where people have died, we sometimes add the offence of manslaughter, unintentional injury or endangerment.</p>

Germany (DE)

<p>GERMANY</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Anyone who</p> <ol style="list-style-type: none"> 1. incites another person to commit or assists another person in committing illegal entry, and <ol style="list-style-type: none"> a) receives a pecuniary advantage or the promise of a pecuniary advantage in return or b) acts in such a manner repeatedly or for the benefit of several foreigners or 2. incites another person to commit or assists that person in committing illegal stay or use of a residence title procured by deceit and receives a pecuniary advantage or the promise of a pecuniary advantage in return.
<p><i>Legal Basis</i></p>
<p>Section 96 AufenthG, Section 97 AufenthG</p> <p>Section 96 Smuggling foreigners into the federal territory</p> <p>(1) The following is punishable with a prison sentence of three months to five years, in less serious cases with a prison sentence of up to five years or a fine: anyone who</p> <ol style="list-style-type: none"> 1. incites another person to commit or assists that person in committing an act referred to in section 95 (1) no. 3 or (2) no. 1 (a), and <ol style="list-style-type: none"> a) receives a pecuniary advantage or the promise of a pecuniary advantage in return or b) acts in such a manner repeatedly or for the benefit of several foreigners or 2. incites another person to commit or assists that person in committing an act referred to in section 95 (1) no. 1 or no. 2 (1a) or (2) no. 1 (b) or no. 2 and receives a pecuniary advantage or the promise of a pecuniary advantage in return. <p>(2) In the cases covered by subsection (1), the following is punishable with a prison sentence of between six months and 10 years: anyone who</p> <ol style="list-style-type: none"> 1. acts for gain, 2. acts as a member of a gang which has come together for the purpose of committing such offences on a continuing basis, 3. carries a firearm, if the offence concerns an act referred to in section 95 (1) no. 3 or (2) no. 1 (a), 4. carries another type of weapon in order to use said weapon in connection with the offence, if the offence concerns an act referred to in section 95 (1) no. 3 or (2) no. 1 (a), or

5. subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of serious harm to their health.

The same punishment is applicable to anyone who, in the cases covered by subsection (1) no. 1 (a), acts in favour of a minor unmarried foreigner who enters the federal territory unaccompanied by a person having the right of care and custody or by a third person who has taken charge or care of him or her.

(3) The attempt is punishable.

(4) Subsection 1 no. 1 (a) no. 2, subsection (2) sentence 1 nos. 1, 2 and 5 and subsection (3) are to be applied to contraventions of statutory provisions on the entry of foreigners into the territory of the member states of the European Union or of a Schengen state and on the residence of foreigners in such territories, where

1. such contraventions correspond to the acts specified in section 95 (1) nos. 2 or 3 or subsection (2) no. 1 and

2. the offender supports a foreigner who is not a national of a member state of the European Union or of another state party to the Convention on the European Economic Area.

(5) Section 74a of the Criminal Code applies.

Section 97

Smuggling foreigners into the federal territory resulting in death; smuggling for gain and as organised gangs

(1) Anyone causing the death of the smuggled person in the cases covered by section 96 (1), also in conjunction with section 96 (4), is punishable with a prison sentence of no less than three years.

(2) Anyone acting for gain as a member of a gang which has come together for the purpose of committing such offences on a continuing basis in the cases covered by section 96 (1), also in conjunction with section 96 (4), is punishable with a prison sentence of between one and 10 years.

(3) Less serious cases covered by subsection (1) are punishable with a prison sentence of between one year and 10 years, less serious cases covered by subsection (2) are punishable with a prison sentence of between six months and 10 years.

(4) Section 74a of the Criminal Code applies.

Penalties

Basically the penalty can range between a fine (less serious cases) and imprisonment up to 15 years (migrant smuggling resulting in the death of the smuggled person).

“Normal” cases range between 3 months and 5 years,


Aggravated cases (section 96 (2)) between 6 months and 10 years,

Cases committed by gangs, who repeatedly commit the crime (section 97 (2)) range between 1 year and 10 years.

Comments

Usually German courts remain in the lower third of the penalty range provided by the law.

Greece (EL)

<p>GREECE</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Article 24 Obligations of private individuals and employees-Penalties</p>
<p>1. Lease of real estate property to a third-country national who is in no possession of passport or other travel document recognised by international conventions and of a valid visa or residence permit shall be prohibited.</p> <p>2. Persons who violate the provisions of paragraph 1 shall be subject to a fine from one thousand five hundred (1.500) to three thousand (3.000) euros, by decision of the secretary general of the decentralised administration.</p> <p>3. Persons who make false declarations or statements, as these are stipulated in the present law and the issued regulatory instruments, and on third-country nationals holding residence permits who are engaged in paid employment or services or work, or exercise independent economic activity without the relevant residence permit or authorisation for access to the labour market shall be subject to a fine of 150 euros.</p> <p>4. Persons who facilitate the entry or exit from the Greek territory of third-country nationals without performance of the checks stipulated in Article 5 shall be sentenced up to ten (10) years of imprisonment and a fine of twenty thousand (20.000) euros as a minimum. If the act was carried out with a view to making a profit or by profession or habit, or if two (2) or more persons acted jointly, the above shall be sentenced to at least ten (10) years of imprisonment and a fine of fifty thousand (50.000) euros as a minimum.</p> <p>5. Persons who facilitate the illegal residence of a third-country national or obstructs the investigations of police authorities to locate, apprehend and deport such national, shall be sentenced to at least one (1) year of imprisonment and a fine of five thousand (5.000) euros as a minimum. If the act was carried out with a view to making a profit, the above persons shall be sentenced to at least two (2) years of imprisonment and a fine often thousand (10.000) euros as a minimum.</p> <p>The above penalties shall also apply to anyone who invites persons with a "Business Invitation" to the Greek territory, in accordance with par. 8 of Article 7, with for the purpose of violating immigration legislation and the relevant European provisions of the Schengen acquis related to entry and residence of third-country nationals.</p> <p>6. A person who illegally holds or uses the genuine passport or other travel document of another person shall be sentenced to at least six (6) months of imprisonment and a fine of three thousand (3.000) euros as a minimum. The same sentence shall be imposed on any person that withholds the passport or other travel document of another person or refuses to hand it over to the competent authority. Further, the same penalty shall be imposed to any person that holds or uses a fake passport or other travel document.</p> <p>7. The manager of the travel agency or immigration office, or any other person who submits to the competent authority supporting documents for the issue of a travel document for the account of a third person, stating details that do not correspond to the identification particulars of that person, shall be sentenced to at least one (1) year of imprisonment and a fine of ten thousand (10.000) euros as a minimum. The same penalty shall also be imposed to the person for whose account the supporting documents were submitted. By decision of the relevant head of region, the office shall be subject to three-month suspension of its operating permit and, in case of repeat violation, permanent withholding of that permit.</p>
<p>Article 25 Obligations of carriers - Penalties</p>
<p>1. Captains of ships or other vessels or aircrafts and drivers of any means of transportation transferring into Greece third-country nationals from abroad who do not have the right to enter the Greek territory or whose entry has been prohibited for any reason, as well as persons who collect them from entry points, external or internal borders, with a view to move them inland or to the territory of another EU Member State or a third country, or facilitate their transportation or provide them with accommodation for concealment, shall be sentenced to:</p>

- a. imprisonment of up to ten (10) years and a fine from thirty thousand (30.000) to sixty thousand (60.000) euros for each transported person;**
- b. at least ten (10) years of imprisonment and a fine from sixty thousand (60.000) to one hundred thousand (100.000) euros for each transported person, if the offender acted with a view to making a profit or by profession or habit, or is a relapsing offender, or acts in the capacity of civil servant or tour or shipping or travel agent, or if two or more persons acted jointly;**
- c. at least fifteen (15) years of imprisonment and a fine of two hundred thousand (200.000) euros as a minimum for each transported person, if the act could endanger human life;**
- d. life imprisonment and a fine of seven hundred thousand (700.000) euros as a minimum for each transported person, if the act referred to in c) above resulted in the loss of life.**

2. Captains or pilots of ships, vessels or aircrafts and drivers of any means of transport shall not accept to carry persons who do not hold the required travel documents or have not undergone regular police control. Violators shall be punished pursuant to the provisions of paragraph 1 of this Article. The above punishable act shall be considered committed, in case of sea and air means of transport, if the person who boarded illegally is found on such means of transport on commencement of the control by the competent public bodies before or after the departure or takeoff, and in case of other means of transport, if the person who boarded illegally is found on such means of transport during the last exit control or near the borders. The penalties of paragraph 3 hereof shall also apply to the persons referred to in that paragraph.

3. Airlines or shipping companies, as well as any other natural person or legal entity performing any type of public transportation of persons shall not accept to carry and shall take all measures to prevent the transportation from abroad to Greece of third-country nationals who: a) do not possess valid passports or other travel documents and visas. When required before the arrival of the third-country nationals in the country, unless the conditions laid down in Article 35 of Regulation (EC)

810/2009 in conjunction with point (b) of par. 5 of Article 6 of Regulation (EU) 2016/399 are satisfied,

or b) are in possession of passports or other travel documents with indications of forgery or falsification.

A decision of the Civil Aviation Authority shall impose on the airlines, as well as on any other natural, or legal person transporting persons by air, who fail to comply with the above obligation, a financial penalty of between five thousand (5 000) euro and thirty thousand (30,000) euros for each transported person.

To shipping companies, as well as to any other natural or legal person performing a public transport of persons by waterborne means, the above fine shall be imposed by decision of the police authority, which shall be locally competent to carry out the control of persons entering the Greek territory, in accordance with paragraph 2 of Article 5.

To road transport companies, as well as any other natural or legal person who carries out public road passenger transport, the above fine shall be imposed by decision of the Secretary of the Decentralised Administration in the administrative boundaries of which the infringement has taken place.

In case of a repeat offence within the same calendar year, the above fines may be doubled but not exceed the amount of thirty thousand (30.000) euros, by decision of the competent body.

... ..

4. The persons referred to in paragraphs 1, 2 and 3 as well as travel agencies and the owners of transport means shall be wholly liable for the costs of subsistence and return of the said persons abroad. Persons who guaranteed the repatriation of a third country national shall also be liable, if the terms of entry or residence were violated. The assessment and payment of the said monetary fine shall be effected pursuant to the provisions of the Code of Collection of Public Revenue.

5. The persons referred to in the first sentence of paragraph 1 or the owners of the means of transport or their agents in Greece shall, immediately after the arrival of the means of transport in Greece, deliver to the passport control agencies arrival cards or lists of passengers who are third-country nationals, whom they carry to and from Greece. The same obligation shall apply on arrival of charter flights from third countries.

6. The above penalties shall not be imposed in case of rescue of people at sea or transport of people in need of international protection as required by international law, as well as in cases of promotion within the country or facilitating the transport, for the purpose of submission to the procedures laid down in Article 83 of Law No.

3386/2005 (A' 212) or Article 42 of Law No. 4939/2022 (A' 111) and after informing the competent police and coast guard authorities.

7. The provisions of Article 254 of the Code of Criminal Procedure shall also apply to the punishable acts referred to in Article 24 and in the present Article, regardless of whether the requirements of Articles 187 and 187A of the Penal Code are met.

8. The deadline for lodging an appeal and the lodging of such appeal against a decision of conviction for violations of this Article, as well as violations referred to in paragraphs 4, 5, and 7 of the Article 24, shall not suspend enforcement of the decision.

9. The one-member court of appeals shall have jurisdiction for the hearing of the felonies referred to in the para. 1 except from point d, and in the Article 24, and the procedure stipulated in Article 309 of the Code of Criminal Procedure shall apply.

10. Property that is derived from the criminal activity within the meaning of this Article as well as within the meaning of par. 4, 5 and 7 of the Article 24, or that has been acquired as a result of such criminal activity in any manner, or property that has been used, in whole or in part, or was intended to be used, for the aforementioned criminal activity shall be seized and, may be confiscated by means of the judgment, if it belongs to the perpetrator or to any of the participants. If the court, of its own motion or at the request of a party or a third party, considers that the confiscation to be imposed on the convicted person will deprive the defendant or a third party, in particular his or her family, from doing something that serves the necessary livelihood and that there is a risk of causing and irreparable damage to them, it shall not impose it. Restitution of property to the owner of the property shall be made in accordance with the provisions of par. 2 of Article 310 and Article 373 of the Code of Criminal Procedure. If the property is property or proceeds referred to in the first subparagraph exceeds four thousand (4.000) euro in value and cannot be seized, assets of a value equal to the value of the above property or product shall be seized and confiscated under the terms of the previous subparagraph.

11. The provisions of this Article and para. 4, 5 and 7 of the Article 24 shall also apply when the punishable acts referred to therein have been committed abroad by a Greek national or alien, even if these are not considered to be punishable according to the laws of the country where they were committed.

Legal Basis


Art. 24 and 25 of Law 5038/2023 (“Code of Immigration”)

Penalties


Art. 24 para. 4, 5, 6 and 7 of Law 5038/2023 (imprisonment of at least 6 months up to 15 years and a fine)
 Art 25 of Law 5038/2023 (imprisonment of at least 5 years up to life sentence and a fine for each transported person)

Comments


Hungary (HU)

<p>HUNGARY</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Legal definition of illegal immigrant smuggling under HU criminal law: providing aid to another person for crossing state borders in violation of the relevant statutory provisions.</p> <p>The legal provisions of illegal immigrant smuggling (§ 353. of the Criminal Code):</p> <p>(1) Any person who provides aid to another person for crossing state borders in violation of the relevant statutory provisions is guilty of a felony punishable by imprisonment between one to five years.</p> <p>(2) The penalty shall be imprisonment between two to eight years if illegal immigrant smuggling:</p> <p>a) is carried out for financial gain or advantage, b) involves several persons for crossing state borders, or c) is committed by destroying or damaging facilities or equipment for the protection of the law and order of the State border.</p> <p>(3) The penalty shall be imprisonment between five to ten years if illegal immigrant smuggling is carried out</p> <p>a) by tormenting the smuggled person; b) by displaying a deadly weapon; c) by carrying a deadly weapon; d) on a commercial scale; or e) in criminal association with accomplices.</p> <p>(4) The penalty shall be imprisonment between five to fifteen years if</p> <p>a) illegal immigrant smuggling within the meaning of paragraph 3(a) is carried out in the manner set out in points (b) to (e) b) illegal immigrant smuggling within the meaning of paragraph 3(b) is carried out pursuant to points (a) or (c) to (e).</p> <p>(5) The organizer or leader of the offence under subsection (3) or (4) shall be punishable with imprisonment between ten years to twenty years.</p> <p>(6) Any person who engages in preparations for illegal immigrant smuggling shall be punishable by imprisonment not exceeding three years.</p>
<p><i>Legal Basis</i></p>
<p>§ 353 of the Criminal Code of Hungary (Act C. of 2012.)</p>
<p><i>Penalties</i></p>
<p>See the first column:</p> <ul style="list-style-type: none"> - base crime: 1-5 years - aggravated crimes: 2-8, 5-10, 5-15 and 10-20 years.
<p><i>Comments</i></p>
<p>None</p>


Ireland (IE)

<p>IRELAND</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Migrant Smuggling not strictly defined in the Criminal Justice (Smuggling of Persons) Act 2021. The three main offences are:</p> <p>Section 6 : Assisting unlawful entry into, transit across or presence in the State.</p> <p>Section 7: Assisting unlawful entry into, transit across or presence in the State.</p> <p>Section 8: provision of fraudulent travel or identity documents for the purpose of assisting unlawful entry into, transit across or presence in the State.</p> <p>See further information below: The Criminal Justice (Smuggling of Persons) Act 2001 The Criminal Justice (Smuggling of Persons) Act 2021 was enacted to prevent the smuggling of persons and , for those purposes to facilitate cooperation with other states, to give effect to Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence; to give effect to Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, to give effect in part to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime done and New York on 15 November 2000; to repeal certain provisions of the Illegal Immigrants (Trafficking) Act 2000.</p>
<p><i>Legal Basis</i></p>
<p>Criminal Justice (Smuggling of Persons Act) 2021</p>
<p><i>Penalties</i></p>
<p>Summary disposal</p> <p>A fine or to imprisonment for a term not exceeding 12 months or both, or</p> <p>On Indictment fine or to imprisonment for a term not exceeding 10 years or both.</p>
<p><i>Comments</i></p>
<p>The act repeals section 2 of the Illegal Immigration (Trafficking) Act 2000 which required proof that the alleged smuggler had made a financial gain by assisting entry into the State.</p> <p>Such gain was often difficult to prove.</p>

Italy (IT)

<p>ITALY</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p><i>Legal Basis</i></p>
<p>Art. 416 par 6 criminal code – criminal organization. Association of three or more persons to commit the crime of facilitation of irregular migration.</p> <p>Art. 12 par 1 d.lgs 286/98 illegally promoting, directing, organizing, financing or conducting the transport of aliens into the territory of the State, or committing any other act aimed at aiding the illegal entry of an alien.</p>
<p><i>Penalties</i></p>
<p>For art. 416 par 6, which is an aggravating circumstance of the “basic” criminal organization, the punishment varies according to the role of the perpetrator within the organization: imprisonment from 5 to 15 years for promoters, organizers and chiefs of the organization, imprisonment from 4 to 9 years for participants.</p> <p>For art. 12 par 1 d.lgs 286/98 the penalty is imprisonment from 2 to 6 years and a 15.000 eur fine for every person whose illegal entry was aided.</p> <p>According to par. 3 the punishment is imprisonment from 6 to 16 years and a fine of 15:000 for every migrant involved, if alternatively the migrants involved are at least 5, they have been put in danger or treated inhumanely, or the perpetrators are at least 3.</p> <p>According to par. 3ter, the punishment can be increased by half if the migrants concerned are to be inducted into prostitution, or if the perpetrators committed the act to gain a profit.</p>
<p><i>Comments</i></p>
<p>The crime of facilitation of irregular migration does not only encompass illegal entries in Italy, but also in any other State the alien wouldn’t be allowed to enter, provided the jurisdiction criteria are met.</p>

Latvia (LV)

<p>LATVIA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Illegal movement of a person across the State border</p> <p>Ensuring the Possibility to Residing Illegally in the Republic of Latvia</p> <p>Ensuring, in Bad Faith, a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation</p>
<p><i>Legal Basis</i></p>
<p>Criminal Law</p> <p>Section 285. Illegal Movement of a Person Across the State Border</p> <p>(1) For illegal movement of a person across the State border,</p> <p>(2) For the commission of the same acts, if they have been committed by a public official, using its official position, or a group of persons according to a prior agreement, or for illegal movement of several person across the State border in one time,</p> <p>(3) For the commission of the same acts, if they have been committed by an organised group or they have resulted in serious consequences, or also who commits illegal movement of a large number of persons, that is, more than five persons at one time, across the State border,</p> <p>(3¹) For the commission of the same acts, if they have been committed during a period of a reinforced regime of operation of the border security system or during a state of emergency declared due to a threat to the inviolability of the State border, regardless of the place of commission of the offence in the territory of Latvia,</p> <p>(4) For the commission of the same acts, if they have resulted in death of two or several human beings,</p> <p>Section 285.¹ Ensuring the Possibility to Residing Illegally in the Republic of Latvia</p> <p>(1) For knowingly ensuring persons the possibility to reside illegally in the Republic of Latvia, if it has been committed by a group of persons or by a public official using his or her official position,</p> <p>(2) For knowingly ensuring persons the possibility to reside illegally in the Republic of Latvia, if it has been committed for the purpose of acquiring property or if such possibility is ensured for two or several persons,</p> <p>(3) For knowingly ensuring persons the possibility to reside illegally in the Republic of Latvia, if it has been committed by an organised group or if serious consequences have been caused thereby, or for providing a large number of persons, i.e. in one case more than five persons, with an opportunity to stay illegally in the Republic of Latvia</p>

Section 285.² Ensuring in Bad Faith, a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation

(1) For ensuring, in bad faith, a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation;

(2) For ensuring, in bad faith, a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, if it has been committed for the purpose of acquiring property or if such a possibility is ensured for two or several persons, or if it has been committed by a group of persons,

(3) For ensuring, in bad faith, a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, if it has been committed by an organised group or if serious consequences have been caused thereby, or for providing a large number of persons, that is, in one case more than five persons, with the possibility of legally acquiring the right to reside in the Republic of Latvia, another Member State of the European Union, a State of the European Economic Area or the Swiss Confederation

Penalties

Section 285 (1): the applicable punishment is the deprivation of liberty for a period of up to three years, or probationary supervision, or fine;

Section 285 (2): the applicable punishment is the deprivation of liberty for a period of up to six years with or without confiscation of property, and with or without probationary supervision for a period of up to three years;

Section 285 (3): the applicable punishment is the deprivation of liberty for a period of two years and up to eight years, with or without confiscation of property and with or without probationary supervision for a period of up to three years;

Section 285 (3¹): the applicable punishment is the deprivation of liberty for a period of two years and up to ten years,, with or without confiscation of property, and and with or without probationary supervision for a period of up to three years;

Section 285 (4): the applicable punishment is the deprivation of liberty for a period of three years and up to fifteen years and with probationary supervision for a period of up to three years;

Section 285¹ (1) the applicable punishment is the deprivation of liberty for a period of up to three years, or probationary supervision, or fine;


Section 285¹ (2): the applicable punishment is the deprivation of liberty for a period of up to six years with or without confiscation of property, and with or without probationary supervision for a term of up to three years.

Section 285¹ (3): is punishable by deprivation of liberty for a term of two to eight years, with or without confiscation of property, and with or without probationary supervision for a term of up to three years.

Section 285² (1): the applicable punishment is the deprivation of liberty for a period of up to three years or probationary supervision, or fine;


<p>Section 285² (2): the applicable punishment is the deprivation of liberty for a period of up to six years with or without confiscation of property, and with or without probationary supervision for a term of up to three years.</p> <p>Section 285² (3): the applicable punishment is the deprivation of liberty for a term of two to eight years, with or without confiscation of property, and with or without probationary supervision for a term of up to three years</p>
<i>Comments</i>
None

Lithuania (LT)


<p>LITHUANIA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>The transportation of people across a state border is understood as the creation of the appropriate conditions for their transfer and their immediate transfer in space (Judicial Practice in some criminal cases).</p>
<p><i>Legal Basis</i></p>
<p>Article 291 of the Criminal Code. Illegal Crossing of the State Border</p> <ol style="list-style-type: none"> 1. A person who illegally crosses the state border of the Republic of Lithuania shall be punished by a fine or by arrest or by imprisonment for a term of up to two years. 2. An alien who unlawfully enters the Republic of Lithuania seeking to exercise the right of asylum shall be released from criminal liability under paragraph 1 of this Article. 3. An alien who commits the act provided for in paragraph 1 of this Article with the intent of illegally crossing into a third state from the Republic of Lithuania shall be released from criminal liability according to paragraph 1 of this Article where he is, in accordance with the established procedure, subject to deportation back to the state from the territory whereof he illegally crosses the state border of the Republic of Lithuania or to the state whose citizen he is. <p>Article 292 of the Criminal Code. Unlawful Transportation of Persons across the State Border</p> <ol style="list-style-type: none"> 1. A person who unlawfully transports across the state border of the Republic of Lithuania an alien not having a permanent place of residence in the Republic of Lithuania or transports or conceals in the territory of the Republic of Lithuania such an alien who has illegally crossed the state border of the Republic of Lithuania shall be punished by a fine or by arrest or by imprisonment for a term of up to six years. 2. A person who commits the acts provided for in paragraph 1 of this Article for mercenary reasons or where this poses a threat to human life, shall be punished by imprisonment for a term of up to eight years. 3. A person who organises the acts provided for in paragraph 1 of this Article shall be punished by imprisonment for a term of four up to ten years. 4. A legal entity shall also be held liable for the acts provided for in this Article. <p>Article 293 of the Criminal Code. Organisation of Travels of Citizens of the Republic of Lithuania Abroad for the Purpose of Staying There Illegally or Abandoning Them without Assistance</p> <ol style="list-style-type: none"> 1. A person who organises the travels of citizens or permanent residents of the Republic of Lithuania abroad for the purposes of applying for asylum or undertaking illegal employment or staying abroad illegally for other reasons or by making a false promise of a legal status abroad shall be punished by arrest or by imprisonment for a term of up to seven years. 2. A legal entity shall also be held liable for the acts provided for in this Article.
<p><i>Penalties</i></p>
<p>Article 291. Illegal Crossing of the State Border: - the fine or the arrest or the imprisonment for a term of up to two years.</p> <p>Article 292. Unlawful Transportation of Persons across the State Border: Part 1 - the fine or the arrest or the imprisonment for a term of up to six years.</p>

<p>Part 2 - the imprisonment for a term of up to eight years. Part 3 - the imprisonment for a term of four up to ten years. Article 293. Organisation of Travels of Citizens of the Republic of Lithuania Abroad for the Purpose of Staying There Illegally or Abandoning Them without Assistance: the arrest or the imprisonment for a term of up to seven years.</p>
<i>Comments</i>
None


Luxembourg (LU)

<p>LUXEMBOURG</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>No information received.</p>
<p><i>Legal Basis</i></p>
<p><i>Penalties</i></p>
<p><i>Comments</i></p>


Malta (MT)

<p>MALTA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person...</p>
<p><i>Legal Basis</i></p>
<p>Article 337A of Chapter 9 of the Laws of Malta, the Criminal Code.</p>
<p><i>Penalties</i></p>
<p>Imprisonment from six (6) months up to five (5) years and/or to a fine (<i>multa</i>) of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73).</p>
<p><i>Comments</i></p>
<p>None</p>


The Netherlands (NL)

<p>THE NETHERLANDS</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>He who intentionally assists a person who is not a national of the state to enter or transit as well as, when conducted for the purposes of financial gain, to reside, in the territory of a Member State in breach of the laws of the State and or provides him with the opportunity, resources or information to do so.</p>
<p><i>Legal Basis</i></p>
<p>Artikel 197a Wetboek van Strafrecht</p>
<p><i>Penalties</i></p>
<p>Artikel 197a Wetboek van Strafrecht lid 1: max 6 yrs imprisonment fifth category fine</p> <p>Artikel 197a Wetboek van Strafrecht lid 2: max 6 yr imprisonment , fifth category fine</p> <p>Artikel 197a Wetboek van Strafrecht lid 3: max 8 yr imprisonment, fifth category fine, disqualification from exercising the right to hold office or exercise the profession and the court may publicly publish its decision</p> <p>Artikel 197a Wetboek van Strafrecht lid 4: max 10 yr imprisonment, fifth category fine</p> <p>Artikel 197a Wetboek van Strafrecht lid 5: max 15 yr imprisonment, fifth category fine</p> <p>Artikel 197a Wetboek van Strafrecht lid 6: max 18 yr imprisonment, fifth category fine</p>
<p><i>Comments</i></p>
<p>None</p>


Poland (PL)

<p>POLAND</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Art. 264. § 1. (repealed). § 2. Whoever crosses the border of the Republic of Poland against the provisions of law by using force, threat, deceit or in complicity with other persons, is subject to the penalty of deprivation of liberty for up to 3 years § 3. Whoever, against the provisions of law, organises crossing of the border of the Republic of Poland for other persons, is subject to the penalty of deprivation of liberty for between 6 months and 8 years. § 4. The penalty specified in § 3 shall be imposed on a person who organises the crossing of the border of another state by other persons against the law, if the obligation to prosecute such an act results from an international agreement ratified by the Republic of Poland.</p> <p>Art. 264a. § 1. Whoever, against the provisions of law and with the purpose of gaining a material or personal benefit, makes another person's stay in the territory of the Republic of Poland possible or facilitates it, is subject to the penalty of deprivation of liberty for between 3 months and 5 years. § 2. In exceptional situations, the court may apply extraordinary mitigation of the penalty, or even waive its imposition, if the perpetrator has not gained any material benefits.</p>
<p><i>Legal Basis</i></p>
<p>Criminal Code</p>
<p><i>Penalties</i></p>
<p>See in Definition</p>
<p><i>Comments</i></p>
<p>None</p>

**Portugal (PT)**

PORTUGAL 
<i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i>
Facilitation of Irregular Migration consists in - a) intentionally favor or facilitating, in any way, the illegal entry or transit of a foreign citizen into national territory; - b) intentionally favour or facilitating the illegal entry, stay or transit of a foreign citizen in the national territory, when conducted for the purpose of financial gain -
<i>Legal Basis</i>
Article 183 National Immigration Law (Act 23/2007, amended by Act 18/2022)
<i>Penalties</i>
a) imprisonment up to three years b) imprisonment from one to five years
<i>Comments</i>
If the acts are carried out by transporting or maintaining the foreign citizen in inhuman or degrading conditions or endangering his life or causing serious harm to his physical integrity or death, the agent is punished with a prison sentence of two to eight years.


Romania (RO)

<p>ROMANIA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Trafficking in migrants - ART. 263 – Romanian Criminal Code</p> <p>(1) Recruitment, instructing, guiding, transporting, transferring or harboring individuals for the purposes of fraudulently crossing Romania’s state border shall be punishable by no less than 2 and no more than 7 years of imprisonment.</p> <p>(2) When the act was committed:</p> <ul style="list-style-type: none"> a) in order to obtain material gain, directly or indirectly; b) using means that endanger the life, integrity or health of the migrant; c) by subjecting migrants to inhuman or degrading treatment, <p>it shall be punishable by no less than 3 and no more than 10 years</p> <p>Facilitating illegal stay in Romania - ART. 264 – Romanian Criminal Code</p> <p>(1) Any individual who facilitates, by any means, the illegal stay on the Romanian territory of an individual who is a victim of offenses of trafficking in human beings, juveniles or migrants, who is not a Romanian citizen and does not reside in Romania, shall be punishable by no less than 1 and no more than 5 years of imprisonment and a ban on the exercise of certain rights. If the mean used is in itself an offense, the rules for multiple offenses shall apply.</p> <p>(2) When the act was committed:</p> <ul style="list-style-type: none"> a) in order to obtain a material gain , directly or indirectly; c) by a public servant in the exercise of office <p>it shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.</p> <p>(3) When the acts set out in par. (1) and par. (2) are committed in relation to another alien who is on Romanian territory illegally, the special limits of the penalty shall be reduced by one-third.</p> <p>Fraudulent crossing of the border - ART. 262- Romanian Criminal Code</p> <p>(1) Entering or leaving the country by fraudulently crossing Romania's state border shall be punished by an imprisonment year between 6 months and 3 years or by a fine.</p> <p>(2) If the act set out in par. (1) was committed:</p> <ul style="list-style-type: none"> a) in order to avoid criminal liability or the serving of a sentence or of an custodial educational measure; (b) by an alien who was declared undesirable or who was denied entry or stay in the country, in any way, the penalty shall consist of no less than 1 and no more than 5 years of imprisonment. <p>(3) The attempt shall be also punishable.</p> <p>(4) The act set out in par. (1), committed by a victim of trafficking in human beings or in juveniles, shall not be punishable.</p>
<p><i>Legal Basis</i></p>
<p>ART. 263 – Romanian Criminal Code</p> <p>ART. 264 – Romanian Criminal Code</p> <p>ART. 262- Romanian Criminal Code</p>




<i>Penalties</i>
ART. 263 – Romanian Criminal Code - Prison 2-7 years or 3-10 years
ART. 264 – Romanian Criminal Code - Prison 1-5 years or 2-7 years
ART. 262- Romanian Criminal Code - Prison 6 month-3 years or criminal fine OR prison 1 -5 years
<i>Comments</i>
None

Slovak Republic (SK)

<p>SLOVAK REPUBLIC</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Any person who organises illegal crossing of the state border of the Slovak Republic, or a transfer through its territory, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic, or who enables such activity or aids it,</p> <p>Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic,</p> <p>a) organises illegal crossing of the state border of the Slovak Republic, or a transfer through its territory, or who enables such activity or aids it, or</p> <p>b) for the purpose referred to in subparagraph a), manufactures, procures, provides or has in his possession a forged passport or a forged identity card,</p> <p>specific qualification term of „Acting in a More Serious Manner“ – it means committing this crime against several persons/migrants (when at least 3 and more migrants are detained with a smuggler)</p>
<p><i>Legal Basis</i></p>
<p>Article 355, Section 1 of the Criminal Code</p> <p>Article 355, Section 2 of the Criminal Code</p> <p>Article 355, Section 3 of the Criminal Code</p>
<p><i>Penalties</i></p>
<p>Article 355, Section 1 of the Criminal Code - shall be liable to a term of imprisonment of one year to five years.</p> <p>Article 355, Section 2 of the Criminal Code - shall be liable to a term of imprisonment of three to eight years.</p> <p>Article 355, Section 3 of the Criminal Code - leads to liability to a term of imprisonment of seven to ten years.</p>
<p><i>Comments</i></p>
<p>Practically, every offender involved in criminal case of smuggling of migrants with 3 and more migrants detained, is liable for minimum 7 years of imprisonment.</p>

Slovenia (SI)

<p>SLOVENIA</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Prohibited crossing the border or territory of the country</p>
<p><i>Legal Basis</i></p>
<p>Article 308 of the Criminal Code</p>
<p><i>Penalties</i></p>
<p>Depend on the method of committing the crime:</p> <ul style="list-style-type: none"> - violent crossing of the state border, armed illegal entry into its territory, illegal stay on the territory of the country or resisting lawful removal from it - <i>imprisonment from three months to three years or a fine</i> - engaging in illegally bringing foreigners who do not have a permit to enter or reside in the Republic of Slovenia to its territory, transporting them through the territory of the Republic of Slovenia or helping them to hide, or whoever one or more such foreigners with the aim of obtaining a financial benefit for himself or others brings someone else illegally across the border or territory of the country, transports them across it or allows them to stay there illegally or an official person who enables a foreigner to enter the territory of the Republic of Slovenia illegally or stay there illegally- <i>imprisonment of three to ten years and a fine</i> - recruiting or collecting people for illegal immigration, providing forged documents or transport or organizing illegal immigration otherwise, organizing immigration by deceiving the competent authorities as to the true purpose of entering the territory of the Republic of Slovenia - <i>imprisonment of three to ten years and a fine.</i> - if the act (described in the second and third indents) is committed for the purpose of obtaining a disproportionate financial benefit for oneself or another person, or whoever provides illegal labor or exposes someone to danger to life or health or commits such acts as a member of a criminal group - <i>imprisonment from three to fifteen years and a fine.</i>
<p><i>Comments</i></p>
<p>The Article 308 also apply to criminal acts committed abroad, if the country in which they were committed, like the Republic of Slovenia, has accepted a common international legal obligation to prevent such criminal acts, regardless of where they are committed, and the acts are in its according to the law, the same provisions as criminal acts. If the criminal act was committed in the territory of the European Union, citizens of its member states are not considered foreigners when applying the second, third, fourth and fifth paragraphs of the article 308.</p> <p>A means of transport used to transport one or more persons illegally crossing the border or territory of the country shall be confiscated if it is the property of the offender. If the means of transport is not the property of the offender, it is confiscated even if it is specially modified, processed or adjusted for the transport of such persons or if the owner or the person delivering the means of transport knew or could have known that the vehicle would be used for such a purpose.</p>

Spain (ES)

SPAIN



Definition of Migrant Smuggling and/or Facilitation of Irregular Migration

1. Anyone who intentionally helps a person who is not a national of a Member State of the European Union to enter Spanish territory or to transit through it in a way that violates the legislation on the entry or transit of foreigners shall be punished with a fine of three to twelve months or imprisonment of three months to one year.

The acts shall not be punishable when the objective pursued by the perpetrator was solely to provide humanitarian aid to the person concerned.

If the acts were committed for financial gain, the penalty shall be imposed in the upper half of the sentence.

2. Anyone who intentionally assists, for profit, a person who is not a national of a Member State of the European Union to remain in Spain, in violation of the legislation on the stay of foreigners, shall be punished with a fine of three to twelve months or imprisonment of three months to one year.

3. The acts referred to in paragraph 1 of this article shall be punishable by a prison sentence of four to eight years when any of the following circumstances apply:

a) When the acts have been committed within an organisation engaged in such activities. In the case of the heads, administrators or managers of such organisations or associations, the penalty shall be applied to them in the upper half of the sentence, which may be increased to the next higher degree.

b) When the lives of the persons who are the object of the offence have been endangered, or the danger of causing serious injury has been created.

4. The same penalties as in the previous paragraph, in addition to that of absolute disqualification from six to twelve years, shall be incurred by those who carry out the acts taking advantage of their status as an authority, agent thereof or public official.


5. When, in accordance with the provisions of Article 31 bis, a legal person is responsible for the offences set out in this Title, it shall be liable to a fine of two to five years, or a fine of three to five times the amount of the benefit obtained if the resulting amount is higher.

In accordance with the rules laid down in Article 66a, the judges and courts may also impose the penalties set out in Article 33(7)(b) to (g).

6. The courts, taking into account the seriousness of the act and its circumstances, the conditions of the offender and the aim pursued by the offender, may impose a penalty one degree lower than the penalty respectively indicated

<i>Legal Basis</i>
Art.318 bis Criminal Code
<i>Penalties</i>
Basic criminal offence : fine of 3 to 12 months or imprisonment from 3 to 12 months Aggravated criminal offence : 4 to 8 years imprisonment
<i>Comments</i>
None

Sweden (SE)

<p>SWEDEN</p> 
<p><i>Definition of Migrant Smuggling and/or Facilitation of Irregular Migration</i></p>
<p>Aliens Act, Chapter 20 Section 8</p> <p>Any person who intentionally assists an alien to unlawfully enter or pass through Sweden, another member state of the European Union or Iceland, Norway, Switzerland or Liechtenstein shall be sentenced for human smuggling to imprisonment for not more than two years.</p> <p>If the offence is regarded as gross, the sentence shall be imprisonment for gross human smuggling for not less than six months and not more than six years. In judging whether the offence is gross, special attention shall be paid to whether the act 1. was carried out in return for compensation, 2. was carried out as part of an activity that involved a large number of persons or 3. was carried out in forms that entail mortal danger for the alien or was otherwise carried out in ruthless forms.</p> <p>If the offence is regarded as minor the sentence shall be a fine or imprisonment for not more than six months. An attempt or preparation to commit an offence under this Section shall be adjudged according to the provisions of Chapter 23 of the Penal Code.</p> <p>Aliens Act, Chapter 20 Section 9</p> <p>Any person who, for financial gain, plans or organises activities designed to enable aliens to travel to Sweden without passports or the permits required for entry into Sweden shall be sentenced for organisation of human smuggling to imprisonment for not more than two years. A permit that has been issued on the grounds of false information shall be considered as a lack of permit, if the information is given in order to promote the activities.</p> <p>If the offence is gross the sentence shall be imprisonment for gross organisation of human smuggling for not less than six months and not more than six years. In judging whether the offence is gross, special attention shall be paid to whether the act involves the systematic exploitation of the vulnerable situation of aliens or involves mortal danger or other ruthlessness in relation to the aliens.</p> <p>If the offence is regarded as minor the sentence shall be a fine or imprisonment for not more than six months. Any person assisting an alien to travel to Sweden without a passport or the permits required for entry into Sweden shall be sentenced for complicity under paragraphs one to three. This provision is applicable if the accomplice realised or had fair reason to assume that the journey was organised for financial gain through a said activity</p>
<p><i>Legal Basis</i></p>
<p>Aliens Act, Chapter 20 Section 8</p> <p>Aliens Act, Chapter 20 Section 9</p>

Penalties

Aliens Act, Chapter 20 Section 8:

Imprisonment for not more than two years

If considered gross: imprisonment for not less than six months and not more than six years

If considered minor: a fine or imprisonment for not more than six months

Aliens Act, Chapter 20 Section 9:

Imprisonment for not more than two years

If considered gross: imprisonment for not less than six months and not more than six years

If considered minor: a fine or imprisonment for not more than six months

Comments

Aliens Act, Chapter 20 Section 8 - This is the definition of the crime migrant smuggling

Aliens Act, Chapter 20 Section 9 - This is the definition of the crime organisation of migrant smuggling



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