



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 4 Financial investigation









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Module 4:

Financial investigation



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Module 4. Financial investigation

A. Learning objectives

The aim of the present module is to address the very important topic of financial investigation. Migrant smugglers commit their crimes for direct or indirect financial benefit; an understanding of a suspect's finances will therefore assist investigations. At the end of this module, you should be able to:

- Understand what constitutes a financial investigation.
- Understand the role of a financial investigation and the potential sources of financial intelligence and evidence.
- Be able to identify the key financial transactions associated with the smuggling of migrants.

B. Financial investigation

Why are financial investigations important?

As was seen in module 1, article 3, subparagraph (a), and article 6 of the Smuggling of Migrants Protocol explain that the smuggling of migrants takes place for financial or other material benefit. In module 3 on investigative techniques, the importance of financial investigation was touched upon. It is recommended that all investigations into the smuggling of migrants also include a financial investigation.

Irrespective of whether your national laws require proof of financial (or other) gain, the investigation of an individual's finances has many advantages. Any opportunity to obtain or seize financial evidence or intelligence must always be taken advantage of. In this respect, it is also important to remember that financial investigations — even when they involve small sums — can strengthen the likelihood of bringing smugglers to justice. Not only do financial investigations assist in the investigation into the smuggling of migrants, they may also help secure a conviction and, in many cases, confiscation and seizure of assets may follow.

The example below highlights how some basic financial investigation techniques assisted in an



Example: petrol purchasing

Financial investigations can reveal much about a person's lifestyle and movements. For instance, tracking the petrol purchases of a suspected smuggler of migrants is a cost-effective way of conducting surveillance and producing evidence of his or her movements.

investigation into the smuggling of migrants.



Example: financial investigation

A law enforcement investigation into the smuggling of migrants was launched following the receipt of intelligence that showed that a particular group was smuggling people by air, using false documents, from country A to country Z via country G. Mr. W was identified as the head of the organized criminal group.

The financial investigator focused on Mr. W. She identified a number of bank transfers made to a Mr. F. This account was investigated and enquiries by the financial investigator established that Mr. W and Mr. F were the same person. The Mr. W account had been opened using a false passport, driving licence and utility bill. The investigation team then shifted their focus by trying to locate Mr. F rather than Mr. W.

Further investigations of both bank accounts identified flight bookings, hotel reservations and car hire.

Investigations subsequently carried out resulted in the identification of 136 migrants who had been smuggled. Initially, attempts to locate Mr. F failed but he was ultimately arrested when he sought to make a deposit at the branch of the bank that he used regularly.

Key considerations when conducting financial investigations

In crimes involving the smuggling of migrants monetary gain is the ultimate aim. The criminal's greed presents investigators with good opportunities to develop tactics against him or her. In module 3, the seizure of cash was shown to be an effective disruption technique. Cash seizures have an impact, and if your national laws allow them, then permission to use them should be sought at every opportunity.

Along the same lines, if your country has a requirement that banks or financial institutions must report suspicious financial transactions, then these should be investigated and the findings relayed to the various intelligence agencies with the aim of determining whether criminal activity is funding those suspicious transactions, and if so, what type of criminal activity.

If you do not have a trained financial investigator, then it may be useful (subject to the advice of lawyers, the judiciary and senior officers) to approach senior banking staff for guidance with respect to the operation of financial systems. In this regard, outreach can be carried out by law enforcers who could establish contacts with staff at banks, with a view to developing a relationship of informal cooperation. This could help investigators understand how money is moved and might suggest potential means of attacking the organized criminal group. Although in many countries, there are strict privacy laws governing access to named bank accounts, those laws should not prevent investigators from being given general advice and guidance on how the banking system actually works.

The fate of confiscated money and assets varies from country to country. In some countries, the money goes into a fund that is used to fight crime and compensate victims. Many countries have entered into bilateral agreements whereby confiscated money can be shared among the parties involved. A good financial investigation can produce excellent results, as shown in the example below.



Case study

Smuggling of migrants from East Asia to North America

In late 2003, a law enforcement agency in a North American country took part in an undercover operation. During this operation, police agents infiltrated an organization by posing as alien smugglers willing to transport nationals from an East Asian country into the North American country as destination. The husband and wife defendants (both nationals of that East Asian country) made payments of \$12,000-\$17,000 per alien to undercover agents for their assistance in the smuggling scheme, which allegedly amounted to over \$100,000 for the 12 undocumented aliens brought to the destination country over a three-month period.

According to the indictment, the two defendants were members of an organization specializing in making arrangements for irregular immigrants from that East Asian country to be smuggled into the destination country via a South-East Asian country and certain Central American countries. Typically, the aliens were required to pay a portion of their total smuggling fee in advance of their departure, with the balance due after their arrival in the destination country. Once they had been guided into the destination country by smugglers, the aliens were held in drop houses or hotels until their relatives or friends paid the balance of the smuggling fee.

The defendants, charged with 12 counts of smuggling for commercial gain and private financial advantage and 4 counts of money-laundering for the more than \$100,000 in fees paid to the undercover officers, faced a mandatory minimum sentence of three years.

Financial investigation involves the collection, collation and analysis of all information available to assist in the prosecution and to deprive the smugglers of migrants of the proceeds of crime. The action may target an individual, an entity or criminal organizations involved in the crime.

It is important to know who conducts financial investigations in your country. In some countries, there are specialized financial investigation units tasked to conduct dedicated investigations. In other countries, judicial experts track the illicit proceeds of crime. In still other countries, law enforcers who investigate the smuggling of migrants are also required to conduct the financial investigation relevant to it. When conducting financial investigations, it is important that one be aware of other laws in relevant jurisdictions so as not to jeopardize the case.

When a person maintains a lifestyle that exceeds his or her legitimate income (has an unaccounted for house or an expensive watch or staff he or she could not legitimately afford to pay), this can be indicative of illegitimate activity. One simple "red flag" indicator is: if it looks like it doesn't belong, it probably doesn't. Where someone's lifestyle seems to have changed suddenly, this could

indicate that he or she is involved in illegitimate activity and should lead to the commencement of an investigation.



Law enforcers and prosecutors should be aware of privacy considerations throughout their investigations; otherwise, the investigation or prosecution can be put at risk.

Article 12 of the Organized Crime Convention addresses the issue of asset seizure and the confiscation of the proceeds of crime.

Article 12 of the United Nations Convention against Transnational Organized Crime, Confiscation and seizure

- I. States parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
 - (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
 - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.
- 2. States parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph I of this article for the purpose of eventual confiscation.
- 3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
- 4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
- 5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
- 6. For the purposes of this article and article 13 of this Convention, each State party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
- 7. States parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation,

to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

- 8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
- 9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State party.



Example: creative financial investigation: "cash dogs"

In 2008, a dog specially trained by the French gendarmerie found about €450,000 hidden in the walls and ceilings of a property inhabited by the financial middleman of a smuggling network.

Financial transactions and records

Financial transactions in investigations into the smuggling of migrants may include, but are not limited to:

- Cash received from would-be migrants.
- Money paid by credit card etc. for services (e.g., airline tickets, hotels etc.).
- Remittances from abroad.
- Foreign purchases (e.g., a smuggler from Toyland buys a property to be used as a safe house in Anyland).
- Money transfers to or from other parties.
- Receipts that are not commensurate with the revenues derived from the person's occupation.

Financial records may provide some basic but very useful evidence. Some examples of types of financial records and the value they may offer to an investigation are outlined below:

Type of Record	Possible benefits
Bank statements	Identification of income; travel bookings; receipts from named individuals and payments to others. Location of a suspect at a particular time; identification of any weakness/routes for covert intelligence-gathering.
Credit card bills	Travel bookings; location of suspect at a specified time; identification of any weakness/routes for covert intelligence gathering.

Type of Record	Possible benefits		
Bank visits	Location of suspect at a specified time; timing linkage to offence; cash deposite or withdrawn. Payments to other accounts.		
Communication of payment	Those paying or in receipt of payment normally communicate the transmission or receipt of such. This can involve others further up in the group's hierarchy.		
Loyalty cards	Use of facilities. Can be helpful with respect to airlines, where tickets have been paid for in cash. Purchases in supermarkets not consistent with family income. (For instance, bonus cards for shopping, airline cards for air mile bonuses.)		
Money transfer slips or by Western Union	Transfer of money to or from named individuals. May provide indications of the presence of those criminals in source, transit or destination countries. Also indicates where money is being laundered.		
Telephone billing	Telephone billing can not only reveal financial transactions but also show routes of money transfers and times of billing evaluated against smuggling-related conduct.		

Some of these records may not be available at present, but might become so. The investigation, like any other, must aim at, and its objectives must reflect, what can realistically be achieved.



Example: the Internet and financial investigations

The Internet is an open source that may provide much information about a person's lifestyle and finances. In Belgium, for instance, law enforcers use www.eurodb.be, a privately kept database of companies and the individuals working within them. This can be used to determine whether a person is a potential suspect in an investigation into the smuggling of migrants and whether a particular business is a legitimate one.



Questions and exercises

- With reference to the possible financial indicators of illegal activity, what are your local indicators?
- Is there a specialized financial investigation unit or body in your country?
- Does the law in your country authorize you or anyone else to conduct financial investigations with respect to the smuggling of migrants?
- What are your powers with respect to financial investigation?
- What laws in your country are relevant to financial investigation?
- In your legislation, do you need to prove gain?

Does this make the commission of the offence harder to prove? If so, why?

- What other types of record (in addition to those listed in the table regarding examples of types of financial records and the value they may have) are relevant for financial investigations in cases of smuggling of migrants in your country?
- What can you achieve locally through financial investigations, given your laws, policies and financial systems?
- With reference to the box "Example: financial investigation", how would the above financial investigation have been conducted locally?
- How are financial investigation systems reconciled with a person's right to privacy?
- Have any financial investigations in your country led to positive results for law enforcement agencies, as was the case for the successful investigations mentioned?
- Can you provide any examples of creative financial investigative techniques used in your country, such as those involving cash dogs, as outlined above?
- What happens to seized assets in your country?
- What informal financial systems are used in your country?

What role can or do they play with respect to the smuggling of migrants or other transnational crimes?

Have you ever conducted financial investigations into informal financial systems in your country? Provide examples.

What are some techniques that can be used to investigate informal financial systems in your country?

C. Key financial transactions within the smuggling of migrants

Smuggling fees and payment modalities

If migrants hope to be smuggled, they will generally have to pay a fee. Fees are charged by smugglers of migrants for the following services or reasons:

Profit: The criminal is involved in the crime to make money.

Travel documents: The provision of forged documents costs money. The higher the qual-

ity of the document, the higher the price.

Transport (internationally): Airfares, payments to captains or operators of boats and the like.

Transport (locally): Lorry or car drivers (who can also be engaged to cross national

boundaries), transport within countries and from border to border.

Accommodation: Places to house migrants at the different stages of the smuggling

process.

Corruption:

To pay officials to allow smuggled migrants to cross borders or use false documents. Also involves payments by smuggled migrants over the price agreed upon.

There are three main modalities for payment of the smuggling fees:

• Payment up front, before departure, by migrants or their family.

Often this will be on a 50/50 basis with the balance due on arrival in the destination country.

Often advance payments are made to a third party or middleman rather than directly to the smuggler. The third party may issue a receipt to the migrant, his or her family and the smuggler. The money would then be released to the smuggler only once the migrant's family had confirmed to the third party that he or she had arrived safely.

Some smugglers will reimburse fees paid where the smuggling operation has been unsuccessful and may even offer to keep trying at no extra cost until the illegal entry is achieved.

- Money paid en route to the different people involved so that the migrant can advance from stage to stage.
- "Credit": the smuggling fee is advanced to the smuggled migrant by some person. The
 smuggled migrant will have to pay back the fee after having arrived in the country of
 destination. Investigators need to be alerted to this and the potential for the smuggling
 of migrants to become a form of trafficking in persons or debt bondage.

The payment modalities established between smugglers and the people they smuggle take many forms, and which form is utilized depends on the origin of both and the nature of the smuggling.

Payments in cash:

• Where this is the case, payments must generally be made in convertible currencies.

Trust systems:

- Require a high degree of organization.
- Often require a closer relationship between smugglers and smuggled migrants than is the case with cash transactions.
- Often require a closer relationship between the smugglers involved.

Informal financial systems

Informal systems may be very difficult to investigate. Informal services are completely unregulated. In some cases, they may have premises; in other cases, they may not. A feature that they all share, however, is the need to communicate. The method of transfer varies among systems. It can be as simple as the transfer of money from one place to another by courier. In other cases, money may be deposited in one location and a phone call is then made communicating the instruction that the funds are to be released in

another location. This may involve the provision of a password to the depositor which is to be passed on to the recipient. Other versions of this system entail the transmission of e-mails, faxes or physical letters between receiver and payer.

Specialist techniques, particularly those involving communications interception and communications data, are very useful in investigating suspected informal remittance systems. In many cases, traffickers use an informal remittance system that is well established in the community from which they come. Identify the community (ethnic group, nationality etc.) that suspects come from, establish the characteristics of informal transfer within that community and use this information to plan your investigative approach. This approach may not always work but it can help speed up investigations.

Where a courier system is used, overt stop-and-search techniques may yield results. This approach can be refined by using intelligence to identify nexus locations such as airports where courier transfer systems are likely to be used. Information such as the destination of flights, final destination of passengers and visas in passports can also help to direct your activities. In a significant number of cases, couriers will travel using genuine documents because they do not wish to attract attention to themselves.

A number of countries allow significant amounts of money to be imported providing that a customs declaration is made. In some cases, couriers will make this declaration, as there is no risk in doing so although there is a risk of having the money confiscated if they do not. If you believe money is being transferred by courier, establish the financial import regulations of the country that it is being taken to. There may be information held by declarations made upon entry into the country.

Hawala

Hawala is an informal value transfer system. In this system, when the payer wishes to transfer money to a payee in another country, he will give the money to a hawala broker in his own city, who will then inform a hawala broker in the payee's city that the appropriate amount (usually minus a commission) should be paid to the payee. The "debt" owed by the hawala broker in the payer's country to the hawala broker in the payee's country will be settled later. Hawala operates on an honour system, meaning that records are rarely kept and exchanges are not legally or juridically enforceable. Hawala can also bypass tax, official exchange rates and immigration or other legal controls, making it an attractive system to smugglers of migrants and other criminals.

In some countries, hawala is illegal as it is considered a form of money-laundering. In other systems, it is a common practice which falls outside the interest of the law.

Regular bank transfers:

• These may be used where the appropriate infrastructure exists to support such transactions, as in larger cities, for example, and in areas where there is less of a tradition of engagement in private money transactions.

Fees paid for smuggling services vary widely depending on factors such as:

- The means of transport used.
- The level of "guarantees" included.
- Additional services, such as provision of forged documents.
- Whether the whole journey is to be organized by one provider and undertaken without any breaks or is to be carried out in stages.
- The risks of detection associated with the route (that is, those posed by the presence of police or coastguard or border police).
- The time of year and weather conditions.
- (Sometimes), the nationality of migrants.

The following example illustrates how fees may vary according to the route.



Case study

Fees varying according to the destination country

A man from a Middle Eastern country recounted the following:

When I entered the shop in the town there were a few boys and a woman sitting there. They offered me a cup of tea and then we talked a bit. Where do you want to go?" they asked.

"Europe", I replied

"Of course. Everybody wants to go to Europe," they said. "But which country in Europe?"

"I do not know anywhere where I can stay."

"OK, at this moment we can offer you a North American country and two destination countries in Western Europe. But you have to know it costs a lot of money. With us you pay a lot but you will get what you want. If the first time fails, we will try again, but this time at our own expense."

"How much does it cost and how long do I have to wait?" I asked. They replied, "The North American country is US\$ 10,000 and we can arrange it within two or three weeks.

Western European country I is US\$ 8,000 and this will also take two or three weeks.

Western European country 2 is US\$ 7,000 but we can arrange that within five days."

"OK, I will go to Western European country 2," I said.

The following assumptions can be made about fees paid by migrants to smugglers:

- The greater the distance between country of origin and country of destination, the higher the fee.
- Reduced risk involves higher cost.
- Land routes often require several stopovers, each of which poses a risk of detection. Clandestine travel (by foot, car, lorry or train) is likely to be more dangerous, and often life-threatening.
- Air journeys directly from the country of origin to the country of destination are safer, more convenient and of shorter duration, and therefore more expensive than longer, more dangerous journeys via land and sea.
- The more sophisticated the smuggling operation, the higher the fee.

Examples of fees paid to smugglers by migrants

Origin to Destination	Route	Fee
China to Australia	Sea	Between A\$ 3,900 and A\$ 40,000
China to Australia	Through Hong Kong, China	Between A\$ 10,000 and A\$ 50,000 for false documents and coaching on how to evade immigration controls
Indonesia to Australia	From Jakarta, Bali or west Timor-Leste	Between A\$ 2,000 and A\$ 6,000
Indonesia to Australia	From southern parts of Indonesia to Ashmore Reef and Christmas Island	Between A\$ 1,600 to A\$ 3,800
Somalia to Australia	From Mogadishu to Australia	About A\$ 3,000 (this generated a profit of A\$ 2.76 million for the smuggling organization)
Afghanistan, Iraq and Iran (Islamic Republic of) to Australia	Flight from Pakistan to Malaysian and Indonesian ports and onward to Australia	Between A\$ 6,000 and A\$ 17,000
Cambodia to Australia	(Intercepted)	Between US\$ 5,000 and US\$ 10,000
Iraq, Iran (Islamic Republic of), Pakistan and Afghanistan to Greece		Between US\$ 3,000 and US\$ 7,000
Turkey to Greece	From Istanbul to Athens	Between US\$ 2,000 and US\$ 2,500
Turkey to Greece	From Greek/Turkish border (Evros river) to Athens or Patras	Between US\$ 800 and US\$ 1,200

Origin to Destination	Route	Fee		
Asia Minor to Greece	From Asia Minor to a Greek island in the Aegean	Between US\$ 500 and US\$ 2,000		
Albania to Greece	From Greek/Albanian border Between US\$ 500 and US\$ (Thesprotia) to inland Greece			
Greece to Italy	From Patras to Bari, Brindisi and Ancona or from Patras to Italy via Albania	Between US\$ 1,000 and US\$ 2,000		
Morocco to Spain		€1,200		
Algeria to Spain		Between €800 and €1,300		
Colombia to Spain		€6,000		
Brazil to Spain		€10,000		
Mexico to the United States of America	Across the desert	Several hundred to several thousand US\$.		

Raising the fee for being smuggled

Migrants commonly need to sell their property (land or chattels) to raise the necessary amount of money or must rely on credit in one form or another, which is often the case. Often, money is borrowed from friends or relatives or even loan sharks. Families will often sell their home and other possessions to support a person who is migrating. Occasionally, money is also borrowed through normal bank loans.

In cases where migrants borrow heavily to pay for their smuggling, they experience great pressure to somehow make enough money to settle their debts. Particularly when the smuggler covers the cost of the smuggling, the migrant in debt to him or her becomes extremely vulnerable to exploitation.



Investigators should be aware that loans incurred to cover the cost of smuggling can make a person highly susceptible to become a victim of trafficking in persons or debt bondage.

Profits

It is difficult to estimate the profits that smugglers derive from their criminal activities because:

- Illicit proceeds are usually laundered and therefore become indistinguishable from legitimate profits.
- Success of attempts to assess and calculate the price and profit of smuggling businesses

varies widely, depending on factors such as the type and range of activities covered by the payment, the distance travelled, the nature of the risks and the countries involved.

• Payments are not always disbursed in a single transaction, making overall fees and profits difficult to calculate.



Case study

Smuggling of migrants via sea

Small, flexible smuggling businesses had been established in a South-Eastern European country. By the end of the 1990s, at least 150-300 people could be transported every night from that country to a country in Southern Europe. It was estimated that about 50 rubber dinghies had been in use in 1999. They were about 10 metres long and had been completely emptied out. Some of them were equipped with two engines.

Each craft carried 15-40 people crouched down and covered with canvas. They all left together at night, travelling in formation so as to be able to offer mutual assistance if necessary. They would then fan out as they approached the territorial waters of the destination country, using lighthouses as their points of reference.

At first, the fee for the journey was variable: from \$400 to \$450 for those dealing directly with the boat owner, and from \$600 to \$650 for those who used the services of a middle man. It has been estimated that the annual turnover in 2000 was between \$30 million and \$60 million.

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Questions and exercises

- Based on your experience in your own country, are smuggling services paid for up front, en route, on arrival or in the form of credit?
- What modalities are used to pay for smuggling services in your country?
- Do the assumptions that can be made about fees paid by migrants to smugglers apply to the smuggling of migrants in your country?

What other assumptions apply to the smuggling of migrants in your country?

- Provide some examples of fees paid by migrants to be smuggled to and from your country.
- In your country, how is the money needed to pay the fees for smuggling services raised by migrants and their families?
- In your experience, what is the profit margin of smugglers in your country?
- Do the assumptions above made about the nature of profit hold true in your country context?

What other assumptions apply in your country context?

D. Concluding remarks

As has been mentioned elsewhere, the fees charged and the services provided vary from case to case. However, the smuggling of migrants is big business and profits can be very large. Smuggled migrants can pay in excess of €30,000 to be smuggled from Asia to Europe, for example. At least half of this money will constitute pure profit for the smugglers. If the money can be identified, then it can be seized and confiscated.

As in many other areas of investigations into the smuggling of migrants, international assistance or cooperation may be required in order to trace money; and rather than confine their investigation to domestic boundaries, investigators should pursue all lines of enquiry. INTERPOL may be able to assist if other bilateral agreements (formal or informal) are not in place or are not effective. The Organized Crime Convention can also be relied upon to facilitate cooperation in the absence of other agreements.

It must be remembered that financial investigations are important for achieving the criminal justice goals of evidentially proving that the crime of smuggling has occurred and confiscating the assets of smugglers. Whether they are conducted as part of the main investigation or in parallel is a matter for local policy to decide; what is important is that such investigations are conducted. Experience shows that specialist financial investigators and/or lawyers generally produce the best results; still, individual investigators must also be made aware of the potential benefits of financial investigations and what to look for.

The seizure of money or assets can hurt criminals and impede the carrying out of their illicit businesses or the financing of other criminal activities. Besides this, the identification of the size of a criminal group and the profits it makes can lead to a significant increase in the weight of the sentences imposed by courts. National laws will set out the basis, if any, for seizure and/or confiscation of assets, however, in a growing number of jurisdictions, the assets seized are directly reinvested in law enforcement. Hence, a successful blow levelled against the operations of the smugglers of migrants that leads to asset confiscation could mean extra equipment, vehicles or technology to assist the individual investigator in future cases.



Self-assessment questions

- What is a financial investigation?
- What impact can a financial investigation have on the smugglers of migrants?
- What impact can a successful financial investigation have on law enforcement?
- Who conducts financial investigations in cases of the smuggling of migrants in your country?
- What happens to confiscated assets in your country?
- List some potential sources of financial intelligence and evidence.
- List some key financial transactions that may take place before, during or after the smuggling process.
- Name some types of financial records.
- Name different services, within the context of operations involving the smuggling of migrants, for which fees are charged.



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