



**(2018/2769)(RSP)**

22.6.2018

# **DRAFT MOTION FOR A RESOLUTION**

further to Question for Oral Answer B8-B8-0000/2018

pursuant to Rule 128(5) of the Rules of Procedure

on Guidelines for Member States to prevent that humanitarian assistance is  
criminalised

((2018/2769)(RSP))

**Claude Moraes**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

**B8-0000/2018**

**European Parliament resolution on Guidelines for Member States to prevent that humanitarian assistance is criminalised ((2018/2769)(RSP))**

*The European Parliament,*

- having regard to the Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (the “Framework Decision”),
- having regard Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (the “Facilitation Directive”),
- having regard to the European Commission Communication establishing an EU Action Plan against migrant smuggling (2015-2020) of 27 May 2015 (COM(2015) 285 final),
- having regard to the European Commission Staff Working Document on the REFIT Evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package (Directive 2002/90/EC and Framework Decision 2002/946/JHA),
- having regard to the European Parliament Resolution on Progress on UN Global compacts for safe, orderly and regular migration and on refugees of 18 April 2018 (B8-0184/2018),
- having regard to the European Parliament Directorate General for Internal Policies’ Study on “Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants” (PE 536.490),
- having regard to the European Union Agency for Fundamental Rights 2014 study on the criminalisation of migrants in an irregular situation and persons engaging with them,
- having regard to the Council of Europe Commissioner for Human Rights Issue Paper on the Criminalisation of migration in Europe: Human rights implications of 4 February 2010,
- having regard to the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime adopted by Resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations (the “UN Smuggling Protocol”),
- having regard to the UN Special Rapporteur on the Human Rights of Migrants, United Nations Human Rights Council Regional Study: management of the external borders of the European Union and its impact on the human rights of migrants of 24 April 2013 (A/HRC/23/46),

- A. whereas in the EU Action Plan against Migrant Smuggling (2015-2020) the European Commission stressed the need “to ensure that appropriate criminal sanctions are in place while avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress” and the need to improve the existing EU Facilitators’ Package, which comprises Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (the ‘Facilitation Directive’), and the accompanying Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (the ‘Framework Decision’);
- B. whereas Article 1.2 of the Facilitation Directive provides a non-binding option to EU Member States to apply an exception to the criminalisation of that facilitation when the latter is “humanitarian” in nature;
- C. whereas the European Parliament Resolution of 18 April 2018 on “Progress on UN Global compacts for safe, orderly and regular migration and on refugees” calls for the non-criminalisation of humanitarian assistance, for greater search and rescue capacities for people in distress, for greater capacities to be deployed by all states, and for the support provided by private actors and NGOs in carrying out rescue operations at sea and on land to be acknowledged;
- D. whereas in its Staff Working Document on the REFIT Evaluation of the Facilitators Package, the European Commission highlighted that a reinforced exchange of knowledge and good practice between prosecutors, law enforcement and civil society could contribute to improving the current situation and avoid criminalisation of genuine humanitarian assistance;
- E. whereas Article 1.1(b) of the Directive does not impose an obligation on Member States to refrain from punishing the facilitation of irregular stay when an element of intention or financial gain is absent and the Framework Decision does not include mandatory provisions preventing the punishment of acts performed for humanitarian purposes or in emergency situations;
1. Recalls that, according to the Facilitation Directive and its accompanying Framework Decision, EU Member States are required to implement legislation introducing criminal sanctions against the facilitation of irregular entry, transit and residence;
  2. Expresses its concern in relation to the unintended consequences the Facilitators’ Package has for citizens providing humanitarian assistance to migrants and on the social cohesion of the receiving society as a whole;
  3. Underlines that, in line with the UN Smuggling Protocol, acts of humanitarian assistance should not be criminalised;
  4. Notes that actors engaging in humanitarian assistance provide support to national authorities in ensuring that humanitarian assistance is provided to those in need and calls for ongoing operational cooperation and coordination, in line with the applicable legal framework, of actors providing humanitarian assistance with competent authorities;

5. Regrets the very limited transposition by Member States of the “humanitarian assistance” exception provided for in the Facilitation Directive and notes that humanitarian exemption should be implemented as a bar to prosecutions, to ensure that prosecution is not pursued against individuals and civil society organisations assisting migrants for humanitarian reasons;
6. Calls on Member States to transpose the humanitarian assistance exemption provided for in the Facilitation Directive and to put in place adequate systems to monitor the enforcement and effective practical application of the Facilitators’ Package, by collecting and recording annually information about the number of people arrested for facilitation at the border and inland; the number of judicial proceedings initiated; the number of convictions along with information about sentencing determination; and reasons for discontinuing an investigation;
7. Urges the European Commission to adopt guidelines to Member States in order to bring clarity and uniformity of implementation of the current acquis, including on Article 1.1(b) and 1.2 of the Facilitation Directive, by specifying which forms of facilitation should not be criminalised by Member States and stresses that clarity of parameters will ensure greater consistency in the criminal regulation of facilitation across EU Member States and will limit unwarranted criminalisation.