



TEXTS ADOPTED

Provisional edition

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Guidelines for Member States to prevent humanitarian assistance from being criminalised

European Parliament resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised (2018/2769(RSP))

The European Parliament,

- having regard to Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence¹ ('Facilitation Directive'),
- having regard to the 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 residence² ('Framework Decision'),
- having regard to the Commission communication of 27 May 2015 establishing an EU Action Plan against migrant smuggling (2015-2020) (COM(2015)0285),
- having regard to the Commission staff working document of 22 March 2017 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) (SWD(2017)0117),
- having regard to its resolution of 18 April 2018 on progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees³,
- having regard to the study entitled 'Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants', published by its Directorate-General for Internal Policies in 2016,
- having regard to the study by the European Union Agency for Fundamental Rights on the criminalisation of migrants in an irregular situation and of persons engaging with them, published in 2014,
- having regard to the Issue Paper of the Council of Europe's Commissioner for Human

¹ OJ L 328, 5.12.2002, p. 17.

² OJ L 328, 5.12.2002, p. 1.

³ Texts adopted, P8_TA(2018)0118.

Rights of 4 February 2010 entitled ‘Criminalisation of migration in Europe: Human rights implications’,

- having regard to the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention against Transnational Organised Crime, adopted by means of resolution 55/25 of 15 November 2000 at the 55th session of the UN General Assembly (‘UN Smuggling Protocol’),
 - having regard to the report of the UN Special Rapporteur on the human rights of migrants of 24 April 2013 entitled ‘Regional Study: management of the external borders of the European Union and its impact on the human rights of migrants’,
 - having regard to the question to the Commission on guidelines for Member States to prevent humanitarian assistance being criminalised (O-000065/2018 – B8-0034/2018),
 - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
 - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas in the EU Action Plan against migrant smuggling (2015-2020), the 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 to improve the existing EU Facilitators Package, comprising the Facilitation Directive and the accompanying Framework Decision;
- B. whereas Article 1(2) of the Facilitation Directive provides for a non-binding humanitarian assistance exemption, giving Member States the option not to criminalise facilitation when it is humanitarian in nature;
- C. whereas in its resolution of 18 April 2018 on progress on UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees, Parliament called 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 Commission highlighted that a reinforced exchange of knowledge and good practices between prosecutors, law enforcement and civil society could contribute to improving the current situation and prevent criminalisation of genuine humanitarian assistance;
- E. whereas Article 1(1)(b) of the Facilitation Directive does not impose an obligation on Member States to refrain from punishing the facilitation of irregular stay when there is no element of intention of financial gain, and whereas the Framework Decision does not include mandatory provisions preventing the punishment of acts performed for humanitarian purposes or in emergency situations;
1. Recalls that under the Facilitation Directive and the accompanying Framework Decision, Member States are required to implement legislation introducing criminal sanctions against the facilitation of irregular entry, transit and residence;

2. Expresses concern at the unintended consequences of the Facilitators Package on 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 involved in humanitarian assistance that supports and complements life-saving actions undertaken by the competent authorities of Member States must remain within the remit established for humanitarian assistance by the Facilitation Directive, and that their operations must take place under the control of the Member States;
5. Regrets the very limited transposition by Member States of the humanitarian assistance exemption provided for in the Facilitation Directive and notes that the exemption should be implemented as a bar to prosecution, 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 on how sentences are determined, and reasons for discontinuing an investigation;
7. Urges the Commission to adopt guidelines for Member States specifying which forms of facilitation should not be criminalised, in order to ensure clarity and uniformity in the implementation of the current *acquis*, including Article 1(1)(b) and 1(2) of the Facilitation Directive, and stresses that clarity of parameters will ensure greater consistency in the criminal regulation of facilitation across Member States and limit unwarranted criminalisation;
8. Instructs its President to forward this resolution to the Commission, the Council, and the governments and parliaments of the Member States.