ANALYSIS

New ‘Facilitation’ Directive: migrants and solidarity under threat

migreurop

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Cover photo:
Sara Prestianni, Calais, France, October 2016

Proposal for a Facilitation Directive: what is it about?

On 28 November 2023, the European Commission adopted a proposal for a Directive **laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union** (known as the 'Facilitation' Directive), without a prior impact assessment [1]. Intended to replace and expand the current European legal framework on this subject (the 2002 'Facilitators Package'), it **updates the definition of the offence of facilitation and the existing criminal law framework.**

The 'Facilitators Package' consists of the Council Directive 2002/90/CE (hereinafter the 2002 'Facilitation' Directive) and the Council Framework Decision 2002/946/JHA , which establish a common definition of the offence of facilitation and constitute the criminal law framework currently in force in this area. Widely criticised for the broad margin of discretion left to Member States, these measures have enabled the **criminalisation of migrants and of solidarity across Europe over the past 24 years.**

This Directive is part of a package that also includes:

- A 'Call to Action' (2023) for a 'global alliance to counter migrant smuggling"'through close cooperation between countries of origin, transit and destination;
- And a 'Regulation strengthening the role of Europol in tackling migrant smuggling and trafficking in human beings' adopted in December 2025: operational and financial strengthening of the European agency, increased capacity to process biometric data, improved information-sharing system with Member States.

In November 2024, the Council adopted its negotiating mandate, and in March 2025 Birgit Sippel (S&D, Germany), the rapporteur appointed by the Committee on Civil Liberties, Justice and Home Affairs (LIBE), adopted the report which will allow the Committee to take its position. The Commitee has not yet reached a decision.

[1] A targeted substitute impact assessment was carried out in 2025 by the European Parliament Research Service (EPRS), at the request of the European Parliament's LIBE Committee. It highlights the proposal's inconsistency with international and European standards, definitional issues, insufficient safeguards for fundamental rights and the lack of a clear distinction between offences of facilitation and humanitarian aid, with potentially negative effects on civic space and democracy.

The new ‘Facilitation’ Directive has been presented by the European Commission as a means of ‘improving’ and ‘modernising’ the current legal framework (the ‘Facilitators Package’). Far from resolving the problems posed by this framework, it instead introduces **new grounds for criminalisation, without including any exemption provisions for humanitarian action or human rights defence**. Several organisations and institutions have warned of the risk of systematising the criminalisation that migrants and solidarity organisations are already experiencing today [2]. The Directive can thus be considered as a veritable ‘**tool offered to Member States to hinder any activity aimed at helping or assisting people in migration**’ [3].

[2] Amnesty International, « Considerations on the European Commission’s Proposal to Reform the Facilitators Package », 26 February 2025

[3] Claire Rodier, « Directive « Facilitation » : l’UE fournit des armes contre les solidaires », Gisti’s Plein droit n° 148, March 2026

TIMELINE

28 November 2023	Publication by the Commission of the proposal to reform the 'Facilitation' Directive, without an impact assessment.
20 March 2024	Publication of a 'briefing' on the text for MPs.
2 May 2024	Impact assessment commissioned by the LIBE Committee from the European Parliament's Research Service.
14 May 2024	The Commission's failure to carry out an impact assessment has been criticised and has led to the production of a 'Staff Working Document' accompanying the regulation. This document is not published on EUR-Lex or in the Commission's Register of Documents.
13 December 2024	Adoption of the Council of the EU's position on the Commission's proposal.
5 March 2025	Publication of an impact assessment on this reform, commissioned by the LIBE Committee and carried out by the European Parliamentary Research Service (EPRS), which highlights the proposal's inconsistency with international and European standards, the inadequacy of safeguards regarding fundamental rights, and the lack of a clear distinction between offences of facilitation and humanitarian aid, with potentially negative effects on civic space and democracy.
July 2026	There is no information on the parliamentary timetable. The LIBE Committee has not yet agreed on a common position, which means that the trilogue negotiations remain on hold [4].

→ To keep track of the Directive's process, the European Parliament provides the 'Legislative Train Schedule', an online tool that allows users to track European legislative proposals in real time.

[4] This timeline was written by Jeanne Olivet as part of her volunteering position in Brussels with Migreurop and EuroMed Droits (2025–2026).

What changes? What risks for migrants and those who support them?

A NEW (AND WORRYING) DEFINITION OF 'FACILITATION'

Under the 2002 Facilitation Directive, assistance with unauthorised stay can only be criminalised where it is motivated by financial gain (Art. 1(b)). By contrast, assistance with unauthorised entry and transit into the Union – by whatever means, for whatever purpose, whether or not for financial or other material gain – is sufficient in itself for the act to be established as a criminal offence (Art. 1(a)).

The new draft Directive provides that the offence of facilitation is constituted where a person '**requests, receives or accepts, directly or indirectly, a financial or material benefit, or a promise thereof, or carries out the conduct in order to obtain such a benefit**' (Art. 3(1)(a)). According to the European Commission, this provision is intended to better target 'criminal networks (...) putting people's lives at risk and seeking in every way to maximise their profits'[5].

WHY IS THIS A CAUSE FOR CONCERN?

- **Any form of act or service generating a benefit, whether direct or indirect, could be criminalised.** The definition makes no reference to any link with a criminal network as a condition for qualifying an act as the offence of facilitation. Moreover, what may be considered a 'benefit' remains vague, leaving Member States considerable latitude for interpretation. This could lead to the criminalisation of migrants who agree to carry out certain tasks to reduce the cost of their own journey (for example, driving a boat, holding a GPS device, etc.), of people who provide services in exchange for payment (renting flats, taxi services)[6], as well as of humanitarian actors who receive funding for their activities.

- **There is no need to act for profit in order to be prosecuted.** Financial motive is not the criterion used to determine whether assistance with entry, transit and/or stay constitutes an offence[7]. A mere 'promise' of a benefit, even where it has not actually been accepted or provided, may be sufficient to trigger criminal liability.

[5] European Commission, Directive of the European Parliament and the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, 28 November 2023, p. 1

[6] This could encourage racial profiling and thus restrict migrants' access to essential services.

[7] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025

Example 1 - a person on the move who agrees to steer a boat

In 2023, Ibrahim Aboubakar, a Sudanese exile, agreed to steer the boat on which he was due to cross the Channel, in order to reduce the cost of his own journey from €1,000 to €400. A survivor of the shipwreck that killed seven people, he was prosecuted in France as a 'smuggler' and held in pre-trial detention for over two years. This type of prosecution is already common in Europe. The new 'Facilitation' Directive, if adopted, would make it systematic. Under the new Directive, the reduction in the cost of the journey could have been considered a 'financial benefit', and Ibrahim Aboubakar could have been sentenced to at least 15 years' imprisonment, deported, and subjected to an entry ban from the European territory of up to 10 years."

Example 2 – a taxi driver who transports people on the move to the border

In January 2026, two taxi drivers from Barcelona were found guilty of having facilitated the entry and stay in France of people without a right of residence. They were sentenced to one year's suspended imprisonment, a five-year ban from entering French territory, and the confiscation of money seized during the journeys. They had driven passengers to the Franco-Spanish border as part of their professional activity, without asking for the passengers' identity documents (a check they are neither authorised nor required to carry out). Under the new Directive, the drivers could have faced a minimum sentence of three years' imprisonment, as well as fines and/or the withdrawal of their taxi licence.

Example 3 – NGO members carrying out a civilian sea rescue operation

In Italy, six members of the NGO Mediterranea are currently facing criminal prosecution over a rescue operation carried out in September 2020 in the Mediterranean. They are accused of having facilitated the 'irregular' entry of 27 migrants rescued after 38 days in distress aboard the Danish oil tanker Maersk Etienne. Three months later, the Maersk Tankers company paid the NGO €125,000, intended to cover the operational costs of the rescue. The public prosecutor argues that this donation is sufficient to establish the existence of a profit motive, treating the mere reimbursement of operational costs as evidence of criminal intent. The new 'Facilitation' Directive, if adopted, risks making cases like this systematic. Under the new Directive, the six members could have faced up to three years' imprisonment, and the NGO Mediterranea could have faced sanctions such as fines, the confiscation of the vessel used in the rescue, and the suspension of its funding.

WHAT DOES INTERNATIONAL LAW SAY ?

The 2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air (known as the Palermo Protocol) – a legally binding instrument of international law – defines the offence of facilitation as the act of assisting so-called 'irregular' entry, '**intentionally**' and **for the purpose of obtaining a financial or other material benefit** (Articles 3(a) and 6(1)) and within the framework of an '**organised criminal group'** (Article 4). In doing so, it targets organised traffickers operating on a large scale and for profit, **rather than occasional facilitators or those acting for altruistic purposes. The draft 'Facilitation' Directive deviates significantly from this framework**. However, under the hierarchy of norms, European Union law must comply with international law.

Article 31 of the 1951 Geneva Convention also guarantees refugees **immunity from any criminal penalties relating to their so-called 'irregular' entry or stay on the territory.** The absence of any reference to the right to asylum in the text of the new proposed Directive obscures the fact that the vast majority of those accused of being 'smugglers' are seeking protection.

TWO NEW ELEMENTS CONSTITUTING THE OFFENCE OF 'FACILITATION': 'SERIOUS HARM' AND 'PUBLIC INSTIGATION'

The draft Directive also introduces two new constituent elements of the offence of facilitation, **without requiring a financial or material benefit**.

1. **Serious harm:** a person may be found guilty of facilitation, even in the absence of financial or material benefit, where 'there is a high likelihood of causing serious harm to a person.' (Article 3(1)(b)) whilst assisting with entry, transit and/or residence. Serious harm constitutes an 'aggravated offence' (Article 4), punishable by a maximum sentence of at least 10 years' imprisonment (Article 6(3)).

WHY IS THIS A CAUSE FOR CONCERN?

- **The lack of a definition for the concept of 'serious harm'.** Who determines the threshold at which a likelihood is considered 'high'? Who decides from what point harm is classified as 'serious'? No definition, criteria or examples are provided by the new draft Directive. This creates legal uncertainty that would allow for arbitrary interpretations.

- **The criminalisation of migrant people who find themselves forced to take dangerous routes.** Due to the intensification of controls along migration routes, some migrants have no choice but to take alternative, dangerous and costly routes, exposing them to situations where they are forced to act to ensure their own survival and that of those travelling with them. Any act carried out in this context could be held against them as aggravated facilitation should people be injured or die during the journey.

Example 4 – a migrant takes control of the boat after a shipwreck

In 2021, a Somali migrant was arrested in Greece following the shipwreck of the boat he was on, which he had taken control of in an attempt to save the passengers on board (including himself). Considered a 'smuggler' responsible for the shipwreck, he was sentenced to 142 years in prison at first instance. His sentence was reduced to eight years on appeal, in January 2023. Under the new Directive, he would have faced at least 10 years in prison for causing 'serious harm' to the other passengers.

- **An infringement of family life.** Parents who undertake dangerous migration journeys with their children could be found guilty of 'facilitation' due to the 'high likelihood of causing serious harm' to them. This risks leading to family separations, which could infringe the right to family life protected under Article 8 of the European Convention on Human Rights (ECHR) ;

- **A risk of a deterrent effect on sea rescue operations.** Organisations working in high-risk situations, such as civilian sea rescue, could suspend their activities out of fear of criminal prosecution.

Example 5 – a parent who lost their child at sea prosecuted for endangering the life of another

In 2020, in Greece, a father of Afghan nationality, whose five-year-old son died in a shipwreck, was prosecuted for endangering the life of another, facing up to ten years in prison. He was ultimately acquitted, the court having found no criminal liability on his part for his son's death during the crossing. Under the new Directive, he could face at least 15 years in prison.

▸ Sara Prestianni, Lampedusa, Italy, 2013

2. **Public instigation :** a person may be found guilty of 'facilitating migration' on the grounds of 'publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any Member State ' (Art. 3.2), even if such 'instigation' has no purpose of gaining profit.

WHY IS THIS A CAUSE FOR CONCERN?

- **The notion of 'public instigation' is not clearly defined.** The Commission's Staff Working Document, an analytical document supporting the proposal, merely cites examples of activities such as publishing routes on social media or instructions addressed to migrants on how to cross maritime and land borders. This creates legal uncertainty that would allow for arbitrary interpretations;

- **Informing migrants about their rights could be treated as facilitating migration.** Human rights organisations, activists and journalists who share information on the possibilities for regularising migrant people's administrative status, on the services they can access, or on the least dangerous routes to take, could be found guilty of facilitation. Although Recital 6 states that 'the sharing of objective information or advice (...) should not be understood as public instigation', the lack of a clear definition of what constitutes 'objective' information or advice, together with the non-binding nature of the recital, leaves room for arbitrary interpretation;

- **Protesting against repressive migration policies could be treated as facilitation[8].** The concept of public instigation could be used to silence critical voices speaking out on border violence, infringing the freedom of assembly and association (Art. 11 of the European Convention on Human Rights - ECHR), as well as the freedom of expression and information (Art. 10 ECHR), 'which includes the right to hold opinions and to receive and impart ideas without unjustified interference, including of a political nature (for example, opposing border closures or challenging the European Union's priorities in tackling so-called irregular migration)'[9].

[8] Amnesty International, « Considerations on the European Commission's Proposal to Reform the Facilitators Package », 26 February 2025

[9] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025, P. 53

Example 6 - activists acting in solidarity at the borders

Since 2015, activists at the Franco-Italian border have advised people on the move attempting to cross this border, informing them of their rights and of ways to cross safely without endangering their lives, particularly regarding equipment and precautionary measures suited to mountain walking. Migrants also exchange maps and GPS points with one another to identify the safest crossing routes. Under the new 'Facilitation' Directive, these activities could be classified as 'public instigation' and punished with a prison sentence of at least three years.

Example 7 - demonstrations against the border regime

In Briançon, a town on the Franco-Italian border, several demonstrations have taken place in recent years against repressive migration policies, which are responsible for deaths and serious rights violations against migrant people attempting to cross the border. Some of these demonstrations were held in front of the Montgenèvre border post, while others, such as the mobile 'Passamontagna' camps, took the form of marches across the border, with slogans and banners calling for the abolition of borders. An expansive interpretation of the new Directive's text risks treating this type of protest as 'public instigation'.

▶ Calais Migrant Solidarity, Calais, France, August 2015

MIGRANTS, FACILITATORS, HUMANITARIAN WORKERS, HUMAN RIGHTS DEFENDERS: NO ONE IS SAFE FROM PROSECUTION

THE TEXT DOES NOT PROVIDE FOR ANY BINDING HUMANITARIAN CLAUSE

In the 2002 Facilitation Directive, a 'humanitarian exemption clause' was included as an optional provision: 'any Member State may decide not to impose sanctions (...) where the aim of the behaviour is to provide humanitarian assistance to the person concerned' (Art. 1(2)). This provision was transposed into the legislation of only eight EU Member States[10].

The new 'Facilitation' Directive **removes any humanitarian clause** from the text, shifting it into the recitals (Recital 7) as a non-binding recommendation. It specifies that:

- the criteria for the offence "will **usually** not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs";
- the aim of the Directive is not to criminalise humanitarian assistance provided '**in compliance with legal obligations**'.

WHY IS THIS A CAUSE FOR CONCERN?

- **The text legitimises the criminalisation of solidarity.** The absence of a binding humanitarian clause in the text could lead to all provisions being interpreted as applicable by default to solidarity organisations, migrants and their family members, thereby systematising and legitimising their criminalisation[11]: a step back compared to the 2002 measures. Moreover, Recital 7 leaves open the possibility of criminalising humanitarian assistance and the assistance provided between family members, through its use of the word 'usually'[12];
- **There is uncertainty as to the nature of solidarity activities considered 'legitimate'.** The wording 'in compliance with legal obligations' creates uncertainty as to which forms of aid or support are permitted by law, without necessarily being mandatory[13]. Moreover, the wide range of legitimate activities carried out by human rights defenders in solidarity with migrants is not sufficiently covered by the notion of 'humanitarian assistance or support for basic needs'. What, then, of human rights defence actions and other forms of solidarity, such as, for example, the documentation and reporting of human rights violations and abuses, or actions aimed at preventing a risk of refoulement or other serious human rights violations[14]?

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[10] Belgium, Greece, Spain, Finland, Italy, Malta, Croatia and France

[11] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025

[12] Ibidem

[13] Ibidem

[14] Amnesty International, « Considerations on the European Commission's Proposal to Reform the Facilitators Package », 26 February 2025

- **No human rights guarantees are included in the text.** The text does not include any legally binding human rights guarantee, and no clear obligation is provided against the criminalisation of asylum seekers and refugees – who turn to facilitators to reach safety – or against the criminalisation of their family members.

Example 8 – civilian sea rescue vessels prevented from taking action

In Italy, a law introduced in 2023 prohibits civilian sea rescue vessels from carrying out more than one rescue operation at a time. Under the proposed 'Facilitation' Directive, vessels that breach this provision would not be covered by the exemption set out in Recital 7 and could therefore be criminalised. This could apply, for example, to civilian vessels that have already carried out one rescue operation and intervene to rescue other people before reaching the port assigned for the first operation, even where the second operation takes place in close geographical proximity to the first [15]. Among the possible scenarios, the vessel could be seized, the organisation fined, and the responsible members exposed to criminal sanctions of a minimum of three years' imprisonment .

WHAT DOES INTERNATIONAL LAW SAY ?

International maritime law imposes an unconditional obligation to render assistance. Under the United Nations Convention on the Law of the Sea, the International Convention on Maritime Search and Rescue and the International Convention for the Safety of Life at Sea (SOLAS), every vessel is required to render assistance to any person in distress at sea, regardless of their nationality or legal status. A captain who fulfils this obligation cannot be subject to criminal prosecution. As highlighted by the EPRS substitute impact assessment, under Recital 7 of the draft Directive, the exemption from criminal prosecution becomes conditional on compliance with unspecified 'legal obligations', which implies that a rescue operation might not comply with these obligations and could therefore be subject to criminal prosecution (as in the Italian case illustrated in Example 6).

[15] PICUM, « How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders », June 2024

THE TEXT TARGETS AND SANCTIONS NGOS, NOT 'TRAFFICKERS'

The Directive's intention to target solidarity activities towards migrants is also demonstrated by the provisions on the liability of legal persons. The text defines a legal person as '**a legal entity having such status under the applicable national law**' (Art. 2(3)). It then reproduces the provisions of the 2002 Framework Decision (Art. 2) on the **criminal liability of legal persons**: 'Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences (...) committed for their benefit by any person, acting either **individually** or **as part of an organ of the legal person**, who has a **leading position** within the legal person' (power of representation, authority to take decisions on behalf of the legal person, or authority to exercise control within it) (Art. 7(1)). Liability is also incurred 'where the **lack of supervision or control**' by the person holding this leading position 'has made possible the commission of the offence' (Art. 7(2)).

WHY IS THIS A CAUSE FOR CONCERN?

- **NGOs in the spotlight.** While organised criminal networks were presented as the target of the proposal, as highlighted in its introductory section, this provision can in fact only target incorporated service providers and legally established NGOs. Indeed, organised criminal networks are, self-evidently, not recognised as legal persons within the meaning of the definition adopted in the draft Directive[16];

- **An excessive extension of criminal liability.** Article 7(2) risks leading to an excessive extension of criminal liability, without taking into account 'specific circumstances, potentially beyond the awareness, will or knowledge of the representative concerned and despite due diligence efforts[17].

Example 9 – Human rights organisations supporting migrants (and/or their administrators) criminalised

Under the new Directive, if a member of a migrant support association commits an act qualifying as the offence of facilitation without the knowledge of its management, Article 7(2) could be sufficient to establish the criminal liability of the entire organisation, on the grounds of a 'lack of supervision' by the person in charge. This would apply regardless of any 'criminal' intent. The association could then face sanctions ranging up to judicial supervision, or even judicial dissolution.

[16] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025

[17] Ibidem, p.89

‘INSTRUMENTALISATION’: ARE SOLIDARITY ORGANISATIONS TO BE CONSIDERED AS ‘HOSTILE NON-STATE ACTORS’?

The draft Directive introduces the '**instrumentalisation** of a third-country national' as an **aggravating circumstance** of the offence of facilitation (Art. 9).

'Instrumentalisation' is a central concept in the European Pact on Migration and Asylum (Crisis Regulation, 2024), defined as 'a situation (that) could arise when a **third country or hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders of the Union or to a Member State**, where such actions are indicative of an intention of a third country or a hostile non-state actor to **destabilise** the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security’.

Since 2021, this concept has been used repeatedly by several Member States (Lithuania, Latvia, Poland, Finland) in recent years to justify derogations from the right to asylum.

WHY IS THIS A CAUSE FOR CONCERN?

- **Solidarity actors as a target.** The concept of the instrumentalisation of migrants could be used by Member States to criminalise solidarity and humanitarian organisations, particularly those operating at the EU's borders, insofar as these could be treated as 'hostile non-state actors'[18].

[18] Opinion on the draft Directive submitted by the Belgian association SOLIDAIRE to the European Commission, 18 March 2024

TOWARDS INCREASED SURVEILLANCE

Article 12 of the draft Directive extends the criminal jurisdiction of EU Member States over facilitation offences. It would, for example, allow them to prosecute acts committed **outside their territory** – even in international waters – provided they '**results in the entry, transit or stay in the territory of that Member State of third-country nationals who were subject to the criminal offence**.' (Art. 12(1)(e)). This jurisdiction would not be conditional on the act constituting a criminal offence in the place where it was carried out (Art. 12(3)(a)), nor on any transmission of information from the third country concerned (Art. 12(3)(b)). In practice, **an investigation could therefore be opened against a person who facilitated a migrant's entry into the territory of an EU Member State, even if that person has no connection whatsoever to that State (no nationality, no residence, no presence on its territory), and even without the authorisation or cooperation of the third country where the assistance with entry took place**[19].

The draft Directive also introduces the possibility of using **special investigative tools** 'such as those which are used in countering organised crime or other serious crime cases' (interception of communications, covert surveillance, including electronic surveillance, monitoring of bank accounts and other financial investigation tools) (Art. 16).

WHAT DOES INTERNATIONAL LAW SAY?

International law governs the exercise of extraterritorial criminal jurisdiction through several recognised principles, whether derived from international custom or international treaties. These include:

- **The principle of territoriality**: a State exercises criminal jurisdiction over acts committed on its territory;
- **The principle of nationality**: a State may exercise jurisdiction on the basis of the nationality of either the offender or the victim;
- **Freedom of navigation on the high seas**: no State may, in principle, exercise jurisdiction over acts taking place on the high seas, except in the exceptional cases expressly provided for by international treaties and the exceptions set out under the law of the sea (High Seas Convention, Art. 6);
- **The principle of double criminality**: in transnational criminal cooperation (extradition, mutual legal assistance), the act must constitute an offence in both the prosecuting State and the State where it was committed;

[19] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025

- **Universal jurisdiction:** reserved, under international custom, for the most serious crimes (crimes against humanity, genocide, war crimes).

The draft Directive thus departs from these principles, without taking into account possible disputes with third countries outside the EU, or the potential proliferation of jurisdictional conflicts between States. It also moves closer to a logic of universal jurisdiction – normally reserved for the most serious crimes – here applied to a mere facilitation offence.

WHY IS THIS A CAUSE FOR CONCERN?

- **A potentially universal extension of criminal jurisdiction.** This provision aims to allow Member States to extend their investigative, prosecutorial and enforcement action beyond their borders, 'in order to include offences committed outside the EU but have an impact on the EU', such as, for example, 'cases of public instigation where smugglers operate abroad [20]. It thus disregards compatibility with international standards and instead suggests that Member States could 'claim a sort of universal jurisdiction, which hitherto has been reserved for the most egregious crimes, such as crimes against humanity, war crimes, or genocide'[21]. It paves the way for an international manhunt for facilitators;

- **Excessively intrusive investigations.** Excessively invasive investigations could be carried out without regard for the customary rules of international law governing the delimitation of criminal jurisdiction. Combined with the recent strengthening of Europol's capabilities, which could moreover be further reinforced in the coming years[22], this could lead to an unjustified expansion of the European agency's powers[23]. This poses a risk of prosecution for NGOs, associations, journalists, migrants and their family members, and of violations of their rights to privacy and data protection[24], and could pave the way for extensive surveillance of civil society, going well beyond the stated aim of combating organised crime.

[20] See the European Commission's Staff Working Document, p. 21

[21] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025, p. 59

[22] A legislative proposal to strengthen Europol's mandate is expected in June 2026. See the 'Strengthening Europol's mandate with a new Europol regulation' factsheet in the European Parliament's legislative train schedule, as of 20 April 2026

[23] Europol's mandate is limited to supporting police cooperation on organised crime and other serious forms of crime, including migrant smuggling, but not the broader forms of facilitation of so-called 'irregular' migration

[24] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025

Example 10 – exceptional investigative measures used against civilian sea rescue crews

In Italy, from 2017 onwards, the crew of the rescue vessel Iuventa was prosecuted for assisting so-called 'irregular' immigration in connection with the rescue operations it carried out in the Mediterranean. To conduct this investigation, the Italian authorities deployed exceptional resources, normally reserved for tackling organised crime: large-scale phone tapping and undercover agents. The file handed over to the defence contained thousands of pages of transcripts concerning journalists and lawyers with no connection to the case: a serious violation of the right to privacy and to a fair trial. The new Directive would legitimise this approach and normalise it across Europe, in disregard of the right to privacy of those concerned.

▸ Sara Prestianni, Lampedusa, Italy ,2013

DISPROPORTIONATE SANCTIONS

Whilst the 2002 Framework Decision left Member States free to determine the criminal penalties applicable in the event of an offence of facilitation (with a few exceptions), the 2023 proposal for a Directive introduces harmonisation of penalties and sanctions across Member States.

Article 6 sets out the sanctions applicable to **natural persons**. **Article 8** sets out the sanctions applicable to **legal persons.**

Criminal penalties for natural persons(articles 6(2), 6(3) and 6(4))	Non-criminal sanctions for natural persons (article 6(5))	Sanctions for legal persons (article 8)
• **The maximum term of imprisonment is set at at least three years** • Where **'aggravated criminal offences'** are committed (commission of the offence within a criminal organisation, serious harm, commission of serious violence, or assistance with the entry, stay or transit of so-called 'vulnerable' persons, including unaccompanied minors) (Art. 4), it is raised to **at least ten years** (• Where the acts have resulted in the **death** of migrants, the maximum term of imprisonment is set **at at least fifteen years** **These provisions leave Member States free to provide for higher penalties.**	• **Withdrawal of the permits** required to carry out the activities that gave rise to the offence • **Confiscation or freezing** of the instruments used to commit the offence (such as vehicles) • **Fines** • Where the offender is a national of a country outside the EU, they would be **deported** 'following the completion of the sentence in a Member State, or in order to serve the sentence, or part of it, in the third country of return'. They would also be subject to a **ban on entering** the territory of the Union for up to ten years	• **Withdrawal of the permits** required to carry out the activities that gave rise to the offence • **Confiscation or freezing of** the instruments used to commit the offence (such as vehicles) • **Fines** • **Exclusion from public funding** and subsidies • (Temporary or permanent) **prohibition on carrying out commercial activities** • (Temporary or permanent) **closure of establishments** • Placement under **judicial supervision** • **Judicial dissolution**

WHY IS THIS A CAUSE FOR CONCERN?

- **A disproportionately severe sanctions regime.** According to the EPRS's substitute impact assessment, 'the penalty scheme proposed appears to be disproportionately harsh, especially considering that, in certain cases, this concerns NGOs, family members, and migrants facilitating their own journeys, often for the purpose of seeking international protection' [25].

Among the risks:

- Facilitation resulting in harm or accidental loss of life (for example, during a sea rescue operation), despite precautions taken, is liable to an aggravated penalty, with no intent to cause harm being required to qualify the offence as aggravated;

- The fact that facilitating the entry, transit and/or stay of unaccompanied minors is treated as an aggravating circumstance exposes family members, and in particular parents, to a particular risk of criminalisation[26];

- Migrants found guilty of the offence would be particularly targeted and subjected to disproportionate measures liable to violate their rights;

- The non-criminal measures provided for risk causing 'immediate and irreparable damage' to individuals, solidarity organisations and service providers, potentially resulting in the cessation of their activities[27].

[25] European Parliament Research Service, 'Commission proposal for a revised Facilitation Directive - Targeted substitute impact assessment', March 2025, p. III

[26] PICUM, « How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders », June 2024

[27] IRU, « IRU Position on the European Commission proposal laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the EU », 9 April 2024

A new ‘weapon’ against solidarity

Clearly, the draft 'Facilitation' Directive fails to resolve the main problems posed by the 2002 'anti-smuggling package', which it nonetheless claims to want to improve and modernise. In a familiar pattern, the Commission uses the rhetorical pretext of combating migrant smuggling and smugglers to introduce legislation that, in reality, does nothing more than enable the systematic criminalisation of solidarity organisations and people on the move. It has indeed been widely demonstrated that 'anti-smuggling' measures are ineffective in relation to their stated objective: in practice, they are used against migrants themselves, contribute to making crossings more dangerous due to the militarisation of borders, and contribute to the criminalisation of solidarity with people on the move[28]. The new 'Facilitation' Directive thus risks becoming yet another 'weapon of war'[29] against migrants and solidarity.

▸ Baobab, Rome, Italy, 2016

[28] See PICUM, « Migrant smuggling: why we need a paradigm shift », 18 July 2022

[29] Claire Rodier, « Directive « Facilitation » : l’UE fournit des armes contre les solidaires », Gisti’s Plein droit n° 148, March 2026

Comparative table

	Facilitators Package (2002) Texts here and here	Draft 'Facilitation' Directive (2023) Text here	Council negotiating mandate (2024) Text here	Birgit Sippel's report (European Parliament LIBE Committee) (2025) Text here
Elements of the offence	• Criminalisation of assistance with unauthorised **entry** and **transit**, even without financial or material consideration (Art. 1(1)(a) of the 2002 Facilitation Directive) • Criminalisation of assistance with unauthorised **stay** when motivated by a '**financial gain**' (Art. 1(1)(b) of the 2002 Facilitation Directive)	• Criminalisation of assistance with unauthorised **entry, transit and/or stay** where a person 'requests, receives or accepts, directly or indirectly, a **financial or material benefit**, or a promise thereof, or carries out the conduct in order to obtain such a benefit' (Art. 3(1)(a)) • Criminalisation of 'facilitation' without consideration in the event of '**serious harm**' (Art. 3(1)(b)) or '**public instigation**' (Art. 3(2))	**Removal** of the concepts of '**serious harm**' and '**public instigation**', while leaving Member States **free to 'adopt or maintain legislation providing for a broader incrimination** than what is set out in this Directive' where no consideration has been obtained	**Removal** of the concepts of '**serious harm**' and '**public incitement**'

Link with organised criminal networks	IIt is **not necessary** to have links with criminal groups to be guilty of the offence of facilitation.	It is **not necessary** to have links with criminal groups to be guilty of the offence of facilitation.	No change compared to the Commission's proposal.	No change compared to the Commission's proposal.
Criminal sanctions against natural persons	Each Member State remains **free** to set the applicable criminal sanctions. However, where the offence is committed for **financial gain** and: • within the framework of a **criminal organisation**, or • by **endangering the lives** of the persons concerned the maximum term of imprisonment is at least **8 years** (Articles 1.1 and 1.3 of the Council Framework Decision).	Maximum imprisonment of at least: • **3 years**, for the simple offence of facilitation • **10 years**, in the case of '**aggravated** offences' such as those provided for in Article 4 • **15 years**, in the event of the **death** of the person who was the subject of the facilitation offence (Articles 6.1, 6.2, 6.3, 6.4)	Removal of the aggravated offences provided for in Article 4. Maximum imprisonment of at least: • **3 years**, for the simple offence of facilitation • **8 years**, where the offence is committed within the framework of a **criminal organisation**, or where the offence **endangered the lives** of the third-country nationals concerned, or was committed with the **use of serious violence**, or where the third-country nationals concerned were **vulnerable** persons, such as unaccompanied minors • **10 years,** in the event of the **death** of third-country nationals who were the subject of the offence	Removal of the aggravated offences provided for in Article 4. Maximum imprisonment of at least: • **2 years**, for the simple offence of facilitation • **5 years**, where the offence deliberately or through gross negligence caused **serious harm** or **endangered the lives** of the third-country nationals concerned, or was committed with the use of **violence**, or where the third-country nationals concerned were **vulnerable** persons, such as unaccompanied minors • **10 years**, where the offence is committed within the framework of a **criminal organisation**, or in the event of the **death** of third-country nationals who were the subject of the offence

Non-criminal sanctions against natural persons	• **Confiscation of the means of transport** used to commit the offence • **Prohibition on exercising the professional activity** in the course of which the offence was committed • **Expulsion** (Article 1.2 of the Council Framework Decision)	• **Withdrawal of licence** / prohibition on exercising the professional activity • **Confiscation/freezing** of the instruments used to commit the offence • **Exclusion from public funding** • **Fines** • **Expulsion** • **Entry ban** of up to ten years (Article 6.5)	**Removal of the entry ban** sanction and of the **confiscation and freezing** of instruments used to commit the offence. The **duration of the ban is not defined**.	**Removal of the entry ban and expulsion** measures, as well as the **confiscation** and freezing measures.
Sanctions against legal persons	• Exclusion from **public funding** • Prohibition on carrying out a **commercial activity** • **Judicial supervision** • **Dissolution** (Article 3 of the Council Framework Decision)	• **Fines** • Exclusion from **public funding** • Prohibition on carrying out a **commercial activity** • **Closure** of establishments • **Confiscation/freezing** of proceeds/instruments • **Judicial supervision** • **Dissolution**	**Removal** of the measures concerning **fines, confiscation and freezing.**	**Removal** of the **confiscation and freezing** sanction measures.

Criminal jurisdiction of Member States	Member States have criminal jurisdiction where the offence has been committed in whole or in part on **their territory**, by one of **their nationals**, or on behalf of a **legal person established there**.	Extraterritorial criminal jurisdiction is extended. A Member State must prosecute an act of facilitation **even if it took place abroad, provided it led to the irregular entry, stay or transit of a foreign national on its territory**. This jurisdiction applies even if the act is not considered an offence in the country where it was committed, and even **without the agreement or cooperation of that country** (Art. 12).	The extension of extraterritorial jurisdiction becomes **optional**: Member States that decide to make use of it need only inform the Commission. **A new recital (19a) nonetheless encourages them to do so**, inviting them in particular to criminalise migrant smuggling, regardless of where the offence was committed, and to consider extending their jurisdiction over migrant smuggling committed outside their territories.	The extension of extraterritorial jurisdiction becomes **optional**: Member States that decide to make use of it need only inform the Commission.
'Special' investigative tools	No mention of these tools.	Possibility of using, in order to conduct investigations, the special investigative **tools usually reserved for the fight against organised crime**, in particular: interception of communications, discreet surveillance, monitoring of bank accounts and the use of other financial investigation instruments (Art. 16).	**No change** compared to the Commission's proposal	**Suppression** de la référence aux outils d'investigation spéciaux.

The concept of 'instrumentalisation'	**No mention** of the concept of instrumentalisation.	Instrumentalisation is considered an **aggravating circumstance** of the offence of facilitation (Art. 9).	Introduction, in the (non-binding) recitals, of the clarification that **neither the involvement of non-State actors** in smuggling activities, **nor humanitarian assistance, may be classed as instrumentalisation** of migrants, **provided they are not aimed at destabilising the Union or a Member State.**	**Removal of the** concept of instrumentalisation.
Binding humanitarian clause	Member States **may decide** not to make humanitarian assistance a criminal offence (Art. 1.2).	**Absent**. The non-criminalisation of humanitarian assistance is relegated to **recital 7, which has no binding force** and excludes humanitarian assistance provided 'in accordance with legal obligations' from the scope of the Directive.	**Absent**. The 'humanitarian clause' appears in the recitals and not in the operative text.	**Present**. Addition, in Article 3, of the provision that the provision of **humanitarian assistance does not constitute a criminal offence.** A **definition** of humanitarian assistance is also introduced in recital 7.

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