When Humanitarian Aid Becomes a Crime

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Sofia Armeni



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Thematic Working Group Briefs – 2026

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Across Europe, people who provide life-saving humanitarian assistance are increasingly at risk of being treated as criminals (PICUM, 2026). Gaps in the EU Facilitation Directive (2002), left by the vague definition of humanitarian assistance and flexible applicability of the term 'facilitator', allow governments to prosecute humanitarian workers, blurring the distinction between facilitation of smuggling or trafficking and humanitarian aid. This creates a chilling effect on humanitarian organizations and interferes with crucial search and rescue missions that save lives every year. The EU should revise the Directive and offer a compulsory exemption for humanitarian workers, along with a clear-cut distinction between what is a humanitarian worker and a facilitator. Additionally, the EU should create positive obligations for

the states to protect solidarity through an EU directive that pushes states to take proactive and effective measures.

Every year, thousands of migrants leave the coasts of North Africa to cross the Mediterranean sea to reach Europe. The Mediterranean has shown to be one of the deadliest migration paths to Europe due to harsh environmental conditions and of the lack of adequate shelter, food, as well as safe transportation. A report from IOM shows that around 1,000 deaths have been recorded by April 2026, confirming that death rates are not decreasing (IOM, 2026). Due to these risks, humanitarian agencies jump in to provide different levels of assistance, such as search and rescue missions (SAR). In an attempt to disincentivise irregular migration, governments have been prosecuting these actors by pursuing legal actions, smear campaigns, and administrative pressure (Tian, 2024).

Criminalization in this context is understood as 'making the provision of humanitarian or other assistance a specific crime under national law, or applying criminal sanctions to individuals who provide such assistance under another legal basis' (International Commission of Jurists, 2022). A report from PICUM highlighted that between January and December 2025 at least 110 people faced judicial proceedings in the EU for providing assistance to migrants (2026). This can entail an explicit ban on forms of assistance, but more often these organizations are accused of other crimes, such as facilitating human trafficking and smuggling (Smart, 2025). Other forms of interference include harassment, intimidation, smear campaigns, and administrative pressure.

Criminalisation can create damage through the costs of legal proceedings, but also by hurting the reputation of the organization, reducing public support, and discouraging donors. Lastly, it can deter humanitarian actors from conducting life-saving operations, thereby reducing assistance available to migrants in distress. For these reasons, the EU needs to take action by adopting a proactive approach that ensures that humanitarian organisations can operate without fear of unjust criminal or administrative sanctions.

The EU Facilitation Directive (2002)

At the EU level, at the core of the legal framework that concerns facilitation of unauthorized entry, transit, and residence, is the EU Facilitation Directive (2002). Its purpose is to define and prosecute the so-called facilitators, which are understood in the text as 'any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens' (EU Facilitation Directive, 2002). This can – but does not necessarily have to – be driven by financial motives.

Moreover, art. 1(2) states that member states may decide not to impose sanctions with regard to facilitation where the aim is to provide humani-

tarian assistance. This leaves the exemption fully to the discretion of the state, which may decide to not transpose this exemption into domestic law, and choose to prosecute organizations that are providing humanitarian assistance under the accusation of facilitating smuggling. Additionally, even when that exception is adopted by domestic law, because there is no clear-cut, binding definition of what humanitarian assistance is, member states have a lot of flexibility in deciding what humanitarian assistance is and is not. These two aspects leave a gap in the legal framework, opening the possibility to states to exploit that and frame NGOs as facilitators.

The proposed revision of the Directive (2023)

In 2023 a new proposal was advanced by the Commission to review and amend the Facilitation Directive. Although its preamble recognizes the need to redefine the definition of facilitator to trace a clear distinction from humanitarian assistance, and states that the latter should never be criminalized, it fails to address what humanitarian assistance is. It is also worth noting that the preamble is not legally binding. Hence, the revised document still fails to establish a legally binding humanitarian exemption or define humanitarian assistance.

Human Rights Law

Furthermore, humanitarian organizations are formally protected by different international human rights obligations. The UN Declaration on Human Rights Defenders (1998) is a non-binding document that articulates existing rights in a way that makes it easier to apply them in order to protect humanitarian orders. While this declaration protects the right of protecting human rights of other individuals, it is only soft-law, which can indirectly influence the implementation of other rules, rather than providing legal protections that can be invoked in court.

Moreover, academics have highlighted that the criminalization of humanitarian assistance clashes with fundamental rights such as the right to life, freedom of expression, religion and conscience, and freedom of assembly and association, protected by the International Covenant of Civil and Political Rights and European Convention on Human Rights(1966, 1950). Lastly, interfering with search and rescue operations undermines the duty to rescue as recognized by the law of the sea (UNCLOS, 1994).

These human rights are legally binding and part of treaties ratified by the member states and provide clear obligations that states must follow. However, while these legal sources can be used in court, they are not sufficient to protect organizations from the legal proceedings, which impose financial, reputational, and operational costs that create a chilling effect on humanitarian actors.

Domestic laws

According to the Directive, member states are therefore allowed to create their own legislation as long as they criminalize facilitators. Some countries like Italy, decided not to apply the exemption for humanitarian assistance, and instead, created a strict framework that imposed punishments on organisations that do not comply with instructions, even in times of necessity (*Legislative Decree No. 286*, 1998). This is extremely dangerous, as it does not safeguard organizations that provide assistance in cases of severe necessity. On the other hand, countries like Greece decided to transpose an exemption into domestic (law law 4251/2014). However, due to the lack of a proper definition of humanitarian assistance, courts can easily find the legal basis to prosecute solidarity, rather than dismissing these kinds of cases, leading to years of NGOs having to endure trials.

Overall, the fact that most trials end in acquittal shows that eventually the law recognizes a distinction between humanitarian workers and facilitators (PICUM, 2026). However, this conclusion is reached after years of lengthy and damaging trials, due to the lack of a clear-cut boundary which differentiates facilitating smuggling and providing aid, an exemption for humanitarian assistance, or a framework that protects humanitarian work.

Recommendation 1: Revise the Facilitation Directive to Prevent Unnecessary Prosecutions

As concluded by the brief, one of the most damaging tools employed by governments to attack NGOs, is the use of lengthy trials by weaponizing the ambiguity of the Facilitation Directive, which may blur the boundaries between facilitating smuggling and conducting a search and rescue mission (2002).

The EU Commission should propose a revision of the original text that makes the application of the exemption humanitarian aid compulsory. This will provide a procedural safeguard that protects the rights of humanitarian organizations, which are crucial in a pluralistic democratic society and to provide necessary assistance to migrants in distress. Adjusting an EU directive, which has a flexible and adaptable nature, allows for these rights to be upheld without undermining the freedom of the states to legislate autonomously on the topic of migration.

Additionally, the Directive should be revised in order to provide a clear-cut definition of humanitarian assistance next to the definition of facilitator. Defining facilitation of human trafficking and smuggling in antithesis to humanitarian assistance will create a clear framework that will not allow governments to weaponise the law to persecute civil society. This will not allow the prosecution to be able to apply the elements of the crime of facilitation to the humanitarian workers, increasing the chances of the case ending in dismissal before entering the courtroom. Although indictments would still have a chilling effect on the victim, avoiding a trial

would mean taking away years of money and energy spent on trying to win a case in court, assets being taken away, and prolonged smear campaigns.

Recommendation 2: Establish Positive Obligations to Protect Humanitarian Actors

Lastly, there is a recognition at the international level that human rights defenders should be protected (UN declaration on Human Rights Defenders, 1998). However, these obligations are not legally binding and this may allow governments to disregard them. **The EU should therefore issue a Directive that forces states to recognize the importance of protecting humanitarian assistance and that sets positive obligations that they must follow**. By coming up with a directive rather than a binding charter of rights, it would be possible to ensure some level of protection while leaving some discretion to the states. This would allow more flexibility and avoid giving too much immunity to humanitarian workers, who should still be held accountable.

Ultimately, the criminalization of solidarity affects mainly two groups. First, the humanitarian organisations and civil society actors, since their freedom of expression and freedom to protect rights, as provided by the UN Declaration of Human Rights Defenders (1998), are facing limitations. Second, and most critically, migrants in need of immediate assistance are impacted, particularly in the context of the Mediterranean route, which remains one of the deadliest migration routes in Europe.

Restrictions on search and rescue operations (SAR), increases substantially the risks faced by people in distress at sea. The politicisation of solidarity has potentially severe consequences for the safety and survival rates of undocumented migrants, clashing with the negative and positive obligations of states under human rights law to protect the right to life and ensure access to life-saving assistance.

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