

To: Members of the European Parliament
Date: 9 January 2026
Subject: **Meijers Committee letter about negotiations Facilitation Directive**

Standing Committee of Experts on International Migration, Refugee and Criminal Law

Surinameplein 122, 1058
GV Amsterdam

[Website](#)
[Email](#)

Dear Members of the European Parliament,

The Meijers Committee has previously submitted several letters and comments on the proposal and ongoing negotiations concerning the Facilitation Directive ([CM2407](#), [CM2503](#), [CM2509](#)). In this letter, the Committee reiterates its serious concern about the potential omission of a humanitarian exclusion clause from the Directive's operational provisions. To address this issue, the letter sets out:

- i. how the absence of such a clause creates significant legal uncertainty;
- ii. the practical and legal consequences this uncertainty imposes on humanitarian actors; and
- iii. the measures required to ensure that those providing humanitarian assistance are effectively excluded from criminal investigation and prosecution.

i. Increased legal uncertainty

Although there is broad consensus that genuine humanitarian assistance must not be criminalized, the proposed Facilitation Directive still contains significant legal uncertainties that undermine that principle. Firstly, the operational text of the Directive contains several key concepts that are drafted in broad and indeterminate terms. Expressions such as the "financial or material benefit",¹ the "likelihood of causing serious harm",² and "public instigation of irregular migration",³ can be interpreted in many ways, and risk being used as tool to criminalize humanitarian and civil society actors – or at least create a deterrent and chilling effect. This ambiguity gives wide discretion to Member States' authorities and has detrimental consequences for individuals and organizations providing life-saving assistance to people in distress across the EU. For instance, prosecutors in Poland stretched the "financial or material benefit" criterion to argue that simply providing assistance to migrants is enough to trigger criminal liability.⁴ Similarly, some Member States interpret "serious harm" broadly to include potential risks associated with irregular entry, even when humanitarian actors act to reduce harm (e.g. SAR operations in Italy and Greece).⁵

¹ Facilitation of irregular entry, transit, or stay is criminalized if the person "requests, receives or accepts, directly or indirectly, a financial or material benefit, or a promise thereof" (proposed art 3(1)(a)). While several Member States already have the requirement of financial and material benefit, that doesn't prevent them from prosecuting people that provide humanitarian aid. In Poland for instance, the mere fact that migrants receive assistance is deemed sufficient for the public prosecutor to criminalize those providing assistance (See PICUM report 2024, fn 23).

² Facilitation of irregular entry, transit or stay is criminalized if "there is a high likelihood of causing serious harm to a person" (proposed art 3(1)(b)). In MS legislations, the endangerment of the life of people is an independent offense and/or an aggravating circumstance. In Greece, this has led to the prosecution of humanitarian workers and migrants that helped their family members (see eg <https://borderviolence.eu/app/uploads/Trial-Monitoring-Report-Homayoun-Sabetara.pdf>).

³ Public instigation of irregular entry, transit or stay is criminalized (proposed arts 3(2) and 5). While proposed recital 6 of the proposal mentions that the providing of objective information to third country nationals about the conditions on the legal entry and stay in the Union and regarding international protection should not be understood as public instigation, the wording is vague in regard to what actually falls into the category of 'objective' information. There is a real risk that some Member States will use such criminal offences as tools to criminalise a wide range of civil society expressions and information provision to those in need.

⁴ See, <https://notesfrompoland.com/2025/09/08/activists-on-trial-in-poland-for-assisting-illegal-migrants-found-not-guilty/>.

⁵ ICJ 22 April 2022, www.icj.org/wp-content/uploads/2022/04/Criminalization-paper-22-04-2022.pdf.

Secondly, while stronger and more protective language is included in the recitals, the CJEU has consistently ruled that recitals are not legally binding in the same way as the operative provisions.⁶ The effects of the proposed recital 7 – which limits exemptions for migrants and their family members, as well as humanitarian assistance or support of basic need provided “in compliance with legal obligations” – are therefore expected to be modest. The same logic applies to the proposed EPP disclaimer in recital 1, which emphasizes that the anti-smuggling efforts “shall in no way affect the obligation to provide humanitarian assistance, which must remain fully respected in accordance with applicable international and Union law.”⁷ While these recitals may guide as interpretation tools of the Directive’s ambiguous provisions, it leaves discretion to the MS for wider implementation and shifting prosecutorial priorities targeting humanitarian actors.

Thirdly, minimum harmonization heightens legal uncertainty, which means it sets a floor—not a ceiling—for criminalization. Member States therefore remain free to adopt stricter rules than those in the Directive. Minimum harmonization is not problematic as such, but specifically troublesome in the case of the proposal at hand. While the EPP position requires Member States, at a minimum, to criminalize intentional facilitation involving financial or material benefit, the Directive does not prevent them from going further, including criminalizing such assistance even when no financial or material benefit is involved.⁸ Since the criterion of financial and material benefit is one of the few safeguards against the criminalization of humanitarian actors, the Meijers Committee is concerned that the discretion without anchoring a humanitarian exclusion clause in operative text leaves the door open for criminal investigation and prosecution of humanitarian actors.

ii. Negative consequences

The previous section highlights that omitting a humanitarian exclusion clause from the operative section of the Facilitation Directive creates serious legal uncertainty. The Meijers Committee is worried about the negative consequences.

Firstly, unclear legislation could create an increased risk of arbitrary/disproportionate investigations and prosecutions. Humanitarian actors – such as NGOs, volunteers, even family members – may face criminal charges for life-saving actions. Many criminal cases in the recent years originated from vague provisions that enabled authorities to prosecute despite the humanitarian nature of the conduct.⁹

Secondly, legal uncertainty in the context of this proposal could result in inconsistent application across MS. Without a binding clause, MS retain discretion to criminalize or exempt humanitarian assistance. It leads to fragmentation of legal standards: aid that is lawful in one country may result in prosecution in another. This undermines the desired goal to create more harmonization and a common playing field.¹⁰

Thirdly, even if MS don’t start criminal investigations, the legal framework could have a chilling and deterrent effect on humanitarian action. It discourages civil society from providing assistance, as they

⁶ See e.g., CJEU 24 Nov 2005, C-136/04 (Deutsches Milch-Kontor), para. 32 and case-law cited).

⁷ Suggested amendment EPP to LIBE draft report (nr 118): The facilitation of unauthorized entry, transit and stay in the Union are criminal activities that put human life in danger and disrespect the dignity of people for the purpose of obtaining high profits, undermining fundamental rights. These criminal activities contribute to irregular migration, undermining the migration management objectives of the Union and generating security challenges. The commission of such criminal activities is driven by increasing demand and the high profits obtained by criminal organisations and the individuals who lead them. Preventing and countering those offences remains a priority for the Union. However, this shall in no way affect the obligation to provide humanitarian assistance, which must remain fully respected in accordance with applicable international and Union law. https://www.europarl.europa.eu/doceo/document/LIBE-AM-773119_EN.pdf.

⁸ Suggested amendment EPP to LIBE draft report (nr 165):

https://www.europarl.europa.eu/doceo/document/LIBE-AM-773119_EN.pdf.

⁹ See PICUM, <https://picum.org/wp-content/uploads/2025/04/Criminalisation-of-migration-and-solidarity-in-the-EU-2024-report.pdf>, April 2025.

¹⁰ COM(2023) 755 final, explanatory memorandum p 4, 8.

fear police surveillance, arrest, criminal proceedings and, in the worst cases, criminal conviction and punishment. This may undermine the right to freedom of expression and to receive and impart information (as protected in Article 11 of the EU Charter and Article 10 European Convention on Human Rights, hereafter ECHR) and the right to freedom of assembly and association (Article 12 of the EU Charter and Article 11 ECHR). It could furthermore be at odds with the search and rescue obligations under international law (e.g., UNCLOS, SAR Convention). The Meijers Committee strongly warns against the creation of conflict with higher legal norms.

iii. Recommendations to counter negative consequences

The Meijers Committee makes several recommendations to ensure that NGOs and civilians providing humanitarian aid are excluded with certainty:

- a. Include a binding exemption in the operative text
 - The humanitarian exclusion must appear in Article 3 of the Directive, not just in recitals. This creates a positive obligation for Member States to prevent investigations and prosecutions of humanitarian actors.
 - Suggested wording: "Humanitarian assistance shall not constitute a criminal offence."
- b. Define "humanitarian assistance" clearly and broadly
 - Add a definition under Article 2 ('Definitions') to avoid narrow or inconsistent interpretations.
 - Ensure the exemption focuses on intent (humanitarian purpose) rather than consequences.
 - The proposed definition: "Humanitarian assistance" means short-term or long-term actions taken to save lives, alleviate suffering or maintain human dignity during and after crises or disasters, including actions to reduce vulnerability and promote and protect human rights. Such actions must be undertaken without the intention of financial or material gain and not for the purpose of furthering organised criminal activity, and must be carried out in accordance with the humanitarian principles of humanity, impartiality, neutrality and independence".
- c. Reject provisions that risk over-criminalization
 - Delete or revise Article 3(2) on public instigation, which could criminalize information-sharing and advocacy by NGOs.
- d. Establish oversight and enforcement
 - Create an independent authority to monitor cases, hear complaints, and prevent misuse of criminal law against humanitarian actors.

As always, we remain available for any comments or questions you may have.

Best regards,



Dr. Sanne Buisman, Chairwoman