



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

Directorate C : Migration and Protection
The Director

Brussels,

To the Attention of Ms France Webber

Vice chair
Institute of Race Relations

Dear Ms Webber,

Thank you for sharing the latest report of the Institute of race relations *Humanitarianism: the unacceptable face of solidarity*.

There is no doubt that saving lives remains an imperative for the EU and its Member States.

Search and Rescue (SAR) capacity, coordination, and effectiveness has been enhanced significantly in response to the situation in the Central Mediterranean, with important contributions from coastal states, joint operations led by the European Border and Coast Guard Agency and EU joint naval operations, Non-Governmental Organisations and international shipping. The increased role of the NGOs has been generally acknowledged as an important element in assisting governments facing the current migratory pressure, and the Commission has repeatedly condemned criminalisation of anybody providing genuine assistance to those in distress at sea. Providing assistance to those in distress at sea is already an obligation of international law, binding upon the EU and all its Member States and fully implemented in the existing EU and national legal frameworks.

However, the need for coordination with competent national authorities responsible for SAR activities is essential to the effective implementation of the existing SAR rules and to ensure the safety of all concerned, migrants and crews alike. The initiative taken by the Italian authorities as regards a voluntary code of conduct for NGOs engaged in the search and rescue in the Mediterranean follows this logic, and was as such supported by the Commission. Furthermore, operational coordination fora which regularly take place, such as the SHADE-MED meetings¹, can also contribute to closer and more effective cooperation in this field.

It is to be underlined that the relevant facts and circumstances of any SAR event must be considered on a case-by-case basis and only Member State national authorities are competent to assess if NGOs conducts in a concrete case constitute a criminal offence based on the applicable national, international and EU law, and to establish jurisdictional grounds.

¹ https://eeas.europa.eu/headquarters/headquarters-homepage_en/41/Shade-Med

Concerning the Facilitators Package, its scope is not to criminalise humanitarian assistance. On the contrary, and besides the already mentioned rules on assistance at sea, the Package already foresees the possibility for Member States to explicitly include in national law exemption of criminalisation for facilitation of illegal entry to the EU, when carried out on humanitarian grounds. Judicial authorities are responsible for the appreciation of such circumstances. Member States who have chosen to adopt explicit exemptions already include those - like Italy, Greece, Spain and Malta - which are first-line receiving countries when it comes to smuggling by sea. Besides, EU law sets out a difference between the facilitation of unauthorised entry and the facilitation of irregular residence, whereby the latter is only criminalised when carried out for financial gain under EU law.

Finally, let me stress that rescue at sea represents a different conduct from knowingly choosing to transport migrants, who may not be in any immediate danger, through the territory or across the border of a Member State, to help them reach another destination. In this respect, the evaluation of the Facilitators Package² showed that perceptions of risks of criminalisation and criticisms, raised by certain individuals or/and civil society organisations seemed to concern different types of assistance provided not only within a Member State's territory, but also at borders or even on high seas, regardless of the fact that different legal frameworks apply to such conducts.

As a direct result of the evaluation, the Commission will engage with relevant players, primarily civil society organisations as well as national authorities and EU agencies such as Eurojust and the FRA, to get a better understanding of the application of the existing rules, supporting both the effective implementation of the existing legal framework and a reinforced exchange of knowledge and good practice between prosecutors, law enforcement and civil society. This should further contribute to ensuring that criminalisation of genuine humanitarian assistance is avoided.

Yours faithfully,

[E-signed]
Laurent MUSCHEL

² https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/irregular-migration-return/20170322_-_refit_evaluation_of_the_eu_legal_framework_against_facilitation_of_unauthorised_entry_transit_and_residence_en.pdf