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On migrant smuggling, Europe must make a U-turn

Cracking down on smugglers doesn't make migration safer, it makes it deadlier — and a new EU directive could make things even worse

Europe's approach to migrant 'smuggling' is harmful and absurd.

Instead of tackling the lack of regular pathways, thereby forcing people to embark on dangerous migration journeys, European countries are targeting migrants, human rights defenders, journalists, lawyers and ordinary citizens — all while injecting billions into the border surveillance industry.

People rely on smuggling because there are no better ways to get to Europe. But cracking down on alleged 'smugglers' – often migrants themselves – does not create better options. On the contrary, it pushes more people onto ever more dangerous routes, while threatening those who help them — and the EU's new Facilitation Directive is likely to make things worse.

Criminalising solidarity

Proposed by the European Commission at the end of 2023, this Directive is meant to update previous rules to counter migrant smuggling (the 2002 Facilitators Package). However, in reality, it follows the same old broken pattern. The current text, largely validated by the EU Council last December, expands the definition of what can be considered 'migrant smuggling' and ups prison sentences across the board. The European Parliament is set to start debating its own position on the Directive this April, with a final vote expected in the summer, before entering final negotiations with the Commission and the Council towards the end of the year.

What's more, the text fails to clearly protect solidarity with people in an irregular situation from criminalisation. There is no 'humanitarian

clause' included among the legally binding provisions; member states are simply invited not to criminalise acts of solidarity. This generates significant legal uncertainty, as recognised by a recent study requested by the European Commission itself. With far-right and other anti-immigration forces in power in several member states and leading the polls in others, it's easy to see how such a failure leaves the door wide open to the criminalisation and harassment of family members, NGOs, human rights defenders and ordinary citizens who are helping people in need.

This is not a fantasy scenario. At PICUM we have been documenting a steady increase in the criminalisation of solidarity with migrants in recent years. Between January 2021 and March 2022, at least 89 people were criminalised, in 2022 at least 102 and in 2023 at least 117.

Migrants themselves are also increasingly being prosecuted for simply helping fellow travellers through routes made irregular and dangerous by repressive policies.

These figures are most likely an undercount. Statistical and official data on those accused, charged or convicted of smuggling and related offences are often lacking. Many cases go unreported by the media or because people, especially migrants themselves, fear retaliation.

Behind these numbers are people who have saved lives at sea, given a lift or provided shelter, food, water or clothes. In Latvia, two citizens were charged with facilitating irregular entry simply for giving food and water to migrants stranded at the border with Belarus. In Poland, five people are facing up to five years in prison for providing humanitarian aid to people stranded at the border with Belarus.

Migrants themselves are also increasingly being prosecuted for simply helping fellow travellers through routes made irregular and dangerous by repressive policies. Just a few weeks ago, Italian judges in Crotone acquitted Maysoon Majidi, a Kurdish-Iranian activist and filmmaker, who was arrested in 2023 on human trafficking charges following a landing of migrants in Calabria. Majidi faced a sentence of two years and four months in prison. The prosecutor in Crotone had accused her of being 'the captain's assistant' because, based on the unverified testimonies of two people on board, she distributed water and food on the vessel. The 'witnesses' later retracted their statements, but Majidi still spent 300 days in pre-trial detention.

In Greece, an Egyptian fisherman and his 15-year-old child were charged with smuggling, simply because the father reluctantly agreed to pilot their

boat in order to afford the journey. The father was placed in pre-trial detention and sentenced to 280 *years* in prison. Not only has the child been separated from his father, but he is now facing the same charges in a juvenile court.

Who benefits?

Counter-smuggling policies clearly fail to make migration safer. As migration expert Hein De Haas has written: 'It is the border controls that have forced migrants to take more dangerous routes and that have made them more and more dependent on smugglers to cross borders. Smuggling is a reaction to border controls rather than a cause of migration in itself.' So, who actually benefits from these policies — besides politicians chasing short-term electoral gains?

Between 2021 and 2027, the EU's budget dedicated to the management of borders, visa and customs controls increased by 135 per cent compared to the previous programming period, from €2.8 billion to €6.5 billion.

Europe must understand that the only reasonable and humane way to tackle migrant smuggling is to open regular routes for people to reach Europe in safety and dignity.

Much of this budget increase is driven by private corporations, including major defence companies such as Airbus, Thales, Leonardo and Indra, which have a vested economic interest in border surveillance. According to research by the foundation porCausa, the Spanish government awarded over €660 million for the control of Spain's southern border between 2014 and 2019. Most of this money went to 10 large corporations, mainly for border surveillance (€551 million), detention and deportation (€97.8 million).

In the negotiation phase of the Facilitation Directive, the Council has already adopted a position that would leave the door open to the criminalisation of migrants and the provision of humanitarian aid. The European Parliament still has the opportunity to adopt an ambitious mandate. MEPs should understand what is at stake if a binding clause to protect migrants and solidarity from criminalisation is not introduced.

Beyond this Directive, Europe must understand that the only reasonable and humane way to tackle migrant smuggling is to open regular routes for people to reach Europe in safety and dignity.



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