

Combating illegal immigration: minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union

2023/0439(COD) - 28/11/2023 - Legislative proposal

PURPOSE: to lay down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: migrant smuggling to and within the EU is reaching new heights, fuelled by increasing demand due to emerging and deepening crises, most notably economic recessions, environmental emergencies caused by climate change, as well as conflicts and demographic pressure in many third countries. It is estimated that more than 90% of the irregular migrants who reach the EU make use of the services of smugglers, mostly organised in criminal groups.

Fighting and preventing migrant smuggling is one of the priorities of the European Union and crucial to addressing irregular migration in a comprehensive way. Criminal networks take advantage of people's despair and use land, sea, and air routes to facilitate irregular migration, putting people's lives at risk and seeking in every way to maximise their profits.

This proposal for a Directive updates and modernises the existing EU criminal law rules of the "Facilitators Package", composed of Directive 2002/90/EC establishing a common definition of the offence of facilitation of unauthorised entry, transit, and residence, and Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit, and residence.

This proposal is accompanied by a Commission [proposal](#) for a Regulation, which enhances police cooperation as well as the powers of Europol in the area of migrant smuggling and trafficking in human beings notably by codifying the establishment of the European Centre Against Migrant Smuggling within the Europol and reinforcing its related powers.

CONTENT: with this draft Directive, the Commission seeks to **upgrade its legislative framework**, by laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the EU with the following five objectives:

- ***Effectively prosecute organised criminal networks***: the proposal sets out a clearer definition of the smuggling offence to focus on activities motivated by financial or material benefit or highly likely to cause serious harm to a person. Public instigation to come to the EU without authorisation will also become a criminal offence. This covers migrant smuggling advertised through digital tools and social media.

- ***Harmonised penalties reflecting the seriousness of the offence***: the proposed level of penalties reflects the seriousness of the offences: the main criminal offence of facilitation should be punishable by a maximum term of imprisonment of at least three years; aggravated offences should be punishable by a

maximum term of imprisonment of at least ten years; the most serious aggravated offences, notably those that cause death of third-country nationals, should be punishable by a maximum term of imprisonment of at least fifteen years. The proposed article also establishes the additional sanctions or measures that could be imposed to convicted natural persons.

- ***Improving jurisdictional reach:*** Member States' jurisdiction will also apply for instance, when boats sink in international waters and people die. The jurisdiction of Member States is also extended to other cases, including offences committed on board ships or aircrafts registered in the Member States and offences committed by legal persons doing business in the EU. The aim is to specifically target the criminal networks. Activities such as humanitarian assistance from NGOs, carrying out a legal obligation of search and rescue, assistance by family members, and migrants themselves must not be criminalised.

- ***Reinforcing Member States' resourcing and capacities:*** it is suggested that Member States should be adequately resource their national authorities to ensure effective prevention, investigation and prosecution of smugglers. Member States should also work on the prevention of migrant smuggling, through information and awareness-raising campaigns, research, and education programmes.

- ***Improving data collection and reporting:*** lastly, the proposal stated that Member States will be required to collect and report statistical data on an annual basis to improve the scale, detection of cases and the response to migrant smuggling.