



# HELP IS NO CRIME: ARE EU POLICIES MOVING IN THE RIGHT DIRECTION?

Criminalisation of solidarity under the EU  
Pact on Migration and Asylum

## Criminalisation of solidarity under the EU Pact on Migration and Asylum

The criminalisation of solidarity with migrants in Europe is soaring. Between 2015 and 2019, [research](#) shows that at least 171 individuals have been criminalised in 13 EU Member States. The number of individuals criminalised for humanitarian activities [has grown tenfold](#), from 10 people in 2015 to 104 in 2018. The [European Parliament](#) and [civil society organisations](#) have long been calling for clear Commission guidelines to ensure that migrants' rights defenders are not criminalised.

**The EU Pact on Migration and Asylum, which sets out the EU's agenda on migration for the years to come and should have addressed those calls, fails to effectively counter the criminalisation of solidarity with migrants. In fact, several of its provisions are likely to further increase the risk of criminalisation for individuals, volunteers and NGOs defending migrants' rights.**

The [EU Pact](#) on Migration and Asylum is a policy document setting out the EU's agenda on migration for the years to come and a package of legislative proposals and recommendations. The Pact has been broadly [criticised](#) for its impact on fundamental rights, for increasing detention, including for children and outside of the legal framework, and curtailing safeguards.

First of all, the [Commission Guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence](#) only invites member states not to criminalise acts that are "mandated by law". This could mean that other activities which are "permitted by law", like providing food, shelter, car lifts or information, can still be criminalised, in particular when they're not carried out by an NGO which is "mandated" to carry out such activities. The almost exclusive focus on search and rescue also risks leaving out activities on the territory and activities that are not directly life-saving, but still extremely important, such as legal aid.

Secondly, the [Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue](#) activities further imposes a number of obligations on search and rescue NGOs, in particular as regards reporting obligations on the administrative structure of the NGO and to verify "compliance with migration management rules".

Thirdly, while the [Screening Regulation](#) indicates that EU member states "may" authorise relevant NGOs to provide information (art. 8) and monitor fundamental rights at borders (art. 7), there is no clear obligation to grant NGOs access to border facilities. This means that in practice, states might prohibit (some or all) NGOs from accessing border areas and criminalise those who try to do so in order to provide services, support, medicines and legal aid to people in need.

Last but not least, the Screening Regulation also foresees that authorities fill in a de-briefing form (art. 13), which will also gather "information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling", without detailing how this information can be used. Such information would be collected in a so-called de-briefing form, at the end of a screening, which anyone would be subject to after entering the EU irregularly, after disembarking from a search and rescue operation or after being apprehended in the country. The de-briefing form would also include sensitive information (for instance on their migration journey) [which may limit their chances to stay in Europe](#). In fact, there are no safeguards to ensure that it won't be used to initiate criminal proceedings against human rights defenders, NGOs and migrants themselves.

This is extremely problematic for several reasons:

- The de-briefing form includes information collected without a lawyer and with no adequate information on its purpose (art. 8).
- Individuals have no right to see the de-briefing form, do not have to sign it, and cannot appeal it.
- As this information is collected together with information on one's asylum application, and when people are in situations of deprivation of liberty. As a consequence, people might feel psychologically constrained, which could easily lead to situations of abuse of power.
- If information collected during an administrative procedure is used for criminal purposes, several safeguards might not be respected, including Directive 2016/680 (Law Enforcement Directive), to Directive 2012/29 (Victims Directive) or Directive 2013/48 (Right of access to a lawyer in criminal proceedings) and other fair trial guarantees.

## What can be done?

The Commission Guidance on facilitation of unauthorised entry, transit and residence and the Commission Recommendation on search and rescue are non-binding documents which have already been adopted by the Commission, and therefore there are very limited opportunities to amend them in the close future.

On the contrary, the Screening Regulation is a legislative proposal which has not been adopted yet: the Council and the European Parliament are both working on amendments which will then have to be adopted by both institutions, after a negotiation phase. Therefore, **it is still possible to change it.**

**Members of the European Parliament** can propose amendments to the Screening Regulation:

- Clarifying that national, international and non-governmental organisations and bodies **shall be allowed** to participate in the fundamental rights monitoring at borders (recital 23 and article 7) and in the provision of information (article 8).
- **Amending article 13 and annex 1** to delete "information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling" from the debriefing form.

**Civil society organisations and individuals** can:

- **Reach out to Members of the European Parliament** from their constituency and ask them to propose the amendments above (you can find their email address [here](#))
- Contribute to **raise awareness** on this topic with journalists and on social media

*For any questions, please contact: Marta Gionco, [marta.gionco@picum.org](mailto:marta.gionco@picum.org)*