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## **Refugee crisis: Council proposals on migrant smuggling would criminalise humanitarian assistance by civil society, local people and volunteers**

**- Greece: NGOs and volunteers have to "register" with the police and be vetted** 28.1.16

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The Council of the European Union is preparing plans to equate the concept of migrant "smuggling" with migrant "trafficking" and potentially criminalise or marginalise NGOs, local people and volunteers who for months have been welcoming and helping refugees and migrants arriving in the EU.

See: The [Draft Council conclusions on migrant smuggling](#) (LIMITE doc no 5481-rev-2-15, pdf): "draft Council conclusions, which were discussed during the meeting of the Justice and Home Affairs Counsellors on 27 January 2016."

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Steve Peers, Professor of Law,  
University of Essex, comments:

*"This document fails to acknowledge the crucial role played by Greek islanders and volunteers in rescuing and caring for migrants who cross the Mediterranean in unsafe vessels. The EU should amend its anti-smuggling laws as soon as possible to confirm that no-one giving such vital humanitarian assistance should ever be penalised for it".*

Tony Bunyan, Statewatch Director,  
comments:

*"The Council proposals would criminalise NGOs, local people and volunteers who have worked heroically to welcome refugees when the EU institutions did nothing, while other plans would require them to "register"*

*with the police and work within state structures. In a humane and caring EU it should not be necessary to "register" to offer help and care to people who have suffered so much already.*

*Civil society, volunteers and all those throughout the EU who are seeking to help refugees as they arrive having fled from war, persecution and poverty should unite to oppose the Council's plans. Criminalising NGOs and volunteers working to help refugees has no place in a democracy worthy of the name."*

### **The current position**

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At present there is a widely accepted distinct between "smuggling" and "trafficking". The glossary provided by the [IOM](#) says:

*"Smuggling - "The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Art. 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000).*  
**Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights."**

Whereas:

*"Trafficking in persons - "The recruitment, transportation, transfer, harbouring or receipt of persons, by **means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability** or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the*

*purpose of exploitation" (Art. 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000). Trafficking in persons can take place within the borders of one State or may have a transnational character."*

What we are seeing in the EU is predominantly not trafficking but people smuggling on a major scale. As an article in the [Guardian explained](#):

***"Smugglers are paid by people to bring them across borders. After the border has been crossed, the transaction between smuggler and migrant ends. Trafficking is a very different crime. Trafficking means bringing people into an ongoing situation of exploitation and then profiting from their abuse in the form of forced labour or forced prostitution.***

*"Migrants usually consent to being smuggled. A trafficked person usually does not consent or their consent is meaningless because they have been coerced.*

*"Smuggling always happens across international borders. Trafficking does not. People can be trafficked from Coventry to Manchester."*

This distinction squares with the [UN Protocol against the on smuggling of migrants](#) which says that smuggling, contrary to trafficking, does not include exploitation, coercion, or violation of human rights.

The current EU law is set out in [Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence](#) (pdf). In Article 1 it states that:

*"General infringement*

*1. Each Member State shall adopt appropriate sanctions on: (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;*

*(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.*

**2. Any Member State may decide not to impose sanctions** with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases **where the aim of the behaviour is to provide humanitarian assistance to the person concerned.**" [emphasis added]

Thus the decision whether or not to use criminal sanctions against people giving humanitarian help is up to each Member State. The Fundamental Rights Agency carried out a [survey in 2014](#) showing the position taken by EU Member States. In ten countries assistance is not an offence and in ten others facilitating "staying" is not an offence. In Italy:

*"relief efforts and humanitarian assistance offered in Italy to foreigners in need, irrespective of their stay status in the territory of the State, do not constitute crimes."*

In Greece taxis and commercial buses cannot transport refugees but Greece altered the law in July 2015 to allow private individuals to drive asylum seekers. ([MPI: Refugee Flows to Lesbos: Evolution of a Humanitarian Response](#))

## Council draft Conclusions on "migrant smuggling"

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First, the Council recognises that currently:

*"smuggling of migrants and trafficking in human beings are two distinct forms of crime, tackled by distinct legal frameworks at EU and international level.."*

However, despite the widely accepted legal distinction it justifies viewing "smuggling" and "trafficking" as the same because:

*"but both forms of crime can be often interlinked, and acknowledging that migrant smuggling has become an increasingly violent form of crime, **often involving serious physical or psychological violence and human rights abuse**"*

While "serious physical or psychological violence and human rights abuse" may occur there is little evidence that it "often" happens.

Second, the Conclusions **do not mention of exempting "humanitarian assistance"** as set out in the 2002 Directive and NGOs are marginally referred to "where appropriate".

Third, the Conclusions lay great emphasis on the role of social media - which is extensively used by refugees, migrants, NGOs, local people and volunteers:

*"Ensure that a mapping exercise is executed on **the ways in which social media are used for the purpose of migrant smuggling** in coordination with the relevant agencies."*

And ominously:

*"Ensure, in synergy with the work of the **Internet Referral Unit of Europol**, that migrant smuggling is included in existing platforms and **partnerships***

***with social media companies or that dedicated ones are created to address this issue and to ensure that public data on migrant activities on social media is used for predictive analysis on migrant flows and consequent smuggling activities and that the possibilities of using counter narratives on social media are explored."***

The reference to by Europol's IRU "partnerships with social media companies" could mean they will request posts or pages to be taken down.

See also: European Parliament Study: [Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants](#) (pdf) which found: ***"significant inconsistencies, divergences and grey areas, such that humanitarian actors are often deterred from providing assistance. The study calls for a review of the legislative framework, greater legal certainty and improved data collection on the effects of the legislation."*** [emphasis added]

### **The Commission's plans**

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In May 2015 the Commission presented: [EU Action Plan against migrant smuggling \(2015 - 2020\)](#) (pdf) which says:

***"The Commission will make, in 2016, proposals to improve the existing EU legal framework to tackle migrant smuggling which defines the offence of facilitation of unauthorized entry and residence, and strengthen the penal framework. It will seek to ensure that appropriate criminal sanctions are in place while avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress"*** [emphasis added]

On 13 January 2016 the Commission

presented: [Refugee crisis: Commission reviews 2015 actions and sets 2016 priorities](#) (link) which said:

*"By the end of 2016 the Commission will present a further package on migrant smuggling"*

The Council's initiative by presenting its Conclusions on "migrant smuggling" is laying down the policy parameters for the Commission to follow. At the same time this set of Conclusions, which are known as "soft law" (ie: not binding) give enabling powers to Member States to act on its recommendations. In this instance on how to interpret and use the 2004 Directive to criminalise humanitarian assistance by civil society, local people and volunteers.

#### **Greece: NGOs and volunteers have to "register" with the police**

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The Council proposals would criminalise NGOs, local people and volunteers while other EU plans would incorporate those who "register" into state structures.

The following is recorded in the Minutes of the UNHCR Coordinating meeting held in Mytilene, Lesbos on 21 January 2016

*"Information was shared about the new coordination board being formed by the Greek government, to set out a **new process for registration of NGOs and volunteers (including local NGOs and independent volunteers) on Lesbos (which will also be applicable to all islands in the Aegean).***

*Process will be as simple as possible for NGOs and volunteers, though more*

*details will be required of those with specialized skills, such as medical personnel and lifeguards.*

*Launching of the process does not mean that current activities will be stalled; registration will be done simultaneously.*

*Confirmation of registration will be provided.*

*Details of each member of an NGO will need to be provided; there will be a procedure for short-term visitors as well. It will be possible to register members in advance."*  
[emphasis added]

Our contacts on the ground in Lesvos reported today that the police as yet do not have the "registration form" readily available yet.

The "registering" of all NGOs and volunteers is part of an EU led strategy to get them into the state coordination structure to stop volunteers, local people and NGOs from helping refugees when they land and to place them within EU-run structures - more commonly known as "hotspots".

This was spelt out in the European Commission [Progress Report on the Implementation of the hotspots in Greece](#) (pdf) in December and requires:

***"a structured system for disembarkation at official disembarkation points as well as Appointed coordinators for the islands should be empowered by way of dedicated transportation to the hotspot areas should be established."*** [emphasis added]

***"And Terms of Reference to***



***coordinate all relevant governmental and non-governmental players involved in the hotspot locations."***  
[emphasis added]

More detail of how the Greek state, at the behest of the EU, intends to register, evaluate, and control the work of NGOs and volunteers has emerged. This [document in the Government Gazette - the Greek Republic, dated 28 January 2016](#) (pdf) says that a Committee will be set up with the purpose to register, classify and co-ordinate the NGOs operating on Lesvos. Para: 7.2 says that the work of that Committee will be:

***"the registration, identification and certification of all NGOs and independent volunteers, that are active on Lesvos, with the purpose of contributing to solving the problem that have arisen by the migrant and refugee flows;***

***- the evaluation of NGOs in accordance with their statute and other documents that may be requested by the Committee;***

***- the contribution to organising their action on Lesvos in accordance with the needs that arise each time by the migrant and refugee flows. Their prior approval will be a necessary requirement for their inclusion in the Registry and the development of their work.;***

***- their classification on the basis of their action (space-wise and function-wise) and the services they provide, after their evaluation the continuous coordination and control of the action of the NGOs and independent volunteers the information with all appropriate means about the duty of NGOs to register and have their action approved"*** [emphasis added]

The seemingly cooperative and voluntary process presented to the

UNHCR meeting of NGOs in Mytilene is in stark contrast to registering, identification, "certification", evaluation and the **"continuous coordination and control of the action of the NGOs and independent volunteers"** set out above in the official Government Gazette.

On the ground in Lesvos NGOs and volunteer groups - who have been working to help refugees from this time last year - are facing increasing hostility from reactionary local forces on the island and in some instances from large IGOs seeking to take over their role of helping refugees on the landing beaches and giving immediate help and aid. Yesterday the following message was posted on Facebook from a local group::

*"The medical station at Eftalou has been attacked for the third time ([post Philippa Kempson 30 January 2016](#)). Will the people who did this be punished? Or just those offering humanitarian help on the beaches?"* and a second post: *"Last night the medical tent in Eftalou was attacked for the third time this week but this time **they finished the job and burnt it to the ground!!!!!!**"*

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