



**FACILITATION DIRECTIVE:
Feedback provided to the
European Commission by the
Border Violence Monitoring
Network**



Border Violence Monitoring Network



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In 2023, the European Commission introduced a new legislative proposal that establishes minimum standards for European Union Member States (EU MSs) regarding the crime of facilitation. Below, a concise analysis of the Commission's proposal is presented, followed by comparisons against the UN Protocol Against Smuggling and pertinent EU instruments. The Commission contends that the rationale behind the legislation is to enhance legal clarity concerning facilitation-related offences, delineate jurisdictional boundaries among MSs, safeguard humanitarian assistance from criminalization, and prevent individuals in transit from becoming inadvertent targets of this legislation. We demonstrate that the proposal achieves the opposite and provides EU MSs with the legal tools to further criminalise people on the move, civil society organisations (CSOs), journalists, and other actors supporting respect for the fundamental rights of migrants. The proposed Directive diverges significantly from the UN Protocol Against the Smuggling of Migrants, from the absence of explicit protection measures for people on the move and omitting a binding humanitarian exemption to not narrowing the criteria establishing the criminal offence. These discrepancies reflect on the Directive's inability to adequately protect migrants and those assisting them, highlighting a departure from the principles outlined in the UN Protocol. In essence, the proposed new Facilitation Directive perpetuates a concerning trend of escalating criminalization of migration and human rights defenders. Humanitarian aid efforts are likely to face continued obstacles, including Strategic Lawsuits Against Public Participation (SLAPP), protracted legal proceedings, and harassment by government entities. The most profound impacts will disproportionately affect racialized communities and people on the move, who may endure unjust trials and extended imprisonment merely for seeking safety or offering assistance to others. Legalising the use of intrusive investigation methods and surveillance tools against this broad group of individuals risks disproportionate measures and reinforces the narrative that migrants and their supporters pose a threat to national security. This framing has led to the application of criminal law against migrants, further exacerbating concerns regarding privacy rights and accountability. Additionally, the expansion of surveillance tools heightens accountability issues, particularly with the potential privatisation of surveillance technologies and limited mechanisms to enforce the responsibilities of private companies. These trends underscore the urgent need for greater scrutiny and regulation to safeguard human rights and privacy in the context of migration. Border Violence Monitoring Network advocates that the proposed Facilitation Directive is repealed in its entirety.



Analysis of the Proposed Facilitation Directive

The Facilitation Directive¹ imposes criminal liability for the crime of facilitation to individuals and legal persons. Compared to its preceding Facilitation Directive from 2002² which encouraged states to provide “sanctions” in cases of facilitation leaving it to the discretion of the state the option between administrative and criminal sanctions, the new Directive defines facilitation as a criminal offence. Humanitarian assistance, assistance among family members or the support of basic human needs are presented as elements that would not trigger liability, yet it is contained only in Recital 7 and a supporting article was not included in the Directive. The criminal liability of third country nationals subjected to facilitation should also not be criminalised, according to the same Recital. A corresponding article has not been included.

In Article 3.1 the crime of facilitation is defined as “intentionally assisting a third-country national to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence”. Article 3.1 (a) specified that facilitation is a criminal offence where the “person who carries out the conduct requests, receives or accepts, directly or indirectly, a financial or material benefit, or a promise thereof”. Paragraph (b) removes the element of financial gain and states that facilitation constitutes a criminal offence where “there is high likelihood of causing serious harm to a person”.

The aggravated forms for the offences include commission in the framework of a criminal organisation, or if it caused serious harm or endangered the life of the person, or when it was committed by use of violence, towards vulnerable persons, or caused death (Article 4). Incitement, aiding and abetting, and attempt are also punishable as criminal offences. A clear definition is not provided for either of these terms. Specifically, the term incitement deviates from international legal instruments and creates legal uncertainty.

¹ DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, COM/2023/755 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0755>

² Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0090>

The Directive also provides criminal sanctions for legal persons setting loose requirements of proof of a link between the actions of the individual or individuals to the conduct of the legal person. Article 7 states that “a legal person can be held liable where the lack of supervision or control by a person [...] has made possible the commission of the criminal offences”.

While the Directive claims to “improve jurisdictional reach”, Article 12 grants jurisdiction to a state for offences committed on the territory of another state if it “results in the entry, transit or stay in the territory of that Member State” blurring further legal certainty for individuals accused of facilitation, and contradicting the Anti-SLAPP Directive, as explained in the section below. Article 12 also leaves the conduct of criminal proceedings to the discretion of Member States, disregarding the right to legal certainty of the accused.

The Facilitation Directive has been issued without an impact assessment, raising concerns among stakeholders. BVMN expresses apprehensions regarding the Commission's decision-making process in this regard. An impact assessment should be conducted with the utmost urgency and prior to further deliberations among EU institutions.

BVMN argues that EU legislation deliberately uses the term “facilitation”, in contrast to the UN Protocol which employs “smuggling”, to intentionally expand the reach of the legislation while accepting inadvertent impacts of criminalisation of people on the move and others supporting their rights. The discrepancy between the terms underscores nuanced differences in legal frameworks and conceptualizations. While “smuggling” is defined as “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”, “facilitation” encompasses a broader spectrum of actions that aid or assist in the commission of a crime, including but not limited to smuggling.

Considering the increasingly restrictive visa policies adopted by EU MSs combined with the refusal to grant refugee status outside the territory of the state and restrictions on family reunification, safe legal routes for people on the move have become nonexistent. In addition, there is a lack of acknowledgement that most refugees are prevented from leaving their countries of nationality or residence through legal means due to persecution or indiscriminate violence, which is not reflected in EU policies and legislation.. In

accordance with the 1951 Geneva Convention, states “shall not impose penalties, on account of their [refugees] illegal entry or presence” (Article 31). The new Facilitation Directive does not reflect the Geneva Convention on non-penalized entry or stay on the territory to refugees, nor does it provide for attenuating circumstances to facilitators.

Equally perplexing is that the Directive fails to clarify that facilitation should be a criminal offence when the financial gain obtained is unlawful or illicit, in order to avoid criminalising persons and companies providing services. This ambiguity encourages private persons to engage in racial profiling and encourages them to request valid documentation to avoid criminalisation. This would be contrary to national laws as one is obligated to present identification only to an official authority. Alternatively, it encourages people providing services to refuse to provide services that might be life saving or support of basic human needs.

Moreso, the requirement of financial gain is completely removed in the case of “high likelihood of causing serious harm”. Neither “high likelihood” nor “serious harm” are defined, leaving a wide discretion to national prosecutors when initiating criminal proceedings. This provision fails to address criticism to the 2002 Facilitation Directive currently repealed that unlawful financial gain should be the staple of the prohibition of smuggling.

Importantly, the addition of the term “incitement” of “persons who publicly instigate, for instance through the internet, third-country nationals to enter, transit, or stay in the Union without authorisation” raises serious concerns with regards to the Directive’s alignment with the EU Charter of Fundamental Rights and Article 11 therein which guarantees the right to information and freedom of expression.

The contested “instrumentalisation” term has made its way into the proposed Facilitation Directive as a grave circumstance that would entail aggravating circumstances of the crime in Recital 14.



Alignment with the UN Protocol Against the Smuggling of Migrants

The proposed Directive, mentions its consistency with international instruments, notably the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime to which the European Union is party.³ However, a parallel examination of the two documents reveals several inconsistencies between the provisions of the Directive and the ones enshrined in the UN Protocol, particularly concerning the protection of the rights of people on the move and those who stand in solidarity with them.

Article 2 of the UN Protocol, identifies protection of the rights of people on the move as one of its three core purposes⁴. States Parties are explicitly required to take all appropriate measures, consistent with their obligations under international law, to preserve and protect the rights of smuggled migrants including the right to life; the right not to be subject to torture or other cruel, inhuman, or degrading treatment or punishment; and the right to consular access. Conversely, the proposed Directive fails to incorporate a parallel provision explicitly safeguarding the rights of people on the move. Article 1 sets out the scope of the proposed Directive, notably establishing minimum rules concerning the definition of criminal offences and sanctions on the facilitation of unauthorised entry, transit and stay of third-country nationals in the Union, as well as measures to better prevent and counter it.

The Directive lays out its nature as a criminal law instrument from the very first Articles and omits any protection provision for people on the move as its purpose. While the Directive makes references to protection provisions in its explanatory sections, by stating its purpose not to criminalise smuggled people on the move, humanitarian and assistance provided to family members, the absence of a dedicated article raises concerns about its adherence to international standards.⁵The UN Protocol against the Smuggling of Migrants by Land, Sea and Air in Articles 5 and 6 explicitly emphasises the non-criminalisation of

³ Proposed Directive. Explanatory Memorandum p. Consistency with existing policy provisions in the policy area. p. 5

⁴ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. November 2000. Article 2 Available at: <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/protocol.html>

⁵ Proposed Directive. Detailed explanation of the specific provisions of the proposal. p. 12

people on the move relying on smuggling to escape danger and risk. In contrast, the proposed Directive provides for such exemptions in the non-binding explanatory parts and recitals, indicating the distance from the purpose and the approach of the UN Protocol.

Article 5 of the UN Protocol states that people on the move should not be criminalised solely for being smuggled. In the preparatory documents of the Protocol the drafters agreed that “[smuggled] migrants [are] victims and should therefore not be criminalised”.⁶ However, the Directive does not contain a respective non-criminalisation provision. Recital 7, which is of non-binding force, mentions that criminalisation of people on the move and assistance provided to them is not the purpose of the Directive. The approach of the Protocol operates much more protectively towards people on the move rather than the EU Commission’s Directive, which in absence of a protection provision in its binding body, exposes people on the move in the grave danger of being criminalised solely by trying to reach a safe territory. The latter represents the current tendency already seen in some Member States, where individuals on the move are detained for performing or assumed to perform tasks such as boat or car driving and are charged with “facilitating unauthorised entry”, subjected to lengthy criminal proceedings and pre-trial detention, usually sentenced to long prison terms. Boat drivers and people on the move trying to reach safety, have been increasingly perceived as parts of criminal networks and have been the target of repressive governmental policies.

Article 6 of the UN Protocol, by incorporating the inclusion of the “*intention to obtain a financial or other material benefit*” as an element of the offence, explicitly intended to narrow its scope by excluding the activities of those who facilitate migration for humanitarian or family reunification reasons. In the official records of their proceedings, drafters affirmed that: “*the Protocol should not require States to criminalise or take other action against groups that smuggle migrants for charitable or altruistic reasons*”⁷. It was not the intention of the Protocol to criminalise the activities of family members or support groups such as non-governmental organisations.

The 2002 Directive provided for an optional humanitarian clause; a provision which was heavily criticised for allowing criminalisation for people on the move and those supporting

⁶ United Nations Office on Drugs and Crime, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. 2006, p. 483. Available at: https://www.unodc.org/documents/treaties/UNTOC/Publications/Travaux%20Preparatoire/04-60074_ebook-e.pdf

⁷ *Ibid.*

them. By omitting a profit motive as one of the constitutive elements of the criminal offence, the 2002 Directive failed to align with international standards set by the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air. Therefore the Proposed Directive tries to address these issues by including a financial or material benefit as a requirement for the criminal offence of facilitation to be established. However, the Directive considers facilitation of illegal entry and smuggling as criminal offences – simple and aggravated. This not only entails harsh sentencing also in the case of facilitation, but further prompts the perception of similarity between these two phenomena in public opinion. The explanatory parts of the Directive mention that 'The UN Protocol includes financial or other material benefit as a constituent element of the crime and provides that third-country nationals are not to become liable to criminal prosecution under the Protocol for having been subject to the offence'.

However, In the Directive, the financial or material benefit criterion is not a requirement for facilitation to be considered a criminal offence in the cases where there is a high likelihood of serious harm. Despite stating in the Recitals of the proposed Directive, that the legislation will bring EU law in line with international standards, and while the requirement of a financial or material benefit is included in article 3.1, it is totally omitted by the very same article in the cases where there is a high likelihood of causing serious harm to a person. Hence, people on the move can still be persecuted, in absence of a financial or material benefit, considering for example the extremely dangerous migration route of the Mediterranean, where conduct falling under the scope of article 3.1(b) renders quite possible. Articles 3 and 6.3 of the UN Protocol state that the risk of serious harm constitutes an aggravating circumstance included only when the criterion of financial/ material benefit is already met, not as a standalone criterion as proposed in article 3.1 (b) of the EU legislation. The way in which the financial and material benefit criterion aims to upgrade the protection network ensured by the previous legislation, is insufficient and diverts from international standards. It adds to the current tendency of hostility and criminalisation which characterise many Member States' stance towards people on the move and solidarity and allows the possible misapplication of the legislation against people on the move who engage in smuggling activities, to offset smuggling fees, or perform operational tasks connected with smuggling activities in order to reach safety as well as human rights defenders providing aid to people on the move.

Article 16 of the UN Protocol mandates States Parties to take legislative measures to protect and assist smuggled people on the move, emphasising their rights under international law. According to the UNODC, risks of death, exploitation, torture or other form of victimisation are present along nearly all routes and States governments have a responsibility to take measures to address these risks in territories under their jurisdiction. For all these reasons, the Protocol introduces Article 16, according to which, smuggled people on the move should not be liable for criminal prosecution, and if in detention, the detaining authorities should comply with their obligations under international law⁸. However, the proposed Directive lacks a corresponding provision. This omission is concerning, given the risks of exploitation and victimisation faced by individuals on the move, who may be wrongfully accused while taking actions to protect their own lives and the lives of others involved.

The Protocol in Article 19 enhances its scope of protection by including a saving clause clarifying that none of its provisions can impact on existing rights and obligations including those related to human rights, international humanitarian law and refugee law. According to this final provision, any State Party that acts does not conform with the letter or spirit of international law, including principles of international refugee law, when implementing its obligations under the Migrant Smuggling Protocol is in violation of one of its central provisions. The proposed Facilitation Directive does not include a similar provision, thus confirming the absence of measures aiming at the protection of people on the move or those supporting them.

In conclusion, the proposed Directive's alignment with the UN Protocol Against the Smuggling of Migrants is marred by significant discrepancies. From the absence of explicit protection measures for people on the move and omitting a binding humanitarian exemption to not narrowing the criteria establishing the criminal offence, the Directive deviates from the spirit of the UN Protocol.

⁸ UNODC. (2018). *Global Study on Smuggling of Migrants*. (United Nations publication, Sales No. E.18.IV.9). p. 42. Available at: https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf



Comprehensive analysis in light of the Anti-SLAPP Directive

In light of recent legislative developments within the European Union, it is imperative to critically assess the proposed Facilitation Directive alongside the newly approved Anti-SLAPP Directive, particularly regarding their respective impacts on fundamental rights, public participation and jurisdiction.

The recently approved Anti-SLAPP Directive stands as a significant milestone in safeguarding public watchdogs against abusive litigation, commonly known as Strategic Lawsuits Against Public Participation (SLAPPs). With a resounding majority vote in the European Parliament of 546 in favour, the EU, with the Anti-SLAPP Directive, has demonstrated a clear commitment to protecting individuals and organisations engaged in matters of public interest, including fundamental rights, allegations of corruption, protection of democracy, and the fight against disinformation. This directive sets minimum standards for protecting public watchdogs against SLAPPs, providing victims with robust safeguards such as early dismissal of unfounded cases and the possibility to seek compensation for damages and legal expenses. Importantly, it recognises the inherent power imbalances between claimants and defendants, thereby ensuring a fair and equitable legal process.

Conversely, the proposed Facilitation Directive introduces worrying provisions that undermine fundamental rights and freedoms, particularly concerning migration and the protection of fundamental rights. Of particular worry, Article 3 of the Directive criminalises the public instigation to enter Member States' territory irregularly. This broad definition of facilitation extends to the dissemination of 'instigating' information on online platforms and social media, and leads to criminalising acts of solidarity with people on the move by human rights defenders.

Further, the broadness of the notion of 'public instigation' allows states a wide margin of discretion in interpretation and gives rise to concerns about the criminalisation of any actor engaged in sharing informative or other content online, including civil society organisations, lawyers, journalists, or individuals. Journalists and media outlets, who play a crucial role in exposing human rights abuses and fostering public awareness, may find themselves at the receiving end of legal threats. The lack of clear safeguards against the misuse of this provision raises legitimate concerns about its potential for abuse and the

chilling effect it may have on the freedom of expression and information as enshrined in the EU Charter (Article 11).

Drawing on the experiences of BVMN, it is crucial to highlight the emergent pattern of informal and formal criminalisation, particularly through SLAPPs, against human rights defenders working with people on the move. BVMN's observations underscore the increasing hostility faced by individual migrant rights defenders and organisations providing humanitarian aid, leading to a pattern of reprisals through judicial accusations, court trials, and administrative and criminal charges.

The approval of the Anti-SLAPP Directive, therefore, was a positive development, protecting against unfounded and abusive lawsuits for individuals and organisations engaged in public interest matters. However, given the historical misuse of legal mechanisms to stifle dissent and hinder investigative journalism, there is a legitimate concern that the Facilitation Directive could be weaponized. Authorities and others seeking to impede the work of journalists or human rights defenders may exploit the broad language of "public instigation" to bring about criminal charges, using legal processes as a means of intimidation. It would lead to an erosion of the freedom of expression with a detrimental impact on the vibrant public discourse necessary for a healthy democracy - meant to be protected by the Anti-SLAPP Directive. Journalists and human rights defenders, essential pillars of a well-informed society, may increasingly self-censor or limit their activities, fearing legal repercussions under the proposed Facilitation Directive.

In this sense, the proposed new Facilitation Directive is set to augment an ongoing trend whereby migration and the defence of human rights are increasingly criminalised. Humanitarian aid workers will continue to be hindered in their operations with Strategic Lawsuits Against Public Participation (SLAPP),⁹ lengthy criminal proceedings, and harassment by state actors. Racialised communities and of people on the move will suffer the most severe consequences, being subject to unjust trials and lengthy prison sentences simply for their attempts to seek safety or to assist others.¹⁰

⁹As shown in the: Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor - Visit to Greece (A/HRC/52/29/Add.1) (Advance Edited Version) - Greece. 10/03/2023. Available at: <https://reliefweb.int/report/greece/report-special-rapporteur-situation-human-rights-defenders-mary-lawlor-visit-greece-ahrc5229add1-advance-edited-version>

¹⁰Winkler, J. & May, L (2023) A Legal Vacuum: The Systematic Criminalisation of Migrants for Driving a Boat or Car to Greece (A Study by Borderline Europe). Available at: https://www.borderline-europe.de/sites/default/files/readingtips/criminalisation_of_migrants-study_by_borderline_europe_en.pdf.

Moreover, the jurisdictional frameworks of the two directives present a stark contrast. The Anti-SLAPP Directive acknowledges the cross-border nature of Strategic Lawsuits Against Public Participation and endeavours to provide a unified, EU-wide approach to counteract this phenomenon. Given the disparate national laws and potential for forum shopping, the Anti-SLAPP Directive introduces a new ground of jurisdiction. This ground allows individuals and organisations targeted by abusive court proceedings to appeal to Member States courts for early dismissal, especially when cases involve more than one EU country. Additionally, it establishes a specialised jurisdiction to address abusive court proceedings initiated in a third country, recognising the need for an efficient remedy within the Union.

On the other hand, according to its Article 12, the proposed Facilitation Directive predicates jurisdiction on a range of factors, including the territorial commission of the offence, the nationality of the perpetrator, and actions resulting in the entry, transit, or stay of third-country nationals. This approach provides Member States with significant discretion in asserting jurisdiction over offences related to facilitation. The potential broad application of this jurisdictional framework raises concerns about the scope of criminalisation, especially in the context of sharing information online and acts of solidarity with people on the move.

To illustrate the potential conflicts that might arise if both directives are approved, consider a scenario where a human rights defender or a journalist is accused of "public instigation" under the Facilitation Directive for disseminating information online about alleged human rights abuses related to migration. Simultaneously, the accused individual is subjected to a SLAPP lawsuit in a third country for the same actions. In such a scenario, the jurisdictional conflict becomes apparent. The Facilitation Directive allows Member States to assert jurisdiction based on the territorial commission of the offence or the nationality of the accused, potentially leading to overlapping claims. Simultaneously, the Anti-SLAPP Directive allows the defendant to appeal to courts for dismissal, creating a situation where the accused faces legal proceedings in multiple jurisdictions with varying legal standards and procedural rules. This dual legal jeopardy not only multiplies the legal challenges but also heightens the risk of inconsistent and contradictory legal outcomes.

This exemplary conflict underscores the importance of coherence in EU legislation. Conflicting directives may create legal uncertainty, forum shopping opportunities, and

disparate outcomes for individuals and organisations involved in public interest matters. As the EU takes strides in protecting against SLAPP practices with the Anti-SLAPP Directive, it is crucial to ensure that complementary legislation, such as the Facilitation Directive, does not inadvertently undermine the principles it seeks to uphold.

In light of these, as the European Commission considers the implications of the Facilitation Directive, it is paramount to acknowledge and address the legitimate concerns voiced by BVMN. The fact that the Directive has progressed underscores the importance of incorporating clear and precise definitions, accompanied by explicit provisions to safeguard journalistic and advocacy activities. These considerations should have been integral from the outset to prevent the Facilitation Directive from being susceptible to misuse as a tool of suppression.



Concerning Digital Surveillance Aspects within the Facilitation Directive

Albeit hidden in the recitals and subsections of its articles, the proposed Facilitation Directive, includes important aspects regarding the use of digital surveillance and monitoring of the online space, which raises significant concerns regarding compliance with the right to privacy, as well as the criminalization of people on the move and those working in their support.

Online Public Instigation : The proposed directive significantly widens the scope of what falls under facilitation of unauthorised entry. Article 3§2 of the directive not only proposes a broad definition but also includes the undefined element of public instigation within what is considered to constitute the crime of facilitation of unauthorised entry. Recital 25, provides clarifications on Article 3§2 and elaborates that online content constituting or facilitating assistance to or public instigating of unauthorised entry, transit and stay in the EU through the internet shall be treated as illegal content and be subject to measures.¹¹ "will be subject to measures pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council 47 as regards illegal content."

As it stands the term "public instigation" is ill-defined and therefore leaves dangerous room for interpretation that could criminalise humanitarian organisations, human rights defenders, as well as migrants and people on the move providing life-saving assistance. It is not clarified, for instance, whether information about available (humanitarian, legal etc.) services provided upon arrival or informing people of their rights could fall under the scope of public instigation. Similarly, solidarity and communication groups on social networks such as facebook, linking people on the move and providing life-saving information about the risks associated with transit. In light of the lack of safe and legal routes helping people to get out of harm's way, such online content is an essential source of information that can save lives, prevent trafficking and support access to basic needs.

Investigative Tools : Recital 24, provides clarifications on Articles 14 and 16 of the Directive relating to resources and investigate tools that should be available to member states to

¹¹ Pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council

implement the provisions of the Directive. The recital specifies and recommends that investigative tools and technological resources used to combat organised crime and other serious crimes shall be employed by member states to combat the facilitation of unauthorised entry. The listed tools include, interception of communications, covert surveillance including electronic surveillance and financial investigation tools.

Considering the broad definition of facilitation of unauthorised entry in Article 2 , which could include and target humanitarian workers¹², and migrants providing life-saving support as explained above, legalising the use of such intrusive investigation methods and surveillance tools against a wide group of people is disproportionate and feeds into the more and more pervasive assumption that people on the move and their supporters constitute a threat to national security. Such framing has justified the application of criminal law against migrants.¹³ Allowing for covert electronic surveillance of suspects, without regulating in what circumstances and on what evidentiary grounds the use of such methods of surveillance would be justified, raises significant concerns regarding the right to privacy, and falls into a greater trend of migrants being used as testing grounds for innovative surveillance schemes.¹⁴

Moreover, the expansion of surveillance tools raises serious accountability concerns, considering the risk of privatisation of public responsibilities, when developing or deploying surveillance technologies in partnership with a private actor.¹⁵ Surveillance and data-sharing agreements may include loopholes that allow for the silent abuse of human rights. Private companies are not exposed to the same level of accountability required of public authorities and limited mechanisms exist that enforce the responsibilities of private companies.

¹² The directive does not include an exemption for humanitarian assistance, but merely a recommendation for exemption see Recital 7.

¹³ Euronews. Greek police accuse 33 NGO members of migrant smuggling. 29/09/2020. Available at: <https://www.euronews.com/2020/09/29/greek-police-accuse-33-ngo-members-of-helping-migrant-smugglers>

¹⁴ See for example the following resources: Privacy International (2020): <https://privacyinternational.org/learn/migrants>
Privacy International (2022). Electronic monitoring using GPS Tags.: <https://privacyinternational.org/explainer/4796/electronic-monitoring-using-gps-tags-tech-primer>
Privacy International (2020): <https://privacyinternational.org/explainer/3587/use-social-media-monitoring-local-authorities-who-target>

¹⁵ Privacy International (2021). Safeguards for Public-Private-Partnerships: <https://privacyinternational.org/our-demands/safeguards-public-private-surveillance-partnerships>



Comparison to the Facilitation Directive 2002

The 2002 Facilitation Directive encouraged states to adopt sanctions in case of facilitation. A 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” was defined as facilitating entry or transit. The requirement of unlawful financial gain was not specified for entry and transit, and applied only for residing.

The Directive did not specify the type of sanctions that facilitation should entail. Considering that entering unlawfully is considered a violation of administrative law. This should be contrasted with the crime of smuggling of persons conducted by criminal networks. Instigation was penalised without further definition of the term (Article 2), however mentions of instigation through online content was not specified.

Article 1.2 of the Directive provided exemptions for humanitarian assistance, granting each Member State the discretion to incorporate these exemptions into their national legislation as they see fit. This discretion enabled states to potentially criminalise CSOs and individuals offering aid to people on the move, a decision that received significant criticism from stakeholders. The new Directive retains this failure, indicating a likelihood of further criminalization in the future.



Short Analysis of the Commissions 2017 REFIT Evaluation

The purpose of the REFIT Evaluation was to assess whether the 2002 Facilitation Directive equipped states sufficiently with tools to fight migrant smuggling and reduce irregular migration. The evaluation looked at its effectiveness, efficiency, relevance, coherence and EU-added value¹⁶. It also assessed the implementation across EU Member States. Taking stock of the flawed foundations of the 2002 Facilitation Directive and its replacement in 2023 aimed at deterring irregular migration without concurrent EU legislation providing legal pathways and decriminalising unauthorised entry for refugees, the evaluation findings were disregarded in the formulation of the new Facilitation Directive.

REFIT raised concerns that the 2002 Directive did not specify that the facilitation of irregular entry or transit lacked an obligation of material or financial gain, compared to irregular stay which constituted an offence "only when conducted for financial gain". In addition, it contrasted that some member states (E.g. Czechia) specifically mentions in its legislation that the financial gain must be "unfair" or "unlawful" creating more legal certainty. The evaluation takes note of the conclusions reached at the Fundamental Rights Agency 2014 conference which considered that even in the case of irregular stay "renting accommodation cannot be legally interpreted as an act carried out with the intention of facilitating stay; however, the legal system should ensure that those people who rent accommodation under exploitative conditions are punished". The evaluation also referred to the lack of a definition for "humanitarian assistance" which led to criminalization of search and rescue, aid, and other types of support provided by civil society organisations.

The impact of the Facilitation Directive on the distinction between "low-ranking facilitators", usually at the end of the criminal chain who are sometimes people on the move themselves, and the heads of the criminal rings, who mostly remain unpunished is disregarded in the 2002 Directive, according to the evaluation. The new Directive also

¹⁶ COMMISSION STAFF WORKING DOCUMENT REFIT EVALUATION of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package (Directive 2002/90/EC and Framework Decision 2002/946/JHA). 22/03/2017. Available at: [https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2017/0117/COM_SWD\(2017\)0117_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2017/0117/COM_SWD(2017)0117_EN.pdf)

neglected to incorporate this distinction. Evaluators also noted that an increase in prosecutions and convictions may not indicate improved management of the issue but could merely reflect its growing prevalence. BVMN further emphasises that fundamentally, this leads to riskier migration routes and escalates costs for individuals as the stakes rise for smugglers.

Most stakeholders consulted, including Member States, experts, and respondents to public consultations, asserted that the 2002 Facilitators Package has had minimal deterrent effect. Several Member States and stakeholders argued that neither the definitions nor the severity of sanctions, nor their harmonisation, have influenced irregular migration or the operations of smuggling routes. This was attributed to the perception that potential gains from migrant smuggling far outweigh the risks of detection, conviction, and penalties. Conversely, BVMN would argue that neither the Commission nor the Member States considered as deterrent decriminalising entry for refugees, and increasing legal pathways to enter the Union through better visa policies, programmes aimed at work or studying, and others. Systemic border violence and recorded pushbacks across the Union¹⁷ reinforced gains for criminal networks and corruption among border guards¹⁸, while criminals benefitted from corruption and received a free ticket out of the country through pushbacks.

BVMN contends that the proposed Directive overlooks the complexities surrounding migration, asylum, border violence, and the criminalization of movement and solidarity, all of which serve as primary factors and catalysts for the operations of smuggling networks. Failing to address these issues will heighten the risks associated with transit, bolster the profits of smuggling rings, and ultimately jeopardise the lives and fundamental rights of migrants.

¹⁷ BorderViolence Monitoring Network. (2022). Black Book of Pushbacks. Commissioned by the Left in the European Parliament. Available at: <https://left.eu/issues/black-book-of-pushbacks-2022/>

¹⁸ Solomon (2023). The Great Robbery. During Illegal Pushbacks in Greece Refugees are Robbed by Border Guards. Available at: <https://wearesolomon.com/mag/format/investigation/the-great-robbery-during-illegal-pushbacks-in-greece-refugees-are-robbed-by-border-guards/>



Instances of Criminalisation

The Facilitation Directive, was supposedly introduced in order to modernise the framework set by the 2002 Directive which has been heavily criticised for exposing both people on the move and human rights defenders supporting them to serious risk of criminalisation by Member States. However, it is observed that the proposed criminal law instrument and the offences that are described therein, leaves also room for Governments to implement hostile migration policies, which criminalise migration itself rather than protecting the ones who seek safety. Below, incidents of criminalisation and legislative tendencies of States are mentioned, in order to prove that the proposed framework, which totally omits an explicit humanitarian exemption and protection provision, still enables such incidents both for people on the move and Human Rights Defenders supporting them.

Criminalisation of people on the move

Migration management through criminal law can be defined as formal criminalisation of people on the move. Charges against people on the move often refer to 'illegal stay' in the country when, in a number of Member States, access to asylum is restricted and there are limited, if any, options to legitimise a person's stay. Charges for the 'facilitation' or 'support of illegal entry' (depending on national legislation) are frequently brought against people on the move for driving boats in the Aegean and Mediterranean, often under coercion or to avoid shipwrecks and loss of life, and are accompanied with lengthy prison sentences.

BVMN member organisations report that, on the Greek islands, for every new boat that arrives, at least one person on the move is apprehended on the allegations of being a boat driver. The decision on the person is usually made arbitrarily, for instance if they appear to be sitting close to the engine of the boat upon arrival. Following their apprehension, contrary to the European Convention on Human Rights¹⁹, they are apprehended and transferred into pretrial detention where they are kept for lengthy amounts of time. Detention under Article 5 (1) ECHR is unlawful and arbitrary where it lacks a clear and accessible legal basis, clearly setting forth the permissible grounds of detention

¹⁹Council of Europe: European Court of Human Rights, Article 5 of the European Convention on Human Rights

as well as the relevant procedural guarantees and remedies available, including judicial review and access to legal advice and assistance. Accessible and effective judicial review in accordance with Article 5 (4) ECHR is an essential safeguard against arbitrary detention and access to legal aid and advice should be taken into consideration in this regard. The prohibition of arbitrary detention is inextricably linked to the broader right of liberty. For a deprivation of liberty to be considered lawful, it must adhere to legal standards of domestic and international law, be non-discriminatory, and free from arbitrariness. However, it is widely acknowledged in international declarations and legal decisions that prolonged incommunicado detention constitutes ill-treatment.²⁰

Testimonies collected by BVMN highlight a systematic violation of the right to liberty and security for people on the move. According to BVMN latest data, in Greece, for irregularly arriving or staying third country nationals who wish to register an asylum claim, a mandatory period of de facto detention up to 25 days is now implemented across the islands and the mainland, with people experiencing longer periods of detention on the islands in times of high arrivals. In addition, despite EU law clearly dictating that detention should only be used as a measure of last resort, in 2021 the Greek government implemented a law that overturned this principle, leading to the systematic detention of third country nationals subject to removal. Finally, the excessive use of detention measures for asylum applicants on public order grounds has contributed to the 697% rise in asylum detention orders between 2021 and 2022.²¹

Criminalisation of people on the move through the arbitrary accusation of smuggling because of having driven the boat can be viewed as a systematic practice in Greece.²² In a judgement ruled in May 2022, a Greek Court sentenced three people on the move to 439 years of prison in total for facilitation of illegal entry.²³ In this case, publicly known as

²⁰BVMN (2023) K.A. and others v. Greece and Türkiye and B.A. and others v. Greece and Türkiye. Applications nos. 35090/22 and 38444/22. Available at: <https://borderviolence.eu/reports/k-a-and-others-v-greece-and-turkiye-and-b-a-and-others-v-greece-and-turkiye-applications-nos-35090-22-and-38444-22/>

²¹BVMN (2024). Violence within State Borders: Greece. Available at: <https://borderviolence.eu/app/uploads/Violence-Within-State-Borders-Greece-1.pdf>

²²I Have Rights. (n.d.). Free the Samos 2! The real crime is the border regime: Justice for N. & Hasan. Available at: <https://ihaverights.eu/free-the-samos-2/>

and; Hänsel, V.; Moloney, R.; Firla, D.; & Serkepkanî, R.(2020). Incarcerating the Marginalized: The Fight Against Alleged ›Smugglers‹ on the Greek Hotspot Islands. Bordermonitoring.eu. Available at: <https://www.borderline-europe.de/sites/default/files/readingtips/report-2020-Incarcerating%20the%20Marginalised%20-%20The%20Fight%20Against%20Alleged%20%22Smugglers%22%20on%20the%20Greek%20Hotspot%20Islands.pdf>

²³Spaggiari, Ottavia (2022) How European courts are wrongfully prosecuting asylum seekers as smugglers: ‘These people are victims of the system.’ The New Humanitarian. Available at:

<https://www.thenewhumanitarian.org/investigation/2022/09/01/European-courts-prosecution-asylum-seekers> ;

Border Violence Monitoring Network.(2022). Policy Brief: Criminalization of POM. Available at:

<https://borderviolence.eu/reports/policy-brief-criminalization-of-pom/> ;

'Paros 3', three people on the move were sentenced despite the fact that the judges found that they were neither the smugglers, nor did they act for profit or were responsible for the death of those impacted by the shipwreck.²⁴ Similar cases of criminalisation of people on the move can also be observed on the Greek mainland. In September 2022, an Iranian national was sentenced to 18 years imprisonment in Thessaloniki on smuggling charges. The ruling was based on his arrest in mainland Greece, while driving a car transporting undocumented people on the move.²⁵

Last, recent events, such as the Pylos shipwreck in Greece in June 2023, exemplify the dire consequences of such criminalisation practices. Despite the allegations of direct involvement and responsibility of the Hellenic Coast Guard, nine survivors were arrested on the grounds of participating in a criminal organisation, manslaughter and causing a shipwreck. Concerns have been raised that these charges were attributed to them simply for being people on the move for trying to reach safety, and are based on insubstantial evidence.

Criminalisation of Human Rights Defenders (HRDs)

Serving the purpose of deterring people from entering European territory, which has been at the centre of EU States migration policies, the criminalisation of those on the move has been extended to the criminalisation of Human Rights Defenders.

BVMN Members have faced growing criminalisation during the last years with a deteriorating situation in 2023, hindering their efforts to assist people on the move in accessing necessities and asserting their rights. BVMN has documented instances of direct targeting, with six individuals affected in 2023, mostly by police authorities. The methods of criminalization include administrative measures, intimidation, and false accusations, causing one member organisation to suspend operations in the targeted location for a week. Such actions force many civil society organisations to change location or cease vital support work, diverting resources to combat criminalisation and defamation campaigns. Fear of reprisal has prompted some BVMN members to operate anonymously,

²⁴Border Violence Monitoring Network. (2022). *Illegal Pushbacks and Border Violence Reports: April 2022: Balkan Region*. Available at: <https://borderviolence.eu/app/uploads/MonthlyReportApril.pdf>

²⁵Border Violence Monitoring Network (2022). *Illegal Pushbacks and Border Violence Reports: September 2022: Balkan Region*. Available at: <https://borderviolence.eu/app/uploads/MonthlyReportSep2022vA.pdf> ; for further examples of the cases of people on the move being criminalised in Greece, as well as an in depth overview about relevant national and international legislation, see: Border Violence Monitoring Network (2022) *Policy Brief: Criminalization of POM*. Available at: <https://borderviolence.eu/app/uploads/POLICY-BRIEFING-Criminalisation-of-POM.pdf>

given that 9 out of 13 member organisations have been subject to formal or informal criminalization attempts.²⁶

According to the recitals and explanatory parts of the Directive, its aim is not to criminalise humanitarian assistance provided to people on the move. The latter is pursued through setting the financial or material benefit criterion, as a requirement of the criminal offence in Article 3.1, which is insufficient and does not prevent criminalisation of people on the move and all those supporting them.

Incidents of formal criminalisation have been reported against HRDs who have, in several cases, faced charges or criminal investigations against them on the grounds of smuggling and trafficking. CSOs have encountered tactics designed to intimidate and exert pressure on their work, with deliberate leaks to the media as part of this strategy. The latter is a tactic used in order to undermine trust in, perpetuate a false image, enhance suspicion and mistrust towards the work and motives of CSOs, and negatively affect the provided support.

In Croatia, criminalisation of Human Rights Defenders supporting people on the move is based on accusations of facilitation of illegal entry, stay or transfer of a third-country national. According to the Croatian Human Rights House, “[b]road interpretation of legislation seeks to criminalise the work of Human Rights Defenders dealing with the rights of refugees, whilst they are baselessly brought into connection with people smugglers and criminal activities.” These kinds of accusations are based on Art. 53 of Croatia’s Aliens Act provides for the “[p]rohibition to assist a third-country national in illegal crossing, transit and stay” and the exemption of “assistance in illegal stay on humanitarian grounds without the intention of preventing or postponing measures which are to be taken for ensuring return.” The aforementioned article forbids not only helping, but also the attempt to help, which opens doors for various interpretations in its application. Overall, it amounts to a severely repressive and unjustified measures. The prohibition remains very vague, especially concerning the question of what the term “attempt” entails, and a definition of the humanitarian grounds it refers to. In practice, the authorities try to limit these definitions with the aim of decreasing activities of organisations and activists, as well as to intimidate

²⁶BVMN. (2024). Input by Civil Society Organisations to the EUAA Asylum Report 2024 – by Border Violence Monitoring Network. Available at: <https://borderviolence.eu/reports/input-by-civil-society-organisations-to-the-euaa-asylum-report-2024-by-border-violence-monitoring-network/>

them. Even though the article provides for a humanitarian exemption²⁷ it is largely unclear. For years, civil society in Croatia has been calling for better regulation and a legal definition of the term “humanitarian grounds”²⁸.

In Greece, BVMN has observed increasing instances of HRDs and members of CSOs being depicted as ‘smugglers’ of migrants in the media and political discourse. As far as Criminal Law is concerned, Law 4908/2022 amending Article 187 of the Greek Criminal Code, for the formation and participation in criminal organisations, has to be mentioned²⁹. The law was enacted in March 2022, and when coupled with the anti-smuggling provisions of law 4251/2014 raises concerns regarding the legal protection of CSOs, since penal consequences in acts such as facilitation of illegal entry have been made much stricter. Specifically, in order to qualify as a criminal organisation, a group of people should be composed of two or more people who gather with the intention of committing a crime. Since, under the anti-smuggling legislation characterises facilitation of illegal entry or transit as a felony offence, CSOs operating in assistance of people on the move can be qualified as criminal organisations. The amendment introduced by Law 4908/2022, allows for the mandatory imprisonment of anyone joining other people in committing a felony offence, for at least six months and up to three years, without allowing for the suspension of the sentence, according to particular circumstances of each case, while under the previous mandate Article 187 would allow for the suspension of prison sentences in wait for the appeal³⁰.

BVMN has also observed a concerning rise in self-censoring among its network of NGO partners across Europe, in reaction to public defamation and smear campaigns, including in the relation to speaking out or delivering evidence to UN treaty bodies or special procedures against State parties. In June 2023, the criminalization case of the 24 humanitarian activists, who assisted people on the move through search and rescue operations in the Aegean Sea, facing charges for smuggling, facilitation of illegal entry

²⁷ [...] (2) Assistance within the meaning of paragraph 1 of this Act shall not include the following: – assistance referred to in Articles 197 and 198 of this Act [...] – assistance in illegal stay on humanitarian grounds without the intention of preventing or postponing measures which are to be taken for ensuring return.

²⁸ BVMN. (2023). In Defence of Defenders: A practical guide to legal means and advocacy tools for criminalised Human Rights Defenders in Europe. Available at: <https://borderviolence.eu/reports/in-defence-of-defenders/>

²⁹ Government of the Hellenic Republic (2022) Law No. 4908, Measures to Combat Fan Violence, Strengthening the Institutional Framework for the Operation of Supporters’ Clubs, Sports Volunteering, Intellectual Sport, E-Sports, Professional Sport, Other Provisions for the Modernisation of Sports Legislation and Other Provisions. Available at: <https://www.et.gr/SearchNomoi>

³⁰ Ibid. Article 178

and for forming and participating in a criminal organisation in 2018, came to an end with the prosecutors appeal being rejected by the Greek Court due to procedural flaws³¹. CSOs working with people on the move or highlighting governmental practices targeting their work, are subjected to further criminalisation which may cause unbearable damage for CSOs, reaching even to the point of their dissolution³². This has been the case with the dissolution of Mare Liberum, in May 2023, an organisation monitoring Human Rights in the Aegean Sea, due to the ongoing repression by the local authorities on the Greek island of Lesbos and the increasingly restrictive legal framework³³.

As it has been stated above, provisions laid out in Article 3 of the proposed Facilitation Directive, which further clarify the criminal offences, can be applied so as to serve for the criminalisation of Human Rights Defenders providing support to people on the move. Article 3.2 describes public instigation to enter Member States' territory irregularly as a criminal offence. This broader definition raises concerns that the proposed offence of 'public instigation' could be misused to further criminalise content shared on online platforms and social media. Such potential misuse can operate as a deterrent, dissuading civil society organisations, lawyers, journalists or individuals from sharing migration-related information.

An indicative example, allowing for further criminalisation on the grounds of 'public instigation' constitutes the one of the recent amendment to the Greek Criminal Code introducing Law 4855/2021, regarding the spread of "fake news"³⁴. This provision amended the Criminal Code in a way that spreading fake news that is "capable of causing concern or fear to the public or undermining public confidence in the national economy, the country's defence capacity or public health," constitutes a criminal offence with a potential sentence of up to five years in prison upon conviction³⁵. This law is very vague in its definition of "fake news," which means that journalists and Human Rights Defenders can face lawsuits and jail time for reporting on government policies if the government simply claims their reports are false. This is particularly problematic, as in recent years

³¹Border Violence Monitoring Network (2023). Illegal Pushbacks and Border Violence Reports: January 2023: Balkan Region. Available at: <https://borderviolence.eu/app/uploads/January-Monthly-Report-2.pdf>

³²Border Violence Monitoring Network (2023). Illegal Pushbacks and Border Violence Reports: June 2023: Balkan Region. Available at: <https://borderviolence.eu/app/uploads/Monthly-Report-June-1.pdf>

³³Mare Liberum. Mare Liberum forced to cease human rights activism. May 2023. Available at <https://mare-liberum.org/en/mare-liberum-muss-menschenrechtsarbeit-einstellen/>

³⁴Government of the Hellenic Republic (2021). Law no. 4855, Amendments to the Criminal Code, the Code of Criminal Procedure and Other Urgent Provisions. Available at: <https://www.et.gr/SearchNomoi>

³⁵Border Violence Monitoring Network. (2023). In defence of defenders: a practical guide to legal means and advocacy tools for criminalised Human Rights Defenders in Europe. <https://borderviolence.eu/reports/in-defence-of-defenders/>

governmental actors have accused CSOs reporting on pushbacks of spreading 'fake news'. Journalists and Human Rights Defenders working with people on the move or exposing governmental flaws concerning Greek migration and border policies, have reported incidents of surveillance by the National Intelligence Service (EYP)³⁶.

In 2020, BVMN received reports of unlawful intrusive surveillance by Greek authorities from two of its member organisations at the time. The surveillance occurred in the context of a large-scale smear campaign in the Greek media, following the leaking of details by the Greek State regarding a case in which NGOs' members were accused of criminal activities, including espionage, violation of state secrets and the facilitation of illegal entry of people into Greece.³⁷ A wiretapping scandal which unfolded in 2022 implicated the utilisation of Predator spyware on journalists covering topics related to migration. As highlighted by CASE (Coalition Against SLAPPs in Europe), Grigoris Dimitriadis, who resigned from his position as general secretary in the office of the Prime Minister in August 2022 following the scandal breakup, initiated SLAPPs against investigative journalists who reported on the case/revealed the information.³⁸

The latter can be also related to data protection laws in Greece³⁹, according to which National authorities are allowed to process personal data where "it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority conferred on the controller"⁴⁰. However, with amendments to the national legislation for data protection, several rights have been excluded for citizens, concerning data privacy and surveillance, thus allowing national services such as EYP, to operate without further scrutiny. Indicatively, in July 2019, Law 4622/2019 changed the operating nature of EYP, from being an independent body, run by an internal Committee to fall under the direct

³⁶Efsyn (2021) Citizens under surveillance by the EYP. Available at: https://www.efsyn.gr/themata/thema-tis-efsyn/319063_polites-se-kathestos-parakoloythisis-apo-tin-eyv?_cf_chl_f_tk=a0ITlgPHqzkrFyUBJl_oHb1ZnQ37a3TGHwcHT8Qw2nI-1642599118-0-gaNycGzNCVE

³⁷Ekathimerini (2020). 'Thirty-three NGO members face charges of illegally smuggling migrants into Greece.' Available at: <https://www.ekathimerini.com/news/257462/thirty-three-ngo-members-face-charges-of-illegally-smuggling-migrants-into-greece/>

³⁸Article 19, Greece: SLAPP Award Winner Urged to Drop Defamation Lawsuits, 21 October 2022. Available at: <https://www.article19.org/resources/greece-slapp-drop-lawsuits/>

³⁹Government of the Hellenic Republic. 2019. Law No. 4624, Hellenic Data Protection Authority (HDPA), measures for implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, and transposition of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016, and other provisions. Available at: https://www.dpa.gr/sites/default/files/2020-08/LAW%204624_2019_EN_TRANSLATED%20BY%20THE%20HDPA.PDF

⁴⁰Ibid., Article 5

control of the Governing Party⁴¹. One month later, an official, who did not meet the qualifications required by law, was appointed as EYP's director. After his appointment, requirements for the position were retroactively amended, under the intense disagreement of other parties in the Greek Parliament.

Evidently concerns are raised in relation to the transparency and integrity of the Agency, and the effect it may have on the work of CSOs, which take a clear stance criticising and exposing violations by the government. Last, the criteria for becoming head of the EYP have been changed by the government, following the resignation of at the time head of the Service, due to a wiretapping scandal of MEP Panagiotis Androulakis, which erupted in Greece in 2022⁴².

⁴¹Government of the Hellenic Republic (2019) Law No. 4622: Organization, Operation and Transparency of Government, Government Bodies and Central Public Administration and other provisions. Available at: <https://www.et.gr/SearchNomoi>

⁴²Financial Times (2022). Greek wiretap cases turn up the heat on prime minister. Available at: <https://www.ft.com/content/733a2316-74a4-4155-82a4-ce60b6b9bd34>



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