Adopted by Social Platform's Steering Group on 4 February 2016

POSITION PAPER ON THE REVISION OF THE FACILITATION DIRECTIVE

Enable humanitarian assistance throughout the EU

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The Facilitation Directive states that anyone who intentionally assists an undocumented migrant to enter or transit across the EU is breaking the law, as well as those who profit financially by helping undocumented migrants to reside in the EU. In many cases, this means organised smuggling rings, employers or landlords who seek to exploit undocumented migrants' vulnerable position. However, the problem is that the Facilitation Directive does not rule out imposing similar sanctions on individuals or organisations that offer humanitarian assistance to undocumented migrants. This could include the provision of emergency shelter, food and medical attention, even if these services are delivered to the undocumented migrant free of charge.

In 2015 Social Platform launched a campaign against the criminalisation of solidarity with undocumented migrants, recommending the EU to revise the Facilitation Directive.

OUR RECOMMENDATIONS TO THE EU

1. **Revise Article 1(2) of the Facilitation Directive (2002/90/EC) to state that Member States "shall not impose sanctions" on those who provide humanitarian assistance** on a not for profit basis to undocumented migrants. This Article currently gives Member States the option not to sanction providers of humanitarian assistance, but does not discourage them from doing so.

2. **The EU should provide guidance to Member States to ensure that service providers are not obliged to report undocumented migrants they encounter** when providing humanitarian assistance such as provision of emergency shelter, food, health care and other necessities, as also put forward by the EU Agency for Fundamental Rights. In cases of abuse and exploitation of undocumented migrants, systems for reporting should be developed that protect both the service provider and the undocumented migrant.

WHY

The legal ambigiouty of the Facilitation Directive with regards to humanitarian assistance sometimes leads providers to limit their services, due to fear of sanctions. For example, recent developments in Hungary have shown that the Hungarian Catholic Church initially refused to shelter refugees, citing fear of criminal prosecution. Hungarian law has made some volunteers – both non-governmental organisations and individuals – reluctant to provide humanitarian assistance due to fear of being prosecuted, fined or jailed, while others continue helping despite a lack of clarity around whether their actions are considered criminal or not.

Civil society organisations and individuals must be able to provide humanitarian assistance – services such as food, health care, shelter and legal aid – to all people in need, including to help undocumented migrants to access their human rights.

Governments and international bodies have a duty to uphold human rights obligations, including for undocumented migrants. Due to the sheer volume of undocumented migrants arriving in the EU, the support of civil society and individuals will be necessary to ensure that humanitarian assistance is provided to those most in need.[1] Revising the Facilitation Directive to clarify that the provision of humanitarian assistance without a profit-making logic is legal and cannot be sanctioned is an important political signal that will encourage a joint response to the humanitarian emergency in Europe. It will also bring the Facilitation Directive in line with the European Commission's Anti-Smuggling Plan 2015-2020 and the European Parliament's Civil Liberties, Justice and Home Affairs

[1] The three largest European NGO coalitions working on social rights (Social Platform), asylum and migration (EPAM) and development (CONCORD Europe) jointly expressed to the EU Justice & Home Affairs Ministers that while services will only increase as the humanitarian crisis continues, it is vital that organisations and citizens are not criminalised for such acts as they currently are in some Member States.

committee working document on tackling criminal smuggling, trafficking and labour exploitation of irregular migrants, and LIBE study on the humanitarian clause of the Directive.[2] A revision of the Facilitation Directive is supported also by the EU Agency for Fundamental Rights and the The Council of Europe, arguing that EU law, which penalise people assisting, is an obstacle for undocumented migrants to access a minimum standard of protection of social rights'.[3]

More and more responsibility is being placed on service providers to report undocumented migrants, putting them in difficult situations that could lead to the suppression of moral conscience, financial penalties and arrest. There is an urgent need to address the fact that most of the very significant number of refugee and asylum seeking children and vulnerable adults who are subjected to sexual and other forms of exploitation go unrecognised. The people concerned fear that involving social services and other sources of protection and assistance may result in the removal of their children or other unwelcome consequences. Information about such matters given in confidence to health and social services personnel should not be passed on to third parties, except where it is necessary to prevent further abuses. Criminalisation of humanitarian assistance does not contribute to immigration enforcement, and it should not be used as a means to deter those who want to help. The creation of a firewall between immigration control and access to services – a proposal suppoted in the conclusions of the 2015 European Migration Forum – would both allow service providers to deliver unhindered humanitarian assistance to undocumented migrants, and allow undocumented migrants to report cases of abuse and exploitation without fear of deportation.

More information: www.socialplatform.org

Contact person: Annica Ryngbeck, Policy & Advocacy Adviser, annica.ryngbeck@socialplatform.org

@social_platform **facebook.com/socialplatform**

[2] 'Fit for purpose? The Facilitation Directive and the criminalization of humanitarian assistance to irregular migrants' LIBE 2016
[3] Paraliamentary Assembly of the Council of Europe, 7 May 2015