

Position paper



RED CROSS
EU OFFICE

Protecting the humanitarian space

to access and support migrants

Based on their operational experience, National Red Cross Societies in the European Union (EU) call on the EU and Member States to promote a conducive environment for humanitarian activities with and for migrants. To this end, they have identified the following recommendations:

1. Guarantee that all migrants, irrespective of status, have safe and effective access to assistance and protection, including when delivered by humanitarian actors.
2. Amend legislation that hampers or criminalises providing humanitarian assistance to migrants.
3. Make sure the EU budget enables a needs-based and principled migration response.
4. Closely cooperate with civil society in developing, implementing and evaluating migration policies and programmes.
5. Ensure adequate protection of personal data.

The prioritisation of migration management objectives in relationships with third countries and efforts to curtail smuggling and irregular migration often expose humanitarian actors to potential instrumentalisation.

This position paper includes key steps for the EU and Member States to uphold the conditions for humanitarian actors to operate when necessary to address migrants' vulnerabilities and needs.

“ All migrants should be able to access essential services without fear of arrest. ”

Position paper

The European Union and Member States are increasingly relying on humanitarian actors to address the consequences of current policy choices on the vulnerability of migrants. However, the space for civil society actors to provide them with support in accordance with humanitarian principles has been significantly compromised in recent years¹ – in part because of measures that are denying access to migrants, criminalising aid, politicising funding and imposing intrusive data reporting requirements.

Within and outside the EU, humanitarian actors' ability to uphold the neutrality principle underpinning their work is in jeopardy. This is because of sustained efforts to counter migrant smuggling and curtail irregular migration on the one hand, and the prioritisation of migration management objectives when cooperating with third countries on the other.

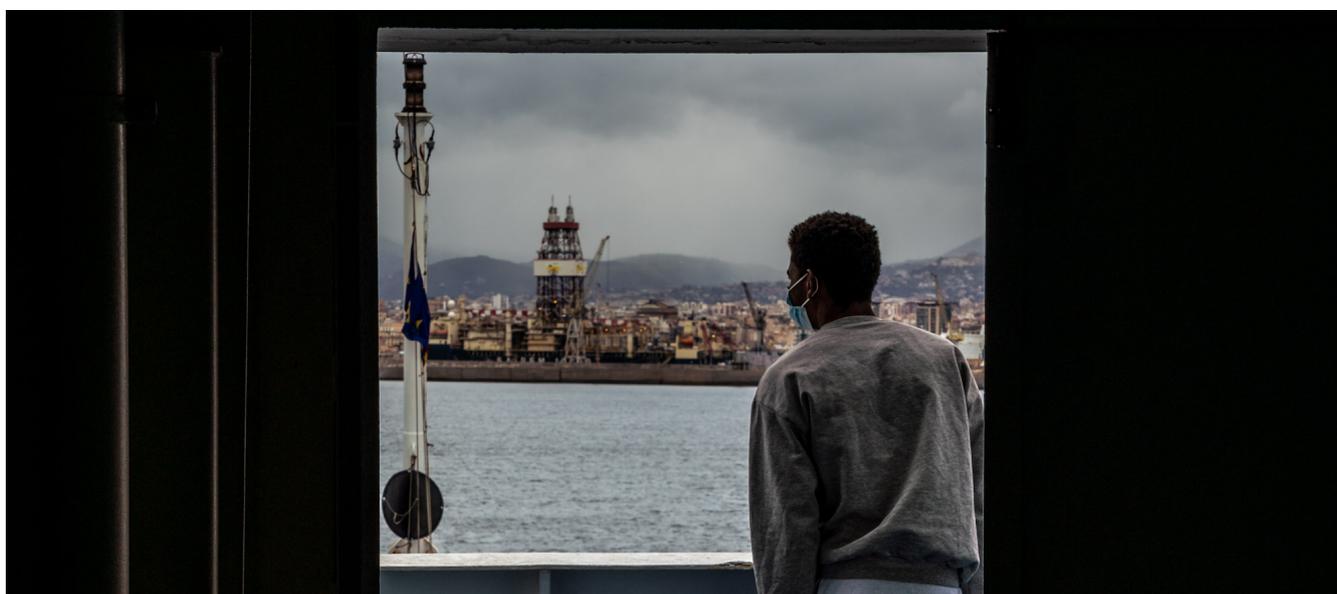
“Sustained efforts to curtail irregular migration jeopardise our ability to uphold humanitarian principles.”

Background

In September 2020, the European Commission published the EU's New Pact on Migration and Asylum² and two additional documents aiming to clarify the issue of criminalisation of humanitarian actors³: the guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, and the 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. These intend to support Member States in interpreting the 2002 legislation which underpins EU efforts against migrant smuggling, the so-called EU Facilitators' package⁴.

The guidance underlines the importance of not criminalising humanitarian assistance that is mandated by law. This attempt to support Member States is welcome, yet there is a risk that this clarification will not be sufficient and could even result in limiting the assistance. The European Commission recommends assessing whether an activity meets the definition of humanitarian assistance on a case-by-case basis. Depending on Member States' interpretations, however, activities such as providing food, shelter, transport, information or other things which may not be directly life-saving but are critical to ensure the safety, dignity and well-being of migrants, risk being criminalised or viewed as contributing to irregular migration.

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In addition, the Commission recommendation on search and rescue (SAR) activities of private vessels⁵ further suggests a connection between migrant smuggling and SAR, and imposes several obligations on the vessels' owners. While the European Commission re-emphasises the international obligation to search and rescue, it implies that SAR operations are only to be considered legitimate when they "observe the instructions received from the coordinating authority", while "complying with the relevant legal framework." Further obligations imposed on SAR NGOs include "safety and health requirements," reporting obligations on the administrative structure of the NGO, and verifying "compliance with migration management rules". In the past, these aspects have been invoked to incriminate SAR NGOs.

As leading providers of humanitarian services, National Red Cross Societies in the EU witness the pressing challenges faced in protecting the dignity, safety and rights of all migrants, particularly those in an irregular situation. Furthermore, across Europe, civil society actors encounter difficulties in maintaining their access to all migrants with a view to delivering principled humanitarian assistance. They observe with concern the consequences of increasing limitations to both assistance and protection, which jeopardises migrants' fundamental rights. Such a trend not only compromises the delivery of principled assistance, but can also prevent access to life-saving support by migrants who may lose trust in the independence, impartiality and neutrality of humanitarian actors.

National Red Cross Societies in the EU would like to remind Member States of their commitments to ensure that staff and volunteers in different countries are able

to provide humanitarian assistance to all migrants based solely on needs, and to support their access to services as well as their obligations in this regard⁶. With the Global Compact for Safe, Orderly and Regular Migration, Member States have reaffirmed their responsibility to uphold migrants' access to essential services, regardless of their status⁷. When they are unable to do so, Member States need to facilitate the work of humanitarian actors. Despite this, National Red Cross Societies increasingly experience challenges to act in accordance with their fundamental principles⁸ when delivering services and supporting all migrants in accessing the necessary support to ensure their safety, dignity, protection and well-being.

Our Recommendations

We call on Member States to guarantee that all migrants, irrespective of their legal status, can realise their rights and fundamental freedoms, are protected from harm, and have access to essential services – such as food, water, hygiene and sanitation services, housing, education and healthcare – without fear of arrest, deportation or detention, in line with international law. Often, this can only be done by ensuring humanitarian actors enjoy effective access to migrants.

National Red Cross Societies in the EU make the following recommendations to the EU and Member States to secure a conducive environment for humanitarian actors to address migrants' vulnerabilities and needs, as well as mitigate the risks they face:



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1. Guarantee that all migrants, irrespective of status, have safe and effective access to assistance and protection, including when delivered by humanitarian actors.

Upholding the dignity and human rights of all migrants, regardless of their status, and ensuring their safety must be the cornerstone of EU migration and asylum policies, including those linked to countering irregular migration. This requires the relevant authorities to grant humanitarian organisations effective access to all people in need, whatever their legal status, including in immigration detention facilities, at borders and in informal camps.

To this effect, the EU should encourage and support the establishment of humanitarian service points, where humanitarian actors are able to provide assistance and protection to migrants, with guarantees that such spaces will be protected from the scope of immigration enforcement activities. In addition, ‘firewalls’⁹ between healthcare providers and immigration authorities are necessary to guarantee

all migrants’ access to basic preventive, curative and rehabilitative health services, as well as to other essential services such as housing and education, without the risk of being reported, arrested, detained or deported.

HUMANITARIAN SERVICE POINTS:

Neutral spaces along migratory routes that provide a welcoming and safe environment for all migrants to access essential services, without fear of arrest or of being reported to the authorities.

EU Member States must also abide by their obligations to rescue and assist people in distress at sea, and ensure that private vessels flying their flags do the same¹⁰. These vessels, including those of humanitarian organisations, must not be penalised for rendering

such assistance – and their mission should be supported. Humanitarian organisations, the EU and Member States should work together to prevent further loss of life and more migrants from going missing.

We call on the EU and Member States to:

- » Ensure that migrants in need have safe and effective access to relevant protection and assistance services wherever they are, including during screening processes at borders.
- » Facilitate the establishment of humanitarian service points.
- » Refrain from using healthcare facilities – or locations where services are provided to migrants – with the intention to implement immigration enforcement activities, and avoid organising police control close to humanitarian facilities.
- » Guarantee that law enforcement authorities are duly trained to protect vulnerable migrants (especially survivors of human trafficking and unaccompanied minors) and to preserve their fundamental rights.
- » Extend and reinforce firewalls in the fields of health, social services, education and criminal justice.
- » Establish and operate effective SAR operations covering the entire Mediterranean Basin.
- » Make sure people who are rescued disembark in a place of safety with the least possible delay.



2. Amend legislation that hampers or criminalises providing humanitarian assistance to migrants.

The EU and Member States should promote a conducive environment to humanitarian assistance and solidarity towards migrants, irrespective of their legal status, and ensure that this assistance throughout migratory routes is never criminalised. Supporting migrants in distress must be facilitated¹¹ – and, in line with international obligations¹², sanctions for the crime of migrant smuggling must extend only to persons allegedly responsible for this crime. The EU's anti-smuggling strategy should thus target criminal networks, in particular those who collect financial benefits by exploiting migrants, not those acting on humanitarian grounds.

We call on the EU and Member States to:

- » Develop and implement additional guidelines to enhance legal certainty and ensure the delivery of humanitarian assistance is supported and never criminalised.
- » Abolish all provisions in national and EU laws that risk criminalising the delivery of such assistance to migrants in an irregular situation.
- » Explicitly exclude humanitarian assistance from the scope of national legislation transposing the EU Facilitation Directive, to prevent the punishment of those providing aid to people who are in breach of laws on entry, transit and stay¹³.
- » Collaborate with the EU Agency for Fundamental Rights to monitor and address early signs of policing of solidarity with migrants, including criminal convictions, as well as cases of investigations, ongoing harassment and targeting of people providing assistance to migrants.
- » Put in place laws and procedures to ensure humanitarian actors are able to access all migrants in need, and facilitate responses wherever needs are. Include legal safeguards in national legislation, as well as sufficient training at national, regional and local levels, to make sure that protections given to 'safe spaces' or humanitarian service points are understood, implemented and complied with, at all levels of immigration enforcement.

3. Make sure the EU budget enables a needs-based and principled migration response.

With migration featuring across a wide variety of areas in the 2021-2027 EU budget, comprised of the new Multiannual Financial Framework (MFF) and Next Generation EU recovery package, there is a growing risk of humanitarian work with and for migrants, being instrumentalised for migration management purposes. A principled approach to EU funding must be upheld



“ Authorities must work closely with humanitarian actors, but without instrumentalising them for migration control. ”

to allow for needs-based interventions with a view to maintaining trust towards humanitarian actors. The MFF must provide the means for these actors to address the needs and vulnerabilities of migrants and other vulnerable people, while preserving their neutrality and operational independence in decision-making and action. Humanitarian assistance must remain fully independent of migration control policies, and EU development funds must not be used to curb migration or to facilitate the return of migrants. Humanitarian and development funding should aim to respond to needs on the basis of vulnerability assessments of migrants and host communities alike.

We call on the EU and Member States to:

- » Prevent EU financial support for humanitarian assistance and development cooperation to third countries from being conditional on collaborating on migration management and readmission.
- » Conduct an unbiased and multidimensional needs assessment ahead of determining programming priorities.
- » Broaden and facilitate direct access to EU funding for civil society, including for assistance to migrants, regardless of legal status.
- » Ensure all actions funded under the Asylum and Migration and Integration Fund include measures to support migrants' access to assistance and protection¹⁴.
- » Guarantee sufficient financial investments in all EU Member States on effective and dignified asylum systems and integration-related activities targeting society as a whole.
- » Support legal aid, strategic litigation and actions promoting the rule of law as priorities in the

MFF to ensure that national legislation is in line with EU and international legal frameworks.

- » Knowing that migrants are among the most vulnerable and least protected people during the COVID-19 pandemic¹⁵, allocate adequate funding to respond to their particular vulnerabilities.

4. Closely cooperate with civil society in developing, implementing and evaluating migration policies and programmes.

Authorities must work closely with humanitarian actors to coordinate and strengthen support to migrants. Partnerships and cooperation with civil society organisations (CSOs) from EU countries and other regions should be enhanced. Key areas for partnership include assistance, health and social services, information provision, training of public authorities and services to restore family links.

Such collaboration must not instrumentalise humanitarian organisations to implement migration control. CSOs may support and cooperate with the authorities, but the responsibility to ensure human rights and dignified treatment remains with the Member States. Better and more active use of CSOs' practical experience should be made when elaborating, implementing and evaluating migration policies. In addition, a structured dialogue between civil society, managing authorities and the European Commission must be set up on the programming and implementation of the MFF, including emergency measures.

We call on the EU and Member States to:

- » Increase partnerships with civil society and humanitarian actors, such as National Red Cross

Societies, to provide assistance and essential services to migrants in a principled manner.

- » Acknowledge and respect the roles, complementarities and responsibilities of each actor in addressing the needs of migrants, including when identifying who is best placed to intervene¹⁷.
- » Support transparency, dialogue and opportunities for meaningful inputs from CSOs in developing, monitoring and assessing EU migration-related policies and programmes, as well as in assessing their implementation at national level.
- » Include stakeholders such as CSOs and social partners in the design and implementation of migration funds, including through implementing the Partnership principle¹⁶.
- » Establish an EU-level Partnership principle that would ensure a structured dialogue between CSOs and the European Commission on the programming and implementation of activities under its direct management, including for emergency assistance.

5. Ensure adequate protection of personal data.

EU data protection policies¹⁷ clarify that personal data can only be collected and processed for a specified, explicit and legitimate purpose. Humanitarian actors are facing mounting ethical and legal challenges as they are increasingly being asked by (national) authorities to systematically share information

on their beneficiaries. This goes against their organisations' responsibility, mandate and obligation to ensure the protection of the personal data of their beneficiaries and abide by the 'do no harm' principle¹⁸. Such requests for personal data can result in humanitarian actors being perceived as actively colluding with authorities on the surveillance and policing of migratory movements, and can result in an atmosphere of fear and mistrust, deterring migrants from seeking help. Ensuring that any use of data collected by these actors is used solely for humanitarian purposes is thus crucial.

We call on the EU and Member States to:

- » Refrain from asking humanitarian actors to play an active role in the surveillance of migratory movements and to share personal data on their beneficiaries.
- » Ensure that providers of healthcare or other essential services are not allowed or required to report migrants in an irregular situation for the purpose of migration management.
- » Prevent personal data of affected people from being requested or used for purposes incompatible with the work of humanitarian organisations, or in a manner that would undermine the trust of the people they serve and the independence, impartiality and neutrality of their services, such as the Restoring Family Links programme¹⁹.

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National Red Cross and Red Crescent Societies are considered to be auxiliary to the public authorities in the humanitarian field. This is a specific and distinctive partnership, entailing mutual responsibilities and benefits, based on international and national laws, in which the national public authorities and the National Society agree on the areas in which the National Society supplements or substitutes public humanitarian services.

“**Trust is the foundation of humanitarian action.**”

ADDITIONAL INFORMATION:

- 1 See, for instance, the July 2019 statement signed by over 100 organisations, [The EU must stop the criminalisation of solidarity with migrants and refugees](#), and the 2017 Red Cross EU statement, [Humanitarian space for migration work must be protected](#).
- 2 European Commission, [New Pact on Migration and Asylum](#), 2020.
- 3 [The Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence](#) and 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](#).
- 4 See [Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence](#) and [2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence](#).
- 5 European Commission, [Commission Recommendation of 23.9.2020 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](#), 2020.
- 6 Red Cross and Red Crescent International Conference, Resolution 3, see [Migration: Ensuring access, dignity, respect for diversity and social inclusion](#), November 2011.
- 7 [Global Compact for Safe, Orderly and Regular Migration \(A/RES/73/195\)](#), in particular objectives 5, 7 and 8.
- 8 The International Red Cross and Red Crescent Movement is guided by seven fundamental principles: humanity, impartiality, neutrality, independence, voluntary service, universality and unity.
- 9 'Firewalls' refer to measures that States and non-State actors implement to separate immigration enforcement activities from public service provision, labour law enforcement and criminal justice processes with a view to ensuring that persons in an irregular status are not denied their human rights.
- 10 Law of the seas: [United Nations Convention on the Law of the Sea](#), Article 98 of the [International Convention for the Safety of Life at Sea](#), Regulation V-33, and the [1979 International Convention on Maritime Search and Rescue](#).
- 11 Red Cross EU, [Perilous journeys: addressing the vulnerabilities linked to migratory routes to the European Union](#), December 2015.10
- 12 UN, [Protocol against the smuggling of migrants by land, sea and air, supplementing the UN convention against transnational organised crime](#), 2000.
- 13 According to article 1(2) of the [Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence](#), Member States may decide not to impose sanctions for facilitation of irregular stay, where this is done on humanitarian grounds. The directive, however, does not oblige Member States to exempt humanitarian actors from prosecution. The directive, however, does not oblige Member States to exempt humanitarian actors from prosecution.
- 14 See also: Joint Statement [Last call: The future Asylum, Migration & Integration Fund](#), November 2020, and Joint Statement [The future of the Asylum, Migration and Integration Fund](#), February 2019.
- 15 International Federation of Red Cross and Red Crescent Societies, [Least protected, Most affected: Migrants and refugees facing extraordinary risks during the COVID-19 pandemic](#), September 2020.
- 16 The Partnership principle set out in the Common Provisions Regulation foresees the set up of a framework for consultation with civil society and other relevant local, social and international actors. A dedicated AMIF Partnership principle would help ensure an expert participation of relevant actors, including refugees and migrants themselves.
- 17 [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 on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\)](#) and [Directive \(EU\) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA](#).
- 18 The 'do no harm' principle is set out in the first protection principle of the Humanitarian Charter and Minimum Standards in Humanitarian Response, emphasising the need to "avoid exposing people to further harm as a result of your actions".
- 19 Red Cross and Red Crescent International Conference, Resolution: [Restoring Family Links while respecting privacy, including as it relates to personal data protection \(33IC/19/R4\)](#) and the new Red Cross and Red Crescent Movement [Restoring Family Links strategy 2020-2025](#).

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The International Red Cross and Red Crescent Movement is committed to, and bound by its seven Fundamental Principles
HUMANITY | IMPARTIALITY | NEUTRALITY | INDEPENDENCE | VOLUNTARY SERVICE | UNITY | UNIVERSALITY