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Subject: Letter Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants

Ref.: OL OTH 119/2025

Dear Special Rapporteurs,

I would like to thank you for your letter of 22 September 2025 addressed to Ambassador Deike Potzel regarding the Commission proposal for a Directive laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, COM(2023)755 final.

While the discussions in the European Parliament are currently ongoing, I would like to provide some clarifications in relation to issues you raised in your letter.

The Commission proposal aims to strengthen the legal framework against the facilitation of unauthorised entry, transit and stay, focusing on tackling its organised crime aspects and on migrant smuggling as a business. By providing more precise and detailed definitions on the criminal offence of facilitation of entry, transit and stay in the Union, the proposal ensures more legal clarity with regards to the definition of the offence than the current legal framework (Directive 2002/90/EC ⁽¹⁾).

In line with the legal basis, Article 83(2) of the Treaty on the Functioning of the European Union, the focus of the proposed Directive is to establish minimum rules with regard to the definition of criminal offences and sanctions.

⁽¹⁾ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

The proposal includes a clearer definition of the criminal offence, through the inclusion of a financial/material benefit element, in line with the UN Protocol against the Smuggling of Migrants by Land, Sea and Air. Recital 7 provides that the elements of the offence *'will usually not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human need'* and that *'it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations'*.

These obligations encompass inter alia obligations pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR).

The Commission Guidance on the implementation of EU rules on the facilitation of unauthorised entry, transit and residence⁽²⁾ referred to in your letter, clarifies that humanitarian assistance mandated by law cannot and must not be criminalised; that the criminalisation of NGOs and other non-state actors that carry out search and rescue operations while complying with the relevant legal framework, amounts to a breach of international law, and therefore is not permitted by EU law. Where applicable, the assessment of whether an act falls within the concept of 'humanitarian assistance' in Article 1(2) of Directive 2002/90/EC – a concept that cannot be construed in a manner that would allow an act mandated by law to be criminalised – should be carried out on a case-by-case basis, taking into account all the relevant circumstances.

Recital 7 also clarifies that *'third-country nationals should not become criminally liable for having been the subject to such criminal offences'*.

The proposed Directive is in line with the policy aims pursued by the Union and with the Directive on preventing and combating trafficking in human beings and protecting its victims⁽³⁾ and the Directive establishing minimum standards on the rights, support, and protections of victims of crime⁽⁴⁾. As set out in the EU Strategy on Combatting Trafficking in Human Beings (2021-2025) (COM/2021/171 final), the Union remains committed to address trafficking in human beings, this in close cooperation with relevant stakeholders including civil society organisations.

In conclusion, I wish to recall the EU's firm commitment to upholding the values enshrined in its Treaties, including the principles of the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, democracy, the rule of law, and respect for international law as articulated in Article 6 and 21 of the Treaty on European Union (TEU) and the Charter of Fundamental rights. These principles guide all our actions, both within the European Union and in our external action.

On 19 November 2025, the Commission participated in the event *'The EU's Facilitation Directive: an opportunity to rethink EU counter-smuggling responses'* organised by the

⁽²⁾ Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, 2020/C 323/01, (OJ C 323, 1.10.2020, p. 1).

⁽³⁾ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

⁽⁴⁾ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

Office of the High Commissioner for Human Rights and the Red Cross EU, which provided a valuable opportunity to discuss the topic and remains open to further engagement.

Yours sincerely,

[e-Signed]
Olivier BAILLY