

‘Criminalisation of migrants in an irregular situation and of persons engaging with them’



TFEU, Article 79

The Union shall develop a common immigration policy aimed at ...enhanced measures to combat illegal immigration...

The European Parliament and the Council...shall adopt measures in the following areas:...illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

TFEU, Article 67

The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

Criminalisation of irregular migrants

- Custodial sentences for irregular entry and stay, and detention within the return procedure [Return Directive](#)
- Access to justice (fear of apprehension, impunity for perpetrators)

Criminalisation of persons engaging with irregular migrants

- Risk of punishment for also emergency and humanitarian assistance, rescue, and renting accommodation [Facilitation Directive](#)

- UN Smuggling Protocol
- EU facilitation *acquis*: directive & framework decision
- EU Charter of Fundamental Rights
- Human rights law – duty to rescue; principle of *non-refoulement*; obligations deriving from Articles 1 and 3 ECHR;

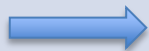
Facilitation of
irregular
entry and stay

Risk that humanitarian, emergency or legal assistance is punished




Duty to rescue – should be reflected in the rules on facilitation
Humanitarian, legal and emergency assistance excluded from
punishment – should be reflected in the rules on facilitation


Risk that landlords are punished – implicitly (facilitation of stay) or explicitly




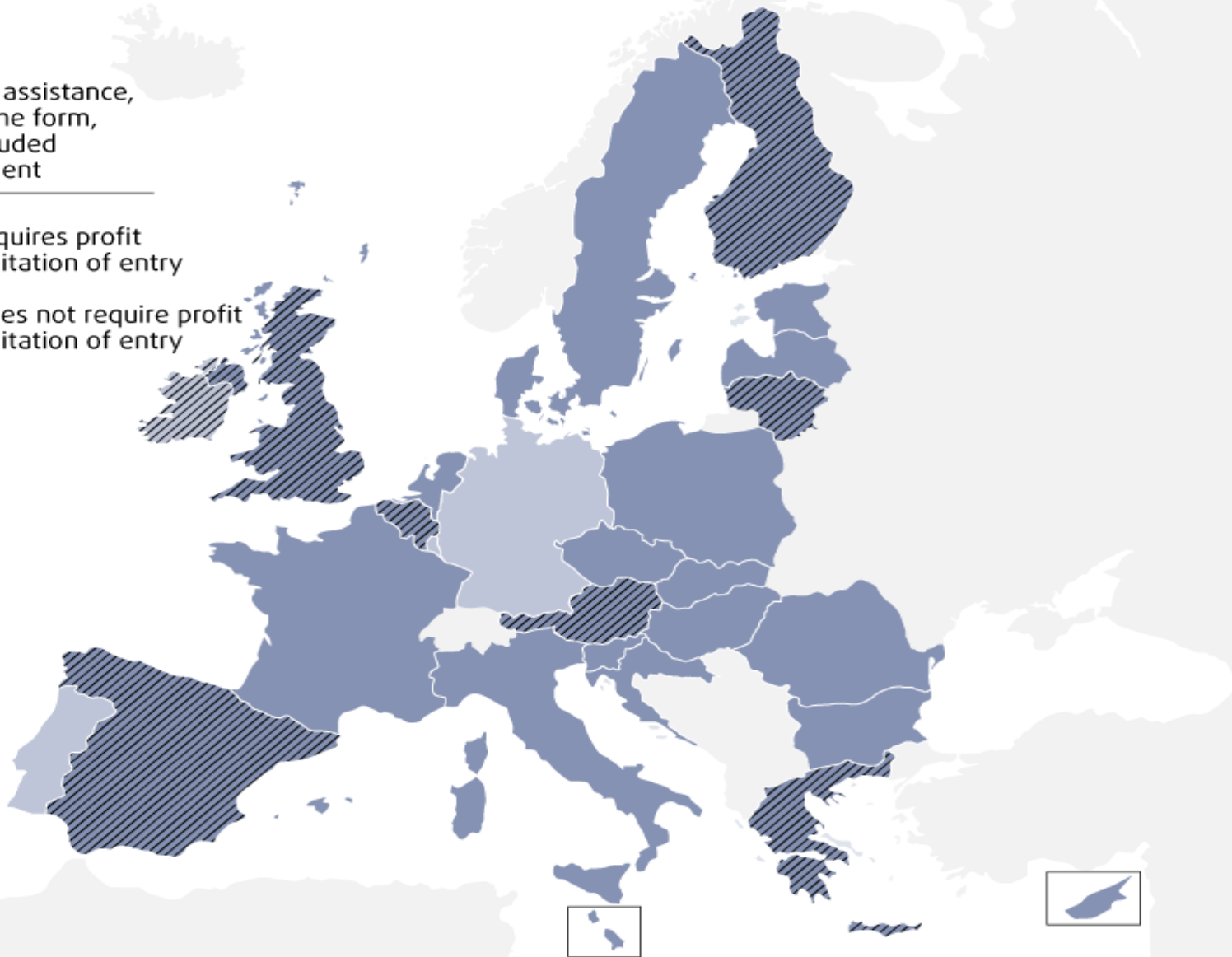
Landlords excluded from punishment, if not preventing removal,
and if not exploitative conditions – should be reflected in the rules
on facilitation

Facilitation of irregular entry – EU 28


 Humanitarian assistance, at least in some form, explicitly excluded from punishment


 Legislation requires profit to punish facilitation of entry


 Legislation does not require profit to punish facilitation of entry

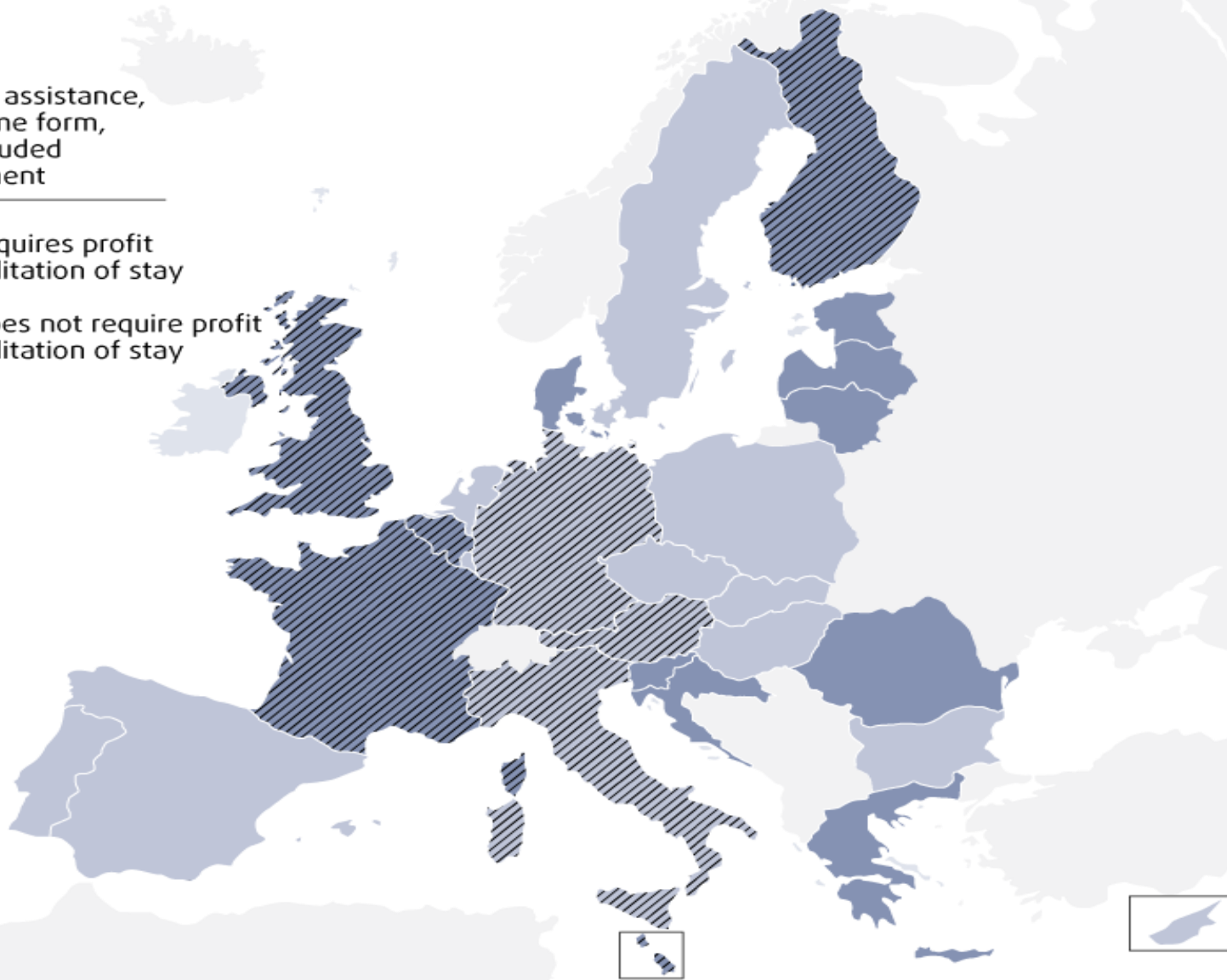


Facilitation of irregular stay – EU 28




 Humanitarian assistance, at least in some form, explicitly excluded from punishment

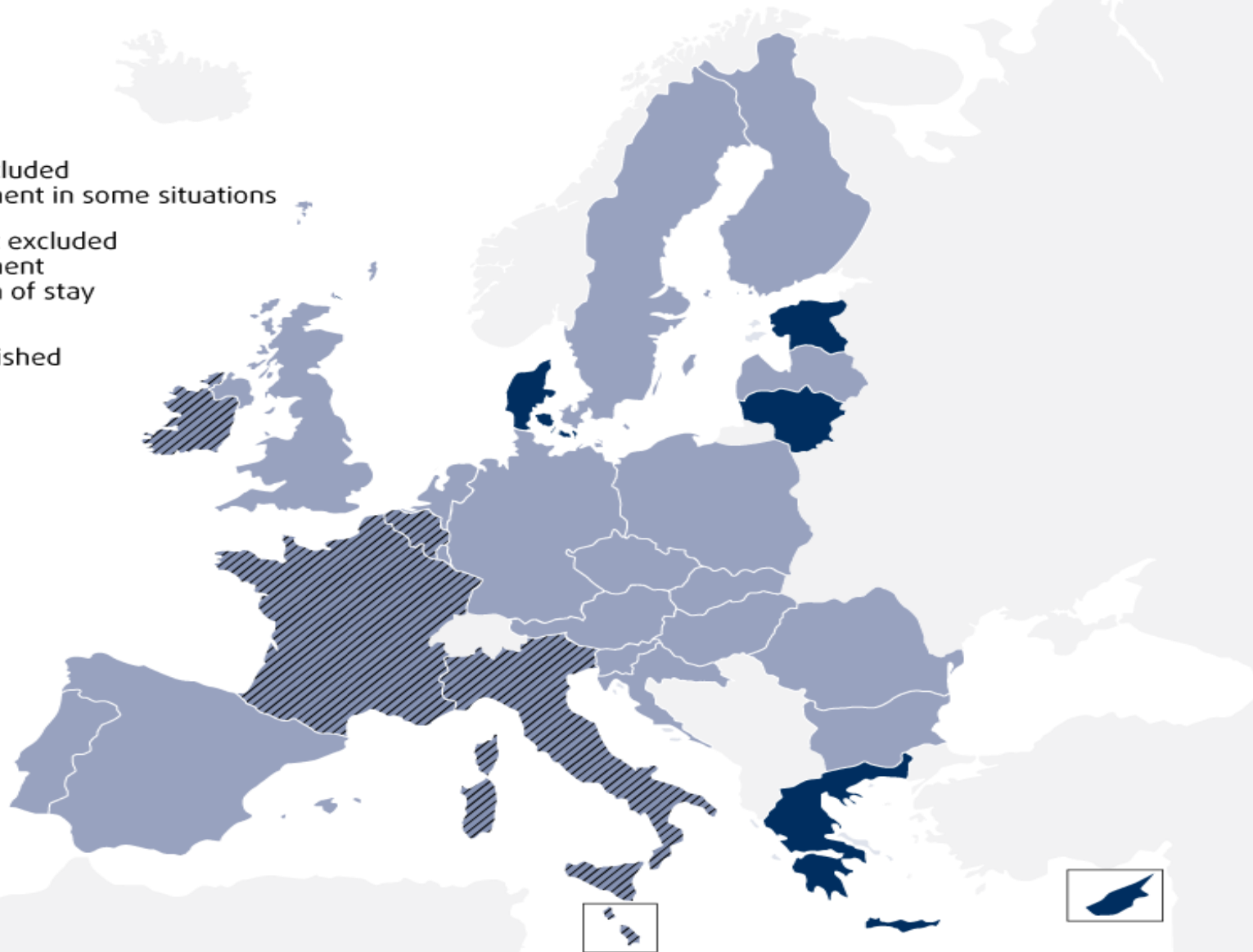
 Legislation requires profit to punish facilitation of stay

 Legislation does not require profit to punish facilitation of stay



Punishment for renting accommodation

-  Landlords excluded from punishment in some situations
-  Landlords not excluded from punishment for facilitation of stay
-  Landlords explicitly punished



Fundamental rights safeguards - the Facilitation Directive

- *Review of EU facilitation package.*
- *Practical guidance explicitly excluding punishment for humanitarian assistance at entry (rescue at sea and assisting refugees to seek safety) as well as the provision of non-profit humanitarian assistance (e.g. food, shelter, medical care, legal advice) to migrants in an irregular situation. Renting accommodation to migrants in an irregular situation should not be punished – exploitation should of course!*

- Task Force Mediterranean – 4 December 2013 at 3.8
evaluation of the EU acquis on facilitating unauthorised entry, transit and residence announced

- Agenda for Migration – 13 May 2015 at III-1
In order to strengthen the instruments available to prosecutors to address smuggling networks, the Commission will improve the existing EU legal framework to tackle migrant smuggling and those who profit from it.

- EU Action Plan against migrant smuggling (2015 - 2020)
– 27 May 2015
Proposals to improve the existing EU legal framework announced for 2016:
 - *ensure that **appropriate criminal sanctions***
 - ***avoiding risks of criminalisation** of those who provide humanitarian assistance to migrants in distress.*

Thank you for your attention!



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