



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

Deputy Director-General  
Head of the Task Force Migration Management

Brussels  
HOME.C.3/MF

Dear Sir or Madam,

Thank you for your email of 23 November 2021 with a Statement of several European ACAT on the situation at the Eastern borders of the European Union.

The situation at EU's external borders with Belarus is serious and unprecedented. In 2021, we have seen more than 8 200 irregular arrivals from Belarus, orchestrated by the Belarusian regime, with people originally from Iraq, Afghanistan, Cameroon, and Syria. This has resulted in an artificially created migratory pressure affecting Poland, Latvia and Lithuania.

The Commission has been in touch with the Polish authorities on this situation since the beginning. We enquired about the exact terms of the Emergency State Law in force in Poland since the beginning of September, which restricts access to the border only to the national authorities, and expressed concerns on its impact to the access to the asylum procedure. We also asked clarifications on the practices at the Polish border with Belarus, in particular as regards access to the border area, access to the asylum procedure, the provision of basic assistance to migrants and the protection of vulnerable migrants.

The Commission got also immediately in touch with the United Nations agencies, the International Organization on Migration and the United Nations' High Commissioner for Refugees. Since then, we are in constant contact with them and have immediately mobilised funding to support their efforts on the ground.

We were very saddened to hear the reports of deaths at the Polish-Belarus border. The saving of human lives must always be the priority. We have pleaded that the Polish authorities carry out thorough investigations in order to ascertain what has happened and prevent such events from recurring.

In September 2021, Commissioner Johansson visited Poland and reiterated the EU support against the practices of the Belarusian regime, but emphasised that all laws, policies and practices in Poland concerning border protection must be in line with EU law. Commissioner Johansson called on the Polish authorities to engage in a regular

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bilateral exchange on the situation, the evolving needs, the legal environment and the humanitarian support at the border.

Further visits of the Commission services to Poland took place in October in order to continue discussing the situation at the border and the different ways in which the European Commission could intervene, including EU funding and the operational support of EU agencies such as the European Border and Coast Guard Agency (Frontex) and the European Asylum Support Office (EASO). The Commission services emphasised that the humanitarian situation at the border needs to be adequately addressed and stressed the absolute need to prevent additional deaths. Meetings with civil society and international organisations took place in both occasions, with constructive exchanges on how to avoid a possible humanitarian crisis.

The amendments to the Polish Act on Foreigners, which would allow authorities to disregard asylum applications made by those who crossed the border irregularly, were adopted on 14 October. During our contacts with the Polish authorities, we have repeatedly raised our preliminary concerns, emphasising that the management of the EU's external borders and return procedures have to be conducted in line with EU law, including the respect for fundamental rights, ensuring a genuine and effective access to the asylum procedure and respecting the principle of *non-refoulement*. We are assessing these amendments in view of the legal framework of the European Union.

On 23 November 2021, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy adopted the Communication “Responding to state-sponsored instrumentalisation of migrants at the EU external border”<sup>1</sup>. It outlines the actions that the European Union has been undertaking, in particular regarding humanitarian support, diplomatic outreach to the countries of origin of migrants, sanctions against people and entities in Belarus, sanctions against transport operators facilitating human trafficking and smuggling of migrants, and protection of the border.

On 1 December, the Commission adopted a proposal for a Council Decision aimed at supporting Latvia, Lithuania and Poland<sup>2</sup> by providing measures and operational support needed to manage (in an orderly and dignified manner) the arrival of persons being instrumentalised by Belarus, in full respect of fundamental rights. The proposal preserves the genuine and effective right to asylum. It also provides additional safeguards in relation to children and their family members and vulnerable persons.

The cooperation with all EU Member States at the border with Belarus will continue as long as this situation persists. Our objective remains to avoid any loss of life and to ensure a treatment of migrants in line with the provisions and guarantees provided for by EU law.

Yours faithfully,

[e-signed]

Beate GMINDER

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<sup>1</sup> “Responding to state-sponsored instrumentalisation of migrants at the EU external border”, JOIN (2021) 32 final of 23 November 2021.

<sup>2</sup> COM(2021) 752 final.