



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Poslanecká sněmovna for its Opinion on the Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Responding to state-sponsored instrumentalisation of migrants at the EU external border {JOIN(2021) 32 final}; the proposal for a Council Decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland {COM(2021) 752 final}; the proposal for a Regulation of the European Parliament and of the Council on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the European Union {COM(2021) 753 final}; the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders {COM(2021) 891 final}; and on the proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum {COM(2021) 890 final}.

As part of the measures to address the instrumentalisation of migrants for political purposes by Belarus, the Commission made a proposal under Article 78(3) of the Treaty on the functioning of the European Union for a Council Decision on provisional measures for the benefit of Latvia, Lithuania and Poland. To protect the European Union's borders, and to protect people, the Commission proposed the measures and operational support to Member States to manage this emergency situation in a humane, orderly and dignified manner, with specific guarantees and in full respect of fundamental rights and international obligations. The Commission proposal is under discussion in the

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Council, which will act after consulting the European Parliament.

With regard to the Poslanecká sněmovna's concern on the appropriateness of the legal basis for the legislative proposal COM(2021) 753 final, the Commission wishes to underline that the focus of the proposed measure is on commercial transport activities performed by transport operators. This proposal provides a legal framework allowing the Union to adopt measures that should be addressed against transport operators of any mode of transport (air, sea, inland waterways, rail and road), that facilitate or engage in the trafficking in persons, or the smuggling of migrants in relation to illegal entry into the Union territory in the aforementioned activities.

The proposal introduces measures that are clearly related to the common transport policy, as they concern the rights of access of transport operators to the Union market (including of non-resident carriers) and the possible suspension of such rights – in particular of the rights to provide transport services from, to, or within the Union, to fly over the territory of the Union, to refuel or carry out maintenance within the Union, to call into and enter the Union ports, or to transit through the territory of the Union. Such measures are also to be interlinked with the requirements of good repute for transport operators set out in the transport acquis of the Union. The proposal does not therefore find its center of gravity in the area of justice and home affairs, as the provisions in question are not to be considered restrictive measures under the common foreign and security policy of the Union, but rather as measures related to the rights of access of transport operators to the common transport market. As such, it is a transport measure, which should therefore be based on a transport legal basis.

As regards the proposed amendment of the Schengen Borders Code, the Commission's proposals tackle three challenges, which have been affecting the functioning of the Schengen area in the past years: COVID-19, the instrumentalisation of migrants and the long-lasting reintroduction of internal border controls. Based on the experience acquired in relation to COVID-19, the Commission is convinced that the Schengen area requires uniform and directly applicable measures to be adopted at the external borders in response to a disease with epidemic potential. Any necessary flexibility in this regard can be assured by the Council when adopting the implementing regulation, taking into account the specific conditions of any future pandemic.

As regards border surveillance, the proposed modifications in the first place concern a situation of instrumentalisation of migrants. Member States are entitled to take the measures they consider necessary to ensure a high level of external borders control, provided that the adopted measures guarantee respect of fundamental rights and the principle of non-refoulement.

Finally, the proposed measures at internal borders serve to ensure that the reintroduction of internal border controls remains truly a measure of last resort, and that the length of the periods for which these internal border controls are reintroduced is limited to what is strictly necessary. The proposed measures in Article 23 and new Article 23a provide Member States with alternative measures to internal border controls, which could help address also the phenomenon of secondary movements.

The Commission welcomes the positive feedback of the Poslanecká sněmovna concerning the response to instrumentalisation of migrants as proposed in the Schengen Borders Code. The proposal on instrumentalisation makes reference to the definition of instrumentalisation as foreseen in the proposal for revision of Schengen Border Code. The Commission considers that a number of safeguards were put in place that strike a balance between, on the one hand, the immediate needs of the Member State facing instrumentalisation of migrants to manage that situation and, on the other, the need for legal certainty and uniformity in the application of derogations and specific rules and the necessary protection of the third-country nationals being instrumentalised. The Commission considers that the current rules of the Dublin¹ and Eurodac² Regulations that continue to apply sufficiently meet this objective, as well as the rules and safeguards for grounds for detention under the Reception Conditions Directive recast³. The Commission proposed to extend the deadline for carrying out the emergency asylum procedure by four weeks, which makes a total of sixteen weeks, which is proportionate to the objective to ensure an expedite return at the end of the procedure for those who do not qualify for international protection and ensure legal certainty for those who qualify for international protection.

The Commission hopes that these clarifications address the issues raised by the Poslanecká sněmovna and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Ylva Johansson
Member of the Commission*

¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person; *OJ L 180, 29.6.2013, p. 31–59.*

² Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice; *OJ L 180, 29.6.2013, p. 1–30.*

³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); *OJ L 180, 29.6.2013, p. 96–116.*