



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Strasbourg, 23.11.2021
JOIN(2021) 32 final

**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**

RESPONDING TO STATE-SPONSORED INSTRUMENTALISATION OF MIGRANTS AT THE EU EXTERNAL BORDER

1. INTRODUCTION

A particularly cruel form of hybrid threat has emerged with the state-sponsored instrumentalisation of people for political ends. Such practices run counter to EU and universal values. Countering hybrid threats is one of the most complex challenges the European Union and its Member States face. The ways in which a state or non-state actor can pressurise or attack another state have evolved. This can take different forms ranging from cyber attacks to foreign information manipulation and interference. All these forms of threats have the intention of destabilising or undermining society and key institutions, and have the effect of putting citizens at risk.

Recent actions by the Lukashenko regime and its supporters are to be seen in this light – as a determined attempt to create a continuing and protracted crisis, as part of a broader concerted effort to destabilise the European Union, testing its unity and resolve. These actions represent a real and present danger to the EU’s security. Beyond this, such actions and the strategy behind them, have global ramifications and are a matter of concern not only for the EU but also for the international community.

It is the EU as a whole that is being challenged, especially Lithuania, Poland and Latvia, which have since the summer experienced an insidious new threat, in the form of the instrumentalisation of desperate people. This has resulted in an unprecedented increase in irregular border crossings from Belarus. While recent years saw almost no attempts to cross the external borders illegally from Belarus into the EU, this is now a daily reality. This has been initiated and organised by the Lukashenko regime luring people to the border, with the cooperation of migrant smugglers and criminal networks.

For the migrants at the border the situation remains dire. It is crucial that humanitarian aid reaches all people in need and that they can be provided with lifesaving assistance.

The EU has strongly condemned this instrumentalisation of vulnerable migrants and refugees. The gravity of the situation has been made clear at the highest level. The European Council addressed this threat at its meetings of June and October 2021.¹ In the State of the Union address, President von der Leyen identified the Belarus action as a hybrid attack to destabilise Europe.² The EU’s firm position remains that the Lukashenko regime lacks democratic legitimacy.

There has been resolute support for the Member States most affected, who are managing the external border on behalf of the EU. This support has meant operational and financial help to bolster border management and to cater to humanitarian needs. This has been underpinned by major diplomatic efforts to call on third countries and airlines to avoid becoming unwitting partners in Belarus’ strategy, as well as direct pressure on Belarus itself. The EU’s efforts to build a coalition to oppose the instrumentalisation have had rapid results. Transit routes being exploited by smugglers to bring migrants to the Belarusian border are being shut down one by one.

¹ EUCO conclusions of 24-25 June 2021 and 21-22 October 2021.

² State of Union 2021 Address, 15 September 2021.

This Communication provides an overview of the actions taken in response so far and the measures under way to step up these efforts. It also looks ahead to how the current framework can be adapted to provide a more permanent toolbox to address future attempts to destabilise the EU through the state-sponsored instrumentalisation of irregular migrants. The EU will not accept any hybrid attack that exploits human beings in this way, taking advantage of their suffering, and provoking violence and loss of life for political purposes. The international community as a whole needs to come together in opposition to this manipulation of people.

The collective strength and solidarity of the EU working as a whole on this issue further underlines the EU's added value in border and migration management.

2. THE CURRENT SITUATION

Situation at the external border of the EU

As of 16 November, the total number of arrivals in the EU from Belarus in 2021 was 7 698, with 4 222 in Lithuania, 3 062 in Poland and 414 in Latvia. There have been over 40 000 repeated attempts to cross these borders prevented during 2021.³ The main third country nationalities involved are Iraqi and Afghan. Independently of the state-sponsored instrumentalisation of migrants, a number of Belarusian nationals are seeking to escape the repression by the Belarus regime.

The situation at the Polish border with Belarus was deliberately escalated by the Belarus regime on 8 November. Several thousand people were gathered on the Belarusian side to pressurise the Polish border. This was instigated by the Belarusian authorities. In the subsequent days, the Belarus authorities also gave smaller groups of migrants tools and tear gas to attempt entry by force. Belarusian soldiers partially destroyed the temporary border barrier.

The three Member States have taken a variety of measures in response. All three have declared **states of emergency**, reinforcing their presence at the external border with EU support, including by calling upon their armed forces. They have also adopted dedicated legislation to deal with this specific situation.⁴ The Commission is in contact with these Member States, providing technical advice on their legislation to ensure consistency with the respect of fundamental rights and EU law.

The situation has had a clear impact on asylum applications, which have significantly increased. By 14 November, there had been 2 649 applications asylum applications in Lithuania, 294 applications in Latvia and 6 498 applications in Poland.

In addition, there is strong evidence that there has been a major increase in unauthorised **secondary movements** connected with irregular entry from Belarus. Germany has estimated that over 10 000 detections at the German border with Poland in recent months can be traced back in this way. The German Federal police and Polish police cooperate in patrolling the border area and performing checks to detect potential irregular migrants. Joint anti-smuggling actions are also ongoing under the Joint Investigative Cell in Vilnius where Lithuania, Poland, Germany and Finland exchange on smuggling activities and coordinate joint operational response. Sixteen smuggling cases have been tackled so far. The Investigative Cell will become an operational task force early December with other Member States invited to join.

³ To note that these may include multiple attempts to cross by the same individuals.

⁴ As of 9 November, Lithuania adopted a 'state of extraordinary circumstances' which prohibits movement within 5 km from the border area and around migrant centres.

Humanitarian situation in Belarus and immediate EU response

Belarus' actions have created a humanitarian crisis, with a number of fatalities already confirmed. It should be recalled that Belarus bears the primary responsibility for addressing this crisis. It is bound by the Geneva Convention, including the principle of *non-refoulement*. Therefore Belarus must provide for adequate protection of the refugees it invited onto its territory and cooperate with UNHCR to this end.

Inside **Belarus**, men, women and children, including people in vulnerable situations such as pregnant women, are stranded in sub-zero temperatures. As winter deepens, the situation will only be exacerbated. Due to the lack of adequate access for humanitarian organisations, it is difficult to assess the exact number of people in need. It is estimated that there have been 2 000 people close to the border and up to 15 000 stranded in total in Belarus. There are now reports that the Belarusian authorities in the region have organised night stay facilities for a number of women and children and have moved people from the makeshift camps at the border to a logistical centre nearby.

While limited access has hindered the task of assessing needs, the Commission has remained in close contact with its humanitarian partner organisations. Recent decisions have mobilised €700 000 in humanitarian funding in order to support partners in providing assistance to vulnerable people stranded at the border and inside the country (see below).

Situation in Member States and immediate EU response

The EU offered immediate support to the most affected Member States, providing material support through the civil protection mechanism, deploying EU agencies and mobilising additional funds with a view to full access for the relevant humanitarian agencies on the ground. Political support was galvanised and visits by Commissioner Johansson to Lithuania in August and to Poland in September led to a number of measures, including a decision on **emergency aid** from the Asylum, Migration and Integration Fund to Lithuania of €36.7 million. The grant provides for support to the implementation of asylum procedures and for reception conditions, including for vulnerable persons.

Since July, the Commission has brought together affected Member States, EU agencies, the EEAS and relevant international organisations in weekly meetings of EU Migration Preparedness and Crisis Management Network (the Blueprint Network), to provide high quality situational awareness and coordination to shape an effective response.

Lithuania activated the **EU Civil Protection Mechanism** (UCPM) on 15 July 2021. The Commission coordinated assistance from 19 Member States⁵ and Norway consisting of tents, beds, heating systems, electric generators, bedding, food-rations and other in-kind assistance. The option of activating the UCPM remains open to Poland and Latvia, with each country able to define its specific needs. The Commission's Emergency Response Coordination Centre is in constant contact with Poland, Latvia and Lithuania to provide support as required.

EU Home Affairs agencies have also been deployed since July. To date, 104 Frontex officers, 73 EASO experts, two Europol Guest Officers and one analyst are deployed in Lithuania. In addition, Frontex provided patrol and transport cars as well as helicopters in Lithuania. Seven Frontex border police officers, one patrol car and one thermal vision vehicle as well as nine EASO experts (support officers and interpreters) are currently deployed at the Latvian border with Belarus. There is also a Europol specialist deployed in Poland as well as

⁵ Austria, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Luxemburg, Malta, the Netherlands, Poland, Portugal, Slovenia, Slovakia, and Sweden and Norway.

three Frontex border guard officers who were present in Poland before this crisis. Frontex is also supporting Latvia and Lithuania on returns, and most recently received a request for support from Poland.

3. TACKLING THE ONGOING CRISIS

Action outside the EU

- **Restrictive measures (sanctions)**

The EU reaction to the instrumentalisation of migrants by the Lukashenko regime follows increasing concern about Belarus flouting international norms, both in terms of repression of democracy and the forced landing of the Ryanair flight in May.⁶ **Sanctions** responding to the fraudulent elections and the crackdown on civil society and opposition, as well as to the flight diversion, have been progressively scaled up and a total of 166 individuals and 15 entities are now designated under the sanctions regime. This is complemented by a comprehensive package of economic and financial measures against Belarus as well as a ban on the overflight of EU airspace and on access to EU airports by Belarusian carriers.

These measures are now being extended as a specific response to the state-sponsored instrumentalisation of migrants and refugees by Belarus. On 15 November, the Council amended the EU sanctions regime regarding Belarus and the EU is now also able to target **both individuals and entities organising or contributing to activities that facilitate illegal crossing** of the EU's borders. Further actions may be applied after International Civil Aviation Organisation (ICAO) investigations.

The Council has also reached political agreement on a **fifth package of listings** to address the situation at the border, the instrumentalisation of migrants, and the continued repression within Belarus. In line with the EU gradual approach on sanctions, the strengthened legal framework will allow the EU to impose further measures against those who deliberately put people's lives, health, and well-being in danger, and attempt to undermine the security of the EU's external borders. Reacting to developments, the Commission is ready to propose further restrictive measures for Council discussion to curb the ability of the Belarusian regime to instrumentalise migrants.

A **strong and uniform implementation** of existing restrictive measures will step up pressure on the regime.⁷ These measures will yield considerable results, given the economic profile of some of the listed persons and entities. Information exchange among Member States and with the Commission is crucial to make sure that hidden economic ties are known to all relevant national authorities, and that sanctions are fully implemented. The Commission and Member States have acted systematically to enforce the overflight restrictions over Belarus by EU air

⁶ This flight diversion concerned an intra-EU flight and its objective was the arrest of a Belarus dissident and his partner, who reside permanently in an EU Member State. The Ryanair flight is flagged under Irish law.

⁷ The listing of natural and legal persons, entities and bodies not only means the freezing of assets, funds and economic resources of the persons and entities on the list, but also of assets owned, held or controlled by them through non-sanctioned companies and intermediaries. It also means an obligation not to provide funds and economic resources which would benefit, directly or indirectly, the sanctioned persons, entities or bodies. This prohibition extends to cases where such resources would be indirectly provided through owned or controlled companies.

services operators. In response to implementation questions received from companies, law firms and national authorities, the Commission will shortly propose further guidance.⁸

- **Suspension of the Visa Facilitation Agreement**

On 9 November 2021, the Council adopted the Commission proposal on the partial suspension of the EU-Belarus Visa Facilitation Agreement. The suspension concerns government officials of Belarus (members of Belarus official delegations; members of Belarus national and regional Governments and Parliaments, Belarus Constitutional Court and Belarus Supreme Court). This means that Belarusian officials will have to submit the full set of supporting documents on each visa application, the issuance of multiple-entry visas will not be facilitated and they will not be entitled to the waiver of the visa fee. The other provisions of the Visa Facilitation Agreement remain in force and facilitation will continue for the ordinary citizens of Belarus.

- **Diplomatic Efforts**

Since the beginning of the crisis, the EU has been making full use of diplomatic tools at its disposal. Outreach has been conducted at both political and technical levels. President von der Leyen highlighted the need for a proactive approach in announcing that Vice-President Schinas, coordinating with High Representative/Vice-President Borrell, would travel to the main countries of origin and transit involved to prevent people falling into the trap set by the Belarus regime.

On 30 July, HRVP Borrell issued a declaration on behalf of the EU denouncing the instrumentalisation of migrants and refugees by the regime⁹ and a second declaration identifying the situation as a hybrid attack was issued on 10 November¹⁰. The Belarusian regime has been subject to démarches in August and in September. HRVP Borrell called Foreign Minister of Belarus Makei on 14 and 16 November, raising the precarious humanitarian situation at the border and demanding that the regime stop the current illegal and immoral practices.

The issue of the state-sponsored instrumentalisation of migrants has also been addressed by the EU in the Organisation for Security and Cooperation in Europe and at the United Nations in both New York and Geneva. On 11 November, a closed UN Security Council meeting on the situation at the border and on Belarus' instrumentalisation of migrants was held on the request of the EU. The G7 Foreign Ministers issued a statement on 18 November declaring solidarity with Poland, Lithuania and Latvia, and commended the actions of the EU working closely with countries of origin and transit to put an end to the actions of the Lukashenko regime.

The Commission and the High Representative have stepped up visits to key partner **countries of origin and transit**. Authorities in partner countries have been alerted to the situation at the EU's border with Belarus, the risks of exploitation of their citizens and of people in transit, the need to actively inform their citizens of the risks and dangers of irregular migration to Europe, and the potential for a negative impact on their relations with the EU. The importance

⁸ The Commission has also put Belarus on the agenda of the Expert Group on Sanctions Implementation, and could set up a sub-group dealing with Belarus if the situation so requires.

⁹ Declaration by the High Representative on behalf of the European Union on the instrumentalisation of migrants and refugees by the regime, 30 July 2021.

¹⁰ Declaration by the High Representative on behalf of the European Union on the situation at the European Union border, 10 November 2021.

of cooperation on return of those migrants without a legitimate right to stay in the EU has been underlined. President Von der Leyen has actively raised the matter at international level and with key partners, including with the United States. In early September, HRVP Borrell visited Iraq, and in October Commissioner Johansson visited Turkey. Vice-President Schinas has recently visited Iraq, Lebanon, the United Arab Emirates and Turkey and will shortly visit Uzbekistan.

Through its network of EU Delegations and working closely with Eurocontrol, the EU has consistently monitored the situation to identify changes flight patterns to Belarus and detect the emergence of new routes. Partner countries have been asked to fight smuggling networks and to impose tighter controls on flights and passengers to mitigate the risk of irregular movement to the EU.

The outreach has included direct contacts with airlines and civil aviation authorities. This has included discussions with the Arab Civil Aviation Organisation, exploring ways to help limit non bona fide travel to Belarus.

EU Member States have also reached out to partner countries on the situation at the EU border with Belarus and the continued instrumentalisation of migrants by the Belarusian regime. Joint demarches have been made by the EU Delegations with Member States, as well as by Member States acting bilaterally in Kazakhstan, India, Georgia, Ukraine, Turkey, and Uzbekistan.

The EU's continuous engagement has led to results. Discussions with Iraq, in the light of the Commission's proposals under Article 25a of the Visa Code to improve cooperation on readmission, have highlighted the imperative to strengthen cooperation on returns, including non-voluntary returns. Following the first dedicated outreach in July, by both HRVP Borrell and Commissioner Johansson, the government of Iraq acted swiftly, with a suspension of direct flights from Baghdad to Belarus in August. This remains in place today. Following Vice-President Schinas' visit, flights from Erbil transiting through third countries to Belarus were also stopped. Iraq has further investigated smuggling activities and has closed Belarusian honorary consulates. It is now organising repatriation flights for Iraqis, also supported by the Commission (see below).

There have been several other steps taken to suspend flights and impose tighter controls on flights and passengers in the course of November with the aviation authorities of a number of key states now declining to allow in particular Iraqi, Syrian, Afghan and Yemeni passengers to travel or transit to Minsk. Monitoring of the implementation of these decisions will be important.

Intensive diplomatic effort will be required to prevent the exploitation of **new routes** with the risk that Belarus will seek to compensate by facilitating travel via new routes, especially from the East. The EU should continue to sensitise relevant partners about the risk of being drawn into the Belarus strategy as a hub for irregular movements. Strong and coherent collective messaging will be required to assure these partners that the EU will support preventative action, and also to make clear the potential negative consequences if this matter is not given the due attention and importance.

- **Countering disinformation**

Information manipulation is a key tool used to instrumentalise migrants. There is clear evidence that the situation is being exploited to orchestrate a widespread disinformation campaign to discredit the EU's international reputation, by presenting it as hostile towards refugees. The same campaign portrays the Lukashenko regime as meeting the legitimate wishes of people wanting to migrate and aims to distract attention from the systematic

violation of human rights in Belarus. Increased transparency and information campaigns are important to counter that narrative effectively. Access of media and civil society organisations is key so they can contribute to countering disinformation.

Russian state-controlled media outlets are constantly present at the Belarusian border, alongside their Belarusian counterparts. This ensures that manipulative messages are spread internationally. The situation is aggravated by the fact that independent media outlets in Belarus have largely been shut down by the regime.

The EU will continue to provide legal, financial and other support for the independent Belarusian media, including its operations in exile. All EU delegations have been instructed to play an active role in addressing information manipulation issues. EEAS Stratcom will continue to raise awareness and publically expose disinformation and information manipulation efforts by the Belarusian and Russian state-controlled media on the migration issue, and share its analysis and monitoring with Member States and international partners via the Rapid Alert System.

- **Social media and combatting misleading information to migrants**

Social media has played a key role in stimulating demand for the services of migrant smugglers and raising unrealistic expectations about the chances of entry into the EU. It is also used as a logistical tool by migrant smugglers and between migrants in Belarus. Europol is engaging with social media providers to encourage platforms to play a part in disrupting communication.

The European External Action Service will step up work to counter false and misleading information online, focusing on where migrants exchange information and Belarus and migrant smugglers may stimulate demand for irregular migration. EU delegations will deploy dedicated communication material.

The existing Infomigrants project supports **information and awareness raising campaigns** to over 50 million people available in six languages (French, Arabic, English, Bengali, Dari and Pashto).¹¹ It conducts information campaigns through an online media portal providing on a single platform, news and information services for migrants and refugees in third countries, and is expanding direct engagement with migrants via Facebook Messenger. It offers reliable, verified and objective information to counter misconceptions about the risks along the migration route and the quality of life abroad. Specific information now deployed on Belarus includes daily news coverage and direct engagement on the risks involved. Migrants trapped at the Belarus borders have been able to contact InfoMigrants to warn others not to embark on a journey and making clear that there is no guarantee of asylum.

Through an EU funded project, the International Centre for Migration Policy Development (ICMPD) provides information to potential migrants in Asia on the options for legal pathways, as well as on the risks connected to irregular migration. The dedicated centre in Iraq has rapidly scaled up its activities to discourage further departures towards Belarus. The campaign has been carried out with individual outreach, messages on social media and television campaigns.

- **Stepping up humanitarian support in Belarus**

With some possibilities to provide humanitarian support for stranded migrants in Belarus now being created, the EU has recently been able to channel direct support to the situation in

¹¹ This will be extended under AMIF in 2022.

Belarus. This includes the immediate allocation of €200 000 to the International Federation of Red Cross and Red Crescent Societies (IFRC) as part of the EU's overall contribution to the Disaster Relief Emergency Fund, managed by the IFRC. This immediate EU funding supports the IFRC and its national society, the Belarus Red Cross, to deliver much needed relief assistance, including food, hygiene kits, blankets, and first aid kits.

The Commission's **Small Scale Tool** has also been activated with €500 000 available for international organisations such as IOM, UNHCR, IFRC to provide emergency assistance. This can provide lifesaving assistance to the most vulnerable people stranded at the border, including food and water, non-food items (blankets, clothing, baby items) and health support, and preparing for winterisation. The Commission is currently in contact with its humanitarian partners on the implementation of these funds. It is imperative that they have the necessary access to the people in need.

The Commission stands ready to provide **additional humanitarian funding**, to the UNHCR and IOM among others, to respond to clearly established humanitarian needs, should the access for humanitarian partner organisations further improve.

- **Flights to return those stranded in Belarus**

A humane response to the crisis includes helping people to return home where possible. There is already evidence that many people are ready to return to their countries of origin. The Commission will mobilise up to €2.5 million to **facilitate assisted voluntary returns**. This will cover the costs of return and reintegration to countries of origin, as well as essential humanitarian, medical, and legal support while on the territory of Belarus.

A flight with 432 Iraqis on board left Minsk for Baghdad on 18 November. The Iraqi authorities have requested help with such returns. In response, the Commission will mobilise additional funds of around €1 million to support voluntary return and reintegration in cooperation with the IOM. Altogether, this means the Commission will provide up to €3.5 million to support voluntary returnees from Belarus.

In addition, further funding through the new budgetary instrument **NDICI-Global Europe** will support Iraq in stepping up its cooperation with the EU in addressing common migration challenges, with a priority given to preventing irregular migration, developing cooperation on return, readmission and reintegration, addressing the root causes of irregular migration and forced displacement, providing assistance and protection to refugees in the country and better organising labour migration.

At the border/inside the EU

- **Border management, asylum, and return**

EU funding can give further support to the most affected Member States, drawing upon the Asylum, Migration and Integration Fund (AMIF) and the Border Management and Visa Instrument (BMVI). While the Member States have received allocations for national programmes, the two funding instruments also each establish a Thematic Facility. This funds priorities at EU level, including emergency assistance for urgent and immediate needs and support to Member States under migratory pressure.

This has already been drawn upon for the €36.7 million in emergency aid now under way in Lithuania. This programme shows how the EU can help to address a wide variety of financial and operational needs, from operating equipment and border surveillance systems to transport for border guards. It can help with the quality and availability of reception centres, as well as

the transport of migrants, and to build up dedicated facilities to support the vulnerable. The Commission is in dialogue with Lithuania, Poland and Latvia about the extent of this funding and how it can help, based on a full needs assessment. In addition to the €360 million foreseen for these Member States under the BMVI for this financial period, a further top-up of around €200 million will be available for 2021 and 2022.

The EU has also offered support from its **agencies** to Latvia, Lithuania and Poland, as the three Member States being targeted by Belarus. This is already being shown through the deployment of experts. The agencies can now provide a further step forward in operational support and it is important for the three Member States to make full use of that support.

As well as responding to a substantial request for deployment in Lithuania in particular, **Frontex's** current support includes a 24/7 Situation and Crisis Monitoring services and operational information exchange. Other options include the provision of equipment, capacity building and training to national border guards, and targeted information and risk analysis,¹² as well as the deployment of the Standing Corps.

Frontex's new mandate offers considerable opportunities to go a step further in support of border control activities, including screening and return operations. It opens the door to much clearer operational coordination. For example, on a request from a Member State, the Frontex executive director can launch a rapid border intervention and/or return intervention on the territory of the host Member State concerned. This would allow an organised and resourced intervention at EU level. It is important for all Member States to be ready to respond with equipment and personnel in line with the Agency's new mandate.

The European Asylum Support Office (EASO) is providing operational support to Lithuania to accelerate the handling of asylum applications and to improve reception conditions in line with EU standards. EASO is also supporting Latvia with interpretation and capacity building measures. Further support could focus on registering and processing applications in the most effective way, to ensure screening of vulnerable migrants, supporting the management, design and putting in place of adequate standards of reception facilities.

As regards **returns**, the Commission, Frontex and IOM have been working with Lithuania to reinforce return capacity. Poland has also asked for Frontex support in conducting returns. EU solidarity with the three Member States affected will continue to include support for returns to countries of origin, and this has already resulted in substantial numbers of return operations. EU action will focus not only on technical and operational support, but also on outreach to Iraq and other third countries to ensure returnees will be accepted, and that the necessary authorisations are given for charter flights.

This work will be stepped up with tailor-made support to all three Member States. Frontex support can involve deployment of return specialists and the organisation of identification missions, as well as the chartering of flights for returns.

Moreover, in addition to the operational support that is being provided and could be further stepped up, the Commission is working on a proposal for provisional measures in the area of asylum and return, based on **Article 78(3) of the Treaty on the Functioning of the European Union**. This follows the invitation of the European Council to the Commission to

¹² For example, the EUROSUR Fusion Services offering risk analysis and targeted information for potential departure or transit areas for irregular migration.

propose any necessary changes to the EU's legal framework and concrete measures to ensure an immediate and appropriate response in line with EU law and international obligations. It also responds to a request by the impacted Member States to be able to rely on provisional measures to address the emergency migratory situation at the EU's external borders effectively. Those measures would aim to further support Latvia, Lithuania and Poland in managing the current situation in a controlled and swift manner, while fully respecting fundamental rights and international obligations.

- Tackling smuggling

The strategy of the Belarusian authorities – of first drawing migrants to Belarus, and then pushing them to irregular crossing of the EU external border and potential secondary movement – depends on the smuggling economy that encourages, facilitates and monetises the situation of those who can be lured on false pretences.

Europol provides round the clock support to criminal investigations by the European Migrant Smuggling Centre (EMSC), and facilitates operational information exchanges within the Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings at Europol, which meets on a weekly basis. The agency also undertakes open source monitoring and support through its Internet Referral Unit to Member States making referrals. Europol's ongoing support to the Member States concerned includes secondary security checks and other cross checks focused on cases of facilitation of smuggling, including unauthorised secondary movements. This work can be stepped up through the deployment of experts, cross-checking of information against data held at Europol, internet monitoring, and facilitating rapid and secure information exchange between Member States. The Belarus situation could be prioritised to result in tailored analysis, such as threat assessments and situation reports.

The Commission has recently proposed a renewed **EU Action Plan against migrant smuggling (2021-2025)**¹³, which recognises the new phenomenon of instrumentalisation of migrants for political purposes and the need to protect the EU external borders as a result. The joint implementation of the EU and its Member States of key aspects of the action plan will provide a more effective response to changing patterns and evolving routes, strengthening the sanctioning of migrant smugglers, law enforcement and judicial cooperation as well as preventing the exploitation of migrants and ensuring respect for their rights.

Elements that could be quickly deployed include Common Operational Partnerships to pursue the investigation and prosecution of criminal smuggling networks, including support to specialised investigative units in partner countries, especially in the countries most closely involved in flows to Belarus. Supporting partners in establishing solid legal frameworks to fight smuggling, as well as in practical implementation, is central to developing Joint Anti-Smuggling Operational Partnerships.

4. PREVENTION: ACTION TO ADDRESS INSTRUMENTALISATION

State-sponsored instrumentalisation of migrants should be recognised as a significant new threat and be included in the EU Security Union work-strands as well as taken up widely within the global community. The EU's diplomatic activities are raising awareness of the phenomenon both among the EU's partners and in multilateral fora. Efforts will continue to build a global consensus that human beings must not be used as pawns in the political power-play of unprincipled actors. It is in the common interest of both countries of destination, but

¹³ COM(2021)591 final.

also of countries of transit and origin, to avoid this pattern being repeated. The Commission and Member States should work together to reach out to key international bodies such as the International Civil Aviation Organisation (ICAO) to take action against migrant smuggling and state-sponsored instrumentalisation of people.

Inside the EU, the New Pact on Migration and Asylum is already seeking to provide the EU with the comprehensive legal and institutional framework required, tackling the vulnerability created by the lack of a common effective and fair system. It is crucial that the European Parliament and the Council advance on the negotiations.

The issue of instrumentalisation needs to be factored into this approach, and the Commission's forthcoming proposals to reform the Schengen Borders Code will include strengthening the EU's legal framework to give better tools to Member States to protect the external borders in situations of instrumentalisation, while ensuring full respect for fundamental rights. They will also contain measures that will help those Member States who see unauthorised movements of migrants including the repercussions of instrumentalisation far away from the external border.

Another specific aspect to be addressed is transport. As a tool for migrant smuggling, it is essential to involve transport operators closely in preventing and combatting the smuggling routes inherent in instrumentalisation. The same approach is needed to combat the criminal networks behind human trafficking. Many transport operators already have policies in place to avoid becoming an accessory to crime and the international transport organisations and industry associations have developed Guidance material for their members.¹⁴

However, such policies are not universal, and where they do exist, they are not always well implemented. Recent events could not have taken place without certain transport operators knowingly or unknowingly contributing to – and in some cases benefiting from – the exploitation of people, with a vast humanitarian toll and at high cost to the security of the EU's external borders and stability in the region. Participating in such activities or facilitating them may constitute criminal offences under national provisions implementing the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

To ensure that the EU has the appropriate tools to combat migrant smuggling and its instrumentalisation for political purposes, as well as to tackle human trafficking, more targeted legislation is required to directly address transport operators that engage in such operations or other serious crimes in relation to the facilitation of illegal entry into the EU.

The Commission is tabling today **a proposal to prevent and restrict the activities of transport operators that engage in or facilitate smuggling or trafficking of people into the EU.**

The proposal would provide a legal framework allowing the EU to adopt preventive and protective measures against transport operators of any mode of transport (land, air, inland waterways and sea) which engage in, or facilitate, smuggling or trafficking of people into the EU. Measures taken should be necessary and proportionate in view of the particular circumstances of each case. They could include the suspension or limitation of current

¹⁴ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime; ICAO Guidelines for Reporting Trafficking in Persons by Flight and Cabin Crew; IATA Resolution denouncing trafficking in persons; IATA Guidance on Human Trafficking; IMO Interim measures for combating unsafe practices associated with the trafficking, smuggling or transport of migrants by sea.

operations, the suspension of operating licenses, prohibition to overfly the EU, to make technical stops or to call on EU ports, or prohibition to operate to and from the EU. The effectiveness of measures will depend to a large extent on their swift deployment. Measures will therefore be adopted swiftly by the Commission based on appropriate evidence and after allowing the transport operators involved to exercise their right to be heard.

5. CONCLUSION

Determined and comprehensive action against the Belarus strategy of state-sponsored instrumentalisation of migrants is starting to yield results. A concerted diplomatic effort has started to cut off opportunities for migrant smuggling to Belarus. The consequences for Belarus and for the facilitators of smuggling are becoming ever clearer. Support to the Member States most affected is being stepped-up. There needs to be a strong focus on the humanitarian needs of people now stranded, including work to help their return home.

At the same time, faced with an attempt at creating a continued and protracted crisis, the EU is standing strong with its Member States and making clear that under no circumstances will it tolerate attempts to undermine or destabilise its democratic values and societies. This is central to our mission of ensuring a secure and democratic Europe through initiatives such as the Security Union and the Strategic Compass. There is first and foremost a humanitarian imperative to act decisively now to alleviate the situation at the borders of Belarus as well as moral duty to prevent such unscrupulous actions being replicated. The European Union is therefore building a global coalition against the use of people as political pawns.

Overall, the EU's response to the Lukashenko regime's aggressive actions demonstrates the need for a holistic approach to fighting hybrid threats and mitigating their potential impact on the security of the EU and of its citizens. Looking forward, the EU needs an appreciation of the wider challenge of developing capabilities to address hybrid threats, complemented by specific tools able to be used as required now and in the future.



Strasbourg, 23.11.2021
COM(2021) 753 final

2021/0387 (COD)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The Union and the Member States are parties to several United Nations Conventions and Protocols destined to combat transnational organised crime, the smuggling of migrants and trafficking in persons, namely:

- the United Nations Convention Against Transnational Organized Crime¹,
- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime²,
- the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime³.

Such illegal activities very often rely on different means and modes of transport, making it necessary to closely involve transport operators in preventing and countering these activities.

Several sectoral initiatives have already been taken at international level in this area. The International Civil Aviation Organization (ICAO) has adopted Circular 357 on '*Guidelines for Reporting Trafficking in Persons by Flight and Cabin Crew*⁴' and in its Circular 352 provided '*Guidelines for Training Cabin Crew on Identifying and Responding to Trafficking in Persons*⁵'. According to these circulars, States' Civil Aviation Authorities should require that operators develop policies, procedures, training and guidance for their employees on these matters. The International Air Transport Association (IATA) also issued a Resolution against trafficking in persons in 2018 and has developed Guidance material for its members⁶. The International Maritime Organization (IMO) published interim measures for combating unsafe practices associated with the trafficking, smuggling or transport of migrants by sea⁷. The International Chamber of Shipping (ICS) has issued guidance on ensuring the safety and security of seafarers and rescued persons⁸.

Many transport operators have policies in place to avoid, to the best of their ability, becoming an accessory to trafficking and smuggling. However, in some cases such policies are not in place or not well implemented.

Recent events have also shown how migrants can be instrumentalised for political purposes, and how certain transport operators have been contributing to – and in some cases benefiting

¹ <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

² <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

³ <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

⁴ <https://www.icao.int/safety/airnavigation/OPS/CabinSafety/Documents/Cir.352.alltext.en.pdf>

⁵ <https://www.icao.int/safety/airnavigation/OPS/CabinSafety/Documents/Circ.357.EN.pdf>

⁶ <https://www.iata.org/contentassets/8e5bb5f5bfa04057a8826cf042cd4df9/human-trafficking-guidelines-v1.pdf> and <https://www.iata.org/contentassets/8e5bb5f5bfa04057a8826cf042cd4df9/resolution-trafficking-persons-agm2018.pdf>

⁷ <https://www.wcdn.imo.org/localresources/en/OurWork/Facilitation/Documents/MSC.1-Circ.896-Rev.2.pdf>

⁸ <https://www.wcdn.imo.org/localresources/en/OurWork/Facilitation/Documents/large-scale-rescue-at-sea.pdf>

from - smuggling and trafficking operations that have put at risk the lives of vulnerable people and the security of the Union external borders.

Therefore, in order to avoid such situations, it is necessary to adopt legislation targeted at transport operators that facilitate or engage in the trafficking in persons, or the smuggling of migrants in relation to illegal entry into the Union territory. To pursue that purpose effectively, that legislation should be applicable across the Union. The condition for its application should be formulated as close as possible to the ones provided for by the aforementioned UN Conventions which have been ratified by the overwhelming majority of countries of the world, including all Member States of the Union. Thus the Union will be able to fully use the tools offered by those Conventions, including in the situations envisaged in Article 15(2) of the said Convention, in cases where the smuggling or trafficking activities are committed with a view to committing serious crimes in the Union.

This Regulation should therefore provide 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 engage in the aforementioned activities. The types of measures to be imposed should be appropriate and proportionate in view of the particular circumstances of the case in question. They should include, in particular, the prevention of any further expansion or the limitation of current transport operations, the suspension of licences or authorisations granted under Union law, the suspension of the right to fly over the Union, transit through the territory of the Union or call into Union ports, the suspension of the rights to refuel or carry out maintenance within the Union or the suspension of rights to operate to, from and within the Union.

- **Consistency with other Union policies**

The present proposal is complementary to the Union's external action including its common foreign and security policy. In the light of the possible security dimension, it is appropriate that the overall strategy as regards the measures to be taken is defined in coordination with the High Representative of the Union for Foreign Affairs and Security Policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Articles 91 and 100(2) of the Treaty on the Functioning of the European Union in relation to transport matters.

- **Subsidiarity**

Since the objective of this proposal, namely to ensure a harmonised approach with regard to measures against transport operators, cannot be sufficiently achieved by the Member States but can rather, by reason of its effect, complexity, and trans-border and international character, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

The proposal does not exceed what is necessary in order to achieve its objective.

- **Choice of the instrument**

In order to ensure that migrants and other persons affected by such illegal operations are protected in a uniform and effective manner, the rules to be established in that regard should

take the form of a Regulation. Appropriate humanitarian measures should accompany the present measures.

3. STAKEHOLDER CONSULTATIONS

Since the beginning of the crisis at the EU's external borders with Belarus, the EU has been making full use of the diplomatic and outreach tools at its disposal both at political and technical levels.

The Commission and the High Representative have stepped up visits to key countries of origin and transit. Authorities in those third countries have been reminded of their obligations under international conventions on trafficking and smuggling, alerted to the situation at the EU's border with Belarus, the risks of exploitation of their citizens and of people in transit, the need to actively inform their citizens of the risks and dangers of irregular migration to Europe, and the potential for a negative impact on their relations with the EU. The outreach has included direct contacts with airlines and civil aviation authorities.

All parties consulted have agreed on the need to ensure that effective and appropriate tools are in place to fight the smuggling of migrants and the trafficking of persons, in particular the use of commercial means of transport in this context, and to ensure appropriate action is taken to protect the lives and safety of people being instrumentalised for political ends.

- **Fundamental rights**

Processing of personal data will be performed in a way that the obligations on personal data protection laid down in Regulation (EU) 2016/679⁹ and Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ are respected.

4. BUDGETARY IMPLICATIONS

This proposal does not entail any implication for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Any measures adopted under this Regulation will be limited in time and will be subject to review in accordance with Article 3(2).

- **Detailed explanation of the specific provisions of the proposal**

The proposal is structured as follows:

Article 1: Subject matter and scope

Article 2: Definitions

⁹ 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 (OJ L 119, 4.5.2016, p. 1).

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 3: Measures concerning transport operators

Article 4: Right to be heard

Article 5: Procedural rules

Article 6: Cooperation with third countries

Article 7: Information and rights of passengers

Article 8: Committee procedure

Article 9: Entry into force

Proposal for a

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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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 and Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹¹,

Having regard to the opinion of the Committee of the Regions¹²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Trafficking in persons and smuggling of migrants endanger the lives and security of migrants, and in particular of the most vulnerable people.
- (2) The instrumentalisation of migrants, whereby State actors facilitate irregular migration for political purposes is an increasingly worrying phenomenon, which may involve the smuggling of migrants or trafficking of persons in relation to illegal entry into the territory of the Union, thereby endangering the lives and security of those people, while posing a security threat to the borders of the Union.
- (3) Such illegal activities very often rely on different means and modes of transport, making it necessary to target transport operators in preventing and countering these activities. In order to combat trafficking in persons and smuggling of migrants, it is therefore necessary to provide for measures to be taken in respect of commercial transport operators that facilitate or engage in such illegal operations. Such measures should apply not only where the transport operators use the transport means for the trafficking in persons and smuggling of migrants, but also in cases where transport operators take an active part in the criminal activities of an organised criminal group active in trafficking in persons and smuggling of migrants with knowledge either of the aim and general activity of that organised criminal group, or of its intent to commit those crimes, or where they aid or facilitate the commission of those crimes, including where those transport operators and those organised criminal groups are State sponsored. The measures in question may target the activities of transport operators

¹¹ OJ C , , p. .

¹² OJ C , , p. .

even where the latter do not transport persons or migrants into the Union. Those measures should not affect the activities of non-commercial operators, in particular humanitarian activities.

- (4) In the light of the possible security dimension at hand, it is appropriate that the overall strategy as regards the measures to be taken is defined in coordination with the High Representative of the Union for Foreign Affairs and Security Policy.
- (5) The procedure for adopting measures against transport operators which contribute to trafficking in persons or smuggling of migrants should allow for decisions to be taken swiftly. Such measures should at all times be necessary and proportionate, and limited in time. Where necessary, it should be possible to extend the measures. The types of measures that may be taken against transport operators should be sufficiently broad to effectively target the specific conduct of the relevant transport operator.
- (6) According to Article 6 of Regulation (EC) No 1071/2009 of the European Parliament and of the Council¹³ and to Article 8 of Council Directive 87/540/EEC¹⁴, managers and transport operators are required to be of good repute, in order to provide certain transport services in the Union. Member States should take into account any measures taken by the Commission pursuant to this Regulation when assessing whether managers and transport operators fulfil or continue to fulfil that requirement.
- (7) In order to ensure that the measures against transport operators may be taken swiftly, implementing powers should be conferred on the Commission to impose such measures through immediately applicable implementing acts. Implementing powers should also be conferred on the Commission to adopt detailed rules on the procedures to be followed before adopting such measures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁵.
- (8) It is fundamental to ensure the respect of the right of persons to be heard before any individual measure which affects them adversely is taken. The Commission should ensure that, before adopting any measures against transport operators, those operators are given the opportunity to be heard, while also taking into account the urgency of the procedure. It should also be possible to invite transport operators to cease any activities relating to trafficking in persons or smuggling of migrants without delay, before measures are taken.
- (9) Before taking measures against transport operators established in third countries, the Commission should consult the relevant authorities in an appropriate manner, with a view to coordinating their actions. In that context, the Commission should also be able to ask those authorities to take any relevant measures.
- (10) Measures taken against transport operators pursuant to this Regulation should be made known to the public. The implementing acts imposing such measures should therefore

¹³ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

¹⁴ Council Directive 87/540/EEC of 9 November 1987 on access to the occupation of carrier of goods by waterway to national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for the occupation (OJ L 322, 12.11.1987, p. 20).

¹⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

be published without delay in the *Official Journal of the European Union*, and relevant actors in transport operations should bring such measures to the attention of passengers, both via their websites and, where relevant, on their premises.

- (11) This Regulation is without prejudice to the application of Directive 2011/36/EU¹⁶ on preventing and combating trafficking in human beings and protecting its victims, which establishes, inter alia, appropriate mechanisms aimed at the early identification of, assistance to and support for victims, determines penalties and sets out the liability of legal persons committing trafficking in human beings.
- (12) This Regulation should not affect the rights of passengers established in Regulations (EC) No 261/2004¹⁷, (EC) No 1107/2006¹⁸, (EC) No 1371/2007¹⁹, (EU) No 181/2011²⁰ and (EU) No 1177/2010 of the European Parliament and of the Council²¹. In particular, the rights to reimbursement, re-routing and compensation should be safeguarded. Moreover, the cancellation of transport operations due to the application of measures taken by the Commission should not be considered as extraordinary circumstances.
- (13) Since the objective of this Regulation, namely to ensure a harmonised approach across the Union with regard to measures against transport operators, cannot be sufficiently achieved by the Member States, but can rather, by reason of its effect, complexity, and trans-border and international character, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (14) While this Regulation affects the freedom to conduct a business enshrined in Article 16 of the Charter of Fundamental Rights of the European Union, it respects the essence of that freedom and limits it only to the extent necessary to meet the objectives of preventing and countering the use of commercial means of transport for the smuggling of migrants and trafficking in persons.
- (15) In view of the urgency entailed by the exceptional circumstances caused by the situation at the Union's external borders with Belarus, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed

¹⁶ 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).

¹⁷ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

¹⁸ Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p.1).

¹⁹ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

²⁰ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

²¹ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

- (16) In the light of the overriding need to address without delay any instrumentalisation of vulnerable people, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down rules to prevent and counter the use of commercial means of transport to facilitate or engage in the commission of smuggling of migrants or trafficking in persons.

In particular, it lays down rules on measures that may be taken to prevent or restrict the activities of transport operators who, in relation to the illegal entry of such migrants and persons into the territory of the Union, either:

- (a) use transport means in the commission of smuggling of migrants or trafficking in persons; or
 - (b) with knowledge of either the aim and general criminal activity of an organised criminal group active in smuggling of migrants or trafficking in persons or of its intention to commit those crimes take an active part in the criminal activities of such a group; or
 - (c) organise, direct, aid, abet, facilitate or counsel the commission of smuggling of migrants or trafficking in persons involving an organised criminal group.
2. This Regulation also lays down measures to ensure that Member States take into account the measures taken by the Commission in the light of the conduct of transport operators referred to in paragraph 1 when assessing the good repute of managers and transport operators.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) ‘trafficking in persons’ means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

- (b) ‘smuggling of migrants’ means the procurement, in order to obtain, directly or indirectly, a benefit, of the illegal entry of a person into the Union of which the person is not a national or a permanent resident;
- (c) ‘serious crime’ means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (d) ‘organised criminal group’ means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences of smuggling of migrants or trafficking in persons, in order to obtain, directly or indirectly, a benefit;
- (e) ‘transport operator’ means any natural or legal person providing a transport operation on commercial terms by any mode of transport, namely by air, sea, inland waterways, rail or road;
- (f) ‘illegal entry’ means crossing borders without complying with the necessary requirements for legal entry into the receiving Member State.

Article 3

Measures concerning transport operators

1. Without prejudice to the application of national criminal and administrative measures, where a transport operator facilitates or engages in an activity referred to in Article 1(1), the Commission may, by means of immediately applicable implementing acts, decide to take measures against that transport operator. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 8(2). They shall be published immediately in the Official Journal of the European Union.

2. The measures referred to in paragraph 1 shall be necessary and proportionate, and may consist of any of the following:

- (a) preventing any further expansion of or limiting the current transport operations in the Union market;
- (b) suspension of the right to provide transport services from, to or within the Union;
- (c) suspension of the right to fly over the territory of the Union;
- (d) suspensions of the right to refuel or carry out maintenance within the Union;
- (e) suspension of the right to call into and enter the Union ports;
- (f) suspension of the right to transit through the territory of the Union;
- (g) suspension of licences or authorisations granted under Union law to operate within the Union or to carry out activities of international carriage of passengers.

The period of application of those measures shall not exceed one year. They shall be reviewed where necessary and may be renewed.

3. Member States shall take into account the measures taken by the Commission pursuant to paragraph 1 when assessing the good repute of managers and transport operators for the

purposes of Article 6 of Regulation (EC) No 1071/2009 and Article 8 of Directive 87/540/EEC.

Article 4

Right to be heard

The Commission shall ensure that, before it adopts any of the measures referred to in Article 3, the transport operator concerned is given the opportunity of being heard, taking into account the need for urgency. The transport operator may be invited to cease any activity referred to in Article 1(1) without delay.

Article 5

Procedural rules

The Commission may adopt implementing acts establishing the procedures to be followed for the adoption of the measures referred to in Article 3. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 8(3).

Article 6

Cooperation with third countries

Before taking any measures pursuant to Article 3 against transport operators established in third countries, the Commission shall consult, in an appropriate manner, the relevant authorities from that country with a view to coordinating their actions. The Commission may ask those authorities to take any relevant measures.

Article 7

Information and rights of passengers

1. The implementing acts adopted by the Commission pursuant to Article 3 shall be published immediately in the Official Journal of the European Union.
2. Transport operators, national enforcing authorities, the European Aviation Safety Agency, the European Union Agency for Railways, the European Maritime Safety Agency, and the managing entities of ports, airports, stations and other relevant infrastructures in the territory of the Member States shall bring the measures taken by the Commission pursuant to Article 3 to the attention of passengers, both via their websites and, where relevant, in their premises.
3. This Regulation shall not affect passengers' rights under Regulations (EC) No 261/2004, (EC) No 1107/2006, (EC) No 1371/2007, (EU) No 181/2011 and (EU) No 1177/2010.
4. For the purposes of those Regulations, the cancellation of transport operations due to the application of measures taken by the Commission pursuant to Article 3 shall not be considered as extraordinary circumstances.

Article 8

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 9

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President