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NOTE

From:	Presidency
To:	JHA Counsellors on the Migration situation
No. prev. doc.:	WK 3841/2022 INIT
No. Cion doc.:	14755/21
Subject:	Kick-off discussion on the proposal for a Regulation on measures against transport operators facilitating irregular migration

On 23 November 2021, the Commission presented a proposal for a Regulation concerning 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 Union¹.

The proposal is based on Article 91 and Article 100(2) of the Treaty on the Functioning of the European Union in relation to transport matters. On 10 December 2021, the Permanent Representatives Committee decided that the proposal should be examined by the Working Party of Foreign Relations Counsellors (RELEX) as lead preparatory body. On 15 March 2022, the Council Legal Service put forward a revised version of the proposal², aiming to address some of the concerns raised by delegations with regards to the scope and content of the proposal.

¹ 14755/21

² WK 3841/2022

However, as its main objectives are to address trafficking in persons and migrant smuggling, including in situations of instrumentalisation of migration, COREPER on 9 January 2025 took note of the Presidency's decision that the file should be reattributed to the Justice and Home Affairs Counsellors, reinforced by other experts where appropriate. In this way, we ensure that the most interested communities contribute to the work on this proposal.

The aim of the proposed regulation is to guarantee, throughout the Union, a harmonised set of measures against transport operators that facilitate or engage in trafficking in human beings or smuggling of migrants. This applies regardless of whether the transport operators take an active part in the activities of organised crime, or they merely facilitate or aid the illegal entry, including in cases of instrumentalisation of migration where third States act as sponsors.

Indeed, mainly airborne transport operators have, willingly or not, largely contributed to arrivals of third country nationals to the EU or neighbouring regions, which have then proceeded to irregular entry or stay in the EU. We have also witnessed a series of events in which third countries have deliberately used migratory movements to assert pressure on the EU. There have been cases where transport operators have been used to achieve this purpose through state-sponsored operations. This phenomenon has placed the issues of instrumentalisation and weaponisation firmly on the agenda of the EU's migration policy in recent years. In late 2021, the Belarussian government attempted to retaliate against European sanctions (which had been imposed following its illegitimate presidential elections) by luring migrants into the country and then funnelling them over its borders into the EU member states of Latvia, Lithuania and Poland.

The migration situation is very fluid. Periods of relative calm are followed by increased efforts to maintain the previously artificially created migration channel. Therefore, the European Union must be prepared for various scenarios. In this context, it is necessary to take the most far-reaching preventive measures to safeguard Member States against trafficking in persons and migrant smuggling, including where these lead to risks of destabilisation as a result of a massive influx of migrants at the border. The current migratory flow at the Eastern Land border, although not at the same level as in 2021, reflects a consistent number of illegal border crossings (IBCs) and prevented illegal border crossings. In the first 10 months of 2024, around 7 800 IBCs were recorded which is 64% more than in the same period in 2023 – 7 670 to Poland (+81%), 108 to Latvia (-77%) and 46 to Lithuania (-25%). In the same period, around 27 200 attempts to cross the border illegally were prevented (-23%), the large majority in Poland, which saw a slight increase, while attempts decreased in Latvia and Lithuania. As reported by Frontex and IOM, more than 90% of migrants

crossing the PL-BY border illegally have a Russian visa, confirming the trend of the migrants entering Belarus mainly through Russia with a student or tourist visa issued in the countries of origin. By way of illustration, as regards airline companies operating routes to Belarus, in October 2024, 6 Syria-Belarus flights (by Sham Wings) and 8 Qatar-Belarus flights (by Belavia) were recorded³.

In this context, in its conclusions of October 2024, the European Council recalled its determination to ensure effective control of the Union's external borders through all available means and reaffirmed its commitment to countering the instrumentalisation of migration for political purposes. In December, the European Council also called on the co-legislators to advance as a matter of priority on files with a migration dimension. The announcement of further work on this topic was also indicated in the Communication of December 11 from the European Commission to the European Parliament and the Council⁴.

In previous discussions in COREPER and in the RELEX working party, Member States have expressed general support for the objective of the proposal. Nevertheless, there were also concerns with regards to the scope and content of the proposal. The revised version of the proposal as drafted by the Council Legal Service was discussed in RELEX, but no further action was taken. Given the general political context and the recent EUCO conclusions, the Polish Presidency would like to invite you to take a fresh look at the file and kick-off the handling in the JHA Counsellors by replying to the following questions:

1. How do you assess the specific roles the Commission and the Council have been assigned in the Commission proposal, including taking account of the changes suggested by the Council Legal Service?
2. The draft proposal, as revised by the Council Legal Service, concerns general situations of trafficking in human beings and migrant smuggling, but also specific cases of instrumentalisation of migration. How would you envisage the decision-making process in general situations as well as in cases of instrumentalisation of migration and weaponisation of migrants, including with regards to the urgency and the role of the different institutions?

³ See ISAA *Trends Assessment Report* No 443 (monthly), of 13 December 2024.

⁴ Communication from the Commission to the European Parliament and the Council on countering hybrid threats from the weaponisation of migration and strengthening security at the EU's external borders