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LIMITE

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Subject:	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 EU - compilation of comments of delegations –

Following the meeting of the JHA Counsellors on 28 May 2025, delegations will find attached a compilation of comments received in response to the request for comments from the Presidency on the above-mentioned proposal.

WK 7087/2025 INIT

LIMITE

EN

Written comments submitted by the Member States

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 EU

- compilation of comments of delegations (follow up 28.05.25 JHA Counsellors on the Migration situation) –

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BULGARIA

Bulgaria thanks the Presidency for the efforts made to take into account the concerns expressed by delegations regarding the distribution of competences in relation to certain measures that could affect air traffic rights. We consistently support the objective of the proposal, which we see as an additional tool for effectively countering illegal migration.

Bulgaria supports option 1, according to which the controversial letters c) and d) of Art. 3 par. 2 will be moved to a new Art. 3a, which allows only Member States to decide on the imposition of such measures after the Council identifies this need, based on analysis proving the criminal liability of a specific air transport operator. In this way, Member States keep their control over the traffic rights and decide for themselves whether to implement the proposed measures. The Council decision acts only as an incentive, without having a directly binding nature for the Member States, which assess themselves in the specific case.

We are of the opinion that Member States will cooperate and coordinate in taking adequate action. Our preference for option 1 is that on one hand it gives the Member States the opportunity to make their choice, on the other hand it will still be based on a Council decision (shared competence), i.e. again the Member States will take decisions, not the Commission, until a decision is taken on the Oman case regarding competences.

In addition, we would like to underline that recital 6a on the preservation of national sovereignty should remain in the text, regardless of which option is preferred.

We have some reservations about option 2, but if it receives more support we could be flexible.

FRANCE

Objet : Contributions écrites de la France faisant suite à la réunion des Conseillers JAI « Migrations » du 28 mai 2025 (règlement « transporteurs »)

Réf. : SGAE/FAM/2025/892

Vous voudrez bien trouver ci-après les éléments portés par la délégation française lors de la réunion Conseillers JAI « transporteurs » du 28 mai 2025.

- **La France partage l'objectif poursuivi par le texte ainsi que l'ambition de mobiliser l'ensemble des leviers permettant de lutter contre la facilitation des flux migratoires irréguliers et de contrer les menaces hybrides, qui mettent en jeu tant la sécurité de l'espace Schengen que la cohésion de l'UE dans son ensemble.**
- **S'agissant de la proposition alternative discutée lors du COREPER du 12 mai, la France rappelle qu'elle ne saurait y apporter son soutien, l'introduction d'un nouvel article 3a maintenant le transfert de compétences en matière de droits de trafic aériens.**
- **Cela étant, elle accueille favorablement la restriction du champ des mesures prévues à l'article 3, paragraphe 2. A cet égard, elle tient à saluer l'approche d'écoute et de dialogue constructif de la Présidence, et affirme sa disponibilité à s'engager dans la poursuite des discussions sur la base de cette orientation, qu'elle considère comme une piste de travail prometteuse.**
- **Au regard de la nécessité d'un examen approfondi de la proposition, la France souhaite faire part d'une réserve d'examen. Certaines interrogations demeurent et appellent des clarifications, qu'il conviendra de lever dans le cadre des travaux à venir.**
- **La France remercie par avance la Présidence pour sa transmission d'une version consolidée du projet de règlement, intégrant l'ensemble des modifications proposées.**

GERMANY

Germany continues to support the objectives of more effectively combating the smuggling of migrants while upholding human rights and welcomes measures which are, to the greatest extent possible, consistent throughout the EU and rapidly effective.

Germany has extensively commented on the proposal for a Transport Regulation and on the discussion papers provided by the POL Presidency, including on the last paper (document 9082/25) which was discussed in the margins of the meeting of JHA Counsellors on 28 May 2025.

While we would like to seize the opportunity to submit our comments on document 9082/25, we **also want to reiterate that we still see a number of unresolved issues and continue to have significant concerns which are not addressed in document 9082/25. In this regard, we refer to our previous written statements.**

Specific comments on document 9082/25:

- 1.) In Germany's view, the option set out in Annex 1 in the version that has been presented for the first time now, **continues to constitute a significant risk of a reallocation of competences** because paragraph 1 lists the specific measures related to air traffic rights, linking them with an obligation ("Member States shall"). Furthermore, paragraph 2 also contains an obligation to report measures to the Commission. **As a result, Germany cannot approve this option.**
- 2.) The option outlined in Annex 2 seems to be more promising:
 - In paragraph 2b, the wording "the Council may call upon Member States to voluntarily take any appropriate measures at national level" could help to reduce the risk of a reallocation of competences. **For this reason, we reiterate our urgent request expressed at the JHA Counsellors' meeting on 28 May 2025 that the Council's legal service examine this matter.**
 - Germany has, however, doubts regarding the wording of paragraph 2c which establishes an obligation for Member States to coordinate with other Member States ("Member States shall coordinate [...] and inform [...]"). While we have no objections regarding the substance of this provision, because we consider coordination among the Member States to be useful, we have legal reservations because we hold the view that **such coordination should not be made mandatory on the basis of an EU Regulation.** The wording should be amended accordingly. Alternatively, one could consider deleting paragraph 2c and include a new recital suggesting a coordination among Member States. **Here again, we reiterate our request for an assessment by the Council's legal service.**

3.) Furthermore, Germany comments as follows on the remaining provisions of Article 3:

- As regards the introduction to Article 3 (2), it is not clear why the wording “shall be necessary and proportionate” is to be deleted. In Germany’s view, the measures would in any case have to be reviewed for compliance with the principle of proportionality. In the preceding document (doc. 7902/25), sub-paragraph (g) was followed by a paragraph which also provided for a review of compliance with the principle of proportionality. In the present document, this paragraph is no longer contained and it is unclear, whether it has been deliberately deleted or omitted by mistake.
- As regards paragraph 2 sub-paragraph (e), it is made clear at the top of page 3 that **sub-paragraph (e) refers only to “maritime and river ports” (and not to airports). Germany welcomes this clarification.** However, **this should also result from sub-paragraph (e) itself** to prevent misunderstandings and leave no room for interpretation. For this reason, we propose to amend sub-paragraph (e) as follows:

(e) suspension of the right to call into and enter ~~the Union~~ maritime and river ports situated in a Member State, with the exception of emergency situations;

- As regards paragraph 2 sub-paragraph (g), we have basically no objections. However, we ask for an explanation as to whether the term “Union law” also includes mixed EU agreements (which would be a problem) or whether the term refers exclusively to EU Regulations and EU Directives (which would not constitute a problem).
- Furthermore, we consider the last part of the sentence (“to operate to, from or within the Union or to carry out activities of international carriage of passengers or of carriage of goods”) to be too **unspecific** as it leaves room for interpretation resulting specifically from the use of the terms „operate“ and „international carriage“. **In Germany’s view, this part of the sentence should be deleted; this would not affect the regulatory content but help to reduce the risk of a reallocation of competences.**

We could, therefore, consider the following wording:

(g) suspension or limitation of any licences or authorisations granted under Union ~~law~~ regulations or directives to transport operators in any mode of transport ~~to operate to, from or within the Union or to carry out activities of international carriage of passengers or of carriage of goods.~~

- 4.) Furthermore, we continue to welcome a new recital which explicitly excludes any reference of the Regulation to air traffic rights.
- 5.) **We also refer to our previous written comments, in particular the comments of 30 April 2025 (contained in WK 5401/2025) and of 2 April 2025 (contained in WK 4461/2025), which still apply.** This refers, among other things, to the following points:
- carrying out an impact assessment;
 - reviewing the Regulation for compliance with the principles of subsidiarity and proportionality;
 - choice of the legal basis;
 - many undefined legal terms;
 - definitions of „smuggling of migrants“ in Article 2 (b), „a situation of instrumentalisation“ in Article 2 (c) and „unauthorised crossing of the external borders“ in Article 2 (h);
 - unresolved practical issues regarding recourse and liability for damages.

IRELAND

Aviation

We appreciate the work of the Presidency to try and find a solution from an air traffic rights perspective.

On Annex 1 and the proposal for a new Article 3a and the removal of measures (c) and (d) from Article 3.2

In our view, the requirement to take action being shifted from the Commission to the Member States does not resolve our fundamental concerns about these provisions being included in this regulation.

The rights for air operators to overfly and make technical stops at airports are granted for scheduled and non-scheduled services to Parties to the International Air Services Transit Agreement (IASTA) and the Chicago Convention respectively.

Additionally, by retaining the possibility of measures foreseen in points (a) and (b) in the list of measures, we would still be including a provision within the Regulation that concerns the granting of traffic rights. Retaining these measures in the text would be a concern for Ireland in relation to their interaction with obligations to designated airlines contained in bilateral air service agreements between Member States and third countries. Such international agreements contain clauses regarding suspension, or revocation of the traffic rights granted to airlines designated to carry out services under the agreement.

We would welcome the views of the Council Legal Service in this regard.

On Annex 2, which would see Article 3.2 points (a), (b), (c), and (d) deleted from the text:

From an aviation perspective, Ireland has a more positive view of this proposal. Further clarity however will be required in any proposed additional clauses concerning voluntary measures. This is particularly important given that Member States will have varying bilateral agreements with third countries.

Road Transport

From a Road Freight perspective, we still retain reservations on both options presented.

Both options would see competencies transferred from Member States to the Commission. The suspension or withdrawal of road transport operator licences is a well-established Member State competency under Regulation EC No. 1071/2009.

The approaches suggested by the Presidency would impinge on these competencies.

Maritime Transport

Regarding Maritime Transport, further clarity is required on what mechanisms already exist to prevent private transport operators from carrying out operations in the EU if they are found to be involved in smuggling/trafficking.

There are also questions of delineation of operator responsibility. For example, if trafficking is taking place on board a HGV and that HGV uses a vessel bound for Ireland, are both operators to be sanctioned? If so to what degree?

We also consider that the proposal lacks a proper impact assessment and would request further scrutiny on the possible impacts of the revised proposals on maritime transport.

THE NETHERLANDS

Written comments – The Netherlands

Article 3a and article 3

- The Netherlands welcomes the presidency's work after Coreper, and underlines the importance of the proposed options forward.
- We believe that the proposed article 3a and changes to article 3 under the *combined* options could maybe provide a way forward from the competency issue, and we believe we can be flexible in our preference depending on the process of further refining.
- We value the inclusion of an article like 3a in which the specific measures for air transport operators are laid out, separate from the other measures, and with the competency question addressed in it.
- We would furthermore suggest a small addition to article 3a paragraph 3: 'This provision is without prejudice to Member States' sovereignty over their airspace **and the traffic rights granted by a Member State to a third country in any way.**'
- In addition, we think it could still be useful to add the recital 6a as mentioned in the presidency's Coreper paper, in addition to these solutions in the operational text.
- The changes mark important progress, but in our eyes additional points remain for article 3 that still warrant further discussion:
 - We reiterate that enforcing the remaining measures can lead to distinct difficulties for the different modalities, and thus urge that it is added that the Commission should take the distinctions between modalities into account when proposing the concrete measures or that this is spelled out in the article.
 - Proportionality of measures in relation to the specific situation should also be ensured and thus be mentioned.
 - Moreover, it is essential to provide clear guidelines and make clear what is expected from transport operators – especially where it concerns seemingly bona fide travel movements. These moreover should pose no additional administrative burdens. Measures should only be taken when transport operators violate them.

- Additionally, a transport operator should have clear legal grounds for denying such passengers to avoid legal actions against the operator.
- Furthermore, we are interested in the relation with the working paper on irregular migration that is currently being discussed at ICAO, and would appreciate clarification on whether, and how, the Commission plans to incorporate the guidelines from this paper into the regulation and its application? Perhaps this can also be incorporated in the text.
- Then regarding article 3(1a) in conjunction with article 8: while we welcome the larger role for the Council in the procedure for instating measures as discussed during the last working group, we still have questions on the immediately applicable implementing acts by the Commission, as now the Member States have no say in advance on the *type* of measures taken.
- This should in our eyes still be addressed by not resorting to the urgency procedure in the process of instating the *type* of measures.
- We also urge to further finetune the monitoring mechanism at the end of article 3 paragraph 2.
- In the last version of the text, it states that measures shall be reviewed and renewed where necessary, but not that measures could also be ended sooner than after the 1 year period.
- This should be explicated to incentivize transport operators to swiftly better their behaviour after measures have been instated.

Other

- Furthermore, beyond the direct remit of article 3, Recital 6c states that the Regulation applies only to means of transport subject to applicable instruments under Union law.
- This limitation of scope is currently only mentioned in the recital and not in the operational text of the Regulation.
- We suggest to also explicate this somewhere in the operational text, perhaps under the scope in article 1.

PORTUGAL

Portugal thanks the Presidency for the efforts made to find a compromise of the proposal for a Regulation.

However, the lack of an impact assessment, which is still a fundamental weakness in assessing the regulation's reach.

The new Article 3a makes a visible effort to address sovereignty and flexibility concerns, but it does not fully resolve issues around:

- Impact on national competences in aviation diplomacy and bilateral rights;
- The legal ambiguity surrounding enforcement criteria and proportionality.

In this context, specifically in **the air transport sector**:

Positive Aspects (partial alignment with concerns)

1. Preservation of Sovereignty

- The phrase “without prejudice to Member States’ sovereignty over their airspace” is a direct response to concerns about national competences.
- It acknowledges the right of each Member State to control access to its airspace.

2. Member State Discretion ("where appropriate")

- Paragraph 1 introduces conditional language: "Member States shall, where appropriate..." This gives some discretion rather than imposing an absolute obligation.
- This could serve as a flexibility clause to address national interests or legal constraints.

3. Transparency and Coordination (Paragraph 2)

- Requires Member States to notify the Commission and others, supporting coordinated implementation, not centralized enforcement.

Remaining concerns

1. Shift of operational role to Member States Post-Council Decision
 - Once the Council confirms the risk, the obligation to implement restrictions shifts to Member States, even though “where appropriate”.
 - This might still be perceived as an indirect limitation on national authority, especially if political pressure mounts to act uniformly.
2. Potential impact on Bilateral Air Agreements
 - Refusing overflight or landing rights—even if justified under international law—could impact existing bilateral air service agreements, leading to legal or diplomatic friction.
3. Lack of legal clarity on criteria for "Concerned Operator"
 - The criteria for determining which air transport operators are “concerned” remain vague.
 - This could lead to legal uncertainty or disputes, especially with third countries.

Related to the Ports and Shipping sector:

⇒ 2 (g) of article 3.º

We could accept the proposal text if its application:

- Do not interfere with bilateral agreements signed by Portugal, such as those with CPLP (Community of Portuguese Speaking Countries) countries;
- It does not affect national licenses granted by Portuguese competent authorities.

It should also be made clear that the suspension of licenses under Union law applies only to transport operators *stricto sensu* (i.e. entities that directly operate means of transport), rejecting any interpretation that would allow the measure to be extended to terminal concessionaires or port service providers whose activity is subject only to national licensing, namely in the areas of stevedoring, storage or supplies to ships.

⇒ **N.º 2b. of article 3.º**

The Article 3(2b) could be accepted, stressing that:

- It is a strictly voluntary mechanism, with no binding effect on the Member States;
- The decision and implementation of measures is the exclusive responsibility of the national and
- Any action will be preceded by a legal, operational and administrative assessment, in conjunction with the competent authorities.

In addition, we believe that any voluntary action should be proportionate, based on proven risk and compatible with national law.

⇒ **N.º 2c. of article 3.º**

We consider that the provisions of Article 3(2c) could be accepted, if the following fundamental safeguards assured:

- That coordination between Member States is strictly technical and functional, without interfering with national decision-making autonomy and without imposing formal procedures that could compromise the speed or proportionality of the national response;
- That the obligation to inform the Commission be fulfilled without delay, but after the adoption of the measure, ensuring the necessary reserve in sensitive situations, including for operational, contractual or security reasons;
- That the safeguard concerning the autonomy of the Member States in the application of article 3(2c) be explicitly incorporated into the text of the Regulation or, failing that, formally recognised by means of an interpretative declaration, making it clear that the obligation to coordinate and report to the Commission does not confer on the Commission powers of approval, validation or prior control over national decisions, which remain the exclusive competence of the competent national authorities.

SLOVAK REPUBLIC

General remarks:

- The Slovak Republic firmly supports initiatives aimed at combating human trafficking and addressing the activities of migrant smugglers.
- Nevertheless, the Slovak Republic continues to have concerns **regarding the practical implementation** of the proposed measure

As regards air transport, the Slovak Republic does not consider any of the proposed alternatives to be fully optimal in terms of their practical implementation.

However, after reviewing the proposals presented by the Polish Presidency in the discussion paper 9082/25, we find the solution **outlined in Annex 2** – namely, the deletion of points (a) to (d) from Article 3(2) – **to be the more acceptable option**. The newly proposed Article 3a does not include a mechanism for central identification by the Commission and includes the phrase “shall, where appropriate”, which is legally ambiguous and may lead to uncoordinated actions by Member States and a weakening of legal certainty.

In this context, **the Slovak Republic would welcome an Impact Assessment** of the proposal, together with a separate review of the implications of Article 3(2)(g) on the Regulation (EC) No 1008/2008. It remains unclear whether the proposed wording is fully compatible with the Regulation, particularly the Articles 4, 8, 18 and 21.

We would also appreciate clarification of what is to be understood as included under the term “any licenses or authorization granted under Union law”, as used in Article 3(2)(g).

Finally, we believe that the overall design of the proposal still requires careful consideration, particularly regarding its purpose and feasibility in practice.

SPAIN

GENERAL COMMENTS

Spain reiterates its support to the relaunching of the negotiations regarding this legislative proposal. The Spanish delegation considers that this proposal, which aims at preventing and fighting against trafficking and smuggling of migrants, complements the EU toolbox in this area pertaining to the Justice and Home Affairs policies.

However, the Spanish delegation upholds its general scrutiny reservation on the file.

Notwithstanding the above, the specific preliminary comments and drafting suggestions outlined below focus exclusively on Article 3. These comments do not prejudge the Spanish position with regard to the whole text. In addition, we would like to reiterate previous suggestions regarding The suggestions are inserted in the text in track changes for ease of reference and to facilitate the Presidency's work.

The position is based on two main principles which the Spanish delegations considers key in order to make progress on the proposal:

- **Consistency with adopted international and EU legislation**, particularly the international transport law and the Pact on migration. In this regard, further clarification and explicit referrals to the specific international conventions, Union acts or national law is required in order to ensure that the proposal is legally sound and consistent. In addition, the decision making process in situations of instrumentalisation of migrants should be aligned with the Crisis Regulation.
- **Respect of the distribution of competences**. Spain is particularly cautious on the potential implicit or explicit conferral of powers and competences regarding this file. In this regard, Spain assesses positively the compromise text on Article 3 proposed by the Presidency in the discussion paper 9082/25. However, Spain still considers that the implementing acts by the Commission should be adopted in accordance with the examination procedure. Furthermore, it should be clarified that the measure laid down in Article 3 (2) (g) refers to licences or authorisations granted by the EU institutions, agencies or bodies.

In this same vein, the enacting terms or, at least the preamble, should underline that this Regulation is without prejudice to Member States' sovereignty over their airspace and that and should not modify or alter in any way the powers of Member States over conclusion of air service agreements with third countries.

SPECIFIC COMMENTS AND DRAFTING SUGGESTIONS

Article 3

Measures concerning transport operators

1. *unchanged*

1a. ~~unchanged~~ Where the assessment referred to in Article 2a has adequately demonstrated that:

a) a transport operator's services have been used in a significant or continuous manner to facilitate or enable smuggling of migrants and trafficking in human beings in connection with the unauthorised crossing of an external border into the Union, or in a situation of instrumentalisation as established in Article 1 (4) (b) of Regulation 2024/1359/EU;

b) there is a risk that the unrestricted operation of that transport operator's services is likely to continue facilitating or enabling smuggling of migrants and trafficking in human beings in connection with the unauthorised crossing of an external border into the Union or that the situation of instrumentalisation will persist; and

c) the dialogue referred to in Article 2a(4) has not satisfactorily addressed that risk, and it is considered that addressing the situation is within the remit of the transport operator;

d) the situation does not involve the instrumentalisation of migrants;

the Council, acting on a proposal from the Commission, may adopt a decision to confirm the existence of a risk as referred to in this paragraph and the need to take measures in accordance with paragraph 2. The Council shall act without undue delay and taking into account the need for urgency. Following the Council decision, the Commission may adopt ~~immediately applicable~~ implementing acts in accordance with the procedure referred to in Article 8(23) of this Regulation, indicating the measures taken against the transport operators concerned.

1b. Where the assessment referred to in paragraph 1 has adequately demonstrated that an activity which fulfills the conditions listed in letters a) to c) of paragraph 1a of this Article involves the instrumentalisation of migrants, the Commission may adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 8(2) of this Regulation.

2. The measures referred to in paragraph **1a of this Article**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 of the transport operator concerned in any mode of transport** in the Union market;
 - (b) suspension of the right **any licence or authorisation** to provide transport services **in any mode of transport** from, to or within the Union **or a Member State**;
 - (c) suspension **refusing the air transport operator concerned** of the right **possibility** to fly over the territory of the Union;
 - (d) suspensions **refusing** of the right **the air transport operator concerned the possibility to land for technical purposes, with the exception of emergency situations**; to refuel or carry out maintenance within the Union;
 - (e) suspension of the right to call into and enter the Union ports **situated in a Member State, with the exception of emergency situations**;
 - (f) suspension of the right **licence or authorisation granted to road or rail transport operators** to transit through the territory of the Union;
 - (g) suspension **or limitation** of **any** licences or authorisations granted under Union law **by Union institutions, agencies or bodies to transport operators in any mode of transport established in a third country** to operate **to, from or** within the Union or to carry out activities of international carriage of passengers **or of carriage of goods**.

2a. *unchanged*

2b. Where the Council has adopted a decision confirming the risk and the need to take measures as foreseen in Article 3(1a), and without prejudice to the measures that may be taken by the Commission under Article 3(2), the Council may call upon Member States to voluntarily take any appropriate measures at national level to address the situation identified in the Council decision.

2c. When adopting measures in the sense of paragraph 2b, Member States shall coordinate among themselves and inform the Commission without delay.

SWEDEN

As announced at the JHA Counsellors on the Migration situation meeting on 28 May 2025 (CM 2673/25), Sweden would like to give following comments on 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.

To begin with, we would like to reiterate that Sweden would prefer to have a strong instrument, in line with what was proposed in the compromisetext discussed in Coreper (7902/25), in order to allow measures against transporters that facilitate irregular migration.

Since this proposal was not supported by Member States, and following the outcome of the JHA Counsellors meeting on the 28 May, Sweden supports the presidency efforts in finding a solution that provide the best possibilities for the union to take the strongest possible measures against transporters that facilitate irregular migration. It needs to be clarified, however, that the competence given to the EU cannot or must not go beyond the scope of the regulation, i.e. lead to the EU's competence in the area being extended to areas other than migrant smuggling, trafficking in human beings and instrumentalisation.

We also would like a clarification regarding the implementation and enforcement of the legal act and measures concerning article 3 (2) e), f) and g). Can it be assumed that the measures that will be adopted will be designed so that they can have direct applicability in the Member States?

Since it is not yet clear how the measures will be designed it is also unclear if there is a need for changes of Swedish law in order to make implementation and or enforcement of the measures possible. To ensure that the regulation is fully applicable it could be specified in the proposal or else Member States may need sufficient time to adopt further national legislative measures. It may therefore be a need to revise Article 9 of the proposed regulation.

Is the subject matter of recital 5(a), with its reference to a number of legal acts, meant to be covered by article 3 (2) a)?

We also note that during the negotiation on 25 April 2025 the Council Legal Service replied that, after consultations, the proposal was not considered to be in conflict with UNCLOS. The Council Legal Service was unable to answer the question of whether Member States could waive enforcement in view of international and bilateral agreements. Is the conclusion also tenable to article 17-19 UNCLOS regarding innocent passage? According to Article 19 g) passage is not innocent if it involves the embarkation or disembarkation of persons in violation of the coastal state's laws concerning, among other things, immigration. Could you confirm that article 19 g) would not come in conflict with this regulation?
