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From: To:	General Secretariat of the Council JHA Counsellors on the Migration situation
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Subject:	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 - compilation of comments of delegations –

Following the meeting of the JHA Counsellors on 17 June 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.

ANNEX

Written comments submitted by the Member States

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

- compilation of comments of delegations (follow up 17.06.25 JHA Counsellors on the Migration situation) –

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BULGARIA

Bulgaria would like to thank the Presidency for the third compromise draft of 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.

With regard to air transport, Bulgaria supports the deletion of the controversial provisions in Art. 3, para. 2, letters a), b), c) and d), relating to various restrictive measures against transport operators.

We believe that the added recital (7a) is a step in the right direction, as it confirms that the granting of traffic rights is the prerogative of each Member State and in this sense the measures within the meaning of the Regulation should not be considered as a violation of the full and exclusive sovereignty of the Member States over their airspace.

In this way, a potential contradiction with Articles 1, 5 and 6 of the Chicago Convention, to which all EU Member States are parties, is avoided.

With regard to maritime transport, we would like to propose a refinement of the wording of Article 3(2)(e) as follows: "suspension of the right to call into and enter maritime and river ports situated in any Member State, with the exception of emergency situations;"

We believe that, worded in this way, the provision is clearer - the ships of the carrier concerned will temporarily not be allowed to enter the ports of any Member State (i.e. all Member States).

With regard to road and rail transport, we can support the proposed texts and have no further comments.

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FINLAND

FI written comments on regulation on transport operators

1) We support the objectives of the proposed regulation. In addition to various national measures, there is a need to develop tools at EU level to combat human smuggling, for example, but especially in situations where migration is used as a tool for hybrid influencing.

2) Concerning the division of competences between the EU and its MS, we see the changes in the proposal positive, but it needs further work.

We support the addition of recital 7a and a similar text should also be included in the operative part of the regulation.

Article 3.2.g need further clarification on what is referred to as "Licenses or authorisations granted under Union law Regulations or Directives to Transport operators in any mode of transport". A list of the licences and authorisations to which it applies to is needed in order to be able to take a position on the proposal.

The evaluation of the other measures in Article 3.2 is still ongoing among experts.

With reference to Article 3(2b) and in particular the phrase "*the Council may also indicate a course of action at national level*", some clarification is needed. What is the legal nature of such an indication by the Council? What could 'a course of action' touch upon substance-wise and how it would be made sure that this type of act respects the division of powers? Is there a similar or comparable provision in other EU legislation?

3) With respect to Article 3(1)(a), is there a similar or comparable structure of Council decision and Commission implementing act used in other EU legislation?

4) The regulation should make it clear under what conditions administrative measures may be taken. It should also be ensured that it is clear how strong evidence is needed on the facts on which administrative measures are based.

5) According to article 1.1 in the proposed text, operators could also be subject to administrative measures in cases where their services are used "with or without their knowledge" to promote smuggling, trafficking in human beings or instrumentalization. We see no reason to impose sanctions, if the operator has acted diligently and complied with the instructions and requests of the authority. On the other hand, it would be reasonable to impose measures on a carrier if it has played an active role, which has undesirable consequences.

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It would be appropriate to give operators the opportunity to remedy deficiencies in their operations which appear to contribute, inter alia, to human smuggling before proceeding to measures. Articles 2a (4) and 3(1)(c) should be written more clearly to ensure this. If, for example, the matter is so urgent that immediate action is required, such a situation would be an exception to the general rule, which should be laid down separately in the regulation.

The Commission should consult the operator before imposing sanctions. Exceptions to consultations should be defined in a precise manner and linked, for example, to situations requiring urgent action by the Union.

The wording "taking into account the need of urgency" in Article 4(2) is not clear enough. Clear conditions should be laid down for example: "the hearing of views may jeopardise the application of the purpose of the decision, or the delay to the consideration of the matter as a result of the hearing of views would cause considerable detriment to public health, public safety or the environment".

6) Penalties should be governed by the regulation itself, since they concern the rights and obligations of individuals. If the Commission were empowered to adopt binding decisions on operators, easy access to appeal should be considered. It would be appropriate to consider, for example, providing for a review or re-examination procedure in which the Commission would, at the initial stage of an appeal, review the administrative measures imposed if the operator so requests.

7) We understood from the responses received at the WP that the list of measures in Article 3(2) is exhaustive. For the sake of legal certainty, this could be clarified, eg. in a recital.

8) The operator may also be a natural person (article 2.1(e)). The obligation to publish information concerning measures against an operator (10 recital and 7.1-7.2) would also require the publication of information on a natural person on an open information network and does not appear to be subject to any conditions which would limit the obligation.

It would be appropriate to consider the possibility to add such conditions limiting the publication of information on a natural person. For example publication of the identity of a natural person could, as a general rule, be excluded and it may be possible to publish the identity exceptionally, if this is necessary for protecting the objectives of the publication obligation and ensuring the effective implementation of the regulation. Publication of personal data in such situations should be justified and limited to what is strictly necessary in the light of the above objectives.

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It would be appropriate to consider, whether it would be sufficient to require to have the information available in such a way that it would not require publishing the identity of a natural person or other direct identification data on an open information network.

9) These are the most important comments at the moment, but the Regulation needs further clarification overall.

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GERMANY

Germany's comments on the proposed Transport Regulation following the meeting of JHA Counsellors on 17 June 2025

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 Presidency's third compromise text (document 10108/25) which was discussed on the margins of the meeting of JHA Counsellors on 17 June 2025.

Given the extremely short deadline for the submission of further written comments, these remarks mainly focus on Germany's statements during the meeting of JHA Counsellors on 17 June 2025 while **reiterating that Germany still sees a number of unresolved issues and continues to have significant concerns also with regard to the latest draft of the proposed Transport Regulation**.

Specific comments on the Presidency's third compromise text (document 10108/25):

1.) Thank you for providing a new compromise text. Germany appreciates the efforts of the Polish Presidency. However, we do **not understand why so many of the points raised jointly and multiple times by many Member States have simply been ignored**. Germany would like to **continue to play a constructive role in this process and makes the following comments regarding the content** of the compromise text 10108/25:

2.) Recital 6e: Deleting the end of the recital text ("*Before initiating any administrative procedure against transport operators, the Commission should consult the competent authorities of Member States in an appropriate manner, with a view to coordinating their respective actions.*") does not seem logical; this wording should therefore be retained. We believe that **consulting the competent authorities of the Member States is reasonable and important** in order to avoid diverging action by the Commission and the Member States.

3.) Recital 7a: We propose revising the wording: firstly, in order to expand the recital to include all means of transport; and secondly, to ensure an appropriate differentiation according to the particular features of each means of transport. In contrast to aviation, the relevant traffic rights – or authorisations for rail transport – are not necessarily granted to third countries, but rather to transport operators based in a third country. Proposed wording:

> *The measures taken under this Regulation are not to be understood as terminating, suspending, limiting or impacting traffic rights granted by a Member State to a third country in any way and are without prejudice to Member States' sovereignty over their airspace.* ***The same applies to authorisations for other modes of transport granted by a Member State to transport operators established in a third country****.*

4.) Article 2a (4): The deletion should be rejected at least with regard to the cooperation between the Commission and the Member States. In our view, coordination throughout the administrative procedure makes sense in order to **avoid diverging measures and/or conflicts between the national and the EU level** (see also our comment on recital 6e).

5.) Article 3 (1a) sentence 3: We welcome the **clarification** that a **Council decision confirming the existence of a risk and the need to take measures is required** before the Commission may take further action.

6.) Article 3 (2) (f): As already noted in previous comments:

- the necessary authorisation for rail transport operators is granted by national bodies of the Member States (here: the Federal Railway Authority (EBA)) in national implementation of the applicable Union law. It remains unclear as to how the proposed text of the Regulation is compatible with this fact. Consistency with recital 7a should also be ensured.
- We also reiterate our comments made already at the beginning of the year: the relationship with existing EU legislation and with the national implementation of EU legislation is unclear, which creates the **risk that duplicate/parallel procedures could be carried out by different actors and/or at different levels**. The text of the **proposed Regulation still fails to address this relationship between the different levels and could lead in practice to significant uncertainties**, especially when national authorities and the Commission both take action. So it is **particularly regrettable and should be criticised that passages in the current proposed text which provided for some degree of cooperation/coordination between the Commission's measures and the Member State level have been deleted**.

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7.) In addition to the unclear demarcation of authority already referred to, Germany is also critical of the **possible restriction of (national) legal remedies for the transport operators affected**. Under national law, an administrative procedure would first require an appeals proceeding for decisions made by the responsible authority (for rail transport: the EBA), followed as necessary by appeals to the successive levels of national administrative courts. The text of the Regulation does not directly provide for such a series of steps to appeal the Commission's decisions.

8.) Further general comments:

- The text of the Regulation still lacks relevant provisions on how the Regulation is to be applied in **relations with third countries such as Norway, Switzerland and the United Kingdom**, even though special treatment in these constellation would appear to be useful and would be very important particularly for rail transit from Germany via Switzerland to Italy.
- Germany also raises the following point once again: We also point out that, with respect to the definition of the term "transport operators", the compromise text means that taxis, rental cars and vans, for example, would also be included in the scope of the Regulation. These means of transport should not be included in the scope of a future Transport Regulation, as this could lead to the argument that the EU has exercised its competence shared with the Member States according to Article 2 (2) sentence 2 of the TFEU to the effect that national provisions relating to taxis and vans would be blocked. Taxis, rental cars and vans are currently subject to the national laws of the Member States. The proposed Transport Regulation should only cover those buses and coaches which are already subject to Union regulations, such as those in Regulation (EC) No 1071/2009. This could also be achieved by exempting micro and small businesses from the scope. A clear designation of the means of transport would be preferable.

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9.) Furthermore, Germany refers once again to the following unresolved issues:

- lack of an impact assessment;
- provision of legal remedy;
- practical issues of recourse/claims for damages;
- the legal basis: we **ask the Council Legal Service for an opinion**. The choice of legal basis is not irrelevant for the European Court of Justice procedure, which could be decisive in determining whether or not the Regulation belongs to the area of (air) transport;
- issues of subsidiarity and proportionality and thus the argument that the Union even has jurisdiction;
- for Germany, it remains very important that the Council maintain its decision-making competence in the dossier with significant effects (no precedent should be created here).

Germany cannot support the proposal for a Regulation in this form and without substantively addressing the points we have been raising for a number of months.

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GREECE

EL would like to see in the third draft of the above Proposal Regulation, Article 3: 1a, a) and b) as well as in the Preamble, the replacement of the phrase **~~in connection with~~ the unauthorised crossing of an external border ...** by the phrase **in relation with the unauthorised crossings of an external border ..** for the reasons explained in yesterday's meeting.

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THE NETHERLANDS

Written comments – The Netherlands - 18-06-2025

- The Netherlands welcomes the presidency's new text and once more underlines the importance of the aim of the regulation. We are therefore glad to share some constructive observations in writing.
- In particular we believe that our text proposals under article 1 about 'initial knowledge', the proposed recital 11c relating to bona fide travel, and the proposed addition to article 3 paragraph 2 on different modalities can help in achieving a text that we can support.

Article 1

- The text in the first sentence currently reads as if the reference to 'in relation to the unauthorized crossing of the external borders into the Union' only refers to THB and not also to SOM, whereas in the rest of the text it also refers to SOM. We suggest that the sentence is brought in line with text elsewhere by adding 'or' instead of a comma.
- The second sentence of paragraph 1 uses text that differs from the first sentence and elsewhere in the text. We suggest that reference to 'facilitate or engage' and 'or' are added.

In particular, it lays down rules on **administrative** measures that may be taken to prevent or restrict ~~**the use of** the activities of~~ transport operators**'** ~~who~~ **services and operations, which are used, with or without their initial knowledge,** ~~**in activities**~~ **to facilitate or engage in the commission of smuggling of migrants**~~, and~~ **or trafficking in human beings in** relation to **the** ~~illegal entry~~**unauthorised crossing of the external borders into the Union, or in a situation of instrumentalisation.** ~~**of migrants** of such migrants and persons into the territory of the Union, either:~~

- Moreover, in the second sentence it should be clarified that transport operators will only be eligible for measures if they have knowledge of SOM, THB or instrumentalisation, or when they initially have no knowledge but subsequently learn through the administrative procedure.
- We therefore suggest to add the wording of 'initial', i.e. 'with or without their **initial** knowledge.'
- Furthermore, 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, to make clear the measures that can be taken by the Commission only concern those under applicable EU instruments.

Article 2a

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- Even though in article 2 it is technically clarified when measures might come in play with the inclusion of the references to SOM, THB, instrumentalization and their respective definitions in legal instruments, they do not always include obligations for, or legal grounds for actions taken by transport operators.
- We believe it is still essential to provide clear guidelines about what *in practice* is expected from transport operators – especially where it concerns bona fide travel movements within the legal framework of both country of origin and destination that eventually are part of facilitation or engagement in SOM, THB or instrumentalization. We propose to resolve this in the procedure under article 2a by explicating that such guidelines will be issued to transport operators.
- In addition, to avoid legal actions against the operator by denied passengers, the operator should have clear legal grounds for denying passengers and taking other preventive measures when it finds out during the administrative procedure that its services are being used to facilitate or engage in SOM, THB or instrumentalization.
- It is also unclear how transport operators should address any possible facilitation/use of its services in SOM, THB or instrumentalization if the transport operator already complies with all existing obligations in line with recital 11b.
- Simply pointing out that no new obligations are created (with recital 11b) then in our view creates tension with the goal of the regulation to also govern possible situations in which it is the bona fide transport of passengers (that may be part of facilitation of SOM, THB or instrumentalization that may eventually result in unauthorized entry in the EU) that is problematized.
- We therefore urge to add a recital 11c (or an addition to the article on the administrative procedure itself) along the following lines, but are open to further necessary finetuning by the Presidency, CLS or other delegations:

> **Recital 11c: For those instances in which the legitimate use of a transport operator's services by bona fide passengers constitutes an element facilitating the commission of smuggling of migrants or trafficking in human beings in connection with the unauthorised crossing of an external border into the European Union, or in a situation of instrumentalization, the Commission shall, where applicable, indicate how such legitimate use by bona fide travellers contributes to the situation and how the transport operator could address it within its available legal means and obligations. The legitimate use of a transport operator's services by bona fide travellers shall not in itself constitute grounds for imposing measures, nor shall measures be instated if addressing the situation is not within the remit of the transport operator.**

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Article 3

Article 3 paragraph 1a (jo. Article 8) - on the implementing acts

- Regarding article 3(1a) in conjunction with article 8: we welcome the larger role for the Council in the procedure for instating measures.
- However we still question 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, and thus also maintaining the examination procedure in the process of instating the *type* of measures.

Article 3 paragraph 2 and 2b- on the measures/competency issue

- We welcome the changes addressing the competency issue.
- We furthermore reiterate that enforcing the remaining measures can lead to distinct difficulties for the different modalities, and thus urge that it is added to article 3 paragraph 2 that: **'the Commission shall take the distinctions between the different transport modalities into account when proposing measures'.**
- Moreover, we think paragraph 2b provides a promising alternative to incorporate the more optional measures beyond the ones spelled out in paragraph 2.
- We do however worry that it will be quite onerous for Member States to take any additional optional measures, as we expect that these additional measures can then be directly appealed on the national level, as they are not flowing from the EU wide implementing act.
- Moreover, we also think that 'the Council may also ~~indicate~~ **suggest** a course of action at national level' is a more adequate phrasing that does justice to the non-mandatory character, as was also suggested by another delegation.

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Article 3 paragraph 2- on the monitoring mechanism

- We welcome the changes made to the text on the monitoring mechanism about potential lifting of measures when applicable.

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