

Warsaw, 11 October 2021

**Ursula von der Leyen**  
President of the European Commission

**Ylva Johansson**  
Member of the European Commission

Dear President,

Dear Commissioner,

We are a group of civil society organisations working to protect the rights of asylum seekers, migrants and refugees in Latvia, Lithuania and Poland. Since June 2021 we have observed an evolving attack by the regime of Alexander Lukashenko on the European Union (EU), by orchestrating intense migrant flows to the borders of Lithuania, Latvia and Poland with Belarus (also the EU external border). In retaliation to the EU sanctions against Belarus imposed for harsh violations of human rights, the Lukashenko regime has used thousands of migrants as instruments in a political fight, creating serious humanitarian and security challenges to the EU. While we acknowledge the need to protect the EU external border, we are deeply concerned that the measures introduced by the governments of Latvia, Lithuania and Poland have led to the blatant disregard of international, EU and human rights obligations. As a result, thousands of people have been deprived of any protection or humanitarian assistance, and some have even lost their lives as described below. Several international bodies, including the UN Refugee Agency, the International Organization for Migration, and the Council of Europe have expressed their concerns about the fate of the people stranded between Belarus and the EU and have urged Latvia, Lithuania and Poland to act in accordance with their international legal obligations and prioritise human rights and dignity.<sup>1</sup> We would also like to note that Commissioner Johansson stressed during the press conference on the New Pact on Migration and Asylum on 29 September 2021 that transparency was needed on the EU border with Belarus and that people's lives had to be protected.<sup>2</sup> We therefore urgently request the Commission to take appropriate actions to ensure the full respect of the rights of refugees and migrants stranded on the EU external border.

### **Situation in Lithuania**

Irregular migration into Lithuania has been growing after new sanctions were imposed on the government officials in Belarus, following the criticism of Lukashenko and expressing support

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<sup>1</sup> See IOM, Press Release, "IOM and UNHCR Urge Access to Migrants Stranded on Belarus Border," 22 Sept 2021, available at: <https://rovienna.iom.int/news/iom-and-unhcr-urge-access-migrants-stranded-belarus-border>;

Council of Europe Special Representative on Migration and Refugees' Newsletter, July-August 2021, available at: [https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/newsletter-july-august-2021/-/asset\\_publisher/UnDw8aJsgizX/content/commissioner-reacts-on-the-situation-in-afghanistan-and-at-belarus-border-with-poland-lithuania-and-latvia?\\_101\\_INSTANCE\\_UnDw8aJsgizX\\_viewMode=view/](https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/newsletter-july-august-2021/-/asset_publisher/UnDw8aJsgizX/content/commissioner-reacts-on-the-situation-in-afghanistan-and-at-belarus-border-with-poland-lithuania-and-latvia?_101_INSTANCE_UnDw8aJsgizX_viewMode=view/); PACE Resolution 2404 (2021), "Instrumentalised migration pressure on the borders of Latvia, Lithuania and Poland with Belarus", available at: <https://pace.coe.int/en/files/29537/html>.

<sup>2</sup> Complete press conference, available at: <https://audiovisual.ec.europa.eu/en/video/I-210975>.

for the Belarusian opposition by the Lithuanian government. Since spring 2021, more than 4 170 people crossing the Lithuania-Belarus border had been detained (2 882 in July alone),<sup>3</sup> compared to 81 apprehended during the entire year of 2020. Among those detained the majority are citizens of Iraq (2 810), Congo (204), Cameroon (134), Syria (130), Russia (93), Afghanistan (88), and other countries. With the foreigners' registration centre (Pabradė detention centre) being suitable to accommodate only around 250 people, increased numbers of migrants in a pandemic presented a formidable logistical challenge.

An increased number of undocumented migrants in addition to the involvement of the hostile neighbouring regime led to media and policy narratives that are mostly focused on the potential security threat to Lithuania rather than the risks to life and liberty potentially faced by those who have fled.

On July 13<sup>th</sup> the Parliament of the Republic of Lithuania adopted the resolution<sup>4</sup> which portrayed undocumented migrants as participants in 'hybrid aggression' against Lithuanian sovereignty. On the same day, the Law on the Legal Status of Aliens was hastily changed to excise the airport transit zones, official border crossings, border zones and asylum seeker holding centres from Lithuanian state territory where usual regulations applied. It also legalised the automatic mass detention of asylum seekers having entered the country undocumented in an extraordinary situation (or state of war or emergency). Their right of movement could be denied for up to six months while awaiting the decision whether they will be allowed into the country, with limited possibility to appeal it. On August 10<sup>th</sup>, the Law was amended again to stipulate that in an extraordinary situation application for asylum by undocumented migrants would be accepted only at official border crossing points or Lithuania's embassies abroad prior to travel. In practice, both options are hardly possible. The recent amendments of the Law, followed by the subsequent practice of pushbacks, have created an extremely hostile environment for asylum seekers and irregular migrants in general in Lithuania. Such practices have been criticised by the Council of Europe Commissioner for Human Rights,<sup>5</sup> the UNHCR,<sup>6</sup> the European Council of Refugees and Exiles,<sup>7</sup> Lithuanian human right advocates and civil society actors.<sup>8</sup>

With access to asylum practically blocked for new undocumented arrivals, migrants already in the detention centres are not faring better. Over 4,170 people, a quarter of them being minors, face very poor conditions: overcrowding, lack of water that is safe to drink, poor sanitary conditions (mold, bad air quality), limited access to the outdoor spaces, lack of clothes and

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<sup>3</sup> Official statistics portal, available at: <https://ls-osp-sdg.maps.arcgis.com/apps/dashboards/9b0a008b1fff41a88c5efcc61a876be2>.

<sup>4</sup> Seimas of the Republic of Lithuania Resolution on Countering Hybrid Aggression, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1a84e440e49c11eb866fe2e083228059?jfwid=tcgd2hdge>

<sup>5</sup> The Council of Europe Commissioner for Human Rights, Letter to the Prime Minister of Lithuania, available at: <https://rm.coe.int/letter-to-ms-ingrida-simonyte-prime-minister-of-lithuania-by-dunja-mij/1680a37aae>

<sup>6</sup> UNHCR legal observations on the amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-506), available at: [https://www.refworld.org/docid/610d26971a1.html?fbclid=IwAR30a34z\\_9u50bf1sRtnwZxPL\\_sd3dPFK0uw0frZ3azxVuOX24BH33\\_zGGo](https://www.refworld.org/docid/610d26971a1.html?fbclid=IwAR30a34z_9u50bf1sRtnwZxPL_sd3dPFK0uw0frZ3azxVuOX24BH33_zGGo)

<sup>7</sup> European Council on Refugee and Exile (2021). Extraordinary responses: legislative changes in Lithuania, available at: <https://ecre.org/wp-content/uploads/2021/09/Legal-Note-11.pdf>.

<sup>8</sup> Petition "Applying for asylum is not a crime – for humane treatment of migrants", available at: <https://manoteises.lt/peticija/prieglobscio-prasymas-nera-nusikaltimas-uz-zmogiska-elgesi-su-migrantais/>

hygiene items.<sup>9</sup> Furthermore, education for school-age children is being organised within the detention facilities, hence creating a system of segregation which might have long-term effects on the mental wellbeing and development of minors. Migrants also lack information about their cases and access to legal advice. All asylum applications are fast-tracked, with no consideration of individual circumstances and applicants being pressured to accept voluntary return or be deported.<sup>10</sup>

The harsh reality of the new migration governance is evident. A concertina wire fence along the 679km-long Lithuania-Belarus border is under construction. There is no well-established procedure for identification of vulnerability and special needs at the border. There are no official statistics about the demographic data on persons who were pushed back at the border. On September 6<sup>th</sup> Lithuanian media outlets issued a joint statement<sup>11</sup> calling on the authorities to allow them near the border with Belarus amid the ongoing migration crisis, as access of journalists is severely limited. In addition, non-governmental organisations have not had direct access to persons at the border. Hence, independent monitoring of migrant pushbacks, and provision of humanitarian aid to those potentially stuck is not possible in practice.

## Situation in Latvia

Irregular migration to Latvia across the Latvia-Belarus border intensified at the beginning of August 2021, when close to 300 people arrived in Latvia in a week's time. From January – October 2021, 390 people have been detained for irregular border crossing, compared to less than 100 detained irregular border-crossers in 2020. Most of the detained persons come from Iraq (342), followed by people from Afghanistan (19) and some from Syria, Sri Lanka, India, Iran, and Cuba. Since January 2021, more than 520 people have applied for asylum in Latvia, compared to 147 applications in 2020.

On 10 August the Latvian government declared a three-months state of emergency<sup>12</sup> to deter, intercept and return persons who have crossed the border from Belarus irregularly. Thus, any person who is found in the territory of the four regions neighbouring the Latvia-Belarus border and established to have crossed from Belarus irregularly is immediately returned to Belarus, including, if required, by use of physical force. From 10 August – 6 October, a total of 1534 people have been pushed back<sup>13</sup> from the Latvian border.

The decree on the state of emergency stipulates that no applications for asylum should be accepted in the territory where the state of emergency has been declared. As in Lithuania, the authorities have stated that applications for asylum can be submitted at other official border

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<sup>9</sup>Seimas Ombudsmen's Office of the Republic of Lithuania, Report on conditions in migrant detention facilities, available at: [https://www.lrski.lt/wp-content/uploads/2021/10/NKP-2021-1-3\\_2021-10-07.pdf](https://www.lrski.lt/wp-content/uploads/2021/10/NKP-2021-1-3_2021-10-07.pdf)

<sup>10</sup> Gerdžiūnas, B., Morozovas, A., "The main goal is to get rid of them.' Lithuania's asylum system cracks under pressure", available at: <https://www.lrt.lt/en/news-in-english/19/1493583/the-main-goal-is-to-get-rid-of-them-lithuania-s-asylum-system-cracks-under-pressure>

<sup>11</sup> LRT.lt, Lithuanian media outlets call on authorities to allow border access, say current restrictions 'unacceptable', available at: <https://www.lrt.lt/en/news-in-english/19/1489132/lithuanian-media-outlets-call-on-authorities-to-allow-border-access-say-current-restrictions-unacceptable>.

<sup>12</sup> Cabinet Order No. 518, Regarding the Declaration of Emergency Situation, available at: <https://likumi.lv/ta/en/en/id/325266>.

<sup>13</sup> Information by the State Border Guard of the Republic of Latvia, available at: <https://www.rs.gov.lv/lv/jaunums/6-oktobri-noversts-10-cilveku-meginajums-nelikumigi-skersot-latvijas-baltkrievijas-valsts-robezu>.

crossing points or at Latvia's embassies abroad, which is hardly possible in practice. No provisions have been made to ensure alternative effective access to protection for persons in need of international protection. Persons attempting to cross the border are pushed back without sufficient explanation and effective (or any) possibility to use national legal mechanisms to appeal the actual conduct or any decision of the state.

Following the European Court of Human Rights' indication of interim measures on 25 August, the state of emergency decree was amended to oblige the Latvian Border Guard to provide the irregular migrants arriving at the border with food and basic necessities, as well as with medical assistance. The Border Guard can also allow vulnerable persons to enter the territory of Latvia on humanitarian grounds. Since 10 August, 38 vulnerable persons, 20 of the children, have been let into Latvia. It is not clear, however, whether their asylum applications will be accepted.

There is no well-established procedure for identification of vulnerability and special needs at the border. Moreover, no independent monitoring of border procedures has been possible. Nongovernmental organisations have not had direct access to persons at the border. The Ombudsman has visited the border (several border areas) once, though accompanied by border guards. Since 13 September media are allowed to the border yet their presence during the border patrolling and operations to prevent irregular border-crossing is prohibited for state security reasons.<sup>14</sup>

In August 2021, more than 80 people were stranded at the Latvian–Belarussian border for several weeks without proper food, clothes and shelter. These were not allowed into the Latvian territory, and they were deterred from re-entering the Belarussian territory by Belarussian forces. On 20 August, NGOs in cooperation with the State Border Guard started providing the stranded persons with warm food and other necessities. On 24 August NGOs were told that neither food nor other things were necessary. The stranded people had disappeared. NGOs received messages from some of the previously stranded persons telling that they had been pushed back into the territory of Belarus allegedly by force. While contact with these persons has been lost, NGOs keep receiving calls and messages from their family members who continue searching for their relatives.<sup>15</sup> NGOs have also received information (which they have not been able to test due to lacking access to the border area), that several groups of people keep returning to the border and are regularly pushed back into the territory of Belarus. Thus people arriving at the Latvian-Belarussian border remain unprotected, forced to live in fear and degrading conditions with real threats to their lives and the lives of their children.

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<sup>14</sup>Information for Journalists: Guidelines for Media Visits to the Latvian-Belarussian Border Area", available at: <https://www.rs.gov.lv/lv/jaunums/svariga-informacija-zurnalistiem-vadlinijas-mediju-vizitem-lr-blr-valsts-robezas-tuvuma>. [https://replay.lsm.lv/lv/ieraksts/ltv/240277/divi-irakiesi-mekle-savas-sievas-latvija?fbclid=IwAR2u9sAb1PVSnh0KU\\_HjrXfA47RHEDUpRrMVTGe2xiWAZFuFBgBt-pAxH0o](https://replay.lsm.lv/lv/ieraksts/ltv/240277/divi-irakiesi-mekle-savas-sievas-latvija?fbclid=IwAR2u9sAb1PVSnh0KU_HjrXfA47RHEDUpRrMVTGe2xiWAZFuFBgBt-pAxH0o).

<sup>15</sup> LSM, "Two Iraqis Search for Their Wives in Latvia", 30 September 2021, available at: [https://replay.lsm.lv/lv/ieraksts/ltv/240277/divi-irakiesi-mekle-savas-sievas-latvija?fbclid=IwAR2u9sAb1PVSnh0KU\\_HjrXfA47RHEDUpRrMVTGe2xiWAZFuFBgBt-pAxH0o](https://replay.lsm.lv/lv/ieraksts/ltv/240277/divi-irakiesi-mekle-savas-sievas-latvija?fbclid=IwAR2u9sAb1PVSnh0KU_HjrXfA47RHEDUpRrMVTGe2xiWAZFuFBgBt-pAxH0o).

## Situation in Poland

### Push-backs

Since August 2021 Polish Border Guard has been pushing back migrants who were already on the territory of Poland and made asylum applications in the presence of the Border Guard officers. Several of such operations were documented by human rights activists, press or MPs. However, due to the limited capacity of the civil society organisations and the press, as well as the lack of access to the border territory since 2 September 2021 - when the government introduced a state of emergency in the territories near the border - the number of illegal push-backs is probably higher than the number of documented pushbacks. According to the official data provided by the Border Guards only in August they “prevented” around 3 500 cases of unauthorised border crossings.<sup>16</sup> However, it is not clear how these activities were conducted and whether they respected fundamental rights and the EU asylum and migration law.

During the majority of the documented incidents, groups of migrants were found on the territory of Poland by the human rights activists who informed the Border Guard about the whereabouts of the group. Upon the arrival of the Border Guard officers each member of the group verbally expressed the will to apply for asylum in Poland. They were transported to the Border Guard posts located within the territory of Poland. Despite having the signed power of attorney, lawyers were not allowed to enter the Border Guard premises nor contact their clients. Later all members of the group were transported back to the Polish-Belarussian border. Their asylum applications were not formally processed. Some of the migrants who were pushed back in the described manner were later found once again on the territory of Poland. Some of them were finally allowed to formally make an asylum application and are currently held in detention centres in Poland. They all claimed that they had been pushed back to the Belarussian territory by the Polish Border Guards.

The first documented incident of the push back took place on 21 August 2021. The group of 8 asylum seekers from Afghanistan, Iraq and Yemen, was found near the city of Pierożki and Jurowlany. They asked for asylum in the presence of the Border Guard officers. Yet, no formal asylum procedure was initiated. The group was transported to the Border Guard post in Szudziałowo where their legal representative was not allowed to contact them. From the Border Guard post in Szudziałowo the group was transported back to the Belarussian-Polish border. Only 5 persons from the group were found on the Polish territory by the press and human rights activists the following day, since 3 persons from Iraq got lost in the woods.<sup>17</sup>

The second incident of the documented push back took place on 2 September 2021. The group of 3 Afghans was found near the city of Pasieki. They asked for asylum in the presence of Border Guard officers (their request for asylum was recorded by the local activist). Yet, no formal asylum procedure was initiated. The group was transported to the Border Guard Post in Narewki where their legal representative was not allowed to access them. From the Border Guard Post in Narewki the group was transported to the strict reserve of the Białowieża Primeval Forest on the Belarussian-Polish border, where it is normally forbidden to enter. The

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<sup>16</sup> <https://bit.ly/3BcEHBU>

<sup>17</sup> Testigo Documentary, Push Back, available at: <https://bit.ly/2YhrOb6>

following day the group, together with 6 other migrants, was found in Poland by MP representative and human rights activists.<sup>18</sup>

On 7 September 2021 there was another push back, which was documented by human rights activists and the press. On 6 September a group of 10 asylum seekers from Cameroon and Congo, including one child and 4 women, was found near the city of Szymki and Nowosady. They asked for asylum in the presence of Border Guard officers. Yet, no formal asylum procedure was initiated. They were transported by the Border Guard to the unknown location, most probably to the Border Guard Post in Bobrowniki. Their lawyer was not granted access to them. On 7 September 2021 around 3 p.m. the group was transported back to the woods on the Polish-Belarussian border.<sup>19</sup>

On 28 September 2021 a group of around 20 migrants, including 8 children, was transported from the Border Guard Post in Michałowo to the Polish-Belarussian border. The group informed about numerous push-backs from Poland and the physical violence experienced at the hands of the Belarussian armed officers.<sup>20</sup>

#### Death at the border on the Polish territory

Due to the dire situation on the Polish-Belarussian border - including low temperatures, systemic push-backs, no access of human rights activists and a limited access of humanitarian assistance to the territory near the border - 4 persons were reported dead. On 19 September 2021 the Polish Border Guard reported finding dead bodies of 3 persons near the border.<sup>21</sup> They were probably Iraqi nationals. One of them was found near the city of Gib, one near the city of Gródka and one within the jurisdiction of the Border Guard Post in Kuźnice.<sup>22</sup> On 24 September 2021 the Polish Border Guard reported the death of another Iraqi man near the Polish-Belarussian border. The man was unsuccessfully resuscitated. The Border Guard informed that he had probably died of cardiac arrest.<sup>23</sup>

#### Asylum seekers stranded on the Polish-Belarussian border

At least since August 2021, 32 Afghan asylum seekers are stranded on the Polish-Belarussian border in the city of Usnarz Górny in dire sanitary and humanitarian conditions. The asylum applications made by all members of the group in front of the Polish Border Guard officers were not formally processed.<sup>24</sup> The group cannot return to Belarus as the Belarussian armed forces do not allow for that, and despite making asylum applications in Poland they are not allowed to enter further into the Polish territory.<sup>25</sup> The group claims to have been forcibly pushed back to Belarus by Polish border guards. All members of the group allege that, if returned to Afghanistan, they would face persecution or treatment contrary to Article 3 of the

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<sup>18</sup> <https://bit.ly/3BddrmD>

<sup>19</sup> <https://bit.ly/3D8g6yz>

<sup>20</sup> <https://bit.ly/3a2jUVJ>

<sup>21</sup> <https://bit.ly/3mmaSIT>

<sup>22</sup> <https://bit.ly/3A8sWLa>

<sup>23</sup> <https://bit.ly/3moEKUJ>

<sup>24</sup> Polish Ombudsperson, Nieprzyjmowanie wniosków o ochronę międzynarodową od cudzoziemców przebywających w strefie przygranicznej w okolicach Usnarza stanowi naruszenie prawa. Wystąpienie RPO do Prezesa Rady Ministrów, available at: <https://bit.ly/3FiYDVS>

<sup>25</sup> Amnesty International, Sytuacja w Usnarzu Górnym, available at: <https://bit.ly/3A8sZqk>

European Convention on Human Rights (prohibition of torture and of inhuman or degrading treatment).

Polish authorities did not provide the group with food, shelter or water.<sup>26</sup> They were forced to satisfy physiological needs in the public. They have no access to medical or legal assistance as their representatives are not allowed to access them.<sup>27</sup>

On 25 August 2021 the European Court of Human Rights issued an interim measure requesting Poland to provide to all persons stranded in the city of Usnarz Górny with food, water, clothing, adequate medical care and, if possible, temporary shelter (application no. 42120/21).<sup>28</sup> On 27 September 2021 the European Court of Human Rights prolonged the interim measure granted and additionally requested Poland to provide access to lawyers to the applicants.<sup>29</sup> The interim measure was not respected by the Polish government.<sup>30</sup>

### Legislative changes

On 20 August 2021 the Minister of Interior and Administration amended the Regulation on temporary suspension or limitation of the border traffic on certain border crossings (Journal of Laws from 2021, Item 2264, hereinafter as: "Amends to Regulation") (*Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 sierpnia 2021 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych*). The new Amendments to Regulation allowed to turn the person who crossed the border outside the border crossing to the border line. The Amends to Regulation does not include an exception for asylum seekers nor people invoking the risk of the violation of the non-refoulement principle in case of return.

The Senate (the upper chamber) deliberates on the governmental draft legislation on the amendment of the Aliens Act and the Act on granting protection to aliens on the territory of the Republic of Poland (hereinafter as: "Draft Amends to Aliens Act").<sup>31</sup> The said draft legislation allows an asylum application to not be further considered if it is lodged by a migrant who illegally crossed the border. It also allows to issue the decision to leave Poland without due regard for the non-refoulement principle.

The OSCE Office for Democratic Institutions and Human Rights on 10 September 2021 issued an urgent negative opinion on the Amends to Regulation and Draft Amends to Aliens Act indicating that they violate the principle of non-refoulement, the prohibition of collective

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<sup>26</sup> Ibidem.

<sup>27</sup> Polish Ombudsperson, Wizytacja KMPT ad hoc w placówce Straży Granicznej w Szudziałowie oraz na granicy polsko-białoruskiej w Usnarzu Górnym, w związku z nagłym wzrostem liczby cudzoziemców zatrzymanych z powodu nielegalnego przekroczenia granic RP, available at: <https://bit.ly/3l7Nboj>

<sup>28</sup> ECtHR, Press release, available at: <https://bit.ly/3EUqGe3>

<sup>29</sup> ECtHR, Notification of the communication of the case R.A. and Others v. Poland, available at: <https://t.co/JBb5LVBjCE?amp=1>

<sup>30</sup> Ministry of the Interior and Administration, Polish position in the ECtHR, available at: <https://bit.ly/3BaQMYf>

<sup>31</sup> <https://www.senat.gov.pl/prace/druki/record,11661.html>

expulsion and unjustifiably restrict the right to an effective remedy.<sup>32</sup> The Draft Amends to Aliens Act were also criticised by the UNHCR for violating the non-refoulement principle.<sup>33</sup>

### State of emergency

On 2 September 2021 on the part of the territory near Polish-Belarusian the state of emergency was declared for 30 days<sup>34</sup> and on 30 September 2021 it was prolonged for further 60 days<sup>35</sup>. The state of emergency covers a land strip of the width of approximately 3 kilometres, adjacent to the Polish-Belarusian border, and affects at least 183 local communities. During the state of emergency it is forbidden to access the territory on which the state of emergency was declared. The access to public information on the border protection on the abovementioned territory was also restricted.<sup>36</sup> It prevents human rights activists and press from monitoring the situation on the Polish-Belarusian border.

### **Legal analysis**

The situation on the EU-Belarusian border violates the provisions of EU law. Available information shows that migrants apprehended in the last weeks at the EU-Belarusian border and sent back to Belarus, applied to the representatives of the national authorities for international protection.

Pursuant to the provisions of EU law, since the moment of expressing wish to apply for international protection migrants should be treated as “applicants for international protection” and should be provided with the possibility of formally submitting asylum application (Article 6 of the Directive 2013/32/EU). They should also have the right to remain on the territory of the Member State pending the examination of the application (Article 9 of the Directive 2013/32/EU).

Denying migrants applying for international protection the right to enter Latvia, Lithuania, and Poland and sending them back to Belarus may lead to violation of the right to asylum (Article 18 of the Charter of Fundamental Rights of the EU), prohibition of collective expulsions of foreigners (Article 19 of the Charter), right to life (Article 2 of the Charter), prohibition of torture (Article 4 of the Charter) and violation of the principle of non-refoulement (Article 33(1) of the 1951 Geneva Convention on the Status of Refugees).

It is worth noting that Belarus has already been recognised by the European Court of Human Rights<sup>37</sup> as a country which is not safe for asylum-seekers. Regardless of the circumstances of crossing the border, it is the duty of the authorities to investigate, as part of an appropriate

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<sup>32</sup> [https://www.osce.org/files/f/documents/3/3/498252\\_0.pdf](https://www.osce.org/files/f/documents/3/3/498252_0.pdf)

<sup>33</sup> <https://www.refworld.org/docid/61434b484.htm>

<sup>34</sup> Regulation of the President of the Republic of Poland of 2 September 2021 on the introduction of the state of emergency on the partial territory of the Podlaskie and Lubelskie province.

<sup>35</sup> Resolution of the Polish Parliament (Sejm) of 30 September 2021 on the consent to prolong the state of emergency.

<sup>36</sup> Regulation of the Council of Ministers of 2 September 2021 on restriction of rights and liberties due to the introduction of the state of emergency.

<sup>37</sup> ECtHR, *M.K. and Others v. Poland*, apps nos 40503/17, 42902/17 and 43643/17, § 178 and *D.A. and Others v. Poland*, app no 51246/17, § 64.



procedure, the individual situation of the migrant and not to return him or her from Latvia, Lithuania or Poland if this would lead to a violation of their rights.

The proposed legislative changes in Poland and the legal framework approved earlier in Latvia and Lithuania directly violate the principle of non-refoulement and unlawfully restrict the access to the asylum procedure (Article 6 of the Directive 2013/32/EU). The EU law does not allow to exclude asylum seekers, who crossed the border illegally, from the possibility to make an asylum application.

Regarding other migrants, i.e. those not applying for international protection, proceedings on entry refusal or on return should be initiated in accordance with the provisions of the Directive 2008/115/EU. Currently, contrary to the provisions of the Directive, migrants are not issued with appropriate decisions.

Even assuming that the Directive 2008/115/EU does not apply (Article 2(2)(a) of the Directive 2008/115/EU), Member States shall respect the principle of non-refoulement towards the returned migrants (Article 4(4)(b) of the Directive 2008/115/EU, Article 2 and Article 4 of the Charter). Returning migrants to the Belarussian border does not respect the principle of non-refoulement, the right to life and the prohibition of torture, as it is common knowledge that the Belarussian authorities do not always allow those migrants to return to Belarus and are using force and intimidation to make them cross the EU border once again. According to the EU law the return of the migrants shall always be implemented in accordance with fundamental rights and with due respect for the dignity and physical integrity (Article 8(4), Article 9(2)(a) and Article 4(4)(a) of the Directive 2008/115/EU). Push-backs carried out by the Member States are a direct threat to life and health of the migrants thus violating those standards.

The situation at the EU external border is a direct threat to life and health of asylum seekers and migrants stranded there. Pursuant to EU law, all Member States are responsible to protect life, dignity and physical integrity of people under their jurisdiction, including third-country nationals (Article 1, Article 2, Article 3 and Article 4 of the Charter). The conduct of Latvian, Lithuanian and Polish authorities, including systemic push-backs, restricting access to asylum procedure, disregard of interim measures, and, in the case of Poland, refusal to provide food, water, shelter and medical assistance to people stranded on the border, violate the EU law.

## **Request**

The only way to prevent the unlawful activities towards asylum seekers and migrants which we are witnessing in Latvia, Lithuania and Poland is for the Commission to undertake decisive actions against the said violations. This is why we urge the Commission to:

- conduct a thorough investigation of the situation at the EU's Eastern external border in terms of the compliance with EU law,
- publicly call on the Latvian, Lithuanian and Polish authorities to respect EU asylum law and the principle of non-refoulement,
- initiate infringement procedure against Latvia, Lithuania and Poland, for unlawfully restricting access to asylum procedure and the violation of the principle of non-refoulement,

- urge the Latvian, Lithuanian and Polish authorities to ensure access of Ombudsperson, human rights and humanitarian organizations to conduct independent monitoring of the border procedures and provide humanitarian assistance to irregular migrants on the EU external border,
- organise a meeting with civil society actors from Latvia, Lithuania and Poland in order to discuss the up-to-date situation on the EU external border.

To prevent further deterioration of the humanitarian situation on the EU external border and the blatant disregard for the Common European Asylum System, it is imperative for the Commission to act without delay.

Signed in Latvia by:

Anhelita Kamenska, on behalf of the Latvian Centre for Human Rights, joined by  
 Egils Grasmanis, on behalf *I Want to Help Refugees (Gribu palīdzēt bēgļiem)*,  
 Iveta Kažoka, on behalf of Centre for Public Policy *Providus*,  
 Miks Celmiņš, on behalf of Make Room Europe

Signed in Lithuania by:

Diversity Development Group, joined by  
 Refugee Council Lithuania  
 Human Right Monitoring Institute  
 Lithuanian Centre for Human Rights

Signed in Poland by:

Katarzyna Słubik, on behalf of the Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*), joined by  
 Helsinki Foundation for Human Rights,  
 Polish Migration Forum Foundation (*Polskie Forum Migracyjne*)  
 Fundacja Centrum Badań Migracyjnych / Migrant Info Point  
 NOMADA Association for Multicultural Society Integration (*NOMADA Stowarzyszenie na Rzecz Integracji Społeczeństwa Wielokulturowego*)  
 Dom Otwarty  
 Fundacja Nasz Wybór  
 The Halina Nieć Legal Aid Center (*Centrum Pomocy Prawnej im. Haliny Nieć*)

**For further inquiries please reach out to:**

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