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Dear Ms Blažytė, dear Ms Słubik, dear Mr Oļševskis,

Thank you for your letter of 11 October in which you inform us of your findings on the situation along the European Union's border with Belarus and the plight of those trying to cross it irregularly.

The sharp increase of irregular migration from Belarus is provoked by the instrumentalisation of human beings by the Lukashenka regime in order to put pressure on the Union's external borders. The European Union has reacted in solidarity by providing emergency support to concerned countries, including through its agencies (Frontex, EASO and Europol), and engaging in diplomatic outreach, alerting the countries of origin and transit and asking for their cooperation. We also convene regular meetings with all relevant Commission services and Union Agencies, the European External Action Service and Member States bordering Belarus within the framework of the Blueprint Network¹.

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¹ See Commission Recommendation of 23.9.2020 on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), C(2020) 6469 final, https://ec.europa.eu/info/sites/default/files/commission_recommendation_on_an_eu_mechanism_for_preparedness_and_management_of_crises_related_to_migration_migration_preparedness_and_crisis_blueprint_0.pdf.

In the renewed EU action plan against migrant smuggling (2021-2025)², the Commission proposed a reinforced toolbox for the European Union against such instrumentalisation of irregular migration, composed of operational support by Union agencies, dialogues with partner countries, the use of sanctions, and, where appropriate, targeted action in the area of visa, trade, development and financial assistance.

With regard to your call for a Commission investigation of the situation at the Union's external borders, Polish authorities are currently invoking serious concerns related to national security and safety at the external borders with Belarus to justify restricting access to the border area.

This restriction means that the Commission has been denied access to the border areas. Such temporary restrictive measures are legally within the prerogative of the Member States, while the EU acquis continues to apply.

I am aware that the Member States concerned have recently adopted legislation in response to this new situation. Some of these laws were notified to the Commission through the appropriate channels; for others, the Commission is still awaiting official notification. We are assessing these national laws in view of the legal framework of the European Union. The Commission, as the guardian of the Treaties, may pursue infringement actions against Member States if it considers that a Member State has failed to fulfil an obligation under the Treaties. The Commission has discretionary powers in this regard and uses them taking into account the effectiveness, timeliness and opportunity of such action against one of the Member States of the European Union.

Furthermore, we can and must effectively protect our external borders as well as the fundamental rights that are essential to our common European values. This is the approach we have taken in the New Pact on Migration and Asylum. In the context of the proposed Screening Regulation, the Commission has put forward an innovative model, which would oblige Member States to establish an independent monitoring mechanism. Such independent monitoring, which would be characterised by the presence of independent observers, would be a very helpful and preventive control mechanism for day-to-day practices at our external borders. The Commission is engaging with the Fundamental Rights Agency that is establishing guidance and criteria that Member States should take into consideration when setting up such independent monitoring mechanisms. A key factor for the monitoring to work well will be that both sides - governments and civil society - will have trust in the neutrality and objectivity of the observers. If they are trusted as reliable points of reference, their presence will lead to a triple win: for migrants, for Member States authorities and for civil society. In my address to the European Parliament on 20 October, I specifically called on all Member States to set up independent monitoring mechanisms under their respective national law provisions, and I trust that Latvia, Lithuania and Poland heed this call.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU action plan against migrant smuggling (2021-2025), COM(2021) 591 final, https://ec.europa.eu/home-affairs/renewed-eu-action-plan-against-migrant-smuggling-2021-2025-com-2021-591_en.

I have repeatedly called on all Member States to respect the primacy of Union law and our core Union values: “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.” These are non-negotiable and I expect every Member State to adhere to them both in letter and in spirit.

After my visits to Vilnius and Warsaw, my services have followed up with exchanges with the national authorities of the three Member States concerned and relevant international organisations and non-governmental organisations. I want to have a clear picture of the situation and expect full transparency from the Member States. I also offered them the European Union’s full support to properly deal with this situation, which is caused by the Belarus regime.

The European Union is, at its heart, a peace project, endeavouring to offer its citizens an area of freedom, security and justice. Democratic engagement and civic activism from organisations like yours is crucial to ensuring the realisation of this vision. As such, I thank you for your message and for your advocacy for our common values.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ylva Johansson', with a long horizontal flourish extending to the right.

Ylva Johansson