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**Mr Charles Michel**

President of the European Council

7 December 2021

Dear President Michel,

## TEMPORARY MEASURES ON ASYLUM AND RETURN MUST BE REJECTED

Amnesty International would like to express concern over the European Commission's proposal for a Council Decision on provisional measures for the benefit of Latvia, Lithuania and Poland.<sup>1</sup> The Council Decision would allow the three States to:

- Limit registration and lodging of applications of asylum at specific locations at the vicinity of the border, or designated border crossing points.
- Extend registration deadlines to up to 4 weeks (from current 10 days in the case of max influx), with priority given to be given to minors and families and asylum seekers whose claims are likely to be well-founded.  
Extend the border procedure from current 4 to 16 weeks to decide on admissibility and substance of all asylum applications, including on a possible appeal, with prioritization required for well-founded claims and those of families and children but excluding individuals whose health needs cannot be addressed at the border.
- Limit the automatic suspensive effect of appeals and defer to a court or tribunal to decide on right to remain on territory pending the appeal.
- Limit material reception conditions to basic needs such as food, water, clothing, medical care, assistance to vulnerable persons and temporary shelter.
- Exclude application of the Return Directive in the return procedure.

Amnesty International considers the derogations allowed under the instrument unjustifiable and dangerous on many accounts. First, as the European Commission has acknowledged, the situation at the EU's external border with Belarus has de-escalated including through the EU's diplomatic efforts in countries from which migrants and refugees were departing for Belarus, and there are currently limited number of arrivals into Belarus from those routes. The number of migrants and refugees arriving at the borders with Latvia, Lithuania and Poland has remained manageable, particularly given the prompt activation of EU support measures, including emergency financial assistance, assistance through the EU Civil Protection Mechanism and operational support from EU Agencies. This should have led all countries concerned to treat people arriving at their borders with dignity and humanity, granting access to asylum and providing adequate reception in accordance with their obligations under EU and international law.

Instead, the reaction by the three EU countries to the relatively modest increase in arrivals of people at their border has been unseemly and shocking: adults and children were pushed back to Belarus, sometimes violently, leaving many people stuck for weeks in the forest in the cold and with limited access to food. At least 12 people, including a one-year-old child, died because of those actions. We have yet to hear condemnation from EU leaders for the way authorities in these member states have treated the women, children, and men at their borders. The European Commission President's repeated

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<sup>1</sup> COM(2021) 752 final, 1 December 2021.

expressions of solidarity with Latvia, Lithuania and Poland betray a troubling disregard for the hunger and freezing temperatures people were enduring in the border area and for the loss of human life. The actions of Lukashenka's regime in luring people into Belarus only to push them repeatedly and aggressively at the border with the EU are condemnable. Nonetheless, nothing can condone the cruel behaviour and illegal practices perpetrated by the authorities of some EU member states against the same people.

Secondly, the temporary measures lift provisions from the Pact proposals which are still under negotiation and on which the European Parliament is exercising its legislative power. There is yet no common ground between the two legislative authorities on the set of measures proposed in September 2020, yet Council is now being invested to decide on its own accord on measures which fundamentally alter the Common European Asylum System without the European Parliament having any binding say in it. There are several significant human rights concerns in relation to derogations from registration requirements and widening the scope of border procedures which have already been highlighted by the European Parliament and civil society organisations in relation to the proposed Pact measures.<sup>2</sup> They make asylum seekers vulnerable to pushbacks and lead to de facto arbitrary detention, often in substandard conditions and without adequate access to legal or other assistance. While derogations are meant to be temporary and only addressed to three EU countries, they have an adverse human rights impact and override the necessary democratic scrutiny, other than risk weakening the other EU countries' commitment to observing the EU asylum rules when faced with arrivals of migrants and refugees at their border.

Thirdly, the temporary measures will do nothing to restore rights and values at Europe's borders, as called for by over a hundred civil society and professional human rights and humanitarian organizations, including Amnesty International.<sup>3</sup> Instead of allowing Latvia, Lithuania and Poland to derogate from key provisions in the asylum and return acquis, the European Commission should have promptly and effectively followed up scrutiny of the amendments introduced in their domestic legislation and the states of emergency, which have restricted access to asylum and 'legalized' summary returns of people from their territory, in blatant violation of the principle of non-refoulement, the EU acquis and the Charter of Fundamental Rights.

Considering the above, Amnesty International is calling on the EU member states:

- To firmly reject the temporary measures proposed by the Commission.
- To ensure access to the asylum procedure at the EU's external borders and unequivocally condemn pushbacks and any legislative changes that seek to legalize pushbacks or restrict access to asylum procedures.
- To consider admitting to their territory asylum seekers stranded at the border area with Belarus as part of a European relocation program.
- To call for immediate access of international and national human rights actors and media to the EU's external border with Belarus.
- To commit to effective, independent and transparent human rights monitoring in the border area.

Amnesty International further calls on the European Commission:

- To use the tools at its disposal to sanction abuses and illegal pushbacks of migrants and refugees to Belarus.
- To pursue swiftly and efficiently the infringement process in relation to the elements introduced by Latvia, Lithuania and Poland in their national legislation that are in contravention with EU and international human rights and refugee law.
- To call for an end to the intimidation, repression and criminalization of civil society, journalists and legal practitioners taking place at the EU's external borders, and request they are granted full access to the border zone.
- To promote a safe, accessible and enabling environment to for individuals and organisations working to monitor or protect human rights of migrants and refugees, including at the border.

Finally, we call on the EU institutions and member states to refrain from further using harmful expressions such as 'hybrid threat' or 'attack' in relation to the instrumentalization of migration for political purposes. Such terminology is

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<sup>2</sup> See the European Parliament's [Horizontal Substitute Impact Assessment](#), August 2021; Amnesty International's [position paper](#) on the proposed Crisis Regulation, 3 March 2021.

<sup>3</sup> Call on the EU: Restore rights and values at Europe's borders, [Joint Statement](#), 26 November 2021.

dehumanizing, conceals the suffering and harm done to people who are the victims of these political stand-offs, the responsibility of which lies both with the cynical actions of the Belarus's regime and with the EU's failure to adopt a concerted and human right-centered response.

We are grateful for your attention and welcome any information on the actions taken to address the concerns and meet the recommendations above.

Copies of this letter will be sent to the President of the European Commission, Ursula von der Leyen, Vice-President Margaritis Schinas, and Commissioner Ylva Johansson.

Yours faithfully,

Eve Geddie,



Head of Office and Advocacy Director  
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