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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	14692/21
Subject:	Proposal for a COUNCIL DECISION on provisional emergency measures for the benefit of Latvia, Lithuania and Poland.

Delegations will find attached the compromise text proposal. Modifications of the proposal for a Council Decision, contained in document ST 14692/21 are indicated as follows:

-new text is marked in **bold**;

-deleted text is in ~~striketrough~~.

2021/0401 (CNS)

Proposal for a

COUNCIL DECISION

on provisional emergency measures for the benefit of Latvia, Lithuania and Poland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

Whereas:

- (1) According to Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State(s) concerned.
- (2) Since the summer of 2021, the Union as a whole, and Latvia, Lithuania and Poland in particular have experienced a hybrid threat, in the form of instrumentalisation of **migrants people**. This has resulted in an unprecedented increase in irregular border crossings from Belarus. While recent years saw almost no attempts to cross the external borders irregularly from Belarus into the EU, this is now a daily reality. This has been initiated and organised by the Lukashenko regime, luring migrants at the border with the cooperation of migrant smugglers and criminal networks.

¹ OJ C , , p. .

(3) This instrumentalisation has resulted in a grave situation for these migrants at external borders of the European Union with Belarus. Belarus' actions have created a humanitarian crisis, with a number of fatalities already confirmed. The primary responsibility for addressing this crisis lies with Belarus. It is bound by the Geneva Convention, including the principle of *non-refoulement*. Therefore, Belarus must provide for adequate protection of the migrants on its territory and cooperate with the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) to this end. While limited access has hindered the task of assessing needs on the Belarusian side of the border, the Commission has been working very closely with the United Nations and its specialised agencies and with relevant human rights and humanitarian partner organisations in order to prevent a humanitarian crisis from further unfolding, also in view of deteriorating weather conditions. Recent decisions have mobilised EUR 700 000 in humanitarian funding in order to support partners in providing assistance to vulnerable people ~~stranded~~ at the border and inside Belarus.

(4) ~~Because of this instrumentalisation, in 2021, as of 21 November, 7 831 third country nationals have entered the territories of Latvia, Lithuania and Poland from Belarus in an unauthorised manner, compared to 257 in the entire 2020. There have been 2 676 asylum applications in Lithuania, 579 applications in Latvia and 6 730 applications in Poland. In addition, 42 741 attempts to cross were prevented by the three Member States. While an exact estimate would be difficult to give, up to 10 000 more migrants may be currently stranded in Belarus with further arrivals on a daily basis.~~

During 2020, Latvia, Lithuania and Poland received a total of 1 915 asylum applications. For 2021, the number of asylum applications rose to a total of 10 769, i.e. a rise of more than 560%. Looking at the three Member States concerned individually, the increase for each of them in 2021 as compared to 2020 is 414% for Latvia, 1050% for Lithuania and 493% for Poland. These figures show the sudden and unprecedented nature of the inflow of third country nationals as a result of the instrumentalisation of migrants by Belarus. In view of these figures it is important that the EU remains vigilant by allowing the Member States concerned to continue to react adequately on the basis of the measures provided for in this Decision. This sudden inflow has led to an extraordinary pressure on the asylum systems of these Member States whose effects accumulate over time.

- (5) The Union has strongly condemned this instrumentalisation of ~~vulnerable migrants and refugees~~, at the highest level. The European Council addressed this threat at its meetings of June and October 2021². In the State of the Union address, President von der Leyen identified the Belarus actions as a hybrid attack to destabilise Europe³. These actions show a determined attempt to create a continuing and protracted crisis as part of a broader concerted effort to destabilise the European Union and undermining society and key institutions. They represent a real threat and present danger to the Union's security.
- (6) The current proposal follows the invitation of the European Council to the Commission in its conclusions of 22 October **2021** to propose any necessary changes to the Union's legal framework and concrete measures to ensure an immediate and appropriate response to the hybrid threat in line with Union law and international obligations. ~~It also responds to a request by the impacted Member States to be able to rely on provisional measures to address the emergency migratory situation at the Union's external borders effectively.~~ Those measures would aim to further support Latvia, Lithuania and Poland in managing the current situation in a controlled and swift manner, while fully respecting fundamental rights and international obligations.
- (7) To respond to the current emergency situation, Lithuania, Latvia and Poland have declared the state of emergency and have intensified border surveillance and other border control measures to protect the Union's integrity and security. As part of these measures, these Member States have been forced to limit the number of border crossing points open and deployed a significant number of border guards along the land border with Belarus. They must, in addition, manage the third-country nationals arriving at their borders many of whom are seeking or intend to seek international protection in the European Union and those already present in their territories.
- (8) The Union has shown its resolute support to these Member States that are being targeted by the Belarusian regime and who are managing the external border on behalf of the EU.
- (9) The Commission has granted emergency financial assistance to Lithuania. It has also provided, in addition to the €360 million foreseen for these Member States under the Border Management and Visa Instrument (BMVI) for this financial period, a further top-up of

² EUCO conclusions 24-25 June 2021 and 20-21 October 2021.

³ State of the Union 2021 Address, 15 September 2021.

around €200 million that will be available for 2021 and 2022. Furthermore, Lithuania activated the EU Civil Protection Mechanism and the Commission has been coordinating assistance from 19 Member States. Through the Mechanism, Lithuania has received tents, beds, heating systems and other items crucial to attend the needs of the migrants present in the territory of Lithuania. This option remains open to Latvia and Poland.

- (10) In addition, the European Border and Coast Guard Agency (Frontex), the European **Union Agency for Asylum (EUAA) Support Office (EASO)** and **the European Union Agency for Law Enforcement Cooperation (Europol)** have been providing operational support to the Member States who requested their assistance to help them cope with the current crisis situation. In particular, the agencies have deployed experts to process asylum applications, carry out border control and intelligence measures and have been working to reinforce return capacity and carry out return operations. This operational support has already resulted in substantial numbers of return operations. The agencies can now provide a further step forward in operational support **according to their needs.** ~~and it~~ It is important for the three Member States concerned to make full use of that support.
- (11) This financial and operational support has been underpinned by actions in the foreign policy domain aimed at addressing the instrumentalisation situation and curtailing arrivals. In addition to the comprehensive package of economic and financial sanctions and the ban of Union airspace and on access to Union airports by Belarusians carriers as a reaction to the fraudulent elections and the Ryanair flight diversion, the Union has taken additional measures as a specific response to the instrumentalisation of migrants by Belarus. On 9 November 2021, the Council adopted the Commission proposal on the partial suspension of the EU-Belarus Visa Facilitation Agreement. On 15 November 2021, the Council amended the EU sanctions regime regarding Belarus and the Union is now also able to target both individuals and entities organising or contributing to activities that facilitate illegal crossing of the EU's borders. On 23 November **2021**, the Commission tabled a proposal to prevent and restrict the activities of transport operators that engage in or facilitate smuggling or trafficking of people into the Union.
- (12) The Commission, the High Representative, assisted by the European External Action Service, and the Member States have undertaken intense diplomatic efforts towards the main countries of origin and of transit to prevent further arrivals of nationals of these countries through Belarus. These efforts have included outreach and stepped up visits to key partner

countries of origin and transit to counter Belarusian disinformation, curtail departures and get support for receiving back their own nationals currently ~~stranded~~ in Belarus. The outreach has also included direct contacts with airlines and civil aviation authorities, to explore ways to help limit non bona fide travel to Belarus.

- (13) These diplomatic, humanitarian, operational and financial efforts undertaken by the Union or its Member States have led to rapid results. Transit routes being exploited by smugglers to bring migrants to the Belarusian border are being shut down one by one. However, the actions orchestrated by Belarus are still representing a real and present danger to the security of the Union and of the Member States concerned as well as to their territorial integrity. Indeed, the context remains very volatile with Belarus continuing instrumentalising migrants who are still arriving at the Union's external border, thereby constituting a hybrid attack on the EU.
- (14) As a result, the situation on the ground remains challenging for Latvia, Lithuania and Poland with thousands of migrants ~~stranded in~~ on their territory and at the EU-Belarus border and with third country nationals **or stateless persons** who continue to arrive. Given the current volatile and difficult situation in the three Member States concerned, it is therefore necessary to adopt provisional measures for the benefit of these Member States.
- (15) The measures should equip the Member States concerned with the ~~necessary~~ **appropriate** legal tools to respond rapidly and efficiently to the emergency situation characterised by a sudden inflow of nationals of third countries with which Latvia, Lithuania and Poland are confronted. These provisional measures may include all measures ~~necessary~~ **foreseen in this Decision** to respond effectively and swiftly to the current attack. These measures may in principle also derogate from provisions of legislative acts.
- (16) The measures adopted in this Decision are of a temporary, extraordinary and exceptional nature, and need to be taken so as to allow an orderly and dignified management of the flows in full respect of fundamental rights, and to protect the territorial integrity and national security of the Member States concerned.
- (17) Based on the assessment of the current emergency situation, establishing an emergency migration and asylum management procedure at the external borders, derogating from some of the provisions of the Asylum Procedures Directive 2013/32/EU, **and** the Reception Conditions Directive 2013/33/EU ~~and the Return Directive 2008/115/EC~~, is considered the

most suited to support the Member States concerned. The emergency migration and asylum management procedure and the operational support measures foreseen in this Decision **are tools which may be used by** ~~should help~~ the Member State concerned to manage the situation in a controlled and effective way while ensuring full respect for fundamental rights and international obligations as stressed in the European Council call to the Commission. In particular, the measures in this Decision respect the right to asylum by ensuring a genuine and effective access to the procedure and the principle of *non-refoulement*.

- (18) The emergency migration and asylum management procedure at the external borders set out in this Decision respects and is to be applied in full compliance with the Charter of Fundamental Rights of the European Union, in particular Articles 1, 4, 7, 24, 18 and 19(1) and (2) thereof. In order to reflect, in particular, the primary consideration that must be given to the best interests of the child, the need to respect family life, and to ensure the protection of the health of the persons concerned, this Decision should provide for specific rules and safeguards applying in respect of minors and their family members and of applicants whose state of health requires a specific and adequate support. The guarantees set out in Directive 2013/32 (the Asylum Procedures Directive) and Directive 2013/33 (the Reception Conditions Directive) in relation to applicants with special needs or vulnerabilities should continue to apply in respect of persons subject to the emergency migration and asylum management procedure. Directive 2013/33, including the rules and safeguards concerning the detention of applicants for international protection, should continue to be applied, from the moment an application for international protection is made. The possibility to derogate from certain provisions of this Directive should be without prejudice to the obligation for Member States to ensure at all times respect for human dignity and to cater, in particular, for the basic needs of third country nationals **or stateless persons** subject to the emergency migration and asylum management procedure.
- (19) Setting an emergency migration and asylum management procedure at the external borders, tailored to the specific needs of the Member States concerned, is necessary as the current provisions of the Asylum Procedures Directive do not provide with adequate tools to effectively respond to the current emergency situation characterised by the instrumentalisation of migrants by Belarus. While some of the provisions of the Asylum Procedures Directive 2013/32/EU can be applied to address the current situation in an orderly way, they are not specifically designed for a situation where the Union's integrity and security is under attack as a result of the instrumentalisation of migrants. Therefore,

specific procedural provisions, in particular setting an emergency asylum and migration management procedure, are needed to cater for this particular emergency situation. For the aspects not specifically regulated in this Decision, all the other rules and guarantees of the Asylum Procedures Directive should apply.

- (20) ~~To assist the Member States concerned in the orderly management of the flows, under the emergency migration and asylum management procedure, Latvia, Lithuania and Poland may decide, in relation to third country nationals or stateless persons that have been apprehended or found in the vicinity of the border with Belarus after an unlawful entry or after having presented themselves at border crossing points, to register applications for international protection only at specific registration points designated for this purpose situated in the vicinity of the border, which may include specific border crossing points, and provide an effective possibility for lodging an application for international protection only at the specific points that have been designated for such purposes and which should be easily accessible. An effective and genuine access to the international protection procedure must nevertheless be ensured in accordance with Article 18 of the Union Charter of Fundamental Rights. To this end, Latvia, Lithuania and Poland should ensure that sufficient registration points, which may include border crossing points, are designated and open for such purpose. Applicants should be duly informed about the locations where their application will be registered and can be lodged.~~
- (21) In order to ensure that the Member States concerned have the necessary flexibility and avoid that Belarus targets specific categories of third-country nationals, it should be possible, under the emergency migration and asylum management procedure set out in this Decision, for the Member States concerned to take a decision in the framework of a border procedure under Article 43 of the Asylum Procedures Directive on admissibility and the merits of all applications for international protection by third country nationals or stateless persons apprehended or found in the vicinity of the border with Belarus after an unlawful entry or who presented themselves at border crossing points. The guarantees set in Chapter II of the Asylum Procedures Directive have to be respected.
- (22) In the emergency migration and asylum management procedure, the best interests of child and the safeguards for applicants with medical conditions should be a primary consideration for the competent authorities. For this reason, under the emergency migration and asylum management procedure, Latvia, Lithuania and Poland should prioritise the examination of

applications ~~from those persons with well founded claims or~~ of minors and their family members **as well as of applicants whose particular situation of vulnerability makes it necessary**. Furthermore, where the state of the health of the applicant does not permit to conduct the examination of the application at the border or transit zones, Latvia, Lithuania and Poland should not apply the border procedure. This should also be the case if the health problems become apparent during the examination of the application. If during the examination of the application, it becomes apparent that an applicant is in need of special procedural guarantees, and adequate support cannot be provided in the context of the asylum procedure at the border, in accordance with Article 24(3) of the Asylum Procedures Directive, the Member State concerned should refer the applicant to the normal procedure within the territory.

(22a) In order to better organise themselves in the context of this emergency situation, the Member States concerned may prioritise examination of applications where the application is likely to be well-founded or manifestly unfounded.

(23) Member States may resort to detention, inter alia in order to prevent absconding, in accordance with the Reception Conditions Directive and in accordance with Article 26(1) of the Asylum Procedures Directive, ~~Member States should not hold a person in detention for the sole reason that he or she is an applicant.~~ In case of detention, the grounds and conditions of detention set out in Article 8 of the Reception Conditions Directive should apply. In particular the Member States may detain an applicant only if other less coercive alternative measures, such as restrictions to freedom of movement under Article 7 thereof, cannot be applied effectively. ~~In accordance with Article 8(3)(e) of the Reception Conditions Directive, an applicant may be detained in order to decide, in the context of a procedure, on the applicant's right to enter the territory. Article 8(2) also provides that Member States may detain an applicant only, if other less coercive alternative measures—like restrictions to freedom of movement under its Article 7—cannot be applied effectively.~~ The safeguards for detention as provided for in the Reception Conditions Directive are to apply, in particular for **vulnerable persons and for applicants with special reception needs ~~specific groups such as minors and their families.~~ Alternatives to detention,**

such as restrictions in the freedom of movement **or an obligation to reside in a specific place**, may be as effective as detention in the current circumstances and should therefore be considered by the authorities, ~~particularly for minors.~~

- (24) ~~The emergency migration and asylum management procedure under this Decision allows~~ **The Member States concerned by this Decision should be allowed** to extend the registration deadline for applications for international protection to up to four weeks, **and up to five weeks in cases of imperative reasons related to public health, without prejudice to the obligations under Regulation 603/2013 (Eurodac). ~~and It should be possible to~~ **extend** the maximum duration for applying a border procedure to sixteen weeks **from the date of lodging**, during which a decision on the application, including a decision on a possible appeal against a negative decision, should be taken. These procedural timelines, which are longer than those under the Asylum Procedures Directive, are conceived to help the Member States concerned in relation to dealing with the sudden inflow, in a situation of instrumentalisation of migrants. Confronted with the current situation, the Member States concerned need to divert resources to protect their territorial integrity in addition to managing the third country nationals **or stateless persons** arriving at their borders or that are already present in their territories. As a result, the Member States concerned may need time to reorganise their resources and increase their capacity, including with the support of the EU agencies. Furthermore, the number of applicants under the border procedure will be higher than under normal circumstances, and therefore the Member State concerned may need more time to be able to take decisions without allowing entry into the territory. However, Latvia, Lithuania and Poland should prioritise the registration of applications of minor children and their family members **as well as of applicants whose particular situation of vulnerability makes it necessary.****
- (25) ~~Any violent acts at the border must be avoided at all costs, not only to protect the territorial integrity and security of the Member State concerned but also to ensure the security and safety of the third country nationals, including families and children that are awaiting their opportunity to apply for asylum in the Union peacefully.~~ Where the Member States concerned are confronted at their external border with violent actions, including in the context of attempts by third country nationals **or stateless persons** to force entry *en masse* and using disproportionate violent means, the Member States concerned should be able to take the necessary measures in accordance with their national law to preserve security, law and order, and ensure the effective application of this Decision. **Any violent acts at the**

border must be avoided at all costs, not only to protect the territorial integrity and security of the Member State concerned but also to ensure the security and safety of the third country nationals or stateless persons, in particular families and children that are awaiting their opportunity to apply for asylum in the Union peacefully.

- (26) Article 18(9) of Directive 2013/33/EU allows Member States to temporarily set modalities for material reception conditions different from those provided for in the Directive in duly justified cases under certain conditions. The current emergency situation is an exceptional situation that justifies providing for different material reception conditions, since there has been a sudden and unforeseeable flow of third country nationals **and stateless persons** that need to be processed and taken care of at the border. For this reason, in the current emergency situation, the Member State concerned should be able to derogate from the Reception Conditions Directive standards and provide third country nationals and stateless persons with temporary shelter, that should be adapted to seasonal weather conditions, and cover their basic needs, in particular by providing food, water, clothing, adequate medical care, and assistance to vulnerable persons, in full respect of the right to human dignity.
- (27) ~~In order for Latvia, Lithuania and Poland to better cope with the emergency situation characterised by the current irregular flows of third country nationals, and with a view to complementing and ensuring full coherence with border measures and with the asylum procedure at the external border, the Member States concerned should be allowed to provisionally derogate from the application of Directive 2008/115/EC (the Return Directive) in relation to third country nationals and stateless persons whose application for international protection was rejected in the context of an asylum procedure as set out in this Decision.~~ Where a subsequent application **without new elements or findings** is made merely to delay or frustrate the return, Member States may consider that application as inadmissible in line with Article 33(2)(d) of the Asylum Procedures Directive. **By virtue of Article 2(2)(a) of Directive 2008/115/EC, Member States may decide not to apply Directive 2008/115/EC** ~~This Decision is without prejudice to the possibility for Latvia, Lithuania and Poland to derogate from the application of Directive 2008/115/EC by virtue of Article 2(2)(a) of that same Directive, in relation to illegally staying third-country nationals apprehended or intercepted in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or right to stay in that Member State.~~

- (28) ~~When applying the derogation to the application of the Return Directive, Latvia, Lithuania and Poland need to ensure full respect of the principle of *non refoulement* and take due account of the best interests of the child, family life and the state of health of the third country national concerned as otherwise set out for derogations in the Return Directive. They also need to ensure that the treatment and level of protection in relation to limitations on the use of coercive measures, postponement of removal, emergency health care and needs of vulnerable persons and detention conditions, is no less favourable than that set out in the Return Directive.~~
- (29) Latvia, Lithuania and Poland should inform third-country nationals **or stateless persons** of ~~the~~ **any measures they may have decided to apply** applied in accordance with this Decision. ~~In particular, Latvia, Lithuania and Poland should inform third country nationals or stateless persons in a language which the third-country national or the stateless person understands or is reasonably supposed to understand. about the measures applied, The information should cover in particular,~~ the points accessible for registering and lodging an application for international protection, ~~in particular~~ the location of the nearest points where their application can be lodged, the possibility to appeal the decision on the application, and the duration of the measures.
- (30) In order to support the Member State concerned in providing the necessary assistance to third country nationals **or stateless persons** falling under the scope of this Decision, including by promoting voluntary return activities or by carrying out their humanitarian duties, UN agencies and other relevant partner organisations, in particular the International Organization for Migration and the International Federation of Red Cross and Red Crescent Societies, should have effective access to the border under the conditions set out in the Reception Conditions Directive and the Asylum Procedures Directive. In accordance with Article 29 of the Asylum Procedures Directive, the United Nations High Commissioner for Refugees should be allowed access to applicants, including those at the border. To this end, Latvia, Lithuania and Poland should work in close cooperation with UN agencies and relevant partner organisations.
- (31) Latvia, Lithuania and Poland should apply any measures **they decide to adopt** under this Decision only as long as strictly necessary to address the emergency situation and in any case no longer than six months. If the situation that led to the application of these specific measures were to cease to exist before this six-month period, the Member States concerned

should immediately discontinue their application. The Commission, in cooperation with the Member States concerned and relevant EU agencies, should keep the situation under constant monitoring and review and propose as appropriate to the Council and the Member States concerned the cessation of the application of the measures in this Decision or their eventual prolongation by means of a proposal under Article 78(3) of the TFEU.

- (32) Following a request for support by Latvia, Lithuania ~~and~~ or Poland, the European Union Agencies should assess their needs in cooperation with them. To assist the three Member States facing specific challenges arising from the instrumentalisation of migrants by Belarus, the European Border and Coast Guard (Frontex), the European **Union Agency for Asylum (EUAA)** ~~Support Office (EASO)~~ and **the European Union Agency for Law Enforcement Cooperation (Europol)** as well as the Member States should provide Latvia, Lithuania and Poland with adequate support by prioritising the necessary resources, while continuing to meet the needs of other Member States facing migratory pressure.
- (33) **In accordance with Regulation (EU) 2019/1896 and in order to** ~~To~~ assist the three Member States facing specific challenges arising from the instrumentalisation of migrants, the European Border and Coast Guard (Frontex) should, upon request of the Member States concerned, ~~prioritise~~ **provide or increase** its support to these three Member States. In this context, upon a request from one of these Member States, the Frontex Executive Director should launch a rapid border intervention or return intervention for a limited period of time on the territory of the host Member State concerned and deploy the necessary resources. In addition, upon request Frontex should ~~prioritise~~ **provide, or increase** the provision of, any other type of assistance such as the EUROSUR Fusion Services or risk analysis products as well as the necessary equipment to enhance the border surveillance. A situation of instrumentalisation of migrants should in addition result in the European Border and Coast Guard Agency carrying out a dedicated vulnerability assessment, also to assess any further needs for support.
- (34) **In accordance with Regulation (EU) 2021/2303, and in order to** ~~To~~ support these Member States facing specific challenges arising from the instrumentalisation of migrants in implementing the derogations in these Decision, the European **Union Agency for Asylum (EUAA)** ~~Asylum Support Office (EASO)~~ should, upon request of the Member States concerned, ~~prioritise~~ **provide or increase** its support by making available the necessary resources to Latvia, Lithuania and Poland, in particular through the deployment of asylum

support teams to assist amongst others in the registering and processing applications, identification and assessment of vulnerabilities, ensuring adequate reception conditions or providing necessary translation services, expertise and training.

- (35) **In accordance with Regulation (EU) 2016/794 and in order to** ~~To~~ assist the three Member States facing specific challenges arising from the instrumentalisation of migrants, **the European Union Agency for Law Enforcement Cooperation (Europol)** should, upon request of the Member States concerned, support them through deploying experts, giving priority treatment to their requests, providing tailored analysis products, such as threat assessments, strategic and operational analyses and situation reports, and keep supporting Member States in combating migrant smuggling and related crimes.
- (36) Where appropriate, the European Union agencies should launch calls for experts to respond to the request for support by Latvia, Lithuania or Poland. In this case, the Member States should be encouraged to provide the necessary experts with the adequate profiles as soon as possible. In the context of a rapid border intervention or a return intervention organised by the European Border and Coast Guard Agency, the Member States should be encouraged to provide their respective contributions for the deployment of teams from the standing corps, including from the Reserve for Rapid Reaction or all the necessary equipment, including under the Rapid Reaction Equipment Pool. Member States should also be encouraged to support Latvia, Lithuania and Poland in any return measures and in their outreach to third countries.
- (37) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (38) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (39) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of **the United Kingdom and Ireland** in respect of the area of freedom, security and justice, annexed to the **Treaty on European Union** ~~TEU~~ and to the **Treaty on the Functioning of the European**

~~Union-TFEU~~, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]

OR

[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (by letter of ...) its wish to take part in the adoption and application of this Decision.]

- (40) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (41) In view of the urgency of the situation, this Decision should enter into force on the date following that of its publication in the Official Journal of the European Union.
- (42) Because of their provisional nature, the measures adopted should be limited in time and end once the current emergency situation has ended.
- (43) Persons having arrived to Latvia, Lithuania and Poland from Belarus before the entry into force of this Decision should be included in its scope, if they have not been registered yet ~~or their return procedure has not started~~,

HAS ADOPTED THIS DECISION:

CHAPTER I

INTRODUCTORY PROVISION

Article 1

Subject matter

This Decision establishes provisional measures for the benefit of Latvia, Lithuania and Poland, in view of supporting them in managing the emergency situation caused by the actions of Belarus,

leading to a sudden inflow of third country nationals **and stateless persons** in the current context of instrumentalisation of migrants at the external borders.

This Decision does not apply with respect to Belarussian citizens seeking international protection in the Member States referred to in the previous paragraph.

CHAPTER II

EMERGENCY MIGRATION AND ASYLUM MANAGEMENT PROCEDURE AT THE EXTERNAL BORDERS OF LATVIA, LITHUANIA AND POLAND

Article 2

Asylum procedure

1. By way of derogation from Article 6(1) of the Asylum Procedures Directive, the registration, in relation to third country nationals or stateless persons apprehended or found in the vicinity of the border with Belarus after an unlawful entry or after having presented themselves at border crossing points, may take place no later than four weeks after the application is made, **without prejudice to the deadlines set out in Articles 9 and 14 of Regulation 603/2013/EU (EURODAC). This period may be extended by one week for imperative reasons related to public health.**

Latvia, Lithuania and Poland shall prioritise the registration of applications of minors and their family members **as well as of applicants whose particular situation of vulnerability makes it necessary.**

2. By way of derogation from Articles 25(6) point (b), Article 31(8) and 43(1) point (b) of the Asylum Procedures Directive, Latvia, Lithuania and Poland may decide at their border or transit zones on the admissibility or, ~~in a procedure pursuant to Article 31(8) of that Directive,~~ on the substance of all applications registered in accordance with paragraph 1.

Without prejudice to Article 24 of the Asylum Procedures Directive, for applicants whose state of health requires a support that cannot be ensured adequately at the border or in transit zones, including when this becomes apparent during the

procedure, the border procedure shall cease to apply and the applicant shall be granted entry to the territory in order for the application to be examined, without necessarily restarting the procedure.

The basic principles and guarantees of Chapter II of the Asylum Procedures Directive shall apply.

3. Latvia, Lithuania and Poland shall prioritise the examination of applications ~~that are likely to be well founded or~~ lodged by minors and their family members **as well as of applicants whose particular situation of vulnerability makes it necessary.**

Latvia, Lithuania and Poland may prioritise the examination of applications that are likely to be well-founded or manifestly unfounded.

- ~~4. For applicants whose state of health requires a support that cannot be ensured adequately at the border or in transit zones, including when this becomes apparent during the procedure, the border procedure shall cease to apply and the applicant shall be granted entry to the territory in order for the application to be examined, without necessarily restarting the procedure.~~

- ~~5.4.~~ By way of derogation from Article 43(2) of the Asylum Procedures Directive, the time limit before granting access to the territory may be extended to 16 weeks **from the date of lodging**, during which a decision on the application, including the appeal, shall be taken.

- ~~6.5.~~ By way of derogation from Article 46(5) and (6) of the Asylum Procedures Directive, Latvia, Lithuania and Poland may decide to apply the rules set out in paragraph 6 of that Article in respect of all decisions taken on applications examined in a border procedure as referred to in paragraph 2 of this Article.

Article 3

Material reception conditions

1. By way of derogation from **Articles 17 and 18 of Directive 2013/33/EU**, Latvia, Lithuania and Poland may temporarily set modalities for material reception conditions different from those provided for **therein, Article 17 and 18 of Directive 2013/33/EU** in relation to applicants ~~apprehended or found in the vicinity of the border with Belarus after an unlawful entry or after having presented themselves at the border crossing points, and~~ subject to the measures in Article 2(1) of this Decision.;
2. **Paragraph 1 shall be without prejudice to Article 18 (2)-(5) of Directive 2013/33/EU.**
3. **The modalities referred to in paragraph 1 shall in any event provided these Member States** cover the applicants' basic needs, in particular food, water, clothing, adequate medical care, and temporary shelter adapted to the seasonal weather conditions, and in full respect of human dignity.

Article 4

Return procedure

- ~~1. Latvia, Lithuania and Poland, for third country nationals and stateless persons whose application for international protection is rejected and to which Article 2 has been applied, may decide not to apply Directive 2008/115/EC.~~
- ~~2. With regard to third country nationals and stateless persons referred to in paragraph 1, Latvia, Lithuania and Poland shall:
 - ~~(a) respect the principle of *non refoulement* and take due account of the best interests of the child, family life and state of health of the third country national concerned as set out in Article 5 of Directive 2008/115/EC (the Return Directive).~~
 - ~~(b) ensure that their treatment and level of protection are no less favourable than as set out in Article 8(4) and (5) (Limitations on use of coercive measures), Article 9(2)(a) (postponement of removal), Article 14(1)(b) and (d) (emergency health care and~~~~

taking into account needs of vulnerable persons), and Articles 16 and 17 (detention conditions) of Directive 2008/115/EC (the Return Directive).

Article 5

Specific guarantees

1. Where applying this Decision, Latvia, Lithuania and Poland shall duly inform third-country nationals or stateless persons **subject to this Decision** in a language which the third-country national **or the stateless person** understands or is reasonably supposed to understand about the measures applied, the dedicated points accessible for registering and lodging an application for international protection, in particular the nearest point where they can lodge an application for international protection, the possibility to appeal the decision, and the duration of the measures.
2. Latvia, Lithuania and Poland shall not apply Articles 2, 3, 4 and 5 longer than what is strictly necessary to address the emergency situation caused by Belarus, and in any case no longer than the period set out in Article 10.

CHAPTER III

OPERATIONAL SUPPORT

Article 6

~~Operational support by the European Border and Coast Guard Agency~~

- ~~1. Upon a request for support by Latvia, Lithuania or Poland, the European Border and Coast Guard Agency shall provide or increase its operational support to Latvia, Lithuania and Poland in the area of border management and return by deploying the European Border and Coast Guard standing corps, including where appropriate by deploying staff from the 1 500 staff from the Reserve for Rapid Reaction, technical equipment and providing any other relevant support.~~

~~2. The executive director of the European Border and Coast Guard Agency (Frontex) may launch a rapid border intervention in accordance with Article 39(5) of Regulation (EU) 2019/1896 or a return intervention in accordance with Article 53 of that Regulation.~~

~~3. In accordance with their respective request, the Agency shall support Latvia, Lithuania and Poland through the following activities:~~

~~(a) deploying the standing corps in the framework of border management teams and relevant technical equipment (patrol cars, transport cars, helicopters, thermos-vision vehicles, cameras etc.) to support border control in particular as regards the following activities:~~

~~— border surveillance;~~

~~— border checks;~~

~~— cross border crime detection;~~

~~— reporting;~~

~~— interpretation;~~

~~— the identification of minors and other vulnerable migrants and assist with ensuring proper referral.~~

~~(b) deploying the standing corps in the framework of border management teams and relevant technical equipment to support returns of third-country nationals who either did not apply for international protection or whose right to remain on the territory has ceased, in particular by assisting in:~~

~~— pre return activities, including return counselling and supporting the cooperation with third countries by organising identification missions and providing videoconference service for identification interviews;~~

~~— voluntary returns;~~

~~— return operations by commercial and charter flights, including escorting returnees to the third country of origin and, if appropriate, post return activities in third countries.~~

- ~~(c) deploying the standing corps in the framework of the migration management support teams to support the identification of migrants, including nationality screening and travel documents checks, in particular by:~~
- ~~— providing support in debriefing activities and applying Common Risk Indicators to identify persons possibly linked with terrorism and gather more information about routes, facilitators and modus operandi;~~
 - ~~— providing support with EURODAC equipment and staff supporting registration and fingerprinting of migrants;~~
 - ~~— giving priority treatment to all the requests of the three Member States concerned to the EUROSUR fusion services, in particular for:~~
 - ~~• air traffic monitoring to monitor flights arriving in Belarus from various places of departure;~~
 - ~~• providing regular monitoring with tailor made imagery intelligence services, including satellite imagery, covering the adjacent pre frontier areas of Belarus to assess the situation, as well as further distant pre-frontier areas relevant to better understand potential threats to the safety of deployed personnel and technical equipment;~~
 - ~~• providing tailored multipurpose aerial surveillance service, when available and necessary, covering the Belarusian territory along the border either with a regional approach covering Latvia, Lithuania and Poland or supporting specific Member State(s) with capability to perform surveillance during the night.~~
- ~~(d) providing monitoring of social media platforms to notice groups of would be migrants in time and react to any kind of possible mass movements towards EU borders;~~
- ~~(e) providing tailored risk analysis products;~~
- ~~(f) other specific support, as appropriate.~~

Article 7

Operational support by the ~~European Asylum Support Office~~ European Union Agency for Asylum

Upon a request for support by Latvia, Lithuania or Poland, the **European Union Agency for Asylum (EUAA)** ~~European Asylum Support Office (EASO)~~ shall ~~prioritise~~ **provide or increase** making available the necessary operational support, in particular through the following activities:

- (a) deploying asylum support teams;
- (b) registering the applications for international protection;
- (c) facilitating an initial analysis of asylum applications;
- (d) conducting personal interviews of applicants on their applications and the circumstances of their arrival;
- (e) supporting an appropriate identification and assessment of vulnerable applicants;
- (f) supporting the management, design and putting in place of adequate standards of reception facilities;
- (g) providing applicants or potential applicants of international protection with information and specific assistance that they may need;
- (h) providing expertise, in particular in relation to interpretation and translation services, precise and up-to-date information on countries of origin and knowledge of the handling and management of asylum cases;
- (i) providing training for personnel of competent or other authorities;
- (j) other specific support, as appropriate.

Article 8

Operational support by Europol

Upon a request for support by Latvia, Lithuania and Poland, Europol shall prioritise making available the necessary operational support through the following activities:

- (a) ~~deploying experts to cross check data against data held in databases at Europol, facilitate rapid and secure information exchange between Member States and support operational analysis;~~
- (b) ~~providing tailored analysis products, such as threat assessments, strategic and operational analyses and situation reports;~~
- (c) ~~supporting the Member States in combating migrant smuggling and related crimes facilitated, promoted or committed using the internet and the activities referred in Article 4(1)(m) of Regulation (EU) 2016/794.~~
- (d) ~~other specific support, as appropriate, where required.~~

CHAPTER IV

FINAL PROVISIONS

Article 9

Cooperation and assessment

1. **Where applying this Decision,** ~~the Commission, relevant European Union agencies and Latvia, Lithuania and Poland shall closely cooperate and regularly inform each other on its the implementation of this Decision. Latvia, Lithuania and Poland~~ **To this end, the Member States concerned shall continue reporting all relevant data that are relevant including statistics that are relevant for the implementation of this Decision, via the EU Migration Preparedness and Crisis Management Network.**
2. **Where applying this Decision,** Latvia, Lithuania and Poland shall ~~ensure~~ **maintain their** close cooperation with UNHCR and relevant partner organisations to determine the

modalities for support to applicants in the current emergency situation in line with the rules set out in this Decision and in the Asylum Procedures Directive and the Reception Conditions Directive.

3. **Where applying this Decision**, the Commission in cooperation with Latvia, Lithuania and Poland shall keep the situation under constant monitoring and review and propose, where appropriate, the repeal or prolongation of this Decision by means of a proposal for a Council Decision under Article 78(3) TFEU. To this end, Latvia, Lithuania and Poland shall provide the Commission specific information needed for it to carry out this review and to make the proposal for repeal or prolongation as well as any other **relevant information related to the situation at the border with Belarus** the Commission may request.

Article 10

Entry into force and application

1. This Decision shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.
2. Without prejudice to Article 9 **and paragraph (4) of this Article**, it shall apply until six months after its entry into force.
3. This Decision shall apply ~~to~~**with respect to** all third-country nationals, **with the exception of Belarusian nationals, and to stateless persons**, arriving on the territory of Latvia, Lithuania and Poland from the date of entry into force of this Decision, as well as to those already present in the territory of Latvia, Lithuania and Poland prior to entry into force of this Decision as a result of the actions of the Belarusian regime and whose applications for international protection have not been registered ~~or for whom the return procedure has not started~~.
4. This Decision shall continue to apply with respect to those applicants whose applications for international protection have been registered in accordance with the provisions of this Decision, until a final decision is taken on their applications ~~or until the third-country nationals concerned are returned in accordance with Article 4~~.

Done at Brussels,

For the Council

The President