



Ministry of Immigration
and Integration

Denmark



REPUBLIC OF ESTONIA
MINISTRY OF THE INTERIOR



Iekšlietu ministrija



MINISTRY OF THE INTERIOR
OF THE REPUBLIC OF LITHUANIA



Norwegian Ministry
of Justice and Public Security



Ministry of the Interior and Administration
Republic of Poland



Ministry of the Interior
Finland



Government Offices of Sweden

To the attention of:

Ms Ylva Johansson, Commissioner for Home Affairs

Ms Ilze Juhansone, Secretary-General of the Commission

Mr Anthony Whelan, Acting Head of Cabinet of President von der Leyen

Ms Beate Gminder, Acting Director-General for the Directorate-General for
Migration and Home Affairs

Ms Åsa Webber, Head of Cabinet of Commissioner Johansson

Ms Charmaine Hili, Migration and Home Affairs Adviser in the Cabinet of
President von der Leyen

Joint initiative on an EU level approach to effectively address instrumentalisation of migration

Introduction

As recognised by the European Council¹, almost three years after Belarus launched a hybrid attack at the EU's external borders in retaliation against European sanctions, the EU is in the midst of yet another debate concerning the instrumentalisation of migration, this time with Russia. In addition to the evident hybrid attacks by Belarus and Russia at the EU's external borders, there have been some indications that other state actors are also ready to use similar tactics trying to politically influence and coerce the EU and its relevant Member States. Countries using this tactic wish to undermine the legal processes of Member States by applying pressure at the external borders. The goal of these activities is to threaten the stability, sovereignty and national security of the Member States but also the sustainability of our external borders and the security of the EU. The situation at the Union's Eastern border has deteriorated as more and more EU Member States have been affected by instrumentalisation of migration, which remains a matter of great concern.

State of play

The Member States have certain options to address **situations of migratory pressure and crisis**. Preventive measures include concluding **comprehensive partnerships with key third countries using diplomatic, economic and, where appropriate, visa and other leverages, establishing early warning systems and ensuring effective returns**. The Member States can, to an extent, also introduce **legislative changes** or use **emergency legislation**, in line with their international and EU obligations, to target situations at hand.

The migratory flows into Europe can be divided into three baskets: international protection, other forms of migration, and instrumentalised migration. Each basket requires a different approach and different rules. **The Pact** provides tools for a better management of the first basket, international protection. The Pact and the amended **Schengen Borders Code** will also introduce some welcome steps forward in *recognising* instrumentalisation of migration at the EU level. **Ultimately, however, instrumentalised migration must be assessed as a security issue, not as a migration issue, requiring different types of solutions.**

¹ For example, see the European Council Conclusions from [16 December 2021](#) and European Council Conclusions from [14 and 15 December 2023](#).

The Pact will play an important role in enhancing and strengthening the internal dimension of migration management. The **innovative solutions** developed in the joint letter to the European Commission² will help us outline new ways of strengthening the external dimension of migration, including to counter instrumentalisation of migration.

Future steps

Article 72 TFEU (law and order and internal security) read together with Article 4(2) TEU (national security exclusion) are considered to allow for derogation from EU secondary legislation, but must be interpreted restrictively. The European Court of Justice has not yet addressed a situation similar to the ongoing hybrid attack at Finland's eastern border where migration is instrumentalised by an *aggressive belligerent state*. Consequently, the Court has also not taken a position on whether, in such a situation, a derogation from EU secondary legislation under Article 72 TFEU would be possible for protecting public policy and internal security for a limited period of time.

We undersigned Ministers conclude that, presently, and despite the developments outlined above, the EU legal framework does not enable the Member States to effectively prevent and combat this type of interference with their sovereignty and national security. We therefore propose that in such situations Member States should be allowed to temporarily derogate from EU law based on national security. We should increase the possibilities for Member States to address instrumentalisation of migration under their national legislation. This requires derogations based on national security, which could, if necessary, include changes to the future APR and Crisis Regulation and to the Schengen Borders Code.

The ability to combat hybrid attacks with appropriate tools is not only in the interest of certain Member States, but also of the Union as a whole. In an environment of evolving threats, the Union must be able to guarantee its own security. We call the future European Commission for legislative initiatives that allow for the use of sufficiently broad national security derogations in situations of border security, including instrumentalised migration that are fundamentally not migration issues but security issues. These initiatives should be included in the Work Programme of the incoming European Commission.

² Joint Letter to the European Commission on new solutions to address irregular migration to Europe, 15 May 2024.

Yours sincerely,



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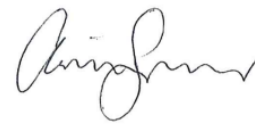
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