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Warsaw, 24 September 2021

**Ylva Johansson**  
**Commissioner**  
**Home Affairs**  
**European Commission**  
**Rue de la Loi / Wetstraat 200**  
**1049 Brussels**  
**Belgium**  
**e-mail: cab-johansson-contact@ec.europa.eu**

*Dear Madame Commissioner,*

I am writing to you on the subject of the alarming migration and humanitarian situation on the Polish-Belarusian border, which is also the European Union's external border. This situation requires urgent intervention and public comment from the European Commission. Therefore, I appeal to you for raising the abovementioned issues during your contacts with the Polish authorities.

In accordance with the information provided by the Helsinki Foundation for Human Rights' employee who was present at the border, as well as based on the reports of the media, activists and the Border Guard, every day attempted unauthorized border crossings by foreigners from Iraq, Afghanistan, Yemen, the Democratic Republic of Congo and other states are "prevented" by Polish authorities. According to the Border Guard, 2.500 such attempts were thwarted only in August 2021. It is reported that foreigners apprehended on the border are removed to Belarus without any procedure prescribed by law and regardless of their applications for international protection. These persons are pushed across the border by the Belarusian and Polish border guards, and, as a result, they wander for many days in harsh weather conditions, without food, shelter and warm clothing. In recent days, the bodies of several foreigners who had died of exhaustion were found at the border. Furthermore, the condition of many other foreigners met by NGO workers was very bad. The deteriorating weather conditions will result in similar situations recurring. The state of emergency introduced by the Polish authorities in the border areas renders it impossible for the civil society organisations and the media to monitor the situation, which raises concerns that the violations mentioned above may happen more often.

Furthermore, since the beginning of August this year, there has been a group of Afghan citizens stranded in the village of Usnarz Górny. Both Polish and Belarusian border guards prevent them from entering the territory of each country. Although they

have expressed their wish to apply for international protection, the Polish Border Guard prevents their applications from being formally lodged and registered. The Polish government has also failed to comply with an interim measure issued by the European Court of Human Rights stating that the foreigners should be provided with food, warm clothing and adequate shelter. While the government argues that the foreigners remain on the territory of Belarus, the Border Guard undoubtedly undertake official activities towards them in response to an attempt to cross the border, and employees of non-governmental organisations, as well as a member of the Polish Parliament, have managed to engage in direct contact with the foreigners. This indicates that the foreigners are under the jurisdiction of the Polish authorities.

In September, the Polish Sejm adopted a draft amendment to the asylum and migration legislation. The draft law provides that foreigners apprehended after an unauthorised crossing of the border shall be removed from Poland, even if they apply for international protection and without examining whether the removal will result in a violation of human rights. The draft law also introduces the possibility to leave without examination any application for international protection lodged by foreigners apprehended immediately after an unauthorised border crossing. The draft law has been criticised by UNHCR, OSCE and civil society organisations.

In my opinion, the practice described above, as well as the proposed legislation are a clear violation of the Treaties, the EU Charter of Fundamental Rights (which guarantees the right to asylum with due respect for the rules of the Geneva Convention), and the directives governing EU asylum law. According to these provisions, appropriate status shall be offered to any third-country national requiring international protection. These provisions also require the acceptance of any application for international protection submitted by a foreigner on the territory or at the border of the Member State. On the other hand, if the foreigner apprehended on the territory of the Member State does not apply for international protection, their removal can only take place on the basis of the relevant return decision and in full compliance with the principle of non-refoulement. Please find attached analyses which indicate in detail the incompatibility of the actions of the Polish authorities with the relevant provisions of EU law.

To date, the Polish authorities have failed to comply with the judgment of the ECtHR in the case of *M.K. and Others v. Poland* (applications nos. 40503/17, 42902/17 and 43643/17), which, among others, indicates that the non-acceptance of applications for international protection and the removal of asylum seekers to Belarus constitutes a manifestation of state policy. Furthermore, the judgment states that Belarus does not have an effective asylum system and cannot be regarded as a safe country for refugees. It seems that the conclusions of this judgment are still valid. I would like to emphasise that I am familiar with the European Commission's position, which indicates that the situation at the border has been caused by deliberate action on the part of the Belarusian authorities as part of what is known as a 'hybrid war'. However, I would like to point out that the fact that foreigners are attempting to cross the EU's external border stems primarily from the poor human rights situation in their countries of origin, including Afghanistan, Iraq, Syria and Yemen. Taking into account the

statistics of the European Asylum Support Office (EASO), these foreigners may be eligible for international protection.

Moreover, regardless of political circumstances, Member States are obliged to comply with EU law, including asylum law. Therefore, the European Commission, as the guardian of the Treaties, should also draw attention to this aspect of the matter in its public statements and in its contacts with the Polish authorities.

I am convinced that the current practice of the Polish Border Guard of repelling foreigners from the territory of the Republic of Poland, combined with the latest proposed changes in the law and the deprivation of foreigners of any medical support and care, will lead to a further intensification of the already ongoing humanitarian crisis on the Polish border.

Observing the firm reaction of the EU institutions to the violation of the rule of law by the Polish authorities, we appeal for a similar reaction in response to the serious violations of asylum law.

In this regard, we appeal to you for:

- a thorough examination of the situation at the external border with Belarus in terms of compliance by the Polish authorities with EU asylum law and the developing humanitarian crisis;
- a thorough analysis of the proposed amendments to the Act on foreigners and the Act on granting protection to foreigners within the territory of the Republic of Poland, in terms of their compliance with EU law;
- acknowledging publicly the fact that the situation at the border is related to the migration and asylum issues, and that the duty of the authorities of Member States, including Poland, is to save human life and health, regardless of the status of these people, and to comply with EU law.

I remain at your disposal for any possible questions and clarifications, and I am ready to discuss the abovementioned topics with you during a direct conversation at the date convenient for you.

Yours sincerely,

Maciej Nowicki

HFHR's Board President