

**COMMENTS OF THE HELSINKI FOUNDATION FOR HUMAN RIGHTS ON THE BILL AMENDING THE ACT ON FOREIGN NATIONALS AND THE ACT ON GRANTING PROTECTION TO FOREIGN NATIONALS IN THE TERRITORY OF THE REPUBLIC OF POLAND (Document # 1507)**

**I. GENERAL COMMENTS**

On 23 August 2021, the government submitted to the Parliament a bill amending the Act on foreigners and the Act on granting protection to foreigners in the territory of the Republic of Poland. The draft provides for the introduction of a new institution: an order on unauthorised crossing of the border. The order is to be issued in the case of apprehension of a foreign national directly after unauthorised crossing of the external border of the EU. Lodging an appeal shall not have suspensive effect on the order. These provisions give grounds for removal of a foreign national from Poland, even if he/she apply for international protection. The draft also introduces the possibility of leaving the applications for international protection without examination lodged by foreign national apprehended directly after unauthorised crossing of the external border of the EU.

The general direction of the changes contained in the bill raises concerns of the Helsinki Foundation for Human Rights. The justification for the proposal states, among other things, that the proposed amendments are intended to facilitate the conduct of cases concerning unauthorised border crossings and ensure the security and the protection of public order. The justification refers to the massive influx of migrants into Europe, many of whom are “radicalised representatives of many cultures and religions, or even extremists.” The justification also points to the phenomenon of abuse of asylum procedures by economic migrants.

However, the justification of the proposal overlooks the fundamental fact that the root cause of the current situation on the eastern border of the Republic of Poland (which seems to be the direct reason for the adoption of the proposal) lies primarily in the poor human rights situation in the countries of origin of the foreign nationals who arrive at the border of Poland, including Afghanistan, which was abandoned by Western forces and taken over by the Taliban.<sup>1</sup> The statistics of the European Asylum Support Office (EASO) show that more than a half of the applicants for international protection from Afghanistan have been granted protection in the EU<sup>2</sup>, which in combination with the current situation in that country leads to the conclusion that most of the people arriving at the Poland’s border meet the conditions for international protection. It is also worth noting that on August 27, 2021, Poland suspended deportations to Afghanistan. According to the statistics of the Office for Foreigners, in 2020 Poland granted one of the forms of international protection also to a number of applicants from Iraq, Yemen or Tajikistan, i.e. nationals of the states which are listed in the announcements of the Border Guard as countries of origin of migrants who were recently apprehended at the Polish–Belarusian border.

It should also be noted that foreign nationals applying for international protection have been present in the territory of Poland since the 1990s and they do not pose a threat to public order and national security. The justification for the proposal does not include any specific information leading to the conclusion that foreign nationals applying for international protection in Poland actually pose such a threat.

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1 Ośrodek Studiów Wschodnich, Triumf talibów: potencjał migracji z Afganistanu, accessible at: <https://www.osw.waw.pl/pl/publikacje/analizy/2021-08-16/triumf-talibow-potencjal-migracji-z-afganistanu>  
2 EASO, Latest asylum trends – June 2021, accessible at: <https://www.easo.europa.eu/latest-asylum-trends>

In view of the above, it should be considered that the justification provided in the proposal, i.e. the need to prevent irregular migration and the abuse of asylum procedures, has no grounds.

The drafted proposals providing for automatic removal from the territory of Poland of foreign nationals who cross the border in an unauthorised manner and leaving their applications for international protection without examination – in the view of the HFHR – are intended to discourage foreign nationals from applying for international protection in Poland and ensure faster removal of those who come to Poland for this purpose. It is also a continuation of the wider state policy, unfavourable towards refugees, which was pointed out, among others, by the European Court of Human Rights, referring to statements by representatives of Polish authorities in its rulings<sup>3</sup>. Given that the authorities make similar statements now<sup>4</sup>, this policy seems to be still relevant.

In view of the fact that the reason for the adoption of the draft law is the migration situation at the Polish–Belarusian border, it should also be recalled that the European Court of Human Rights found that Belarus does not have an effective asylum system<sup>5</sup>. Also, reports showing that Belarusian authorities force foreign nationals to cross the border with Poland and prevent them from returning to the territory of Belarus<sup>6</sup> prove that Belarus cannot be considered a safe country. For these reasons, in order to avoid the risk of violating the principle of *non-refoulement*, before returning a foreign national to Belarus, an individual assessment of their situation should be made. This is not provided for in the proposed regulations.

While the political situation concerning deliberate actions of the Belarusian authorities that facilitate the arrival of foreign nationals at the EU external border cannot be ignored, the Polish authorities are nonetheless obliged to comply with the provisions of international and EU law, according to which:

- states are obliged to comply with EU law, including the EU Charter of Fundamental Rights, international refugee law and the principle of *non-refoulement* when undertaking actions related to border control and surveillance and return of foreign nationals;
- foreign nationals have the right to have their application for international protection made at the border or in the territory of an EU Member State examined, and Member States are obliged to allow such applicants to remain on their territory pending examination of the application;
- a foreign national cannot be expelled from the territory of the Republic of Poland without individual examination of his/her situation, and such expulsion cannot take place if it may lead to violation of their fundamental rights, in particular the prohibition of torture;
- leaving the application for international protection without examination is possible only in strictly defined cases, and unauthorised border crossing is not one of them; the arrival from a so-called safe third country may be a reason to leave the application without examination only if the specific conditions set out in EU law are met; In our opinion, the proposed regulations are incompatible with Poland's international obligations, including EU law, the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR), as well as the Geneva Convention of 1951 on the Status of Refugees. Therefore, the proposed amendments should not be adopted.

## II. COMMENTS ON THE PROPOSED AMENDMENTS TO THE ACT ON FOREIGN NATIONALS

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3 Ruling in the case of M.K. and Others v. Poland, # 40503/17, 42902/17 and 43643/17, § 209.

4 See, among others, Mariusz Błaszczak: we will not allow the creation of a route for the transfer of migrants through Poland, accessible at: <https://www.polsatnews.pl/wiadomosc/2021-08-23/konferencja-mariusza-blaszczaka/>

5 Ruling in the case of M.K. and Others, §§ 116-117

6 Euractiv.pl, A stalemate on the Polish-Belarusian border. About 50 people have nowhere to go: <https://www.euractiv.pl/section/migracje/news/bialorus-migranci-granica-polska-lukaszenka/>

**Article 1 of the draft within the scope of Article 302 (1) (10), Article 303 (1) (9a), Article 303b, Article 303c, Article 435 (1) (1a), Article 438 (1) (1a), Article 443 (1a) of the Act on foreign nationals**

The draft law provides for the introduction of a new type of administrative decision issued with respect of foreign nationals: an order on unauthorised crossing of the border. It will be a different kind of decision than the return decision, which has a similar effect. The order is to be issued in the case of apprehension of a foreign national directly after unauthorised crossing of the external border of the EU. Its wording should indicate that the foreign national is to return from the territory of the Republic of Poland and is prohibited from entering the territory of Poland and other countries of the Schengen area. Such order will also result in an entry into the national list of undesirable foreign nationals and to the Schengen Information System for the purpose of refusing entry. The

**Absolute nature of the order on illegal crossing of the border**

The order on illegal crossing of the border is intended to be absolute, therefore it may be issued and executed regardless of the fact that the foreign national made an application for international protection and without taking into account other relevant circumstances in relation to the foreign national, which should prevent the issuance and execution of such an order.

It should be emphasized that the Act on foreigners clearly indicate, among other things, that in the event of applying for international protection, no decision on refusal of entry (Article 28(2)(2) of the Act on foreign nationals) and no decision the obligation to return (Article 303(4)) shall be issued. It should also be pointed out that in the course of the proceedings for the obligation to return, the Border Guard is required to inform the foreign national on the possibility of applying for international protection (see Article 304 of the Act on foreign nationals).

The lack of similar safeguards in the draft proposal leads to the conclusion that the intention of the government was that the application for international protection would not have an impact on the issuance of and execution of an order on unauthorised crossing of the border. Such intention is also indicated by the immediate enforceability of the order (filing a complaint does not suspend its execution), which will probably result in the foreign national being removed to the external border immediately after their apprehension. The current practice of the Polish authorities on the eastern border raises concern that possible applications for international protection submitted by foreign nationals will be ignored by the officers of the Border Guard.

Moreover, the proposed regulations do not contain regulations regarding the “technical aspect” of the execution of the order (including the basis for its compulsory execution, indication of the country to which the foreign national is to be transferred, issuing a travel document to the foreign national, etc.), as is the case with the decision on the obligation to return. The proposed amendments also do not provide for a situation where the country from which the foreign national came to Poland refuses to accept them, which raises concern that these regulations may form a basis for forcible removal of foreign nationals without the consent of the receiving state, which is contrary to EU law.

**Non-compliance of the proposed amendments with the EU asylum law**

In accordance with the provisions of the EU asylum law, an applicant for international protection is the foreign national who made such an application (Article 2 (c) of Directive 2013/32/EU<sup>7</sup>). Making such application is the first stage of the protection procedure and precedes the formal submission of the application (Article 6 (1) of Directive 2013/32). This request does not have to take any specific form, and the word ‘asylum’ does not have to be used directly.<sup>8</sup> EU law stipulates that “Applicants shall be

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<sup>7</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

<sup>8</sup> Ruling of the Court of Justice of the EU in Case C-808/18 European Commission v. Hungary, paragraph 97; Commission Recommendation of 06/XI/2006 establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by Member States’ competent authorities when carrying out the border control of persons. Accessible at:

allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision.” Furthermore, “Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State” (Article 9(1) of Directive 2013/32 and Article 7(1) of Directive 2013/33<sup>9</sup>).

The aforesaid principles are also reflected in the case law of the European Court of Human Rights, which shows that an applicant for international protection must be protected against forcible return to the country of origin until their application has been duly examined, and that at that time the state may not refuse the applicant entry to its territory.<sup>10</sup>

Therefore, the proposed regulations, by giving grounds for returning foreign national - who has irregularly crossed the border of Poland, without safeguard suspending the issuance or enforcement of the order if the foreign national submits an application for international protection, violate the cited provisions of the EU law.

The proposed amendments therefore infringes the prohibition of torture and inhuman or degrading treatment or punishment enshrined in Article 4 of the Charter of Fundamental Rights of the EU, the right to asylum enshrined in Article 18 of the Charter and, if the execution of the order would result in the expulsion of the applicant to a territory where their life or freedom would be threatened, it would also constitute a violation of the principle of *non-refoulement* enshrined in Article 33 (1) of the Geneva Convention relating to the Status of Refugees and in Article 19 of the Charter. It would also infringe right to Right to an effective remedy enshrined in Article 47 of the Charter.

#### **Non-compliance with ECHR and ECtHR case law on the prohibition of torture and collective expulsion**

In accordance with the proposed regulations, prior to issuing and executing the order, there will be no individual examination of the consequences of its execution with regard to, among other things, the risk of torture or persecution in the event that the foreign national leaves the territory of the Republic of Poland. While the justification of the proposal indicates that the border crossing protocol is to present “relevant evidence and circumstances”, it seems that this protocol will only concern the circumstances related to the crossing of the border itself, and not the potential threats resulting from the execution of the order. Furthermore, the proposal does not indicate consequences related to the possibility of risk of torture or persecution in the event of execution of the order.

It should be noted that the above regulations may lead to violation of the provisions of international law and the principles resulting from the ECtHR case law. It specifies that while states have the right to control the entry, stay and expulsion of foreign nationals, they cannot expel a foreign national if it entails a real risk of violating the prohibition of torture or cruel, inhuman or degrading treatment or punishment. This principle is absolute – there are no exceptions to it. Moreover, compliance with this principle is not dependent on whether the foreign nationals are in possession of documents allowing them to cross the border or whether they were granted permission to enter the territory of the Republic of Poland on another basis.<sup>11</sup> The case law of the ECtHR stipulates that the assessment of the existence of an actual threat must be strict and focus on the foreseeable consequences of the applicant’s expulsion to the country of destination, in light of the overall situation in that country and the personal circumstances of the applicant.<sup>12</sup>

The proposed provisions may also lead to a violation of Article 4 of Protocol 4 to the Convention, which prohibits collective expulsions of foreign nationals. The case law of the ECtHR provides that the purpose of that provision is to prevent states from returning a certain number of foreign nationals

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<http://register.consilium.europa.eu/doc/srv?l=PL&f=ST%2015010%202006%20INIT>.

9 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

10 Ruling in the case of M.K. and Others v. Poland, § 179.

11 Ruling in the case of M.K. and Others, §§ 168–178.

12 Ruling in the case of F.G. v. Sweden, no. 43611/11, §§ 113, 114.

without examination of their personal situation and without allowing them to present their arguments against being expelled. Furthermore, according to the case law, simply issuing a formal decision concerning a given foreign national is not sufficient. The ECtHR also pointed out that circumstances such as ignoring or preventing foreign nationals from submitting applications for international protection, making it difficult for them to contact a lawyer or announcing such actions by representatives of the authorities are indication that expulsion is collective in nature.<sup>13</sup>

Meanwhile, the proposed provisions do not provide for foreign nationals to have an opportunity to present their personal situation and present arguments against expulsion before issuing and executing the order (these circumstances are not indicated as taken into consideration before issuing the order) – in particular, it is not known whether such arguments can be included in the border crossing protocol. However, taking into account first and foremost the context of the proposed provisions – the intention to facilitate and accelerate return proceedings as well as the aforementioned statements by politicians and the observed lack of opportunity to apply for protection at border crossings, it should be concluded that the proposed provisions will result in a violation of the prohibition of collective expulsion stipulated in Article 4 of Protocol 4 to the Convention.

### **Non-compliance of the proposed amendments with the provisions of the EU law on border control and return of foreign nationals**

The proposed amendments are intended to apply in a situation where a foreign national is apprehended immediately after unauthorised crossing of the external EU border. It follows that the activities related to the issuance and execution of the proposed order fall within the scope of the control and surveillance of the EU external border, governed by the provisions of the Schengen Borders Code (Articles 2 (10) to (12) and Article 13 (1)).<sup>14</sup> The SBC also explicitly states in Articles 3 and 4 that, in its application, Member States shall fully respect, among other, the Charter of Fundamental Rights of the European Union, international law, including the Convention Relating to the Status of Refugees, obligations relating to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights. Furthermore, the SBC stipulates that decisions based on its provisions shall be made on an individual basis.

The detailed rules of the SBC (Article 13 (1)) stipulate that a person who has crossed the border illegally is apprehended and made subject to procedures respecting Directive 2008/115/EC, which regulates the common standards and procedures in Member States for returning illegally staying third-country nationals<sup>15</sup>.

Admittedly, Article 2 (2) of Directive 2008/115/EC allows to not apply its provisions with regard to foreign nationals who, among other, are apprehended or intercepted in connection with the irregular crossing of the external border of a Member State, and who subsequently have not obtained a stay permit in the Member State. But even in this case, Article 4(4) of that directive and Article 4 of the SBC, and Article 19 of the Charter of Fundamental Rights require Member States to comply with the principle of *non-refoulement* when expelling foreign nationals. The provisions of that directive with regard to, among other, restrictions on the application of coercive measures, the possibility of withholding expulsion on due to the foreign national's psychological and physical condition and the needs of vulnerable persons should also always be applicable.

Meanwhile, as noted above, the proposed provisions do not refer to the principle of *non-refoulement* and they do not take into account the needs of vulnerable persons, and therefore they are incompatible with Directive 2008/115/EC for this very reason.

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13 Judgment in the case of M.K. and Others, §§ 198–202

14 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

15 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

Furthermore, the proposed provisions infringe the right to an effective remedy guaranteed by Article 13 of Directive 2008/115/EC and Article 47 of the Charter of Fundamental Rights. According to the draft, submitting a complaint against an order on illegal crossing of the border will not suspend its execution (and therefore it will be immediately enforceable). In principle, Directive 2008/115 does not provide that an appeal against a return decision should have suspensory effect. However, the case law of the Court of Justice of the EU stipulates that, in the event of a threat to a foreign national's life, torture or persecution (treatment constituting a violation of Article 18 of the Charter in conjunction with Article 33 of the Geneva Convention or Article 19 (2) of the Charter), the right to effective judicial protection provided for in Article 47 of the Charter requires that the submission of an appeal against a return decision should suspend its enforcement.<sup>16</sup> The case law of the CJEU also stipulates that an appeal against a return decision, the enforcement of which may expose a foreign national to a serious risk of severe or irreversible harm to health, should have suspensive effect. In addition, if a foreign national suffers from a serious illness, they should also be provided with medical care and basic living conditions.<sup>17</sup> The provisions of Directive 2008/115/EC governing the appeal procedures give the foreign national the opportunity to obtain legal advice, legal representation (including free representation) and, if necessary, the assistance of an interpreter (Article 13 (3) and (4)). Meanwhile, the proposed regulations do not require the examination of the above-mentioned circumstances in any way and do not ensure the minimum procedural guarantees provided for by EU law.

The proposed regulations also provide that a complaint against the order on unauthorised border crossing may be submitted with the Chief Commander of the Border Guard. The proposed amendment will cause the appeal proceedings to be carried out by an authority of the same formation, which raises the concern that such control will be purely formal. The experience of the Helsinki Foundation for Human Rights with regard to similar cases concerning refusal of entry shows that the Chief Commander of the Border Guard upheld all decisions of the first instance authorities (all these decisions were subsequently repealed by the Supreme Administrative Court).

### **Non-compliance with EU law regarding the entry of the foreign national's data into the Schengen Information System**

The effect of issuing an order on unauthorised crossing of the border is to impose an entry ban into the territory of the Republic of Poland and other Schengen countries. The personal data of the foreign national with respect to whom the order will be issued, will therefore, under the amended regulations, be included in the list of foreign nationals whose stay in the territory of the Republic of Poland is undesirable, and in the Schengen Information System for the purposes of refusing entry. The SIS II Regulation of the European Parliament and of the Council provides that an alert in the SIS II for the purpose of refusing entry or stay is to be entered on the basis of an alert in a national system but resulting from a *decision based on an individual assessment by the competent administrative authorities or courts in accordance with the procedural rules laid down in national law*<sup>18</sup>. Taking the above-mentioned arguments into account, in terms of insufficient guarantees of appeal proceedings under the order and failure to examine the individual circumstances of a given foreign national while issuing the order, the proposed regulation raises concerns as to its compatibility with EU law in this respect as well.

### **III. COMMENTS ON THE PROPOSED AMENDMENTS TO THE ACT ON GRANTING PROTECTION TO FOREIGN NATIONALS**

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16 Ruling in the case of Gnandi, C-181/16, paragraph 54

17 Ruling in the case of Abdida, C562/13, paragraphs 52–60

18 Article 24 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II) (hereinafter: the SIS II Regulation).

## **Article 2 of the draft, with respect to the added Article 33 (1a) of the Act on granting protection to foreign nationals**

The draft introduces the possibility of leaving the application for international protection without examination, when it was submitted by the foreign national apprehended immediately

after unauthorised crossing of the EU's external border, unless:

- the foreign national arrived directly from a territory in which they were in danger of persecution,
- they provide the credible reasons for the irregular border crossing, and
- they made the application for international protection immediately after crossing the border.

It seems that the proposed amendment refers to two separate institutions provided for in Directive 2013/32/EU – accelerated procedure and consideration the application as inadmissible.

### **a) accelerated procedure**

Article 31 (8) (h) of Directive 2013/32/EU provides that asylum procedure may be accelerated in number of circumstances including when the foreign national:

(i) irregularly entered the territory of the EU member state and (ii) without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry. Therefore, crossing the border irregularly and failing to submit an application immediately after crossing, only provides the possibility of carrying out the accelerated procedure. This means that the examination of the application as to the merits should take place, as the Directive does not provide for non-examination of an asylum application.

In accordance with Article 31 (1) of Directive 2013/32/EU, that application should be processed in accordance with the basic principles and guarantees laid down in that Directive. The decision with regard to the application should be made after completing an individual, objective and impartial examination (and here, at least the individual examination of the application will be missing) and after obtaining a precise and up-to-date information on the situation in the country of origin and transit (Article 10(3) of Directive 2013/32/EU).

In addition, Article 10 (1) of Directive 2013/32/EU provides that applications for international protection may not be rejected or left without examination solely on the grounds that they have not been submitted as soon as possible.

### **b) inadmissible application**

The conditions laid down by Directive 2013/32/EU for declaring an application inadmissible (i.e. not examining it, leaving it without resolution – which is provided for by the proposed regulation) are contained in its Article 33 and constitute an exhaustive list (a principle confirmed in the case law of the CJEU – ruling in the case of Tompa C-564/18, paragraph 29). One such circumstance, which may be related to the proposed amendment, is the concept of the so-called safe third country (Article 33 (2) (c) of Directive 2013/32/EC).

However, the mere reference to the concept of a safe third country in national legislation is not sufficient; the criteria and methodology framework for determining whether a country is safe are contained in Article 38 of Directive 2013/32/EU and must be met cumulatively (CJEU ruling in Case C-564/18, Paragraphs 40 and 41).

Article 38 (1) of Directive 2013/32/EU provides that the concept of safe third country may be applied only if the competent authorities are satisfied that, among other things, the applicant's life and freedom will not be threatened there due to their race, religion, political views, etc., and that they will not be expelled from that country to another country where they would be exposed to danger

and persecution, and that it is possible to apply for refugee status in that country and obtain protection in accordance with the Geneva Convention. The last section is important, since the proposed solution is intended as a response to the situation at the Polish–Belarusian border, and, as already mentioned, the ECtHR case law shows that Belarus does not have a functioning asylum system, and there are reports showing that foreign nationals are being forced to cross the border and that the Belarusian forces are preventing their return to its territory, which shows that they are unable to apply for a refugee status in Belarus.

Article 38 (2) of Directive 2013/32 provides that, for the application of the concept of safe third country, national law must, among other things: (a) require a connection between the applicant and the third country concerned, on the basis of which it would be reasonable for that person to travel to that country, (b) specify the methodology by which the competent authorities can be satisfied that the safe third country concept can be applied. There are no provisions to this effect in the proposal.

It should also be pointed out that according to the case law of the CJEU the transit by an applicant for international protection through the third country concerned cannot be the basis for declaring an application for protection inadmissible. The CJEU also found that national regulations allowing the rejection of an application for international protection as inadmissible are incompatible with EU law on the grounds that the applicant has entered the territory of the Member State in question via a country where they are not at risk of persecution or serious harm, or where an adequate level of protection is provided. The condition for obtaining international protection in that third country is also important (ruling in joined cases C-924/19 PPU and C-925/19 PPU, paragraph 165). Thus, the proposed amendments do not meet the conditions contained in the provisions of EU law and the case law of the CJEU.

It should be noted that the draft law (enabling leaving the application for international protection without examination) also violates the EU Charter of Fundamental Rights which Article 18 guarantees the right to asylum, and the Treaty on the Functioning of the EU, which provides in Article 78 (1) that it is the policy of the Union to grant protection to any third-country national who requires it.

#### **IV. SUMMARY**

The proposed amendments violate the provisions of EU law, the ECHR and the Geneva Convention in such a way that:

- the provisions concerning the order on unauthorised crossing of the border provide that order to be issued and executed even if the foreign national made an application for international protection; whereas in such a situation foreign nationals have the right to remain in the territory of a Member State until the application is examined and may not be returned,
- the proposed provisions do not provide for an obligation to examine in an individualised manner whether the foreign national will be exposed to serious violation of human rights, in particular torture and persecution, in the event of execution of the order (*non-refoulement*); they also do not provide for suspending the execution of the order if the foreign national is in fact in danger of such treatment;
- the proposed provisions on leaving the application for protection without examination are inconsistent with EU law, since the fact of crossing the EU external border irregularly can only be the basis for accelerated examination of the application (i.e. examining it as to the merits); on the other hand, to invoke the concept of a safe third country, which is one of the grounds provided for by EU law for treating the application as inadmissible and leaving the application not examined, it is not sufficient to simply make a general reference to the alleged circumstance that the foreign national was not at risk there, but requires the cumulative fulfilment of additional conditions, among other things, demonstrating the existence of a connection between the applicant and the third country concerned, on the basis of which it would be reasonable for that person to go to that country.

Therefore, we urge the Parliament not to introduce the proposed amendments. At the same time, we point out that if they do not enter into force, the applicable provisions concerning the obligation to



return contained in the Act on foreign nationals and the provisions concerning the rules of applying for international protection contained in the Act on granting protection to foreign nationals will still apply with regard to foreign nationals.

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*European Council on Refugees and Exiles provided input and supported the English translation*