



OPINION

European Economic and Social Committee

Instrumentalisation of migrants

Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Responding to state-sponsored instrumentalisation of migrants at the EU external border

[JOIN(2021) 32 final]

REX/554

Rapporteur: **Stefano PALMIERI**

Co-rapporteur: **Pietro Vittorio BARBIERI**

www.eesc.europa.eu

EN

Referral	European Commission, 02/05/2022
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	18/01/2022
Section responsible	External Relations
Adopted in section	12/05/2022
Adopted at plenary	15/06/2022
Plenary session No	570
Outcome of vote (for/against/abstentions)	142/2/5

1. **Conclusions and recommendations**

- 1.1 The EESC believes that the EU's response to the instrumentalisation of migrants should be based on a common, shared and coherent migration policy. In light of the Belarus border crisis and Russia's aggression against Ukraine, the suitability of the Pact on Migration and Asylum (PMA) needs to be reviewed so as not to fragment migration policy in the face of an emergency but instead ensure that policies and the protection offered to those affected come under one single action framework and legal framework.
- 1.2 The EESC believes that the instrumentalisation of migrants is potentially still a threat to the European Union as a whole, not just to the Member States involved. Thus, the EESC stresses that responses will only be effective and able to rise to the challenge if they manage to integrate the level of the initiatives (political, legislative, administrative, humanitarian) with the scope of the action (community, national, local, international) and the actors involved (institutions, civil society organisations, social partners, the public, etc.), based on the highest standards of EU and international law.
- 1.3 The EESC believes it is essential for the EU to provide Member States with timely, coordinated and effective support, both in material terms (budget resources and EU agency staff) and in terms of administrative, legislative and political assistance. This will require a concerted effort on the ground and at the interinstitutional level, initiatives will need to be fully transparent and freedom of action will need to be ensured for humanitarian organisations and independent media present in the areas where the instrumentalisation of migrants takes place.
- 1.4 In particular, the EESC considers it crucial to establish an integrated framework for humanitarian action that pools together the resources and structures of the national and EU institutions and agencies and ensures the involvement of the international agencies (such as the UNHCR and the International Organisation for Migration) as well as the input of NGOs and civil society. This would foster the successful coordination of the work and ensure the recognition of humanitarian actions as an instrument for reinforcing the principles of the EU.
- 1.5 In this respect, the EESC considers that the full and immediate recognition of the rights of instrumentalised migrants – avoiding grey areas or situations of administrative uncertainty – is key to weakening and diffusing the threat to the security and stability of the EU and the Member States involved, on the ground, rendering attempts to instrumentalise migrants ineffective.
- 1.6 The EU's response must definitely be aimed at the sources of the flows of instrumentalised migrants, involving third countries and supporting their efforts to inform the public in a spirit of cooperation inspired by the principles of democracy and protection of human rights. This will make it possible to drain resources from state actors who encourage the instrumentalisation of migrants.
- 1.7 Regarding States that promote or support the instrumentalisation of migrants, the EESC is in favour of multilateral action by the EU, the international institutions and partner countries, that has the power to condemn and isolate these actions, including through the use of suitable economic and diplomatic sanctions.

- 1.8 The war currently being waged by the Russian Federation against Ukraine has created at least 3.9 million refugees¹, who are now being hosted mainly by neighbouring countries, as well as other EU countries, in addition to several million internally displaced people. Europe at least, has never seen a flow of this size, even in the decades following World War II. This has been dealt with swiftly by the EU, in particular through the 2001 Temporary Protection Directive² and the *Cohesion's Action Plan for Refugees in Europe* (CARE). The EESC believes that such instruments, which are inspired by cohesion, solidarity and a shared responsibility between Member States, are key to addressing the crisis of the instrumentalisation of migrants.
- 1.9 The EU is currently perceived as a safe place offering asylum and protection to millions of Ukrainian citizens. However, the burden of receiving and assisting migrants in terms of capacities and resources is distributed unevenly across the Member States involved. The opening of the EU's internal borders has so far allowed the spontaneous movement of Ukrainian refugees towards their desired destinations. However, the burden borne by neighbouring countries remains visibly disproportionate to other EU Member States. Although not on a comparable scale, the instrumentalisation of migrants on the Belarusian border and in previous instances, suggests the need for a thorough review of the mechanisms of solidarity and cooperation between the EU and Member States, in particular in terms of the redistribution of assisted migrants, which is undoubtedly necessary in crisis situations.
- 1.10 The EESC also wishes to comment on the spirit of the "Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and "asylum"³. We believe that the complex mechanism that defines the legal framework and administrative procedures for dealing with the instrumentalisation of migrants neglects the scale of the interstate crisis which could unfold in such a context and which cannot be separated from the approach to be taken vis-à-vis the migrants themselves.
- 1.11 The EESC believes that while ad hoc instruments are needed to manage the instrumentalisation of migrants, it is essential to also consider measures for their timely and full protection based on the directive on temporary protection, particularly in cases where the management of entries at the borders, the monitoring of secondary movements and the presumed delays or derogations for ordinary asylum procedures prove to be inefficient and counterproductive in relation to the goal of protecting instrumentalised migrants. In any event, the level of migrant protection needs to be increased in relation to the level of interstate crisis observed in the context of the instrumentalisation of migrants.

¹ 5 317 219 refugees in neighbouring and EU countries (figure as at 26 April 2022, source: UNHCR, <https://data2.unhcr.org/en/situations/ukraine>).

² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof).

³ See [COM\(2021\) 890 final - 2021/0427 \(COD\) "Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum"](#).

2. **Proposal**

- 2.1 The communication highlights that the migration crisis at the EU's external border with Belarus (Lithuania, Latvia and Poland) is a deliberate attempt to stir up a continuing and protracted crisis as part of a wider concerted effort to destabilise the European Union, putting its unity and determination to the test. This constitutes a "hybrid threat" carried out through the instrumentalisation of migrants by a third country.
- 2.2 Far from merely describing this specific and complex migration phenomenon, the terms "crisis" and "threat" which appear in this draft opinion are used to point to the relevance of political tensions and instability factors emerging from this geopolitical context.
- 2.3 Not only does this pose a threat to EU security, it has also given rise to a critical situation on the ground, especially for the migrants involved, with serious humanitarian consequences on both the Belarusian and EU sides of the border. There are numerous stories of migrants being subjected to inhumane and degrading treatment on the Belarusian side, partly as a way of putting pressure on the EU. However, the risk is increased by the migrants' protracted stay in the area and the inaccessibility of the EU border.
- 2.4 The EU has swiftly and firmly condemned the instrumentalisation of migrants and vulnerable refugees in all of the Union's institutional fora. The resulting international action has seen the involvement of and cooperation between the EU and partner countries, particularly migrants' countries of origin.
- 2.5 In the face of a new crisis, the EU has taken action to support the Member States affected, taking into account the specific responses of national governments and parliaments, in particular the state of emergency declared by the border regions. The Commission has responded by duly providing assistance with a view to ensuring consistency between national legislation and EU law.
- 2.6 The communication summarises the political, technical and logistical measures taken to support the affected Member States. Starting with Commissioner Johansson's visits and the Commission's subsequent calls to Member States, political ties have translated into different degrees and combined forms of technical support provided by EU agencies (Frontex, Europol, EASO, and emergency aid provided through the Asylum, Migration and Integration Fund) at the borders.
- 2.7 In terms of international action, the Commission has taken action at the highest level, particularly in relation to migrants' countries of origin and countries of transit, improving cooperation with Iraq, Lebanon, Turkey, the United Arab Emirates and Uzbekistan. This is crucial in bringing down the criminal migrant smuggling infrastructure that perpetuates the instrumentalisation taking place in Belarus.
- 2.8 In an interstate crisis there is a high risk of a 'fog of war' settling, enabling the spread of disinformation, fake news and distortion of facts, combined with the political instrumentalisation of migrants. The communication draws attention to this risk on the Belarusian side of the border, in particular the risk posed by Belarusian and Russian state-controlled media. It underlines the

importance and, specifically, the role of a free press, although the finding is not given the same emphasis with regard to the crisis areas on the EU side of the border.

- 2.9 The Commission stresses that further funding can be given in a crisis situation, drawing upon the Asylum, Migration and Integration Fund (AMIF) and the Border Management and Visa Instrument (BMVI). Regarding returns (assisted voluntary returns and non-voluntary returns), the communication refers to the cooperation between the Commission, Frontex and the IOM while emphasising the necessary cooperation of migrants' countries of origin.

3. **Comments**

Instrumentalisation of migrants and management of migration policies

- 3.1 The EESC believes that the response to the instrumentalisation of migrants should be based on a common, shared and coherent EU migration policy framework.
- 3.1.1 In order to manage migration efficiently, the EU must be aware that the initiatives of a single country are never the sole trigger of migration processes (although some of these initiatives may influence the volume of migration flows - and may do so significantly -), even when the country in question instrumentalises migrants for political ends.
- 3.1.2 When responding to very serious crises (where a third country is actively involved, or resulting from war or military action) the EU must show solidarity, particularly towards the people affected.
- 3.1.3 Without prejudice to the need to rescue all those whose life is in immediate danger (refugees and war victims), distinctions relating to legal status (e.g. between people who are eligible for some form of protection and other migrants) can only be made after transparent asylum procedures subject to EU law and international rules have been followed. Distinctions relating to legal status cannot be based on theoretical assumptions about the phenomenon or crisis taking place using labels such as "hybrid threat", "instrumentalisation of migrants", "economic migration", etc.

Hybrid threats and instrumentalisation of migrants

- 3.2 The EESC agrees with the Commission about the nature and level of the threat posed by Belarus's instrumentalisation of migrants. The EESC recognises the threat posed to the EU by forms of "hybrid threat", i.e. "state-sponsored instrumentalisation of people for political ends".
- 3.2.1 The definition of hybrid threat also uses an alternative phrasing: threats backed by "a state or non-state actor". Hybrid threats can be made by different actors and aimed at different targets (state entities, institutions, social organisations or individuals). However, although this broad reading provides a general explanation, it must be seen as distinct from the identification of situations that are relevant to the policies in question. Therefore, the EESC stresses that for the purpose of introducing subsequent legal measures and in particular for the lawful treatment of migrants and to offer them humanitarian support in emergency situations, at least one state agent has to be involved in order for actions to be classed as instrumentalisation of migrants.

3.2.2 Given the valid definition of "hybrid threat" stated in the communication, the EESC hopes for a multidimensional and integrated response, i.e. one that is not solely focused on international relations (between Member States, the EU and partner States) but which also fits in with the EU's policies and efforts for the promotion of human rights, protection of migrants and right to asylum. According to the EESC, all instruments of cooperation between Member States, and EU institutions and agencies must therefore be strengthened so that crises are managed jointly.

Solidarity, coordination and joint crisis management

3.3 The EESC agrees that "these actions represent a real and present danger to the EU's security" and not just for the Member States directly affected. The facts presented in the communication and the serious crisis in Ukraine have strengthened the EESC's belief that it is necessary to build a political, legal and procedural framework for Member States and the EU Institutions to adopt a common response to crises and manage these jointly.

3.3.1 Thus, drawing inspiration from its opinion on the proposals for amending the regulations on managing immigration and asylum⁴, the EESC believes it is crucial to continue pursuing the approach of solidarity and cooperation between Member States. The reason for this is that the situation in question is not the only one putting an increased burden on the responsibilities and difficulties faced by countries of first entry, precisely because of the importance which the Pact on Migration and Asylum (PMA) places on border control and prevention of secondary movement.

3.3.2 The much hoped-for specific regulation for combating the instrumentalisation of migrants by a state should provide for systems for a solidarity-based form of responsibility-sharing between Member States, including the possibility for swift relocation procedures proportional to the severity of the crisis.

3.3.3 The traits of the crisis at the Belarusian border highlight differences but also similarities with other state strategies that seek to instrumentalise migratory movements: the central Mediterranean, the Greek-Turkish border, the Spanish-Moroccan border, the Bosnian-Croatian border, the Serbian-Hungarian border (referring to 2021 alone). The EESC believes that the EU's response must go beyond the actions taken in previous crises. In particular, it must avoid forming a dependence on the strategic policies of third countries which are not compatible with the policies and principles of the EU.

Safeguarding and protection of migrants in a context of instrumentalisation

3.4 The EESC believes that the EU's response needs to combine actions for countering the threat with a clear awareness that, in these specific kinds of situation, the migrants involved are highly vulnerable and in need of protection, particularly in the light of an interstate crisis.

3.4.1 The EESC shares the concern expressed in the communication about the humanitarian crisis that has developed at Member States' borders with Belarus. While the difficulty of acting on the

⁴ [OJ C 123, 9.4.2021, p. 15](#); [OJ C 155, 30.04.2021, p. 58](#)

Belarusian side does objectively hinder humanitarian efforts in situations of crisis and interstate conflict, this should be taken as an incentive to boost efforts to ensure that within Member State borders the humanitarian assistance offered to migrants meets the standards required under EU law and complies with established practices for supporting vulnerable individuals.

- 3.4.2 The EESC hopes for easier access on both sides of the EU-Belarusian border, for humanitarian civil society organisations to be able to provide humanitarian aid (medical support, food aid and legal assistance).
- 3.4.3 In this context, the EU institutions must counter any action or representation that criminalises acts of solidarity carried out by national and international civil society, as the EESC emphasised in previous opinions⁵.
- 3.4.4 The communication draws attention to the presence of significant secondary movements of migrants (at least in relation to the number of migrants that reached EU borders during the crisis), pointing out that joint patrols are being carried out by the border police forces of Member States that are the first entry point for migrants and that are affected by secondary movements of migrants. The EESC believes that where there is instrumentalisation of migrants, the issue of secondary movements must be addressed together with the destination Member States. At the same time, due attention must be given to the most vulnerable migrants, especially during the acute stages of the crisis, in order to prevent further risks to their safety.
- 3.4.5 The EESC also points out the risks posed to the dignified, fair and full protection of vulnerable migrants by the widespread use of legal statuses and exemption procedures in Member States and even the EU itself, even in the context of a crisis that calls for specific responses. Any derogations from the standard procedures for reception and asylum should therefore be matched with specific safeguarding and protection measures on account of the serious risk situation, as well as preserving the principle of non-refoulement.

Combating disinformation, protecting vulnerable individuals, and the role of the media

- 3.5 The EESC welcomes the emphasis the communication places on countering disinformation, fake news and the distortion of facts, including through targeted information campaigns in countries where migration flows originate and through effective use of electronic information and communication tools the purpose of which is to provide migrants with accurate and verifiable information (e.g. Infomigrants).
- 3.5.1 At the same time, in keeping with EU values, the EESC is conscious of the importance of the free production of information and free access to facts and data that are of interest to the public. As such, when emergency measures are implemented, Member States and EU agencies must always guarantee maximum freedom of action and communication for independent media present in areas where there is instrumentalisation of migrants, while also laying down clear and transparent rules for accessing structures that host migrants and have contact with them.

⁵ [OJ C 429,11.12.2020, p. 24](#)

3.5.2 With regard to countering logistical networks for migrant smuggling present on electronic platforms and social media, the Commission, with the support of the EU agencies (ENISA), must distinguish between tools that are directly used by migrant traffickers and communication tools used between migrants; the aim of this is to distinguish responsibilities and not violate data privacy rights or compromise, either indirectly or unintentionally, the safety of migrants who are the victims of instrumentalisation.

International cooperation to combat the instrumentalisation of migrants

3.6 The EESC welcomes the measures taken by the EU institutions to strengthen cooperation with the countries of origin of migrants who are victims of instrumentalisation, with the aim of showing them the risks they face and improving international cooperation on migration.

3.6.1 Such cooperation should go hand in hand with the mechanism for international cooperation on development and with migration regulation agreements. This is also in order to ensure constructive joint action between the EU and the third countries concerned.

3.6.2 The establishment of any agreements and procedures with third countries must be subject to these relations respecting human rights and the international legal commitments made by those countries.

3.6.3 Such cooperation would also boost the efforts of police and intelligence services to prevent and combat criminal organisations involved in smuggling while fully respecting migrants' asylum and protection rights both in cases linked to the instrumentalisation of migrants and in general⁶.

Support for Member States

3.7 The EESC welcomes the support given to Member States that are under threat, in particular through the EU home affairs agencies (Frontex, EUAA, EASO, the civil protection mechanism); it believes these agencies must operate in all cases where an emergency situation is identified, following a balanced and transparent procedure⁷.

3.7.1 The EESC believes that, going forward, Member States facing such threats must be offered an appropriate level of assistance. An equally high level of protection and assistance must be given to victims of instrumentalisation, first and foremost to the most vulnerable.

3.7.2 The EESC is clear that the measures put in place by Member States for both the voluntary and non-voluntary return of migrants who are not granted the right to asylum, must be implemented in emergency situations too, in full respect of basic rights and international obligations and with the support of the EU agencies.

⁶ See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A renewed EU action plan against migrant smuggling (2021-2025)* [COM(2021) 591 final].

⁷ Upon the request of a Member State, endorsed by a subsequent Commission proposal and by a Council deliberation, and adopting mechanisms to constantly monitor and report on the situation. See COM(2021) 890 final - 2021/0427 (COD) *Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum*.

Tools and regulations for the future management of crises

- 3.8 The EESC emphasises that this opinion takes account of the measures being discussed and processed at the time of drafting, in particular the *Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum*. The proposal sets out rules concerning the status of migrants and the procedures for requesting asylum and international protection in such situations.
- 3.8.1 In this respect, the EESC hopes that the regulation will take into account the security needs of Member States and that together with them it will set out legal commitments to address the emergency and guarantee migrant protection rights based on international obligations and EU law.
- 3.8.2 Specifically, the Commission and delegated bodies must check that laws which have been or are in the process of being adopted in Member States to tackle the current crisis and prevent future crises, respect basic rights and EU rights.
- 3.8.3 When looking at this regulation, the EESC will closely assess the exemptions and derogations from the standard procedures for entry and asylum, the right to appeal against a refusal, procedures for returns, and the full transparency and cooperation between the Member States facing an emergency and the EU institutions and agencies.

Brussels, 15 June 2022

Christa Schweng
The president of the European Economic and Social Committee
