

Despite Europe's new wall, the migration route through Belarus is here to stay

Tuesday 1 November 2022, by [GRZEŚKOWIAK Maciej](#) (Date first published: 26 October 2022).

Pushing 'irregular' migrants back from Poland, Lithuania and Latvia won't stop them coming

For over a year now, there has been a humanitarian crisis along borders between the European Union and Belarus. Poland is refusing to give refuge to asylum seekers who enter it from Belarus, and the European Union is supporting it.

It was a different story during an earlier crisis, in 2015. Then, the EU condemned Poland for failing to fulfil its obligations under EU law by refusing to give refuge to asylum seekers. Now the EU consensus is that Belarus is orchestrating a migration crisis with the intention of destabilising the union, and the European Commission seems to believe that Belarus' actions justify a harsh response to migrants.

The situation has been particularly dire along the Polish-Belarusian border. There, people attempting to cross from Belarus by unofficial routes choose to hide from Polish border guards for weeks in the wilderness of eastern Poland to avoid the risk of a violent forced return to Belarus.

A group of Syrians who I met near the town of Siemiatycze in November 2021 told me that they had been pushed back at least a dozen times over several weeks. This is just one of hundreds, possibly even thousands, of [such cases](#).

To contain such 'irregular' crossings from Belarus, its EU neighbours Poland, Lithuania and Latvia have sealed their borders and effectively suspended their established asylum systems. Poland has [adopted legal tools](#) that are grossly incompatible with its international and EU obligations, let alone its own constitutional framework.

Under those well-established rules, anyone who enters the country and declares that they intend to pursue international protection should be regarded as an asylum seeker and have their claim properly considered. In contrast, Poland's new legal framework allows the country's authorities to immediately expel anyone who crosses the border without permission, even if they say they are seeking asylum.

Poland has also decided to seal the border physically by [constructing a 5-metre-high steel border wall](#). There is plenty of evidence, however, that the wall has not worked, at least not entirely, as planned: pictures of tunnels under the barrier often [go viral](#) and Polish border guards report regularly that they have prevented at least [several dozen](#) "attempts of illegal border crossings" and apprehended smugglers of migrants.

This indicates that the crisis is no temporary aberration. Rather, it reveals the opening of a more permanent irregular migration path to Europe.

Even a complete removal of safeguards, with violent pushbacks and the creation of a physical barrier to territory, cannot fully seal a border

The European Commission's reaction has been disappointing from a human rights perspective, to put things mildly. The Commission chose to refrain from exercising its powers as the "[guardian of the treaties](#)" and refused to openly criticise the pushbacks of migrants. Instead, in December 2021, it proposed [emergency provisional measures](#) for the benefit of Latvia, Lithuania and Poland.

If the Council was to agree to the Commission's proposals, the three states would be free to derogate from some standards of the Common European Asylum System (CEAS). Included in these are safeguards against *refoulement*, a [fundamental principle of international law](#) that forbids a country to return asylum-seekers to a country where they would be in danger of persecution.

The proposals are now unlikely to be enacted. One reason is that the peak of the crisis is likely to have passed. The number of "attempts of illegal border crossings", as reported daily by Polish border guards, have fallen significantly since autumn 2021.

One explanation for the lower numbers is that some countries outside the EU have put [restrictions on flying migrants into Belarus](#). Still, there are undoubtedly some people hiding in the vast forests of eastern Poland at this very moment.

Alarmingly, another reason why the emergency measures may remain in draft is that something followed them. Still in December 2021, the European Commission published a [draft regulation "addressing situations of instrumentalisation in the field of migration and asylum"](#). This new draft regulation weakens European asylum standards in much the same way as the emergency proposal for Latvia, Lithuania and Poland did, but could potentially apply to all member states that would find themselves in a situation of "instrumentalisation".

Significantly, the new draft defines instrumentalisation of migration as a situation in which a third country "instigates irregular migratory flows" into the EU and such an action is "indicative of an intention of a third country to destabilise the Union or a Member State". That definition is so ambiguous that member states could abandon some safeguards embedded in the CEAS [virtually at will](#).

Instrumentalisation may sound like a technical issue but it is of huge importance for migration into the EU. It's an accusation often made in arguments about how states police the borders between Poland and Belarus and [Greece and Turkey](#).

Of course, describing migrants as 'instruments' is in itself dehumanising. Beyond that, the draft regulation cannot meet the objective that [some policymakers have proposed](#): to raise the costs for a 'perpetrator state' and thus deter such a state from using these tactics against the EU. Instead, it would merely allow member states to suspend some safeguards for asylum seekers.

What is more, the crisis at the Poland-Belarus border proves that even a complete removal of those safeguards, with violent pushbacks and the creation of a physical barrier to territory, cannot fully seal a border or deter crossing attempts. The projected regulation is therefore likely to fail in its aim of preventing the instrumentalisation of migration.

A rigid tactic of pushbacks paired with construction of a wall is ineffective in closing this particular migration route and has led only to unnecessary human suffering. It is thus time to design a new policy response – one that would make it less rewarding for Belarusian authorities to orchestrate an influx while at the same time would treat those who are already at the border in a manner consistent with human dignity.

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