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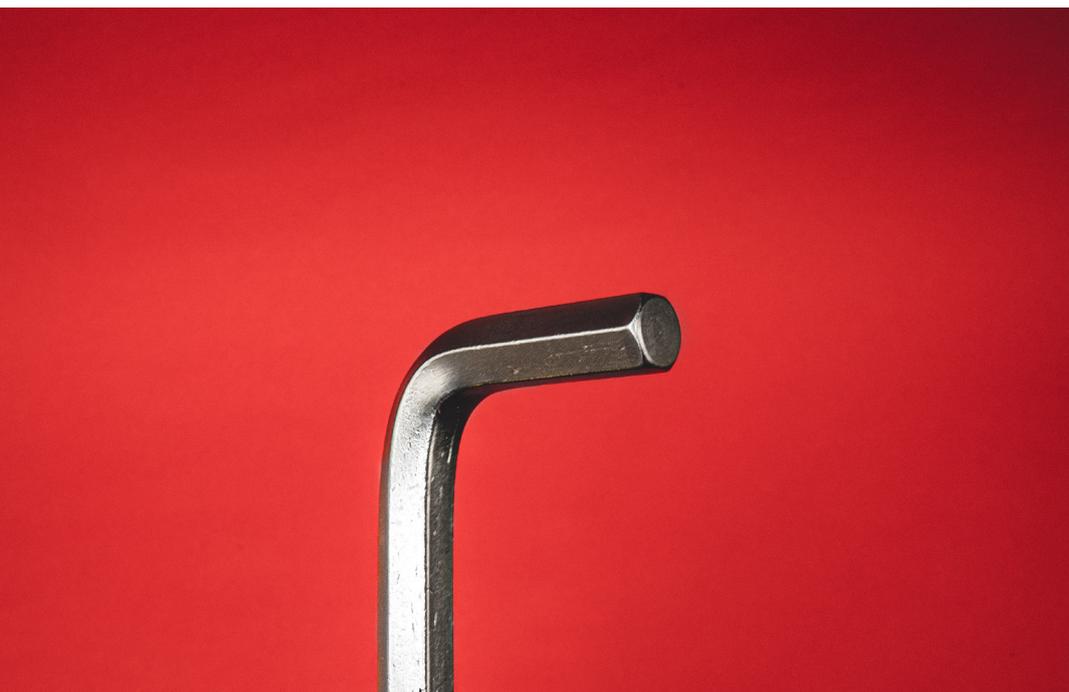**Visions for Europe**

The instrumentalisation of migration
How should the EU respond?

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The instrumentalisation of migration is back on the EU's agenda. One year after Belarus instigated a migration crisis at its border with the EU, concerns emerge that Russia could instrumentalise a second exodus of Ukrainians to undermine the EU's support to Kyiv. Member states' recent failure to agree on the proposal for an Instrumentalisation Regulation should be an opportunity to revise the EU's approach. In fact, the proposed Regulation would have done more harm than good. Two things need to happen for the EU to develop an effective response to the instrumentalisation of migration. First, the proposed Regulation should be amended to avoid the EU stepping into a "hypocrisy trap" by third countries seeking to expose the EU's alleged double standards on fundamental rights. Second, the EU needs a revised migration diplomacy that addresses the structural factors facilitating the instrumentalisation of migration by third countries.

1. Introduction

Migration is back on the EU's agenda. Increased arrivals via the central Mediterranean and the Balkans are adding pressure on already-strained reception capacities in many member states. Since March 2022, 4.8 million Ukrainians have registered for temporary protection in the EU. After a drop in arrivals over the summer, concerns are now growing in many countries about another large-scale flight from Ukraine. As Russia increasingly targets civilian infrastructure and temperatures drop, a lack of heating and electricity may force many Ukrainians to leave their country. Amid a creeping refugee fatigue in many EU member states, worries are emerging that Russia could instrumentalise a second exodus of Ukrainians to undermine the EU's economic and military support for Kyiv.

One year after Belarus instigated a migration crisis at the EU's external borders in retaliation against European sanctions, the EU finds itself in yet another debate concerning the instrumentalisation of migration. And similar to then, the EU is still short of a comprehensive approach for responding to incidents of instrumentalised migration. On 14 December 2021, in direct response to the crisis with Belarus, the European Commission put forward a package of legislative proposals to address the issue of instrumentalisation. The package included a revised Schengen Borders Code and a new Instrumentalisation Regulation. These were accompanied by discussions on developing a toolbox of measures specifically designed for responding to instrumentalised migration. The two pieces of legislation still need to make it through trilogues with the European Parliament (EP). But while there is already a common position on the Schengen Borders Code within the Council, member states remain divided over the proposed Instrumentalisation Regulation. On 8 December 2022, a compromise proposal by the Czech EU Presidency failed to secure a majority at a Council meeting of EU interior ministers.

This failure to come to agreement on the Instrumentalisation Regulation should be an opportunity for the EU to revisit how it can best respond to the instrumentalisation of migration. In fact, the proposed Regulation in its current form is likely to do more harm than good. First, it hands EU countries a disproportionate tool for derogating from existing asylum law that is prone to be exploited by member states seeking to restrict access to international protection at their borders. Ultimately, this may aid third countries attempting to set a "hypocrisy trap" to expose the EU's alleged double standards on fundamental rights. Second, both the proposed Regulation and the envisaged toolbox are primarily shaped by the Belarus episode. This limits their applicability to other situations of instrumentalisation. It also disregards the structural factors and the EU's own role in contributing to third countries instrumentalising migration as a form of coercive migration diplomacy.

The upcoming Swedish EU Presidency will now have to decide whether it will continue to push the proposed Regulation and toolbox. If it does, negotiations in the Council and with the European Parliament need to focus on three things. First, the authorisation procedure for triggering the asylum border procedure foreseen in the Instrumentalisation Regulation must be revised with a view towards avoiding legal exploitation by member states. Second, the Regulation should be improved by reducing derogations from existing EU asylum law and by including more legal safeguards for asylum applicants. Third, member states and the European Parliament should push for a conversation about developing a revised form of European migration diplomacy that addresses the structural factors facilitating the instrumentalisation of migration by third countries.

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2. Instrumentalisation as coercive migration diplomacy

A series of events in which third countries deliberately used migratory movements to assert pressure on the EU has placed the issue of instrumentalisation firmly on the agenda of the EU's migration policy. In February 2020, Turkish President Erdogan unilaterally suspended the EU-Turkey statement, which had been in place since March 2016, and sent an estimated 20,000 migrants to its border with Greece along with demands for additional EU funding. In May 2021, approximately 8,000 people attempted to enter the Spanish exclave Ceuta from Morocco following a diplomatic dispute between both countries over Spain's medical treatment of Brahim Ghali, leader of the Polisario Front in Western Sahara. In both cases, an initial peak of attempted border crossings occurred within a short period of time but did not result in a longer-term increase in arrivals. More prominently, in late 2021, the Belarussian government attempted to retaliate against European sanctions (which had been imposed following its illegitimate presidential elections) by luring migrants into the country and then funnelling them over its borders into the EU member states of Latvia, Lithuania and Poland.

Contrary to what these examples might suggest, the use of migration flows as an instrument to achieve foreign policy objectives is not an entirely new phenomenon. Studies suggest that states have been instrumentalising the movement of people in pursuit of geopolitical interests for a long time. What is new in the current discussion over instrumentalised migration, however, is the political attention devoted to it by the EU and its member states. Commission President von der Leyen referred to the instrumentalisation of migration by Belarus as a "cruel form of hybrid threat". Similarly, the EU's strategic compass, published in March 2022, features the instrumentalisation of migration as a potential means of foreign interference in the EU. In a speech to the European Parliament, Commissioner Johansson described Belarus' actions as "unprecedented".

The EU's newfound attention to the topic is not misplaced. Past responses to the instrumentalisation of migration fell short of preventing a humanitarian emergency at the EU's external borders. In this sense, the EU's response has too often played into the hands of perpetrators such as Turkey, Morocco or Belarus, which have tried to expose the EU as holding alleged double standards on fundamental rights. However, rather than framing the instrumentalisation of migration as a security threat – as statements by Johansson and von der Leyen suggest – it is important to understand the wider context in which instrumentalisation takes place. This is helpful not only to explain the putative frequency of instrumentalisation incidents in recent years, but also to understand the structural factors, power dynamics and motives shaping third countries' behaviour.

To that end, it can be helpful to consider the instrumentalisation of migration within the framework of migration diplomacy, or more specifically as an act of coercive migration diplomacy. The term describes a "threat or act by a state, or coalition of states, to affect either migration flows to/from a target state or its migrant stock as a punishment, unless the target state acquiesces to an articulated political or economic demand." It thus allows for the determination of some characteristics that define "instrumentalisation". These include the **capacity to control migratory flows** (i) with the clear **intention** (ii) to achieve **political concessions** (iii) from another country – or the EU. Furthermore, analysing the instrumentalisation of migration through the lens of migration diplomacy allows for a better understanding of the interplay between migration and interstate bargaining. In particular, migration diplomacy describes the use of "diplomatic tools, processes and procedures to manage cross-border population mobility". This may include the strategic use of migratory movements as an instrument to achieve objectives that are not necessarily tied to migration policy. Through such a process of issue linkage, two separate policy issues are negotiated

in parallel with the objective of a joint settlement. With respect to the EU, the use of issue linkage can help third countries that lack other economic, political or military means to instead leverage their geographic position as transit countries against the EU – thereby rendering the instrumentalisation of migration a low-cost strategy.

The growing global interdependence in migration governance allows third countries to more easily make use of issue linkage strategies. On the one hand, this interdependence is the result of efforts to establish international fora, such as the UN Global Compacts, which allow for common governance of cross-border mobility by sending, transit and receiving countries. On the other hand, the increased reliance of the EU on cooperation with transit or sending countries is a side effect of the EU's policy to externalise migration management. Since 2015, the EU and its member states have launched several cooperation initiatives with third countries which predominantly focus on advancing the EU's own interests, be it border management, accommodating refugee populations, or return. This process of externalisation is also characterised by an increased informalisation, e.g. through the EU-Turkey statement or through bilateral cooperation on re-admission. It is also shaped by the EU's use of negative conditionality and financial incentives for cooperation on migration management.

The involvement of third countries within the EU's migration governance framework has triggered a (re)formulation of third countries' own national interests and objectives in the field of migration policy. Moreover, it has strengthened third countries' bargaining position vis-à-vis the EU and led to a gradual disclosure of their own preferences as to what cooperation on migration should entail. It has also facilitated an exchange on how these countries can adapt their own policies by learning from each other's experience. This preference formulation and disclosure does not necessarily have to result in the use of coercive migration diplomacy. Rather, it can also take place in a cooperative fashion when the objective is not to punish a third country, but to achieve a mutually-beneficial outcome. For example, Jordan has successfully used its position as a host country for Syrian refugees as leverage to extract financial commitments from the EU.

3. The EU's approach to instrumentalisation: A closer look

The Commission considered the instrumentalisation of migration by Belarus that unfolded in late 2021 to be a novelty to which the EU's existing asylum acquis was incapable of providing an adequate response. Hence, it first granted emergency measures to the affected member states of Latvia, Lithuania and Poland under Art. 78(3) TFEU on 1 December 2021. Just two weeks later, on 14 December 2021, and without a prior impact assessment of the emergency measures, the Commission presented a package of legislative measures to turn its ad hoc response into a more systematic approach for dealing with the instrumentalisation of migration. This approach essentially consists of three elements. A revised Schengen Borders Code provides the legal definition of what constitutes an incident of instrumentalisation (i). The new Instrumentalisation Regulation lays down the derogations from EU asylum law that member states can apply when confronted with the instrumentalisation of migration (ii). These are complemented by discussion in the Council concerning a dedicated toolbox that is intended to provide member states with a list of measures to deter third country perpetrators (iii).

The Schengen Borders Code

The revised Schengen Borders Code defines an incident of instrumentalised migration as "a situation where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external

borders, onto or from within its territory and then onwards to those external borders". It further states that such actions need to be "indicative of an intention of a third country to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security". The proposal also allows member states to limit the number of border crossing points as well as their opening hours when confronted with the instrumentalisation of migration.

The Council adopted its general approach on 9 June 2022, adding non-state actors as potential perpetrators of instrumentalisation to the definition. Although these widen the scope of the definition, the Council clarifies that smuggling and humanitarian aid operations should not be considered instrumentalisation "when there is no aim to destabilise the Union". The Council further added a paragraph to the initial proposal of the Schengen Borders Code which would grant member states the right to "take the necessary measures to preserve security, law and order" when migrants attempt to "force entry *en masse* using violent means".

The Instrumentalisation Regulation

Based on the Border Code's definition, the Commission's proposal for an Instrumentalisation Regulation sets out the derogations from EU asylum law that affected member states may request. The Regulation requires member states to first request authorisation from the Commission, which "on the basis of the information provided by the requesting Member State" can then propose a Council Implementing Decision. Once adopted, the Commission is tasked with monitoring and reviewing the situation at the external border and can repeal or prolong the Council Implementing Decision, which is to last for an initial period of six months.

As part of the Council Implementing Decision, member states can apply a so-called emergency migration and asylum procedure. In combination with the provisions of the Schengen Borders Code, it grants member states the right to substantially reduce the possibility of applying for international protection to just a few designated locations. A similar asylum border procedure had already been proposed as part of the Migration Pact which the Commission presented in September 2020. The new Instrumentalisation Regulation now extends the scope of this procedure to all applicants "who are apprehended or found in the proximity of the external border with the third country instrumentalising migrants". In addition to limiting the material reception conditions and a lack of specific guarantees to vulnerable applicants, the proposed border procedure entails derogations from the regular asylum procedure in the following two main areas.

First, it grants member states the possibility to derogate from the Asylum Procedure Regulation by extending the deadline for registering asylum applications from the usual three to ten days up to a maximum period of four weeks. The Regulation also mentions the possibility for member states to apply the Screening Regulation, which is also part of the legislative proposals of the Migration Pact and hence not yet transcribed into EU law. It further allows member states to expand the scope and duration of the asylum border procedure. This implies that member states have the right to decide on both the admissibility and merit of all asylum applications directly at the border or in transit zones. The deadline for a decision is thereby extended from 12 weeks, as proposed in the Migration Pact, to 16 weeks. During this time, applicants are subject to the so-called fiction of non-entry, meaning that despite their physical presence, they are legally not considered to have entered the member state's territory.

Second, the proposed Regulation grants member states several derogations from existing legislation on return. For example, it gives member states the possibility to exclude asylum seekers undergoing the asylum border procedure from the recast Return Directive. Consequently, an applicant whose asylum claim is rejected would be subject to refusal of entry under the Schengen Borders Code. Although the Instrumentalisation Regulation demands that the principle of *non-refoulement* is respected, this would imply that an applicant's legal safeguards and guarantees are substantially curtailed.

The Instrumentalisation Toolbox

Based on a joint communication by the Commission and the Council from November 2021, the Czech EU Presidency advanced discussions on establishing a toolbox of measures to complement the Instrumentalisation Regulation. This toolbox aims to provide a more permanent framework "to address future attempts to destabilise the EU through the state-sponsored instrumentalisation of irregular migrants". It provides a non-exhaustive list of measures that have proven to be effective in the EU's response to instrumentalisation by the Belarusian regime.

These measures include diplomatic outreach to origin and transit countries, operational support to affected member states through EU agencies, return and re-admission programmes for migrants stranded at the EU's external borders, and awareness-raising campaigns, as well as the possibility to impose sanctions on third countries or airlines. In contrast to the Instrumentalisation Regulation, the measures listed as part of the toolbox do not require a formal authorisation procedure. Additionally, there is no sequencing of measures to be applied. Instead, the toolbox is intended to give maximum flexibility to member states in their response to instrumentalised migration. Implementation of the measures is coordinated via the EU's Crisis Blueprint Network and the Operational Coordination Mechanism for the External Dimension of Migration (MOCADEM), which have also been active in coordinating the Union's response to instrumentalisation by Belarus.

4. Fit for purpose? Recommendations for revising the EU's response to instrumentalisation

The fact that no majority could be found on the latest compromise proposal at the Council meeting of EU interior ministers on 8 December has stalled progress on the Instrumentalisation Regulation. With the Czech EU Presidency coming to an end, it is now up to the Swedish EU Presidency to decide whether it wants to continue prioritising the file. Yet, even if a common position were to be found in the Council, negotiations with the European Parliament are likely to be difficult. For one, the EP remains divided on the file. Additionally, the Parliament's rapporteur, Patryk Jaki (ECR), has yet to present his report to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). As a next step, the Council and the European Parliament should therefore reconsider whether the proposed Instrumentalisation Regulation and toolbox will genuinely help to better prepare the EU in responding to incidents of instrumentalised migration.

4.1. Increasing the practicality and relevance of the toolbox

With respect to the proposed toolbox, diplomatic outreach to countries of origin was particularly helpful in reducing the number of migrants that Belarus was able to lure into the country and onward to the EU's border. For example, cooperation with authorities in Iraq benefited from good personal relationships and resulted in organising repatriation flights for Iraqis stuck in Belarus, closing the Belarussian consulate, and providing better information for potential migrants concerning the situation in Belarus. In general, the impression on the part of the EU was that countries of origin lacked information as to

how their citizens were treated abroad, i.e. in Belarus, and had a shared interest with the EU in protecting them from harm. In addition, the inclusion of airlines that facilitated the transfer of migrants to Minsk within the EU's sanctions regime contributed to reducing the capacities of Belarus to send migrants to the border.

As a result, the design and content of the toolbox provide a helpful starting point for responding to the instrumentalisation of migration. The toolbox addresses the need for a comprehensive set of instruments, including a coordinated foreign policy dimension. And the measures listed as part of the toolbox have proven to be effective in de-escalating an incident of instrumentalisation. However, given how closely the toolbox is designed to replicate the EU's response to Belarus, doubts remain as to its applicability for addressing situations of instrumentalisation that deviate from the Belarus textbook case. The toolbox's primary goal is to de-escalate situations at the border by cutting the "supply lines" of migrants who are being instrumentalised by a third country. This approach might not work when dealing with perpetrators that have historically been transit countries along migratory routes to Europe. Moreover, the limited evidence concerning the actual effect of outreach campaigns on migrants' intention to move suggests that this measure could be less impactful in other scenarios. Finally, negative experience with countries of origin concerning cooperation on return and re-admission might make diplomatic outreach to these governments more difficult.

◊ Instead of constituting a static list of measures, the toolbox should therefore be treated as a living document. Member states should be able to add, adapt and qualify or remove measures that have proven to be appropriate and effective in different instrumentalisation contexts.

◊ Regardless of its current limitations, member states should first exhaust the relevant measures provided in the toolbox prior to requesting derogations under the Instrumentalisation Regulation. To that end, it would be helpful to include an explicit reference within the Instrumentalisation Regulation that recommends prioritising the measures contained in the toolbox. So far, the text merely refers to cooperation and outreach with third countries as one potential solidarity measure from non-affected member states.

4.2. Reducing the negative impact of the Instrumentalisation Regulation

With regard to the Instrumentalisation Regulation, the latest compromise proposal discussed in the Council has three main weaknesses. In case it is decided to move the file forward, these should be addressed with the aim to reduce the Regulation's negative impact on fundamental rights compliance.

Avoid the "hypocrisy trap" by making the Regulation a measure of last resort

First, implementing the Instrumentalisation Regulation would increase the risk of the EU and its member states falling into a "hypocrisy trap" – a situation in which its maltreatment of migrants can easily be exploited by states that accuse the EU of being hypocritical about championing of human rights while failing to adhere to them on its own territory. There is no doubt that the Belarusian regime, Turkey and Morocco bear the main responsibility for geopolitical bargaining on the backs of migrants. However, the EU and its member states also share accountability for these situations escalating into a humanitarian emergency.

In response to increased border crossings from Belarus, the Polish government effectively legalised the use of pushbacks – otherwise illegal under EU and international law – and

declared a state of emergency that prevented aid workers and journalists from entering the border area. At least 24 migrants died trying to cross the border between Belarus and Poland. Several hundred people were stranded in the border zone whilst reportedly being subject to violence from Belarusian border guards. In March 2020, Greece temporarily suspended the right to seek asylum while migrants stuck between its border with Turkey were subject to excessive use of force by security forces. And in Spain, the government has used the sudden influx of migrants into its exclaves as a further justification for so-called "hot returns", in which third country nationals are directly deported at the border without prior individual examination. Despite a decision by the European Court of Human Rights (ECtHR) rejecting the claim that Spain had violated the ban on collective expulsion, these practices remain unlawful.

Instead of deterring them, the EU's approach to the instrumentalisation of migration has thus too often played into the hands of third country perpetrators. By providing insufficient safeguards for ensuring fundamental rights compliance, the proposed Instrumentalisation Regulation offers little to change that. Framing the arrival of asylum seekers as a potential security threat that is "liable to put at risk fundamental state functions" will in particular aid third countries trying to escalate situations at the EU's external borders.
Additionally, the derogations of the Instrumentalisation Regulation will result in a further fragmentation of the EU's common asylum system. The EU's current legislative framework already suffers from uneven implementation and a lack of coherence on fundamental rights. One of the main objectives of negotiations on the Migration Pact is therefore to find a balance of responsibility-sharing between member states for the reception of asylum seekers. And yet, further reducing reception standards in some EU countries may incentivise asylum seekers to move onward to other member states. Hence, there should be a (self-) interest in states like Germany, France, the Netherlands or Sweden for the Regulation to remain a paper tiger and not to be applied in practice.

◊ Member states that remain sceptical about the necessity of the proposed Instrumentalisation Regulation, such as France and Germany, should advocate for the file to be put aside. This would allow for a re-focusing on other elements of the EU's response to instrumentalisation and avoid pre-empting negotiations on the Migration Pact.

◊ If the proposed Regulation does remain a priority under the Swedish EU Presidency, the group of member states that prevented a majority on the last compromise text – together with the European Parliament in the upcoming trilogues – should ensure that the Regulation remains a (theoretical) measure of last resort.

Definition and authorisation procedure: Prevent exploitation by Member States

Second, the authorisation procedure laid down in the Regulation in combination with the definition of instrumentalisation set out in the Schengen Borders Code are prone to be exploited by member states that seek to restrict the possibilities of applying for international protection at their borders. Drafting a political response to the instrumentalisation of migration requires the EU to have a clear and common understanding of what constitutes an incident of instrumentalised migration – and what does not. This is particularly relevant as the EU's understanding of instrumentalisation also determines which measures are considered adequate and proportional. While it is necessary to consider the wider context in which the instrumentalisation of migration takes place, it is equally important for the EU to have a narrow legal definition for triggering the measures made available under the Instrumentalisation Regulation.

Given the political attention devoted to the issue of instrumentalised migration, a broad definition of situations amounting to "instrumentalisation" would risk inflationary use of the concept. Member states and the European Parliament should therefore consider whether including non-state actors as potential perpetrators is politically wise. While accounting for the role of non-state actors might help to make the definition future-proof, it currently risks being exploited by member states seeking to clamp down on NGOs rescuing migrants in the Mediterranean. Additionally, the current premise that situations of instrumentalisation are "liable to put at risk essential state functions" can be subject to wide interpretation and hence grants member states considerably leeway for claiming to be confronted with instrumentalised migration. This is particularly problematic as member states remain at odds as to whether the proposed Instrumentalisation Regulation should be for exceptional use only. Whereas France and Germany remain sceptical with respect to frequent application of the proposed Regulation, the Visegrad countries advocate for it to be more easily available for member states to implement.

At the same time, the authorisation procedure described in the latest compromise text by the Czech EU Presidency strengthens the role of member states vis-à-vis the Commission in granting derogations from EU asylum law. The text states that requests for derogations should only be made in "exceptional circumstances". Yet there is much ambiguity as to what constitutes the "conclusive evidence" that member states should submit to prove that exceptional measures are indeed required.

◊ To reduce the risk of member states exploiting the Regulation, references to non-state actors and search and rescue operations should be deleted from the preambles of the Regulation.

◊ Furthermore, the Regulation should specify the information that is required to provide "conclusive evidence" of an instrumentalisation incident.

◊ Moreover, the European Parliament should claim a role for itself within the authorisation procedure by demanding that the Commission and the Council shall take into consideration the EP's assessment before authorising derogations from EU asylum law.

Emergency asylum border procedure: Increase fundamental rights safeguards

Third, the proposed derogations under the emergency asylum border procedure are disproportionate in relation to the challenge posed by the instrumentalisation of migration. Most elements of the procedure under the Instrumentalisation Regulation resemble the border procedure proposed as part of the Migration Pact. However, the latter was designed as a response to large-scale arrivals of irregular migrants. Despite a temporary increase in arrivals, recent situations of instrumentalised migration are rarely characterised by continuously high numbers of asylum applications. The disproportionality of the proposed derogations is particularly striking with regard to the prolongation of deadlines for registration and the maximum duration of the asylum border procedure. Delaying an applicant's registration may infringe their rights to reception and protection from *refoulement*. Prolonging the duration of the asylum border procedure while processing applications in designated facilities at the border is also likely to result in de facto detention. Additionally, upholding the fiction of non-entry, as well as allowing member states not to apply the Return Directive, reduces opportunities for applicants to make use of legal remedies and safeguards.

◊ The Council and the European Parliament should agree to increase the number of exemptions for vulnerable persons made under the proposed emergency procedure. This should include children and persons with medical conditions.

◊ Moreover, the fiction of non-entry should be removed from the text as it may lead to member states claiming the non-applicability of legal safeguards.

◊ Finally, the European Parliament would be well-advised to wait on settling negotiations over the Instrumentalisation Regulation until the Migration Pact is fully concluded. Given the similarity between measures proposed in the Instrumentalisation Regulation and the Pact's border procedure, adopting one without the other would undermine legislative scrutiny and risks further complicating negotiations on reforming the EU's asylum system.

5. Way forward: A European migration diplomacy

The EU's response to the instrumentalisation of migration remains a work in progress. While doubts persist regarding the added value of the proposed Instrumentalisation Regulation, the toolbox offers a good starting point for the EU's future approach to instrumentalisation. Yet, neither a new Regulation nor a toolbox will suffice to develop tailored responses that match the challenges posed by the different contexts and perpetrators of instrumentalisation. Instead, the EU should make both elements part of a revised European migration diplomacy. This requires the EU and its member states to consider the more structural factors that facilitate third countries' use of instrumentalisation as a means of coercive migration diplomacy. While the lack of equal partnerships is certainly no excuse for third countries to instrumentalise migrants, the EU needs to change its approach to engage with third countries on migration governance. To that end, three steps can help in developing an improved EU migration diplomacy.

First, the EU needs to identify its strategic objective for dealing with situations of instrumentalised migration. This requires clarifying which parameters define a successful response to instrumentalisation. Part of the answer to this question is of course the aim to maintain control over the EU's external borders. Another part should be the goal to avoid stepping into third countries' "hypocrisy trap". To that end, upholding fundamental rights when receiving and processing migrants at the border is essential to make attempts to reveal the EU's alleged double standards through instrumentalisation more difficult for third countries. Lastly, the objective of a revised European migration diplomacy should be to convince third countries to transition from the use of coercive to cooperative measures for the pursuit of their own interests.

Second, the EU should align its own policies to achieve the strategic objective of its migration diplomacy. The question here is how to revise existing partnerships with third countries to make the use of coercive migration diplomacy by means of instrumentalisation less attractive, and how to incentivise cooperation instead. In principle, this requires a shift away from the approach that emerged after 2015 which sees third countries mainly as implementing actors for Europe's own migration policy interests. Instead, the EU should take the increased occurrence of instrumentalised migration as an opportunity to actually put the promise of equal partnerships into practice. With a view to achieve issue linkages, two building blocks are particularly relevant to that end.

On one side, there is a need to turn away from the use of negative conditionality. Despite some short-term successes, such a "less for less" approach in cooperation with third

in other policy areas, such as trade or development policy. On the other side, the EU should work more towards implementing common interests with third countries. This applies in particular to the area of legal migration. Facilitating entry into the EU for their citizens is often a relevant domestic policy goal for non-EU countries. At the same time, EU member states are starting to become aware of the need to expand legal migration pathways in order to alleviate labour market shortages. The Talent Partnerships Initiative launched by the Commission could be a good starting point here.

Third, the EU and its member states should avoid framing migration, and especially the instrumentalisation of migration, as hybrid security threats. The discourse on a "weaponisation" of migration in particular is not helpful for developing adequate and proportional responses. Unlike in the case of an actual hybrid threat, the instrumentalisation of migration does not require a combination of non-military and military means and should be countered accordingly with civilian measures. Instead, it is important to find a nuanced response to such situations that both deters the aggressor and protects migrants. This may include upholding and expanding targeted economic sanctions, for example, which has been an important element in making clear that the EU will not allow itself to be blackmailed by Belarus. With regard to the potential instrumentalisation of Ukrainian refugees by Russia, the EU's most effective response so far has been to activate the Temporary Protection Directive for those fleeing the war. Instead of framing them as a security risk, the reception of Ukrainian refugees was widely displayed as an act of solidarity and thereby furthered the EU's strategic objective of support for Kyiv.

Conclusion

Failure to agree on the Instrumentalisation Regulation in the Council should be an opportunity for the EU to revisit its approach to the instrumentalisation of migration. When deciding to continue with the Regulation, improvements will need to be made to avoid self-made vulnerabilities and hypocrisies. The proposed toolbox offers a helpful first step when responding to instrumentalisation incidents. Yet neither the proposed Instrumentalisation Regulation nor the toolbox are ends in themselves. Moving forward, the EU should incorporate both into a revised migration diplomacy that accounts for third countries' use of instrumentalisation as coercive interest disclosure. To that end, determining its objectives, aligning respective policies, and avoiding a security narrative should constitute the main elements of the EU's future strategy on the instrumentalisation of migration.