

Reference: C.N.320.2024.TREATIES-XVIII.12.b (Depositary Notification)

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA  
AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION  
AGAINST TRANSNATIONAL ORGANIZED CRIME

NEW YORK, 15 NOVEMBER 2000

EUROPEAN UNION: COMMUNICATION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 26 July 2024.

(Original: English)

“NV/2024/252

The Delegation of the European Union to the United Nations in New York presents its compliments to the Secretary-General of the United Nations and, with reference to the Interpretative Declaration (C.N.225. 2023.TREATIESXVIII. 12.b (Depositary Notification)) of 31 July 2023 formulated by the Republic of Belarus (the ‘Declaration’) regarding Article 20 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 (the “Protocol”), has the honour to communicate the following:

Having examined the Declaration, the European Union considers that it amounts to a reservation. The purpose and content of the Declaration is to exclude the application of Article 20 of the Protocol to State Parties that have withdrawn their reservation pursuant to Article 20(4) thereof to all disputes that arose “before, on, or immediately after the withdrawal of such a reservation”.

The Declaration, being a reservation, cannot be accepted as it was formulated late. In accordance with Article 20(3) of the Protocol, States are only allowed to make reservations concerning Article 20(2) of the Protocol when signing the Protocol by a State or when depositing its instrument of ratification or accession thereto. This rule of international treaty law is also stipulated in Article 19 of the Vienna Convention on the Law of Treaties. Since the Declaration was made after the signing of the Protocol by the Republic of Belarus and after the deposit of its instrument of ratification of the Protocol, it must be concluded that the Declaration constitutes a belated reservation.

Moreover, the Declaration is to be considered as impermissible reservation as it is not permitted by the Protocol. In accordance with Article 20(3) of the Protocol, only reservations to Article 20(2) thereof are permitted. Therefore, the Declaration, being a reservation to Article 20(4) of the Protocol, cannot be accepted as it intends to modify the date at which the withdrawal of a reservation to Article 20(2) of the Protocol becomes effective.

The European Union also opposes the purported interpretation of Article 20 of the Protocol provided by the Republic of Belarus in the Declaration. That interpretation would allow the Republic of Belarus and other States to formulate objections to withdrawals of reservations by reserving States. Furthermore, given the instrumentalization of migration movements at the Eastern borders of the European Union performed by the Republic of Belarus, the Declaration has to be considered as an attempt to prevent disputes between the European Union Member States and the Republic of Belarus to reach the stage of the International Court of Justice. Therefore, the Declaration cannot be accepted as an act in good faith. In addition, the European Union would like to state that the interpretation of Article 20 of the Protocol as provided by Belarus runs against customary international law and the Vienna Convention on the Law of the Treaties. In accordance with Article 22(1) of the Vienna Convention on the Law of the Treaties, unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal. The general rule stemming from the Vienna Convention on the Law of the Treaties (Article 22(3)(a) of the Vienna Convention on the Law of the Treaties) is that unless the treaty otherwise provides, or it is otherwise agreed the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State.

The Delegation of the European Union to the United Nations in New York avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, 26 July 2024 (Signed) (Seal)”

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7 August 2024

