



COMMISSIONER FOR HUMAN RIGHTS

Adam Bodnar

Warsaw, 29/03/2019

KMP.022.2.2019

**Council of the European Union  
General Secretariat**

Rue de la Loi/Wetstraat 175  
B-1048 Bruxelles/Brussel  
Belgique/België

Ladies and Gentlemen,

The Polish Commissioner for Human Rights of Poland is highly enthusiastic to learn about the revision of the Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. From the standpoint of two main functions performed by the Commissioner for Human Rights of Poland which are: national preventive mechanism and independent equality body, this document could constitute a very important and useful tool providing government authorities with guidance on the compliance with the non-derogable prohibition of all forms of torture and other ill-treatment in all circumstances.

Using this opportunity, National Preventive Mechanism and Equal Treatment Departments wish to present their comments and reservations about the proposed guidelines.

1. Definition and background

p.9 The definition of deprivation of liberty should be in line with Article 4.2. OPCAT in order to emphasize that persons remaining in private institutions may be also subject to torture or other ill-treatment.

2. Demarches and statements

In this chapter the point should be added, stating that recurring allegations of torture or other ill-treatment in a third country may lead to withdrawal of the financing, suspension or termination of cooperation with the EU.

### 3. Operational Section

#### p.1.1.b Domestic legislation

Apart from those mentioned in this point, the following requirements of domestic legislation should be foreseen as well. These are:

*- national legislation should prevent the placement in detention centers for foreigners of persons who could be identified as victims of torture and inhuman treatment. Therefore, legislative bodies in the states concerned shall establish effective procedure providing for a preliminary assessment of migrants who might have experienced torture or any form of physical, mental or sexual violence, prior to putting them in detention*

*- national law should create procedures enabling immediate release from a detention center for foreigners in a situation where the fact that they have suffered torture and inhuman treatment will be disclosed after being placed in a detention center*

*- the principle that no one will be deprived of liberty simply because he/she is applying for international protection/granting the refugee status should be introduced into national legislation.*

p.26 The Protection provided in this point should be extended to victims of trafficking.

I sincerely hope our proposals will be taken into account during the ongoing debate.

Yours sincerely,

