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3.1.1. Access to territory

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The main trends related to the interplay between border protection and access to territory remained similar to 2022, with EU+ countries – whether at the external borders of the EU or not – strengthening cooperation with third countries and aiming to prevent irregular migration and smuggling.

EU+ countries reinforced policies and legal frameworks to reduce irregular arrivals. For example, cooperation agreements concluded with third countries in 2023 and early 2024 included objectives to reduce irregular migration, such as Germany with Georgia,235Spain and the EU with Mauritania,236Spain with Senegal,237and Italy with Albania.238Many countries intensified or extended border checks, for example Czechia,239Germany240and Slovakia.241Continuing with targeted information campaigns like in previous years, Belgium set up a campaign to combat irregular migration from Guinea in response to their increased number of applications. According to the Belgian authorities, three-quarters of the Guineans who apply for international protection appear, after an assessment, to have no need for such protection.242

Austria reported a decrease in the number of applications received between January-July 2023 compared to January-July 2022. The authorities attributed this to consistent border controls; cooperation with Hungary, Serbia and Montenegro to fight smugglers and traffickers; countering trafficking networks inside Austria so that traffickers avoid Austria; faster asylum procedures; and successful international cooperation with countries of origin to ensure returns.243

The impact of the Russian invasion of Ukraine and the situation along the borders with Belarus continued to put pressure on the EU's eastern borders. Countries responded by amending certain laws to formalise existing practices at the border. Lithuania maintained the state of emergency as it continued to experience increased pressure at the external borders related to the instrumentalisation of migrants by the Belarusian regime.244To this end, Frontex provided on-the-ground support by contributing personnel to assist Lithuanian border guards.245

Lithuanian border guards continued to help Latvian counterparts to ensure the protection of the border with Belarus, and the two governments agreed on closer cooperation to address increased secondary movements from Latvia to Lithuania.246

In Estonia, the Police and Border Guard Board (PBGB) signed a cooperation agreement with UNHCR in August 2023, which aims to ensure that the treatment of refugees arriving in Estonia complies with all applicable rights. Through the agreement, the PBGB will identify people in need

of international protection and ensure their access to Estonian territory and to the asylum procedure.247

In Poland, the Ministry of the Interior and Administration extended controls at the border with Slovakia until 2 March 2024 (controls ended at midnight that day). Crossings were possible at designated areas only.248The Ombudsperson in Poland submitted comments to the authorities on several instances, stating that the regulations allowing the return of third-country nationals at the Polish border with Belarus were contrary to international, EU and Polish laws. The authorities replied that the regulations addressed a migration threat, they ensured the necessary guarantees of human rights protection, and listed the considerations taken to balance ensuring state security and upholding fundamental rights.249Concerns were also raised by the UN Special Rapporteur on the human rights of migrants,250as well as civil society organisations. 251

The Helsinki Foundation for Human Rights, a civil society organisation, presented its opinion before the Council of Europe's Committee of Ministers on Poland's implementation of the ECtHR judgment in the case of *M.K. and Others v Poland*. A common submission was also made by the Association for Legal Intervention and the Rule of Law Institute.252All three organisations urged Poland to introduce procedural guarantees to access the asylum procedure.253

The Voivodship Administrative Court in Białystok allowed the action brought by a Yemeni national against the Polish border guard after he was returned to Belarus. The court noted that the lack of evidence in the case was a consequence of the actions of the border guard.

The Voivodship Administrative Court in Warsaw confirmed that the authorities should register an application for international protection within 3 working days. The case concerned an applicant who had orally expressed the wish to apply for international protection but whose application was only registered by the Border Guard in Lesznowola over 3 weeks later.254The Border Guard noted that an applicant has the right to interpretation, as well as the right to request an attorney. For rare languages, when few interpreters are available, the registration time may need to be prolonged to ensure the availability of the interpreter. Similarly, registration activities are adjusted to accommodate the availability of the attorney.

Arrivals continued by sea and through the land border in the Mediterranean region. On the 10th anniversary of the Lampedusa shipwreck, UNHCR urged for further efforts to strengthen cooperation in search and rescue activities; provide life-saving assistance; end criminalisation, obstruction or deterrence of those providing humanitarian assistance; and establish effective regular pathways to seek asylum.255

In Greece, a shipwreck off the coast of Pylos in June 2023 resulted in the deaths of more than 80 persons with hundreds missing.256The Greek Ombudsperson opened an official investigation into the incident, raising questions on the action of the Greek Coast Guard.257The Ombudsperson's announcement was welcomed by the Council of Europe's Commissioner for Human Rights.258Forty survivors of the shipwreck filed a criminal complaint against all responsible parties before the Naval Court of Piraeus.259

The Greek National Commission on Human Rights (GNCHR) presented the first results of the Recording Mechanism of Incidents of Informal Forced Returns in January 2023. The Recording Mechanism, established in 2021 by the GNCHR, aims to monitor, record and report incidents of informal forced returns of third-country nationals from Greece to other countries, through personal interviews with the alleged victims and through a common, transparent and scientific recording methodology.260In its report, the Recording Mechanism recorded 50 incidents of informal forced returns from Greek territory between April 2020 and October 2022, according to statements by alleged victims.261This initiative was supported by UNHCR and welcomed by the IOM, FRA and the Fundamental Rights Officer of Frontex.262The Ministry of Migration and Asylum established an individual complaints mechanism under the Fundamental Rights Officer, who must handle and examine, at a preliminary stage, complaints of alleged violations of human rights with access to territory, in reception or during asylum procedures in Greece.263

In 2023, the CJEU General Court actions for damages brought by Syrian refugees against Frontex in two separate cases (see here and here) after they were returned from Greece to Türkiye. At the same time, a civil society organisation reported obstacles to access the territory and highlighted discrepancies between declarations made by Greek authorities and reports by civil society organisations and people involved in different capacities in the asylum process.264

In the eastern Mediterranean region, similar allegations were made concerning practices in Cyprus that could lead to chain *refoulement*. International and civil society organisations cautioned against sending asylum seekers back to Lebanon, where they are commonly deported back to Syria unlawfully and, thus, are exposed to inhuman and degrading treatment and torture.265

In the central Mediterranean region, there were a number of developments in Italy, starting in February 2023 with the renewal of the Memorandum of Understanding between Italy and Libya. 266The agreement outlines their continued cooperation with training, equipment, funding and other technical support being provided to the Libyan authorities in the field of migration. Civil society organisations, however, claimed that the agreement, through which Libyan authorities receive equipment and training, may encourage indirect *refoulement* to Libya.267

A new law in Italy increased the penalty for facilitating irregular migration and a new crime of “death or injury as a consequence of crimes in the field of illegal immigration” was introduced. A person would be punished even when the death or injury of another occurs outside the national territory. UNHCR made recommendations on the law, excluding the criminal provisions,268and a number of civil society organisations complained to the European Commission that the new legislation violates EU law and the obligations of EU+ countries in search and rescue activities at sea.269 Italian authorities noted that these concerns remained at the level of political observations so far and no concerns were raised at the judicial level yet.

The ECtHR and national courts ruled on practices and procedures in place in Italy and highlighted that they may inhibit effective access to territory.270National authorities underlined that these judgments happened against the background of Italy remaining one of the EU+ countries with the highest number of applications and compared the high number of registered applications with the low number of judgments finding breaches.

Cooperation continued between Italy and Malta in the prevention of irregular migration and combating migrant smuggling.271At the same time, Malta intensified its efforts to enhance cooperation with third countries, particularly with Libya, which received training on maritime border management and law enforcement.272 Civil society organisations continued to allege that Malta ignored distress calls from boats at sea.273The Maltese authorities continued to strongly rebut any allegations of arbitrary delays in responding to distress calls. Malta stressed that it abides with international obligations and responded to all distress calls in its Search and Rescue Region, whereby all notifications are investigated, assessed, prioritised and actioned accordingly.

In the western Mediterranean region, Human Rights Watch stated in June 2023 that there had been no credible investigation or justice for the victims of violence and the deaths of asylum seekers and migrants at the border between Morocco and the Spanish enclave of Melilla in 2022. The organisation called on Spain to take the lead in pushing for an approach that respects rights, including safe and legal routes, accountability for border abuses and human rights as conditions for cooperation with other countries.274 A number of actors continued to express concern about effective access to the procedure at the border with Morocco.275

In Croatia, the Office of the Ombudsperson published a report in April 2023, which states that in 2022 there was a decrease in the number of complaints with allegations of pushbacks, but it still received a large number of notifications from third-country nationals who were already on Croatian territory and wished to submit an application for international protection.276The report for 2023 was published in March 2024, with similar conclusions.277Civil society organisations continued to report on collected testimonies of asylum seekers who were allegedly prevented from entering the territory and seeking international protection.278Concerns about pushbacks and access to the procedure led to debates in other countries about transferring applicants to Croatia under the Dublin III Regulation, with courts taking different approaches (*see Section 3.2.5.2*).

The Croatian Ministry of Internal Affairs continued with the implementation of its project on the “Independent Monitoring Mechanism for the Protection of Fundamental Human Rights” in 2023. The project observes the actions of police officers of the ministry who work on border protection, illegal migration and international protection.279The project was funded earlier by the European Commission under direct funding (emergency assistance), while in the current financial period it was moved under the Croatian Border Management and Visa Instrument programme. The Independent Monitoring Mechanism (IMM), which focuses on monitoring actions related to border surveillance, is based on a cooperation agreement between the Ministry of the Interior and the Croatian Academy of Medical Sciences, the Croatian Academy of Legal Science, the Centre for Cultural Dialogue, the Croatian Red Cross and Prof Iris Goldner Lang. The mechanism has served as a blueprint, and the Croatian Ministry of Internal Affairs highlighted that this is the first and currently only such monitoring mechanism in the EU.

The ECtHR ruled on practices in Hungary. In *Alhowais v Hungary*, the ECtHR found violations of Articles 2 and 3 of the ECHR when the national authority failed to protect the life of a migrant during a river disembarkation from Serbia to Hungary and failed to conduct an effective investigation into the events.

In the Netherlands, the Court of the Hague referred questions to the CJEU concerning the effective date of a residence permit issued to refugees in relation to the date of application for international protection.

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