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3.4.2. Legislative and policy changes

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Comprehensive laws and policies on international protection, as well as amendments to existing legislation, were drafted in several EU+ countries or were in the process of negotiation. They concerned the conditions to be fulfilled for a residence permit, the issuance of a negative decision on international protection jointly with a return decision, and changes to the first instance procedure.

A new asylum and immigration law was discussed in France throughout 2023, with several proposals suggesting changes and adjustments for a more efficient asylum procedure. The law was promulgated at the beginning of 2024.396

Romania changed their legislation to enable the issuance of a negative decision on international protection jointly with a return decision, while Bulgaria was in the process of amending its legislation with the same purpose.397The Romanian legislation also clarifies that the return decision is suspended until the asylum decision remains final and that applicants benefit from their rights until the procedure is finalised.398The law was amended in Luxembourg to ensure that legislation aligns with the relevant CJEU judgment and there are now some exceptions from the automatic return decision which is included in a negative asylum decision.

New legislation entered into force in July 2023 in Czechia, amending the Act on Asylum and Foreign Nationals. It aims to streamline the asylum procedure before administrative authorities and administrative courts.

In Germany, the federal government and federal states agreed in May 2023 on speeding up asylum procedures by ensuring that all asylum applications are filed within 2 weeks and a BAMF personal interview must be held within 4 weeks. In addition, more advanced digital infrastructures would be provided to the relevant authorities.399

The Swedish Migration Agency updated its legal position on the protection needs of nationals from Yemen.400

Externalisation of asylum procedures

In 2023, several EU Member States considered the transfer of asylum applicants to third countries for the processing of their asylum claims.

UNHCR provided an advisory opinion on the proposal of two Belgian MPs in opposition, urging to refrain from establishing laws and practices externalising asylum procedures and responsibilities to third countries, which would be in violation of international obligations.401

In November 2023, Italy signed a protocol with Albania to process asylum applications of people rescued at sea who wish to apply for asylum in Italy in the following 5 years. According to the protocol, Italy would pay for Albania to build two centres where such applications would be processed and where applicants would be received, with the exception of children, pregnant women and vulnerable applicants.402However, on 18 January 2024, the Constitutional Court of Albania temporarily blocked the ratification of the protocol, which was followed by a narrow 5 to 4 decision declaring the protocol to be constitutional and paving the way for ratification in the Albanian parliament (*see Section 3.1*).403 Also in January 2024, UNHCR published its analysis of the protocol, noting that personal interviews and the establishment of a regular monitoring mechanism by Italy on the transfers and the quality and fairness of the procedure were not addressed in the protocol. UNHCR highlighted that the legislation should also ensure that the implementation of the protocol does not lead to a transfer of responsibility, nor undermine Italy's legal obligations.404

- 396Ministry of the Interior and Overseas | Ministère de l'Intérieur et des outre-mer. (January 2024). *1 Loi pour controller l'immigration, améliorer l'intégration, 4 mesures immédiates, 7 orientations pour notre politique migratoire [1 Law to control immigration and improve integration, 4 immediate measures, 7 orientation for our migration policy].*

- 397European Commission. (2023, October 18). *Commission reports on progress made by Bulgaria and Romania on the Pilot Projects for Fast Asylum and Return Procedures* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5063

  Loi du 20 juillet 2023 portant modification de la loi modifiée du 18 décembre 2015 relative à la protection internationale et à la protection temporaire [Law of 20 July 2023 amending the amended law of 18 December 2015 relating to international protection and temporary protection] (2023).
- 398Ordonanta de Urgenta nr 35 din 17 mai 2023 pentru modificarea și completarea unor acte normative privind domeniul străinilor și azilului în România [Emergency Ordinance No 35 of 17 May 2023 for the amendment of normative acts regarding the field of foreigners and asylum in Romania]. https://legislatie.just.ro/Public/DetaliiDocumentAfis/270497
- 399Beschluss Gemeinsame Flüchtlingspolitik von Bund und Ländern: Unterstützung der Kommunen, gesteuerter Zugang, beschleunigte Verfahren, verbesserte Rückführung [Resolution of the Federal Government and federal states on a common policy on refugees: Support of municipalities, accelerating procedures and improving returns] (2023).

  https:/
- 400Swedish Migration Agency (SMA) | Migrationsverket. (2023, November 27). *Rättsligt ställningstagande. Prövning av skyddsbehov för medborgare från Jemen - RS/076/2021 (version 3.0) [Legal position. Protection needs assessment for nationals from Yemen - RS/076/2021 (version 3.0)]*
  . https://lifos.migrationsverket.se/dokument?documentSummaryId=47860

- 401United Nations High Commissioner for Refugees. (2023, August 31). *Advisory opinion by the United Nations High Commissioner for Refugees (UNHCR) on the Draft Law of 16 November 2022 amending the law of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals concerning the introduction to externalize the asylum policy.*
- 402Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministru della Repubblica di Albania per il Rafforzamento della Collaborazione in materia migratoria [Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania for the strengthening of collaboration in migration matters] (2023).

- 403Ministry of Labor and Social Policies | Ministero del Lavoro e delle Politiche Sociali. (2024, January 31). *Albania, la Corte Costituzionale convalida l'accordo con l'Italia sui migranti [Albania, the Constitutional Court validates the agreement with Italy on migrants]*.

- 404United Nations High Commissioner for Refugees. (2024, January 9). *Commenti e raccomandazioni dell'UNHCR sul disegno di legge di "Ratifica ed esecuzione del Protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, fatto a Roma il 6 novembre 2023, nonché norme di coordinamento con l'ordinamento interno" [UNHCR's comments and recommendations on the Italian draft law of "Ratification and execution of the Protocol on strengthening cooperation in migration matters between the Government of the Republic of Italy and the Council of Ministers of the Republic of Albania, done in Rome on 6 November 2023, as well as coordination norms with the national legislation framework"]*.

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