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Section 4.1. Access to procedure

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Effective access to the asylum procedure means that people seeking international protection are able to reach the authorities and are afforded a fair and efficient process. Obstructing access to territory and access to the procedure may, in certain circumstances, result in a person being returned to a country where their life or freedom may be threatened, breaching the international principle of *non-refoulement.*

The recast Asylum Procedures Directive guides Member States on common procedures to undertake when an asylum application is submitted in the territory of a Member State, including at the borders, in transit zones, or in territorial waters.

The directive outlines access to the procedure as a three-step process:

- Making an application: A person expresses a wish to any national authority to apply for international protection.
- Registering an application: The competent authority officially records the application for international protection.
- Lodging an application: The application is formally lodged when all administrative formalities have been completed.

The time limit for the examination of a claim for international protection starts elapsing when the application is lodged and all formalities have been completed.

Pressure on the EU's external borders intensified in 2021 with the number of arrivals resuming to pre-pandemic levels. Illegal border-crossings escalated, and EU+ countries had to manage sudden mass arrivals and ever-increasing numbers of applications for international protection. There were variances in the number of crossings across different routes, so the increase did not affect all routes and the situation remained stable in some areas.

While COVID-19-related restrictions and quarantine requirements were still in place, EU+ countries responded to the increased arrivals by adapting processes to facilitate the making, registering and lodging of applications. Several countries rearranged reception places and reorganised first instance procedures *(see Sections 4.4 and 4.7).* Other countries continued with initial or arrival centres which bring together reception and asylum authorities, while studies

were undertaken to evaluate their impact and efficacy.

As immediate measures, many EU+ countries reintroduced internal border controls within the Schengen area which had an impact on access to territory. In June 2021, the European Commission set out a strategy to strengthen the legal framework of the Schengen area by implementing more effective external border management, measures compensating for the absence of controls at internal borders and robust governance.[291]

Operations by Frontex were stepped up to provide support directly to Member States. However, some activities and procedures were subject to investigations and reviews by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), the EU Ombudsperson, the European Court of Auditors and the Frontex Management Board. No violations of human rights by Frontex staff were confirmed by these entities, however the respective bodies listed weaknesses and made recommendations for improvements. The Agency appointed a Fundamental Rights Officer in June 2021 to reinforce its monitoring framework.[292]

A number of national human rights institutions working through the European Network of National Human Rights Institutions (ENNHRI) conducted research and analyses on issues related to the protection of migrants' human rights at the borders. In collaboration with national partners, ENNHRI published a number of guidance papers, including on monitoring at borders in 2020[293] and human rights scrutiny of public funds for migration and asylum in 2021.[294] ENNHRI's focus on monitoring at the borders culminated in a regional report,[295] which highlights trends, challenges and good practices relating to four key areas: returns and violence, access to relevant procedures, reception conditions and the deprivation of liberty, and human rights accountability. The report concludes with ten recommendations for achieving human rights-sensitive policies at the borders. A key finding in ENNHRI research was the lack of accountability for violations of migrants' rights at the borders. To address this, an ENNHRI report analysed the underlying causes of gaps in accountability at the borders and identified shortcomings in five key areas: structural gaps, gaps in investigations, gaps in access to justice, gaps in revision and prevention, and gaps in promoting a culture of rights.[296]

To highlight the point that access to asylum can be advanced through international legal avenues, in March 2021, ECRE published a legal note focusing on the prohibition of *refoulement* as an imperative element of an accessible, effective and fair asylum procedure.[297] In July 2021, ECRE and Heinrich Böll Stiftung published a report on reception, detention and the restriction of movement at the EU's external borders.[298] The report maps the current EU legal framework and resulting national practices involving the deprivation of liberty and restrictions on the freedom of movement for migrants and asylum seekers. It sets out a set of policy recommendations for EU Member States, the European Commission, the European Parliament and the Council of the EU *(see Section 4.8).*

Addressing practices in some EU+ countries, in March 2021, UNHCR issued a legal note on the externalisation of international protection. While acknowledging that international cooperation as an expression of solidarity is essential in relieving countries from an unduly heavy burden of hosting a large number of refugees, UNHCR stated that it should not be used to shift, minimise or avoid responsibilities, nor to obstruct rather than facilitate access to protection. According to the note, measures that prevent applicants from entering safe territories or the transfer of

applicants to process their applications in other countries without sufficient safeguards may have an eroding effect on the international protection system.299 The annex to the UNHCR note clarifies that the externalisation of international protection may comprise three categories of practices: extraterritorial processing in a third country or other location; unilateral measures to intercept or prevent arrivals which preclude access to asylum; and cooperative measures to intercept or prevent arrivals.300

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4.1.7. Statistics on applications for international protection

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