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4.1.1. Situation on the eastern borders

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Instrumentalisation of migration: Situation at the border with Belarus

icon presenting eastern borders

The situation at the EU's eastern borders in 2021 was largely characterised by the irregular arrival of migrants from Belarus, in what the European Commission described as "the instrumentalisation of migration for political ends" 301 and "state-sponsored smuggling of migrants into the EU".302 The European Council stated that it will "not accept any attempt by third countries to instrumentalise migrants for political purposes" and condemned "hybrid attacks" at the EU's borders.303 Following the 2020 Belarusian presidential election, the subsequent political unrest in Belarus, and the forced landing of passenger aircraft Ryanair Flight 4978 to Minsk in May 2021, EU-Belarusian relations deteriorated. Belarus took various steps to facilitate irregular migration first to Lithuania and then to Latvia and Poland, the majority being Iraqi nationals.304

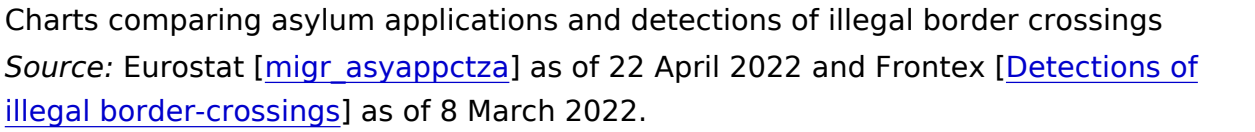
The sudden influx of migrants at the eastern European borders increased pressure on national asylum systems, especially in countries which had not commonly experienced such high numbers of third-country nationals trying to enter their territory. Poland received 7,800 applicants[xi] for international protection in 2021, close to three times as many as in 2020 and the highest level since 2016 *(see Figure 4.1).* Applications in Latvia more than tripled to about 600, and they increased 12-fold in Lithuania to 3,900 applications. For both countries, these levels were the highest since at least 2008.

Iraqis were the largest applicant group in both Latvia and Lithuania, while they were the third-largest group in Poland, after Belarusians and Afghans. Data on illegal border-crossings detected at the eastern land borders of the EU indicate sudden inflows beginning in June 2021, far above the number at any point in 2020. Illegal border-crossings then quickly declined back to previous levels by December 2021.

Lithuania, Latvia and Poland deployed additional resources to maintain control at the borders with Belarus and implemented rapid legislative changes relating to the initial stages of the asylum procedure, including the lodging of applications. Concern was expressed by international organisations, civil society organisations and various human rights bodies over enacted and proposed legislative changes in some countries in this region.

Sudden increase in asylum-related migration at the eastern borders

Figure 4.1. Applications for international protection (left) and detections of illegal border-crossings (right) in countries bordering Belarus, 2021 compared to 2020



Charts comparing asylum applications and detections of illegal border crossings
Source: Eurostat [migr_asyappctza] as of 22 April 2022 and Frontex [Detections of illegal border-crossings] as of 8 March 2022.

Media attention highlighted the tense situation, with Latvia, Lithuania and Poland, declaring emergency situations as a consequence of the instrumentalisation of migrants. In August 2021, Latvia declared a state of emergency due to the rapid increase in irregular migrant arrivals. The Cabinet of Ministers authorised the State Border Guard, the National Armed Forces and the State Police to order any person illegally crossing the border from Belarus to return to the country from which they have crossed and to take the necessary measures to enforce the order. During the emergency phase, asylum applications were accepted only outside the areas under the state of emergency.305 UNHCR responded to these measures in written observations, stating that the fundamental right to seek asylum and the non-derogable principle of *non-refoulement* should be observed also in times of emergency.306 Unrelated to these comments, the Office of Citizenship and Migration Affairs, the holder of the registration information system, enhanced the functionality of this system starting from August 2021. This enabled the State Border Guard, the organisation responsible for registrations, to swiftly register applications, making information immediately available to all authorities involved in the asylum process.307

By November 2021, Lithuanian authorities also declared a state of emergency which was applicable to the entire border section with Belarus and 5 kms from it. Measures included the substantial closure of the border, limited access to emergency areas to permit holders, and limited access by foreigners.308 In December 2021, the Lithuanian parliament adopted amendments to the Law on the Legal Status of Aliens, which distinguishes between asylum seekers and irregular migrants. The law provides that at the end of a 6-month border procedure, the Migration Department and the State Border Guard Service will decide on the accommodation and the restriction of movement based on the individual situation of each person *(see Section 4.8.2).*309 Legislative amendments also included the possibility to refuse the lodging of an asylum application in exceptional situations, meaning that persons who apply for asylum at border crossing points or transit zones are not considered to have entered the territory until a decision permitting entry is issued.310 This was criticised by ECRE as violating the right to seek asylum and the principle of *non-refoulement*.311

Lithuania introduced new methods and material to provide information on the asylum procedure *(see Section 4.9).* Nonetheless, the UN Committee Against Torture (UN CAT) expressed concern

over serious and unprecedented challenges relating to the lack of information on the asylum procedure in Lithuania. Concerns were raised about access to legal assistance and interpreters for refugees and asylum seekers, reported incidents of collective expulsions of asylum seekers without reviewing their individual situations, and pushbacks at the border (including of children) with people left in dire conditions with no access to the asylum procedure and basic needs.312

Poland also intensified activities at the border with Belarus. Additional personnel from the Polish Border Guard were deployed to the area, together with 1,000 soldiers from the Polish army. Border monitoring was increased with foot patrols, vehicles and aerial surveillance. The Polish Border Guard collaborated with Lithuanian border, customs and police services through agreements on the exchange of information.313 In August 2021, UNHCR called for an end to the impasse on the Polish-Belarusian border and appealed to the Polish authorities to provide immediate support and grant access to the territory to the group of people who had set camp close to the border.314 According to the Border Guard, the group wanted to cross the border illegally and were supported by the Belarusian services. The Council of Europe's Commissioner for Human Rights also urged Poland to take immediate action to protect the human rights of those stranded at the border with Belarus, calling the situation "alarming".315

A draft law was issued to amend the Polish Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland.316 Civil society organisations criticised this development as being non-compliant with EU law and violating the principle of *non-refoulement*.318 In addition, UNHCR published observations on the Polish draft law and expressed concern that the provisions undermine the right to seek asylum as foreseen in the 1951 Convention Relating to the Status of Refugees and the EU asylum *acquis*. UNHCR warned against the long-term deprivation of access to territory and the asylum procedure for persons attempting to cross the border irregularly and reiterated the importance of respecting the principle of *non-refoulement*.319

Related to events in previous years, in 2021 the ECtHR found violations of the prohibition of collective expulsions against Poland when Syrian nationals residing for several years in Belarus approached Polish border guards in 2017 to lodge asylum applications. They were instead returned to Belarus despite an interim measure that they should not be removed. UNHCR and the IOM issued joint statements several times during 2021, expressing concern about the situation at the border between Poland and Belarus and the lack of access to assistance and the asylum procedure.320 UNHCR also issued a press statement stating it had not been granted access to asylum seekers at the Polish side of the border.321

During the escalation, there were many reports of impediments for asylum seekers to access the procedure for international protection within the EU. In August and September 2021, the ECtHR issued interim measures in two cases concerning Afghan and Iraqi nationals who were stranded at the borders of Poland and Latvia with Belarus, and with regard to five Afghan nationals stranded at the border between Belarus and Lithuania.

Several civil society organisations jointly called on the EU to restore rights and values at Europe's borders.322 Referring to the situation at the border between Belarus and EU Member

States, they called for access to the asylum procedure, humanitarian access and the withdrawal of non-compliant domestic legislation. They also demanded access to civil society organisations, the media and legal practitioners, and called for human rights standards and transparency at the heart of cooperation with third countries.323

Civil society organisations criticised Poland, Latvia and Lithuania, claiming that *refoulement* practices led to the tragic death of several people.324 To this end,16 civil society organisations in Lithuania, Latvia and Poland sent a letter to the President of the European Commission and the EU Commissioner for Home Affairs, expressing concern about the situation of migrants trapped at the EU's external borders. They called on the European Commission to ascertain that the measures taken by the three Member States were in compliance with EU law.325 In their explanations, the Member States affected by this migration crisis stated that they always take all necessary measures to save the lives of migrants in need. The Polish Border Guard underlined that the causes and circumstances of the death of foreigners were established by the police and the Prosecutor's Office as part of the investigation. The Polish-Belarusian section of the state border is difficult to cross due to both the difficult terrain and weather conditions, and the Border Guard observed with concern the risky and irresponsible behaviour of foreigners who tried to cross the state border.

In response to the challenging situation, a number of initiatives were undertaken by the EU, including increased financial support to the affected countries, concerted action to combat disinformation, and humanitarian support. Additionally, the European Commission proposed a Council decision on provisional emergency measures for the modification of the asylum, return and reception rules at the EU's borders with Belarus for a period of 6 months *(see Section 2)*.326

Displaced people from Ukraine

While in 2021 a number of challenges were reported on access to territory and access to the asylum procedure at the EU's eastern external borders, in 2022 the response of EU Member States to the Russian invasion of Ukraine was to permit easy access to territory. A number of EU+ countries adopted various measures by the end of February 2022, allowing Ukrainian refugees and displaced persons the possibility to freely cross borders to seek refuge from the violent conflict.

The measures included the lifting of COVID-19 restrictions at border control points, the exemption from presenting documentation at the border, and in many EU+ countries, the automatic granting of temporary protection.327 On 4 March 2022, the Council adopted for the first time an Implementing Decision328 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of the Temporary Protection Directive, Article 5.329

As of 2 May 2022, UNHCR declared a Level 3 emergency330 and estimated that over 5.6 million people have fled Ukraine to neighbouring countries since the Russian invasion began on 24 February 2022.331

Footnotes

[xi] Statistics reported to Eurostat refer to persons. Therefore, family members under one application should be counted and reported individually, irrespective of the national legal requirements or administrative procedures.

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pakeitimo, 69 straipsnio ir IX-1 skyriaus pripažinimo netekusiais galios ir Įstatymo papildymo X-2 skyriumi įstatymas [Law amending Articles 2, 3, 5, 26, 32, 40, 50, 67, 71, 76, 77, 79, 113, 125, 126, 130-1, 136, 138, 139 and 140 of Law No IX-2206 of the Republic of Lithuania on the Legal Status of Aliens, repealing Article 69 and Chapter IX-1 and adding Chapter X-2 to the Law]. https://www.e-tar.lt/portal/legalAct.html?documentId=0eee5e90696c11eca9ac839120d251c4. See also: Ministry of the Interior | Lietuvos Respublikos vidaus reikalų ministerija. (2021, December 23). Seimas pritarė įstatymo „Dėl užsieniečių teisinės padėties“ pataisoms [The Seimas approved amendments to the Law on the Legal Status of Aliens]. https://vrm.lrv.lt/lt/naujienos/seimas-pritare-istatymo-del-uzsienieciu-teisines-padeties-pataisoms

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