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Section 4.1. Access to procedures

icon for access to the asylum procedure

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Effective access to the asylum procedure means that people seeking international protection can 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 APD 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. The provisions of the recast APD apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of Member States.

In 2022, EU+ countries received a significantly higher number of applications for international protection than in previous years, in addition to all-time highs for nationals outside of the 10 main applicant groups. National authorities adjusted their laws, policies and practices to the increasing number of applicants, for example by modifying the places of registration.

The activation of the Temporary Protection Directive also triggered changes in the process and impacted the capacity to register applications for international protection in different ways. EU+ countries allocated resources to swiftly provide effective access to protection for displaced persons from Ukraine, which at times resulted in delays to access the procedure for asylum applicants. For people from Ukraine who did not qualify for temporary protection, EU+ countries

took different approaches to ensure they had access to different forms of protection, as necessary.227

In view of the mass arrivals and in an effort to provide access while managing their borders, several countries introduced rules which are applicable in a state of emergency and could be triggered by mass arrivals. UNHCR, the Council of Europe's Commissioner for Human Rights and civil society organisations warned how these changes could potentially inhibit effective access to the territory and impede the right to apply for international protection. Throughout the year, FRA documented the impact of some legislation in practice and summarised the concerning results in its annual report.228

Following a synthesis of relevant international and national sources, FRA warned that, at times violent, obstructions to effective access to protection were increasing at the borders of the EU.229 During 2022, four EU operations patrolled the Mediterranean Sea to rescue migrants at risk, while securing the EU's borders and targeting migrant smugglers. At the same time, critical voices argued that there was a shift towards prioritising border control, enforcement and cooperation with third countries to intercept and return smugglers and migrants (*see Section 2.4*).

At the end of 2022, the European Commission presented two action plans with a series of operational measures to address immediate and ongoing challenges along the Central Mediterranean and the Western Balkan routes (*see Section 2.4*). UNHCR welcomed the adoption of the action plans230 and published a note on legal considerations related to government roles and responsibilities for rescues at sea, non-refoulement and access to the asylum procedure.231

The ECtHR issued several interim measures and judgments which found violations related to collective expulsions, search and rescues, and the principle of non-*refoulement*. National courts were also often called upon to decide on the legality of legislative amendments and national practices. The Protecting Rights at the Borders initiative from the Danish Refugee Council underlined that strategic litigation was often the last resort to uphold rights and ensure accountability at the EU's borders.232

The trend to opt for online appointment systems continued, with the aim of facilitating and accelerating access to the asylum procedure. Nonetheless, civil society organisations observed that delays persisted when appointments could only be obtained after several weeks. These arrangements were also particularly difficult for illiterate applicants and applicants without digital skills.

Section 4.1.1. Access territory

4.1.1. Access to territory

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4.1.2. Access to the asylum procedure

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4.1.3. Data on applications for international protection

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