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Faced with attempts to instrumentalise migrants, the European Commission adopted a communication on countering hybrid threats from the weaponisation of migration and strengthening security at the EU's external borders.68 In addition, several countries closed parts of their borders and introduced stricter border protection regimes to prevent illegal border-crossings, for example at the Polish and Latvian borders with Belarus69 and the Finnish borders with Russia.70 These measures were coupled with legislative initiatives, such as the Finnish Act on Temporary Measures to Combat Instrumentalised Migration,71 the Polish Regulation on establishing a buffer zone at the borders with Belarus,72 and the Polish draft amendment to the Act on Granting Protection to Foreigners.73 When activated, the regulations may temporarily allow:

- Border closures, reducing access to territory only through specified border points and, similarly, introducing temporal and territorial restrictions in receiving applications for international protection;
- Creation of buffer zones at the borders, where temporary bans on staying within specified areas apply;
- Intensified patrolling of the border areas by search and rescue teams;
- Simplified procedures to return third-country nationals to the border when they crossed the border illegally;
- Increased budget for human and technical resources for border protection.

The instrumentalisation of migration is often framed as a question of national security and there has been growing agreement among several Member States that they should have the possibility, if necessary, to temporarily derogate from existing EU law for the protection of the nation.74 Over the past years, several EU countries have reintroduced or intensified border checks at internal EU borders,75, a practice that deviates from the principles of the Schengen system. Thus, the Schengen Borders Code was revised in 2024 to formalise flexibility and define the conditions when additional internal border controls can be activated.76 The integration of Bulgaria and Romania into the Schengen framework in March 2024 has facilitated movement across internal borders, while the two countries have intensified cooperation and increased

capacity in the management of external borders, with support from the European Commission and EU agencies.77

Digitalisation played a key role in improving the management of borders. EU+ countries invested in updating information systems in accordance with the Pact on Migration and Asylum. New technologies were also used in border surveillance to improve the quality of border management at sea and on land; better identify people in distress; and support the fight against cross-border crime.78

EU+ countries engaged in bilateral and regional cooperation on migration management in an effort to address irregular migration, curb organised crime and human trafficking, and prevent the loss of life along migration routes. Examples include the tripartite cooperation between Bulgaria, Greece and Türkiye to control irregular flows at their land borders and the regional cooperation among countries along the Western Balkan route.79 Cooperating with third parties, especially countries along migration routes, is an integral part of the external dimension of migration for EU+ countries.80

The greater emphasis on the external dimension of migration management at times led to discussions and practices, whereby migrants rescued at sea would be brought to the territory of partner countries where they are identified and their applications are processed. This approach was exemplified by the Italy-Albania protocol of 2023, which set up a mechanism and the conditions under which Italy would carry out the processing of asylum applications under Italian jurisdiction in designated areas of Albanian territory for third-country nationals originating from the list of safe countries of origin and who are rescued or intercepted in international water by vessels of Italian authorities.81 UNHCR and civil society organisations raised concerns about border externalisation and procedural specifics and guarantees.82 Various sources framed the agreement as an example of what is considered a growingly popular deterrence strategy in the area of migration and asylum.83 In August 2024, UNHCR announced that: “In recent meetings, the Italian government has provided further information on the implementation of the protocol and reiterated its strong desire that it be in line with international law and standards. Based on an exchange of letters with the Italian Ministry of the Interior, UNHCR will therefore undertake a role of monitoring and counselling people to ensure that the right to seek asylum is protected and that the processes put in place under the protocol are consistent with relevant international and regional human rights standards, are fair, and promote protection and solutions for those in need of international protection”.84

In 2024, the practical application of the agreement proved expensive and faced scrutiny by Italian courts in the application of the accelerated border procedure. In the first operation in October 2024, the two centres in Gjader and Shengjin, initially designed to accommodate a few thousands, received only a small number of Egyptian and Bangladeshi applicants who were soon transferred to Italy. For the first group of Egyptian and Bangladeshi applicants, the Tribunal of Rome did not validate their detention orders,85 citing the *CJEU judgment in CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*. This judgment held that a country cannot be designated as a safe country of origin when certain parts of its territory do not fulfil the criteria for that designation.86 In this case, the Italian court raised the question whether Bangladesh and Egypt could be considered as safe countries of origin despite the fact that for

certain categories of people they are not considered to be safe, also taking into account that “a third country may be considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95, no torture or inhuman or degrading treatment or punishment, and no threat by reason of indiscriminate violence in situations of international or internal armed conflict”.

Italy then carried out two more operations (in November 2024 and January 2025), which encountered similar judicial challenges. For a second group of applicants, the Tribunal of Rome referred a set of issues to the CJEU concerning the new national list of safe countries of origin and its consistency with relevant EU law. As a consequence of the referral, the tribunal suspended the proceedings without taking any decision, and due to the 48-hour constitutional time limit for the validation of administrative detention, the applicants automatically acquired the right to be set free. This was one of the several referrals sent by the Tribunal of Rome and other tribunals. The advocate general’s opinion was delivered on 10 April 2025, concluding that a Member State may designate safe countries of origin by a legislative act and must disclose the sources of information leading to that designation for the purposes of a judicial review. The advocate general also found that – upon certain conditions – a Member State may designate a country of origin as safe, while at the same time identifying a limited categories of people who would still be at risk of persecution of serious harm in that country.87

Measures by EU+ countries to further secure their borders raised questions among human rights institutions, international and civil society organisations about effective access to territory and, consequently to the asylum procedure for third-country nationals seeking protection.88 Concerns were voiced about restricted access to fundamental rights; alleged pushbacks at the EU’s eastern borders, land borders in the Balkans and in the Eastern Mediterranean route; and the return of people in distress at sea to countries that may not be safe or where they risk chain *refoulement*.89 They also underscored the need for a route-based approach and coordinated search and rescue operations;90 highlighted the importance of providing legal information at borders, hotpots and transit zones;91 and called on authorities to end practices that may inhibit effective access to territory and, consequently, to the asylum procedure.92 To provide guidance on legal interpretations for governments and other stakeholders, in September 2024 UNHCR issued guidelines on the non-penalisation of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Geneva Convention.93 It also provided legal consideration on asylum and non-refoulement in the context of migrant instrumentalisation, outlining state obligations under international refugee and human rights law for admission to the territory and access to asylum.94

In July 2024, the European Agency for Fundamental Rights (FRA) published a report which highlights the inadequacy of investigations into reported serious and widespread rights violations at the EU’s borders and offers a set of recommendations to promote effective national investigations.95 To help reduce the risk of fundamental rights violations at the external borders, FRA prepared a guide on national independent monitoring mechanisms for fundamental rights during screening and the asylum border procedure. Foreseen by the Screening Regulation and the Asylum Procedures Regulation, these independent mechanisms set up by Member

States will aim to monitor compliance with fundamental rights during the screening of new arrivals and when assessing asylum claims at external borders.96

In this context, European and national courts stepped in to review the practices of national authorities and ensure the correct interpretation of the EU asylum acquis. For example, the European Court of Human Rights (ECtHR) issued a number of decisions finding violations of Article 2 of the ECHR (use of force not 'absolutely necessary'), Article 3 (prohibition of torture), Article 4 of Protocol 4 (prohibition of collective expulsion), Article 5(a) and (b) (unlawful detention) in cases concerning Cyprus, Greece, Hungary and Poland.97 In June 2024, the CJEU ordered Hungary to pay a lump sum of EUR 200 million and a penalty payment of EUR 1 million per day of delay for failing to comply with the CJEU judgment in European Commission v Hungary (C-808/18) pronounced on 17 December 2020. In the 2020 judgment, the court found that Hungary had failed to comply with EU law on procedures for granting international protection and returning illegally-staying, third-country nationals.98 (For more jurisprudence in this area, see the *EUAA Case Law Database*.)

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