



# The Italy-Albania Agreement on Migration: From the Fiction of Non-Entry to Functional Entry

MIGRATION

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### Summary

- The Italy-Albania Protocol ratified by Law No. 14/24 allows Italy to examine applications for international protection on Albanian territory, but under Italian jurisdiction
- The agreement applies only to migrants intercepted by Italian vessels in the Mediterranean, not those who arrived on Italian soil first
- The Protocol can be considered an entry point to new approaches to territoriality. It will contribute to consolidate the legal fiction of non-entry and will contribute to the introduction of new mechanisms based on a functional extraterritoriality.
- The Protocol establishes a “functional territoriality”, since Italian law is being applied in an extraterritorial space
- It legally requalifies the notion of territory based on a *fictio iuris* aimed at equating areas belonging to the Albanian state to Italian border areas.
- The Protocol configures Albania as a mere supporting State, *functional* in the sense that it provides the space in which asylum seekers’ applications will be examined by the Italian authorities

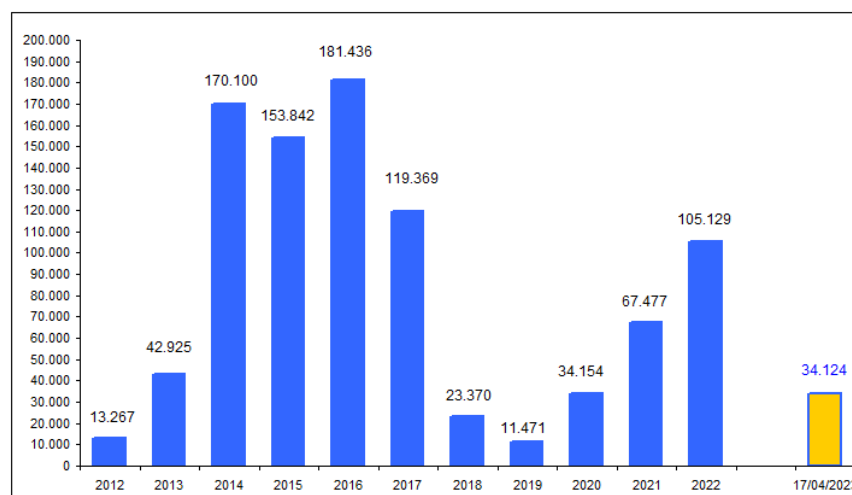
## Introduction

On 6 November 2023, a memorandum of understanding between Italy and Albania was signed in Rome by Italian Prime Minister Giorgia Meloni and Albanian Prime Minister Edi Rama. The agreement between Italy and Albania on migrants provides for the opening of two Centres of Permanence and Repatriation (CPR) on Albanian territory at a cost to Italy of more than 600 million euros over five years. "The policy of redistributing migrants has failed massively" but Albania "behaves like an EU country and shares responsibility", [Rama commented from Brussels](#).

Several initiatives have taken place at EU level to support Italy as a frontline state. From 2015 to 2018, the EU ran an [emergency relocation programme](#). Relocation is a legal tool to enact tangible solidarity between EU countries in the area of migration management. Under this emergency programme, 34,700 persons were relocated from Italy and Greece to other European countries. Over the same period, arrivals in Italy were in excess of 100,000 people per year on average, according to official data.

In September 2019, a temporary relocation mechanism in the context of Search and Rescue Operations in the Central Mediterranean was included in the Malta Declaration endorsed by Italy, Germany, France and Malta. In the framework of these voluntary relocations, some 3,000 persons were relocated from Italy and Malta to other European countries. Only 11,000 migrants arrived in Italy that year, and arrivals in Italy have been rising steadily since, with 2022 the highest year on record since 2017 (see chart below). In 2023, the total number of arrivals reached 157,651, according to [official data](#).

*The Italy-Albania protocol on migration should be seen as a policy that seeks to fill the gaps between the current EU migration management efforts and existing solidarity mechanisms.*



Source: ISMU Foundation, Italian Ministry of the Interior

The Italy-Albania protocol on migration should be seen as a policy that seeks to fill the gaps between the current EU migration management efforts and existing solidarity mechanisms. The policy brief examines the protocol between Italy and Albania. It briefly touches on the enlargement process and the relationship between Italy and Albania as the foundation for the development of the agreement between the two countries. It then moves on to discuss the content of the protocol, and offers a critical examination of its significance, namely the rescaling of sovereignty through 'functional territoriality' to overcome structural gaps in existing mechanisms.

## The enlargement process

The EU enlargement process towards the six countries of the Western Balkans (Serbia, Bosnia and Herzegovina, Montenegro, Kosovo, Albania, North Macedonia—often jointly abbreviated to the acronym WB6 standing for Western Balkan Six) constitutes the main European instrument in the region.

After applying for European membership in 2009, Albania's integration path ran aground on internal political conflicts and the scepticism of [third-party European actors](#) (France, the Netherlands and Denmark) over the Balkan country's observance of the rule of law and [control of irregular migration flows](#).

A change in perspective began to slowly manifest itself in 2019, with the end of Jean-Claude Juncker's mandate; as president of the European Commission from 2014 to 2019, he had openly declared that there would be no new accessions during his term in office.

Countries previously sceptical of enlargement, such as Sweden, Denmark, Belgium and the Netherlands, have recently taken a different stance, with some even including references to EU enlargement in their strategy documents. For instance, the most recent Danish security strategy mentions the accession of [eastern and south-eastern candidate countries as a priority for further partnerships](#). Enlargement is widely regarded not as a means to promote European values and rules as such, but rather as a primarily geopolitical instrument. This is reflected in the [Granada Declaration](#): *“Building on the Strategic Compass for Security and Defence, we will strengthen our defence readiness and invest in capabilities by developing our technological and industrial base. We will also focus on military mobility, on resilience in space and on countering cyber and hybrid threats and foreign information manipulation throughout the Union. The Russian war of aggression has also further highlighted the strength of the transatlantic relationship [...] This will make the EU stronger and will enhance European sovereignty”*.

The year 2019 also saw the adoption of a new regulation on the European Border and Coastguard Agency, Frontex, permitting it to assist the countries with which it signs agreements throughout their territory and not only in regions bordering the EU, as was the case under the previous mandate. The regulation also allows Frontex staff to exercise executive powers, such as conducting border checks and registering migrants across Albanian borders.

This agreement also replaced the previous agreement between Albania and Frontex, which also entered into force in 2019, having been agreed before the entry into force of the new Regulation on [the European Border and Coast Guard Agency](#). An agreement between Italy and Albania on migration is therefore part of the broader shift towards the Balkans and their future enlargement prospects.

## Why Albania? A short history of relations and mobility between Italy and Albania

While Albanian emigration is a long-standing phenomenon, the so-called ‘new diaspora’ began during the 1990s when the fall of Enver Hoxha's communist regime was followed by a massive exodus of Albanian citizens to Italy: in March 1991, some 25,700 Albanians arrived in Puglia (in Bari, Brindisi, Otranto) on board small boats, having crossed the Strait

Countries previously sceptical of enlargement, such as Sweden, Denmark, Belgium and the Netherlands, have recently taken a different stance, with some even including references to EU enlargement in their strategy documents.

*...the strategic role of ports in migration management, and the “closed ports policy” which Italy has expressly adopted in the governmental and political debate starting since 2018, fits into the groove of the nations’ long history.*

*Italy has a key role projected onto the enlarged Mediterranean, of which the Western Balkans forms part, and benefits directly from stability in the region, since it trades trade with the countries in the area and is the third supplier country and the second customer. [...] Italy was once again confirmed as Albania’s leading trade partner, accounting for 29.5% of Albania’s total trade with the rest of the world, which equated to more than 3.2 billion euro.*

of Otranto. At that time, as an exception to the Martelli law<sup>1</sup>, temporary residence permits were issued for a period of six months, allowing the migrants to find work and accommodation. August 1991 witnessed a new surge in landings, which included the arrival of 10,000–12,000 people crammed aboard a single ship, the [Vlora](#), in the port of Bari on 9 August. By August 1991, the Italian government had decided that any new Albanian immigrants would have to be sent back immediately, with Italy assisting with the closure of ports on the Albanian side and supporting Albania’s economic recovery.

It could be pointed out here that the strategic role of ports in migration management, and the “closed ports policy” which [Italy has expressly adopted in the governmental and political debate starting since 2018](#), fits into the groove of the nations’ long history.

The latest migration phase began following the EU Council decision on visa liberalization in the Schengen area approved by the European Parliament on 15 December 2010. The possibility of reaching EU countries without the need to apply for an entry visa prompted, and still pushes many Albanian citizens to [choose the European route](#).

Nowadays, [the top five nationalities cover 48.4% of all foreign residents in Italy](#): the most numerous are confirmed to be Romanians (1.1 million: 20.8%), followed by Albanians (433 thousand: 8.4%), Moroccans (429 thousand: 8.3%), Chinese (330 thousand: 6.4%) and Ukrainians (236 thousand: 4.6%).

In this framework, Italy has a key role projected onto the enlarged Mediterranean, of which the Western Balkans forms part, and benefits directly from stability in the region, since it trades trade with the countries in the area and is the third supplier country and the second customer: according to the data of the Italian National Institute of Statistics ISTAT, between January and November 2022, Italy was once again confirmed as Albania’s leading trade partner, accounting for 29.5% of Albania’s total trade with the rest of the world, which equated to more than 3.2 billion euro. There are 2675 companies with Italian participation present (2021 data), making Italy the first country in terms of the number of foreign companies active in Albania, accounting for more than 40% of all foreign companies active in Albania and constituting an important part of the [Albanian production and employment system](#). Moreover, with the signing of the ‘Ancona Declaration’ on 20 May 2000 at the end of the ‘Conference on Development and Security in the Adriatic and Ionian Seas’ by the Foreign Ministers of the six founding countries, in the presence of European Commission President Romano Prodi, the Adriatic and Ionian Initiative (AII) was established by the Heads of States and Governments of Italy, Albania, [Bosnia and Herzegovina, Croatia, Greece and Slovenia](#). Regional cooperation and Security cooperation in terms of terrorism threats and refugee crisis started to arise as a new priority to be tackled by all regional organizations and an exchange of information and experiences on this issue was deemed advantageous: the statement has been made at the Regional cooperation [meeting held in Budapest in 2016](#), the same year the [EU-Turkey Statement](#) on migration was adopted.

EU Macro-regional Strategies, such as the EU strategy on the Adriatic area, are intergovernmental initiatives which EU Member States can undertake—with other member states, but with third countries, too—to jointly address common challenges and opportunities in a specific geographical area through the definition of shared, long-term objectives.

<sup>1</sup> The legislative intervention took place at a time when the number of foreigners entering Italy stood at around 50,000 per year; the law – which amended Decree-Law No. 416 of 30 December 1989 – was enacted with the aim of organically regulating immigration, redefining refugee status, introducing the management of flows from abroad, and specifying the modalities of entry and rejection at the border in Italy.

*Italy has been a powerful advocate of Albania's EU path, and relations between the two countries have further improved in the light of growing tensions between Albania and its southern neighbour, Greece.*

*The Italy-Albania Protocol ratified by Law No. 14/24 allows Italy to examine applications for international protection on Albanian territory, but under Italian jurisdiction.*

*...two areas in the north of Albania, the ports of Shengjin and Gjader, will be used for the reception, evaluation and processing of asylum seekers and refugees, which will be funded by Italy. The agreement applies only to migrants intercepted by Italian vessels in the Mediterranean, not those who arrived on Italian soil first.*

Finally, Italy has been a powerful advocate of Albania's EU path, and relations between the two countries have further improved in the light of growing tensions between Albania and its southern neighbour, Greece, over the arrest of a Greek minority mayor for alleged vote buying, with [Athens threatening to veto EU enlargement toward Albania](#).

It is therefore not surprising that Italy has sought a strategic partnership on migration with Albania.

### The new Agreement in brief

The Italy-Albania Protocol [ratified by Law No. 14/24](#) allows Italy to examine applications for international protection on Albanian territory, but under Italian jurisdiction. As stated by the Italian government: "[the agreement strengthens our leading role in Europe and opens new avenues of cooperation in the Adriatic against irregular migration and stopping human trafficking](#)".

Under the new agreement, two areas in the north of Albania, the ports of Shengjin and Gjader, will be used for the reception, evaluation and processing of asylum seekers and refugees, which will be funded by Italy. The agreement applies only to migrants intercepted by Italian vessels in the Mediterranean, not those who arrived on Italian soil first. Similarly, it does not apply to minors, pregnant women, or other vulnerable individuals. Upon arrival at the centres under Italian jurisdiction, Italian officials will handle disembarkation and identification procedures and set up a first reception and screening centre. It is estimated that between 3,000 and 36,000 people could be processed annually. The individuals will remain in Albania for as long as it takes to process their asylum application—and, possibly, until their repatriation, and the Albanian police will provide security and external surveillance for the facilities.

The actors involved in the procedures will be based partly on Italian and partly on Albanian territory: although the despatching of Italian personnel to Albania is provided for "to ensure the carrying out of the activities foreseen by the Protocol" (art. 1 Protocol), the ratifying law states that: "The personnel established 'in the areas' concerned will be only that of the judicial police, prison police and a special maritime, air and border health office".

Regarding these personnel, Art. 4(3) of Law no. 14/24 vaguely states that the "Italian person in charge" of each of the areas concerned "shall adopt the necessary measures to ensure the timely right and full exercise of the right of defence of the foreigner subjected to asylum or repatriation procedures", and that "the right to confer with the defender shall be exercised by audiovisual means that ensure confidentiality, through remote connection".

However, there are no express references to the presence of cultural mediators or legal operators on site, nor to what concrete information is to be provided within the aforementioned procedures, which could be screening, asylum (border), or repatriation procedures.

The first articles of the Protocol (4–6) affirm and clarify the role of the Italian authorities, both in managing the designated facilities and with regard to the transfer of asylum seekers both into and out of them. Specifically, it is noted that: "If the right to stay in the facilities ceases for any reason, the Italian Party shall immediately transfer the migrants

out of the Albanian territory. Transfers to and from the facilities shall be carried out by the competent Italian authorities”.

Moreover, “The competent authorities of the Italian Party shall ensure the maintenance of law and order and security within the areas”, taking the necessary measures to ensure that the migrants remain within the designated areas by preventing their unauthorized exit into the territory of the Republic of Albania. However, it will fall to the Albanian authorities to return asylum seekers to the designated areas should they exit them without authorization.

...the only form of temporary stay in the areas in question shall be through the deprivation of personal liberty, without procedural guarantees.

Additionally, the provision suggests that asylum seekers will likely remain in administrative detention as well as those whose claim maybe be rejected, which is relevant to our understanding of whether and how the Protocol complies with EU standards on human rights and the rule of law vis-à-vis the use of administrative detention, as administrative detention implies the deprivation of liberty of individuals by the state without trial.

Relevantly, the agreement establishes that a “person is detained in the areas referred to in the Protocol”, thereby acknowledging that the only form of temporary stay in the areas in question shall be through the deprivation of personal liberty, without procedural guarantees.

The European Court of Human Rights has addressed the issue of the extraterritorial effectiveness of rights on several occasions.

However, any deprivation of personal liberty should be embedded within a legal framework which complies with the EU human rights and rule of law acquis. In the absence of other explicit references, this implies that the regulation must fall under the provisions of Art. 13 of the Italian Constitution. However, while the extraterritorial application of the constitutional rights for citizens not to be deprived of personal liberty is specifically provided for, the same clarity is lacking in the case of foreigners.

[The European Court of Human Rights](#) has addressed the issue of the extraterritorial effectiveness of rights on several occasions, elaborating on the basis of Article 1 ECHR the criterion of so-called *effective control*, according to which state activities conducted abroad or with respect to subjects located abroad determine the responsibility of contracting states if they are carried out under the effective control of the former<sup>2</sup>. In this case, Italy will be exercising in Albania all or some of the public powers which are normally exercised by the Albanian Government; therefore, having *effective control* over the territory, Italy shall also be responsible for breaches of the European Convention of Human Rights, as the areas referred to in the Protocol are equated with the border or transit zones identified by Italian legislation<sup>3</sup>.

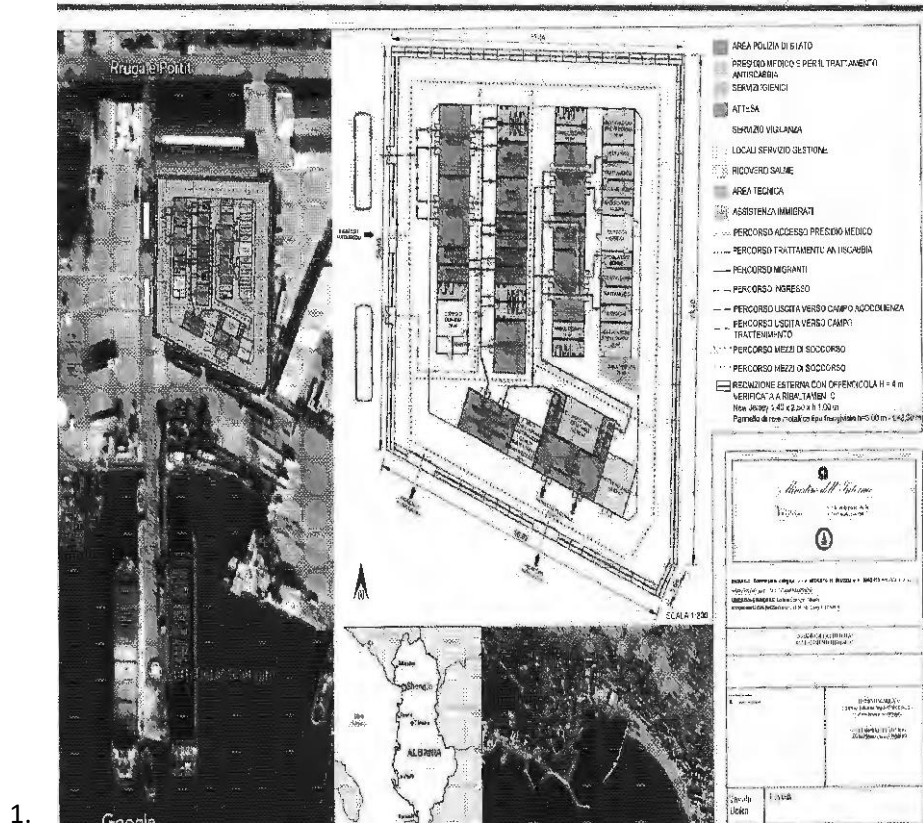
Indeed, the facilities indicated in subparagraphs A) and B) of annex 1 to the Protocol are similar to those provided for by article 10 (1) of the Consolidated Act of the provisions concerning immigration and rules on the condition of foreigners, referred to in legislative decree no. 286 of 25 July 1998, e.g. *Hotspots*. The repatriation facility indicated in subparagraph B) of annex 1 to the Protocol is equated to the centres provided for by Article 14, paragraph 1, of the Consolidated Text of Legislative Decree No. 286 of 1998, e.g. *Repatriation centres*.

<sup>2</sup> The jurisprudence of the ECtHR on this issue mainly concerns the fight against terrorism, military operations abroad and the principle of non-refoulement. On the most recent developments, [see V. Stoyanova, M.N. and Others vs. Belgium](#): no ECHR protection from refoulement by issuing visas.

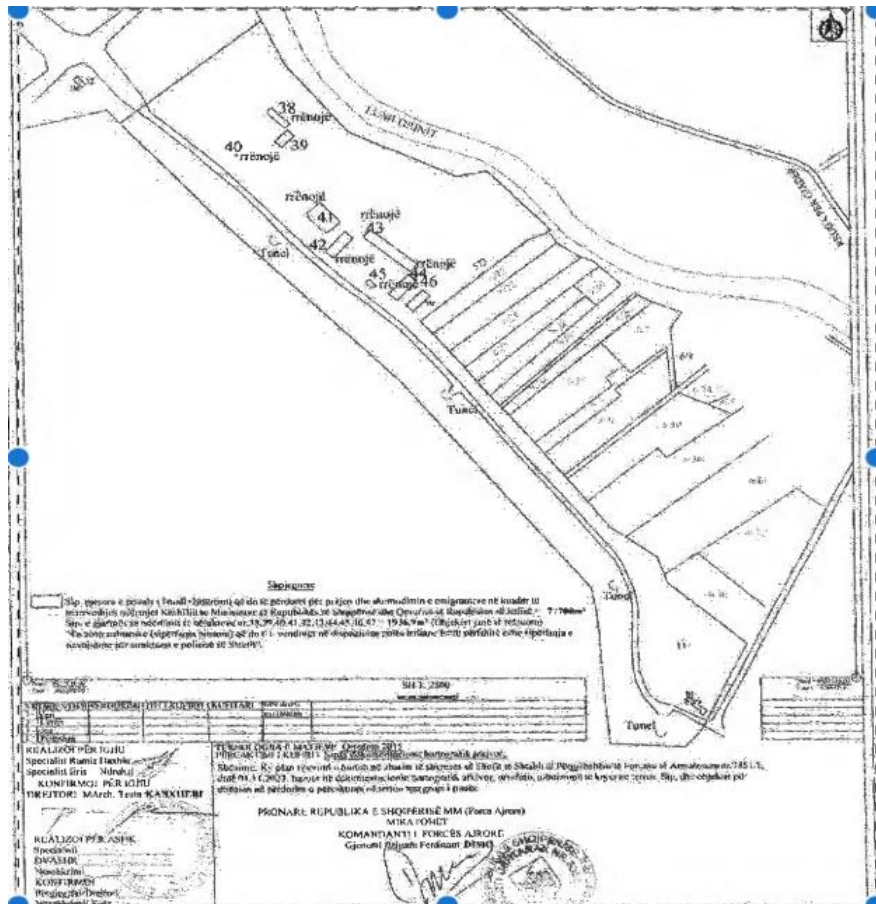
<sup>3</sup> Article 28-bis(4) of Legislative Decree No 25 of 28 January 2008.

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- 1. Area designated for entry and screening
- 2. Area designated for asylum and return procedures



1.



2.



## Territorial paradigms and legal fiction: from non-entry to functional territoriality

*The Protocol can indeed be considered an entry point to new approaches to territoriality. It will contribute to consolidate the legal fiction of non-entry established under the New Pact on Migration and Asylum, as well as on the current externalisation of EU borders.*

The exercise of jurisdiction and the applicability of Italian law—which incorporates the relevant EU directives on asylum—to the extraterritorial asylum processing to be carried out in Albania raises questions relating to the relationship between domestic and European Union law and policies that go beyond this specific case. However, it could be of use to delve into the migration management mechanisms that will be put into place in the context of the ongoing scenario.

The Protocol can indeed be considered an entry point to new approaches to territoriality. It will contribute to consolidate the legal fiction of non-entry established under the New Pact on Migration and Asylum, as well as on the current externalisation of EU borders. Above all it will contribute to the introduction of new mechanisms based on a functional extraterritoriality.

Regarding the first aspect, the precedent set by the Protocol may be considered problematic, as it entails the application of Italian law in an extraterritorial space, as well as the legal re-qualification of the notion of territory based on a *fictio iuris* aimed at equating Albanian state-owned areas with Italian border areas.

Before commenting on the territorial aspects of the Protocol, it would seem necessary to take a step backwards.

To divide space is to establish the foundation of law and who is entitled to rights, accordingly.

The relationships between order, space and social behaviour contribute to the construction of the idea of territory as a ‘symbolic device’<sup>4</sup>. Historically, the tangible expression of sovereignty has been the organization of the state, and thus the control it exercises over its territory.

*The linear territorialities of borders are conventions, since borders may be subject to an elasticity that depends on the policies implemented by a state.*

Such a perspective is useful for investigating the relationship between space and subjects, and for understanding how this relationship is determined by the exercise of sovereign power over it: interactions between space, actors, power relations and territoriality are defined as ‘circular relations’<sup>5</sup>; through their multiple forms of interconnection, they represent the various ways in which it is possible to modify spatial ordering by influencing social/political behaviour and to influence social/political behaviour through spatial ordering.

The terms of this tension are to be understood as the outcome of an interpretation of the organization of territoriality and a response to ordering and—increasingly—economic logics: specific choices made with regard to the organization and control of a territory are also justified through specific uses of the border instrument. The linear territorialities of borders are *conventions*<sup>6</sup>, since borders may be subject to an elasticity that depends on the policies implemented by a state.

<sup>4</sup> Turco, A. (1988). *Verso una teoria geografica della complessità* (Studi e ricerche sul territorio). Milan : UNICOPLI.

<sup>5</sup> Tarrus, A. (2017). Fluidité de l’identité du chercheur en situation d’immersion le long des territoires de circulations migratoires: Extraits de carnets d’enquête : Prizren, Kosovo, 2004. La Palme, Aude, 2014. *Migrations Société*, N° 167(1), 41–52. <https://doi.org/10.3917/migra.167.0041>

<sup>6</sup> See Cuttitta, P. (2007). Le monde-frontière. Le contrôle de l’immigration dans l’espace globalisé. *Cultures & Conflits*, 68, 61-84.

<https://doi.org/10.4000/conflits.5593>; Mezzadra, S., & Neilson, B. (2013). *Border as Method, or, the Multiplication of Labor*. Duke University Press. <https://doi.org/10.2307/j.ctv1131cvw>

*The territorial extensions of the legal fiction of non-entry rely on a flexible use of the border tool by EU Member states, which seeks to create a supranational transit zone.*

*The Protocol configures Albania as a mere supporting State, functional in the sense that it provides the space in which asylum seekers' applications will be examined by the Italian authorities.*

These concepts have already found practical application in various EU policies on migration, not least among them the legal *fictio* of non-entry, which is formally introduced by the [EU Pact on Migration](#) and Asylum recently voted into law, according to which states claim that the arrival of a third-country national only occurs once s/he has been legally approved to enter the state by authorized border officers, regardless of her/his physical presence in the territory.

The fiction of non-entry does not rely on a fictive erasure of the territory and the manipulation of the state's jurisdiction, but rather revolves around the idea that a person is legally considered to be outside the State if s/he lacks formal authorization to enter<sup>7</sup>. This effectively distances states from the obligation to allow an asylum seeker to apply for asylum, and prevents states from being held accountable to the principle of *non-refoulement*. Such legal fictions are often used by states in so-called transit zones. However, their use by many EU Member States has now expanded to include territory [within Member States beyond ports of entry](#). For example, in 2018, the German government extended the fiction of non-entry to include land crossings in the [Residency Act](#), which linked a transit zone to the process of determining a migrant's legal status. In France, the fiction of non-entry has been extended beyond the boundaries of transit zones. In 2017, the French border police detained newly-arrived asylum seekers in a ["temporary detention zone"](#) along the Italian border without formally admitting the migrants into France. The territorial extensions of the legal fiction of non-entry rely on a flexible use of the border tool by EU Member states, which seeks to create a supranational transit zone.

The Italy-Albania Protocol introduces new approach to how the concepts of national territory, borders and sovereignty are conceptualised and thus, also, state accountability. While the aporetic concept of "extraterritoriality"—often used, along with the legal fiction of non-entry, as already mentioned, in [transit area such as airports or ports](#)—can be considered as another expression of the flexible use of the border, and is based on the inclusion/exclusion of part of a state's territory under/from the exercise of its jurisdiction (when the fundamental rights of its own citizens are not involved), the innovation posed by the Protocol is no less problematic.

It creates a "functional territoriality", since Italian law is being applied in an extraterritorial space, and legally requalifies the notion of territory based on a *fictio iuris* aimed at equating areas belonging to the Albanian state to Italian border areas. The Protocol configures Albania as a mere supporting State, *functional* in the sense that it provides the space in which asylum seekers' applications will be [examined by the Italian authorities](#).

The concept of "functional territoriality" leads us to reflect on the third aspect presented: the relationship between domestic and European Union law as regards EU border externalisation.

The idea of functionality is not new to EU Law and jurisprudence: in case C-507/13, the United Kingdom of Great Britain and Northern Ireland vs. European Parliament Council of the European Union, the Advocate General clearly stated that ["an EU legislative measure cannot be invalid simply because it has effects on conduct in territory located outside of the EU"](#). The relationship with EU law is determined here by material rather than

<sup>7</sup> Basaran, T. (2008). Security, Law, Borders: Spaces of Exclusion. *International Political Sociology*, 2(4), 339–354. <https://doi.org/10.1111/j.1749-5687.2008.00055.x>; Basaran, T. (2012). *Security, law and borders*. Routledge; Rondine, F. (2022). Between physical and legal borders: the fiction of non-entry and its impact on fundamental rights of migrants at the borders between EU law and the ECHR, [Cahiers de l'EDEM, Special Issue](#), UC Louvain.

territorial, although it is based on the principle of territoriality, which Member States often claim in order to acquire a legal justification for extending the legal border in such a way that asylum seekers cannot cross it, as it has been seen with reference to the legal fiction of non-entry and the principle of extraterritoriality.

As mentioned above, the new Protocol introduces the concept of “functional territoriality”, affording greater flexibility to Member States in how they use borders and territory, and confirming that those regulations and policies on control measures that have been introduced to preserve the security of the European space into which migrants are presumed to be heading, do actually intervene through borders, wherever they are introduced. Thus, the concept of functionality, acknowledge by the EU jurisprudence with reference to the linkage between EU and domestic law, breaks new ground in reshaping territoriality with new forms of spatiality.

Security policies no longer apply only to the external borders of the state or the European Union (always with reference to the state dimension of the border and its role of providing protection from the outside, even between the territories of different Member States)<sup>8</sup>; they now apply wherever it is necessary to maintain sovereignty.

The de-localization of the border reproduces it in new forms, thus redistributing it in space through dynamics of ‘flexibilization’ of the territory<sup>9</sup>.

The Protocol confirms this trend and makes space for the entry of a new paradigm, whereby the artificial creation (in terms of the creation of infrastructures, too) of a new portion of the national territory– falls within the scope of migration control policies.

## Issues to Consider

Even though it will be necessary to wait for the Protocol to be implemented in practice to fully understand its effects and consequences, some general considerations can be drawn at this stage.

1. With regard with the scope and nature of the Protocol, the utilization by Member States of legal frames of cooperation based on bilateral interests is not new. However, it could create a controversial precedent in terms of the respect of fundamental rights and coordination between national and supranational rules, and with EU asylum law. The EU Institutions will need to assess the compatibility of agreements of this type with human rights standards and the rule of law in the European acquis.
2. There is also a risk that the EU will seek to apply different strategies to different countries, as it does with the macro-regional strategies it is currently pursuing, and extend bilateral agreements regarding returns and repatriation. The macro-regional strategies of the EU are policy frameworks that enable countries in the same region to counter and solve problems, or better exploit potential, which they have in common (e.g. pollution, navigability of rivers, global trade competition,

<sup>8</sup> Sohn, C. (2015). ‘On Borders’ Multiplicity: A Perspective from Assemblage Theory. *Working Paper 10*, [EUBORDERSCAPES](https://doi.org/10.1080/01419870.2013.783710).

<sup>9</sup> For the relevant discussion, see De Genova, N. (2013). Spectacles of migrant ‘illegality’: the scene of exclusion, the obscene of inclusion. *Ethnic and Racial Studies*, 36(7), 1180–1198. <https://doi.org/10.1080/01419870.2013.783710>; E. F. Isin, & B. S. Turner (eds.), *Handbook of Citizenship Studies* (pp. 305-316). London: Sage.

<https://doi.org/10.4135/9781848608276.n19>; Rigo, Enrica. 2011. Citizens despite borders: Challenges to the Territorial Order of Europe. In Squire (ed.) *The Contested Politics of Mobility Borderzones and Irregularity*, London, Routledge, p 199-215.

...the concept of functionality, acknowledge by the EU jurisprudence with reference to the linkage between EU and domestic law, breaks new ground in reshaping territoriality with new forms of spatiality.

etc.). By collaborating in this way, countries can benefit from enhanced cooperation with a view to addressing issues more effectively than they would have done individually. In the case of the extended application of this tool to migration management, the risk of a differentiated application of the right to asylum on the basis of regional characteristics presents significant systemic problems, both with regard to the principle of non-discrimination (different treatment would be outlined on the basis of different territories) and with regard to the maintenance of the principle of solidarity at European level, as the determination of partners on a geographical basis could be used as a justification for not complying with the obligations laid down in the European legislation. This is unexplored terrain, which must certainly be kept under observation at both European institutions and Member States levels, as it could lead to a subtle but irreversible reappraisal of relations both within the Union and outside it with strategically functional countries.

3. Open questions on compliance with EU asylum law persist, as well as on the scope of the Dublin and Eurodac regulations, given that in the absence of a Eurodac registration (which is not foreseen at the moment), a Member State faced with an asylum application from an applicant who had previously transited through Albania could not submit a request to Italy to take the applicant back. There will be two options here: on the one hand, the bloc could consider including Albania in Eurodac to avoid the *de facto* bypassing of Dublin and the opening of an infringement procedure against Italy, thus creating the precedent of incorporating a third country in the European database system. On the other hand, a more likely solution would be for asylum seekers in Albania to be registered as if they were on Italian soil without any specifics, thus institutionalizing the creation of an extra-territory based on specific functions, raising concerns about the internal and external aspects of sovereignty, reminiscent of the colonial past.
4. Finally, considering the centrality of the application of the principle of the Third Safe Country to the new EU Pact on migration, there are concerns over the possibility that migrants will end up remaining in the Albanian territory in a condition of irregularity, should Italy be unable to repatriate people whose application is considered inadmissible. In fact, given the great need which Albanian (and Italian) companies have for workers, irregular migrants would be at high risk of trafficking and exploitation for work and sexual purposes, putting them in a newly created condition of vulnerability without any effective system in place to protect, regularize or integrate them. Finally, an additional outcome of the production of irregularity in this specific case would be the increasing number of migrants trying to leave Albania for other countries via routes old and new, by both land and by sea; the failure to create legal pathways would put these people at risk, by forcing them to place themselves in the hands of smugglers. Thus, emphasis must be placed on addressing the needs of those who are inadmissible but also unable to return home.