



## 'INSTRUMENTALISATION' AT THE FINNISH-RUSSIAN BORDER: A RACE TO THE BOTTOM IN EU MIGRATION POLICY

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Concerns regarding the possibility of 'instrumentalisation' of people on the move towards the Finnish border from the Russian side must be understood in the wider context of EU's external migration policy. The current situation echoes the events of March 2020 when [Erdoğan "opened the doors" to Europe](#), or of May 2021, when [Spain accused Morocco of blackmail](#) when thousands of people crossed into Ceuta. In 2021, [Belarus was accused of weaponising people on the move to put pressure on the EU's external borders](#) with Poland, Latvia, and Lithuania. The response by national authorities on these borders has included [pushbacks](#), denying people access to medical care and asylum, and arbitrary detention in inhumane conditions inside the countries. This has resulted in [hundreds of missing people and dozens of documented preventable deaths](#). What we saw was just the tip of the iceberg, actual numbers are estimated to be far higher and the situation is ongoing.

In 2021, after the events with Belarus, Finland determined that there was no need for immediate changes to its own laws and policies in light of these events. However, there was [internal political pressure](#) for a tightening of Finland's border regime. Subsequent developments since the full-scale Russian invasion of Ukraine in February 2022 have seen a clear shift in Finnish policy towards the eastern border, which runs 1,340 km in length and is both the largest land border with Russia of any EU Member State, and one of the largest external land borders of the EU. Recent policy and legislative changes include the ongoing construction of a [border fence](#) along parts of the Finland-Russia border, [amended legislation](#) providing for the closure of border crossings, the centralisation of asylum applications to particular border crossings, and a declared intention by Finland to [do the bare minimum as regards its international legal obligations](#) towards people seeking safety.

A significant increase in the numbers of new arrivals at the Finnish land border with Russia without the required travel documents was reported in the first half of November 2023. From 1-17 November, there were 415 such arrivals [reported by the Finnish Border Guard](#), up from 32 in October, 13 in September, 12 in August, and 15 in July. Compared to other EU external borders, these numbers are minimal, but in the Finnish context this increase is seen as substantial. The Finnish government has claimed that there are ["indications that foreign authorities or other actors have played a role in facilitating the entry into Finland of persons who have crossed the border illegally"](#). Russia has denied any involvement in 'instrumentalizing' people, and the only evidence that has been presented so far is [a conversation with 'smugglers'](#) documented by Finnish journalists.

Using the new powers added to the [Border Guard Act](#) during the previous government in 2022, Finland responded by closing four southeastern land border crossings for three months effective 18 November 2023. Additionally, applications for international protection could only be lodged at two crossing points further to the north, at Vartius and Salla. Both locations are very remote, hundreds of kilometres from Finland's main southern population centres, and are currently experiencing temperatures well below freezing.



Immediately following these changes to border access in the southeast, some asylum seekers began attempting to cross at the Vartius and Salla crossing points. The Finnish government responded with [further restrictive measures](#), announcing on 22 November that all but one of the eastern border crossing points will be closed for one month starting from Friday 24 November, and that applications for international protection will be taken only at the Raja-Jooseppi crossing point in Lapland, the northernmost crossing on the Finland-Russia border.

Finland has made it clear that it will act in line with its international legal obligations, but also that it will do so [only to the minimum level required](#). The closing of border crossings and the centralising of asylum applications in certain locations is provided for under the Finnish [Border Guard Act](#), and the most recently announced closures have been [approved by Finland's Deputy Chancellor of Justice](#), which oversees the legality of the activities of the Finnish government.

The real risk for people seeking asylum is not so much the legality or non-legality of particular measures used to frustrate or prevent their entry, but the broader threat of such measures for access to asylum. Finland's revised border regime makes it very difficult for asylum seekers to apply for international protection in Finland in practice, forcing asylum seekers to travel to a remote part of the country in dangerous conditions to seek international protection. [Experience elsewhere](#) shows that when safe and legal pathways to asylum are removed people on the move are not deterred, but instead take more dangerous and deadly routes.

Whilst Finland is following the law to the letter, negotiations ongoing in the EU this week might lead to legislation that would actively lower the safeguards that Finland has to uphold in situations deemed as 'instrumentalisation'. In October, the EU Council [made a deal](#) that was hailed as a "breakthrough" on the Crisis Regulation of the New Pact. They moved to include 'situations of instrumentalisation' into the Regulation, and allowing for derogations from the asylum acquis *en masse* in such instances. The Parliament position maintains that this provision should not be included, but news from Strasbourg this week suggests they are looking to concede to the Council and Commission position. There are [a number of salient issues](#) with the inclusion of 'instrumentalisation' in the Crisis Regulation—it lacks a clear definition and, as a result, clear rules around when derogations might be triggered. On top of this it entails violations of international and Union human rights law. On a practical note, for Member States the implementation will cost vast sums of money and the measure itself is expected to be ineffective in that it doesn't tackle the actual behaviour of third countries 'instrumentalising' people on the move against the EU.

Nevertheless, the EU has chosen to bolster Finland's narrative that they are under threat of 'hybrid warfare' from Russia, and clearly haven't learned any lessons from the tragic and illegal events that unfolded in Poland, Latvia, Lithuania, Greece, and Spain. Commissioner for Home Affairs, Ylva Johansson, gave a speech at the European Parliament Plenary stating that "[t]he [Finnish border is the EU's border. The European Union is behind you. You can count on our full support.](#)" Today, 23 November, Frontex stated that starting with next week, the Agency will deploy [50 extra border guard officers, and other staff, along with equipment such as patrol cars, alongside the 10 Frontex officers already stationed in](#)



[Finland, to bolster Finland's border control activities.](#) This gives rise to further cause for concern, given Frontex's [well-documented](#) involvement and complicity in rights violations at European borders.

As seen through the situation unfolding in Finland over the last weeks, relatively low numbers of 415 new arrivals and unsubstantiated statements that Russians are forcing crossings can be spun into 'situations of instrumentalisation'. The definition doesn't rely on a baseline of increased numbers or the requirement of evidence, but is rather the product of political rhetoric. The issue of third countries 'blackmailing' EU Member States with increases in new arrivals is one of foreign policy that cannot be remedied through the misapplication of migration policy solutions. Yet the consequences are felt first and foremostly by people on the move who have their access to international protection stripped away as a result. Whilst Finland has moved to close border crossings and obstruct access to asylum, the inclusion of 'instrumentalisation' in the Crisis Regulation would allow for far more serious derogations. The application of the legal fiction of non-entry would mean that people would be denied the possibility to ask for asylum once crossing the border, essentially legalising pushbacks. *De facto* detention is another foreseen provision which, in previous cases, has been shown to take place in conditions that constitute inhumane and degrading treatment. With the current situation in Finland it is clear how the New Pact on Migration is actively lowering safeguards and would allow countries to restrict access to asylum even further, entailing a race to the bottom when it comes to handling new arrivals into European Member States.

*This statement was co-written with Stephen Philips, Project researcher at Mobile Futures, Åbo Akademi University, Institute for Human Rights (<https://mobilefutures.fi/>).*