

1. Under EU law, if a third-country national makes an application for international protection at the internal border of a Member State, that Member State is required to apply the provisions of the Dublin Regulation to determine which Member State is responsible for the examination of the asylum application¹. The new transfer procedure of Article 23a of the revised Schengen Borders Code² does not apply to applicants for international protection.

2. In accordance with the case law of the Court of Justice of the European Union, the derogation of Article 72 of the Treaty on the Functioning of the EU must be interpreted strictly. This Article cannot be read in such a way as to confer on Member States the power to depart from the provisions of EU law based on no more than reliance on the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. A Member State has to prove that it is necessary to have recourse to that provision which will be subject to control by the Court of Justice of the European Union³. In doing so, the Court examines to what extent the EU legislator has already taken account of the exercise of the responsibilities incumbent upon the Member States in relation to public policy and internal security⁴.

¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) OJ L 180, 29.6.2013, p. 31.

² Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, as amended by Regulation 2024/1717.

³ Judgement of 2 April 2020, *Commission / Poland, Hungary and the Czech Republic* (Temporary mechanism for the relocation of applicants for international protection) (joined cases C-715/17, C-718/17 and C-719/17), ECLI:EU:C:2020:257, para 45-47.

⁴ Judgment of 26 April 2022, *Landespolizeidirektion Steiermark* (joined cases C-368/20 and C-369/20), ECLI:EU:C:2022:298, para. 89.