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THE 2015 IMMIGRATION KNOT  
BETWEEN THE EUROPEAN UNION AND THE BALKANS

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THE 2015 IMMIGRATION KNOT  
BETWEEN THE EUROPEAN UNION AND THE BALKANS

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Approval of the Graduate School of Social Sciences

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## **ABSTRACT**

### **THE 2015 IMMIGRATION KNOT BETWEEN THE EUROPEAN UNION AND THE BALKANS**

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This thesis explores the European Union's (EU) response to the 2015 migration wave. It examines the impact of migration influx on the existing European asylum regulations. It then looks into the Western Balkan route and its consequences for the transit Balkan region and refugees. The positions of concerned actors – the EU, the Balkan states, migrants/refugees, and Turkey are pointed out. In this regard, the thesis shows how their interests are conflicted and thus consequently no common position is worked out. The thesis argues that the internally divided EU is exaggerating over the migration 'burden' and failing to assure both the temporary protection mechanism as well as the application of the solidarity clause. It transferred the problem of refugees into a refugee problem by transfer of the apparent 'burden' into the wider Balkan 'buffer-zone' through the mechanisms of Europeanization and enhancement of the safe third country concept. For Turkey, this was a matter of linkage between migration, visa liberalisation, and readmission. The thesis concludes that the refugee issue became instrumentalised as a bargaining chip

between the EU and the Balkan states as well as Turkey which all expected trade-offs for the desired migration management that exceeded their capacities. The most vulnerable part of the actors' triangle, the refugees, were sacrificed, while the international asylum system was undermined and weakened.

**Keywords:** European Union, Turkey, Balkans, asylum, readmission

## ÖZ

### BALKANLAR VE AVRUPA BİRLİĞİ ARASINDAKİ GÖÇMENLİK DÜĞÜMÜ 2015

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Yüksek Lisans, Uluslararası İlişkiler Bölümü

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Bu tez Avrupa Birliği'nin (AB) 2015'teki göç dalgasına verdiği karşılığı inceler ve göç akışının Avrupa'nın halihazırdaki sığınma konusundaki düzenlemeleri üzerindeki etkisini sorgular. Ayrıca, Balkan bölgesinin geçişi ve mülteciler için Batı Balkan güzergahını ve sonuçlarını gözden geçirir. İlgili aktörlerin (AB, Balkan Devletleri, göçmen/mülteciler ve Türkiye) tutumlarına dikkat çeker. Bu bağlamda, aktörlerin çıkarlarının nasıl birbiriyle çatıştığını ve bunun sonucunda ortak bir zeminin oluşmadığı üzerinde durur. Tez, dahili olarak bölünmüş Avrupa Birliği'nin göç yükünü abarttığını ve dayanışma hükmünün uygulanmasının yanısıra geçici koruma mekanizmasının da temini konusunda başarısız olduğunu öne sürer. Bu durum, Avrupalılaşıma ve güvenli üçüncü ülkenin güçlendirilmesi gibi mekanizmalar ile görünürdeki yükü daha geniş olan Balkan 'tampon bölgesine' naklederek mültecilerin problemlerini bir mülteci problemine dönüşmesine neden olmaktadır. Türkiye açısından ise bu göç, vize muafiyeti ve geri kabul denklemini içinde barındıran bir konudur. Bu çalışma, mülteci meselesinin AB, Balkan



Devletleri ve Türkiye arasında tüm tarafların arzuladıkları fakat kendi kapasitelerini aşan bir göç yönetimi takası umdukları bir pazarlık konusu olarak araçsallaştırıldığı sonucuna varır. Uluslararası sığınma sisteminin temeli çürütölüp zayıflatılırken, bahsedilen aktörler üçgeninin en savunmasız kısmını oluşturan mülteciler feda edildi.

**Anahtar kelimeler:** Avrupa Birliđi, Türkiye, Balkanlar, sığınma, geri kabul

To My Parents

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## LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
AMIF	Asylum, Migration and Integration Fund
BAMF	Bundesamt für Migration und Flüchtlinge / German Federal Office for Migration and Refugees
BiH	Bosnia and Herzegovina
CARDS	Community Assistance for Reconstruction, Development, and Stabilization Programme
CEAS	Common European Asylum System
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
EAM	European Agenda on Migration
EBCG	European Border and Coast Guard
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Right
EEC	European Economic Community
EP	European Parliament
ERF	European Refugee Fund
ERM	emergency relocation mechanism
EU	European Union
eu-LISA	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
EUREMA	European Union Relocation Malta
EXCOM	Executive Committee of the United Nations High Commissioner for Refugees
FYROM	Former Yugoslav Republic of Macedonia

GAM	Global Approach on Migration
IDPs	internally displaced persons
IMF	International Monetary Fund
IOM	International Organization for Migration
IPA	Instrument for Pre-Accession Assistance
IP Act	International Protection Act
ISIS	Islamic State of Iraq and Syria
JHA	Justice and Home Affairs
MENA	Middle East and North Africa
NATO	North Atlantic Treaty Organization
NGO(s)	non-governmental organisation(s)
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Co-operation in Europe
PHARE	Pologne, Hongrie Assistance à Reconstruction Economique
PM	Prime Minister
PRM	provisional relocation mechanism
QMV	qualified majority voting
RABIT(s)	Rapid Border Intervention Team(s)
RPP(s)	Regional Protection Programme (s)
SAA(s)	Stabilization and Association Agreement(s)
SAP	Stabilization and Association Process
TCN(s)	Third country national(s)
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VCLT	Vienna Convention on the Law of Treaties
WB 6	Albania, BiH, Kosovo, Macedonia, Montenegro, Serbia

## CHAPTER 1

### INTRODUCTION: DEFINING THE PROBLEM

In summer and autumn 2015, unprecedented hordes of people from the North Africa, Middle East and East Asia resolved to take a long and strenuous journey to reach a better life in the Western Europe and thus escape from their miserable, apprehensive, and uncertain future in war-torn or collapsed and dysfunctional countries. The only thing they aspired for was a free passage to reach Germany, Sweden and some other northern and western European country, where, they had believed, they would be welcomed as some of their relatives, friends or acquaintance years ago. They wished to start their lives anew, in a peaceful environment, with dignity and some initial state support, living in a small apartment and maybe even initiating some own business afterwards.<sup>1</sup> If anywhere, such dreams should be possible in liberal and democratic Europe which states have preserved some degree of social security and known as a vocal bulwark of human rights worldwide. In addition to Europe's expected solidarity with refugees stemming from its dark experience in the past, refugees felt 'officially' invited by the German Chancellor Merkel who unilaterally decided to temporary remove the European apparent Dublin border.<sup>2</sup> It was a simple tweet of the German Federal Office for Migration and Refugees (BAMF), going viral in the middle of a dark August 2015 night and stating

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<sup>1</sup>For stories and aspirations of refugees in 2015 migration vawesee Patrick Kingsley, *The New Odyssey: The Story of Europe's Refugee Crisis* (London: Faber & Faber, 2016); Boštjan Videmšek, *Auf der Flucht - Moderner Exodus ins Gelobte Land* (Berlin: KlakVerlag, 2016); Wolfgang Bauer, *Crossing the Sea: With Syrians on the Exodus to Europe* (High Wycombe: And Other Stories, 2016).

<sup>2</sup>"BAMF setzt Dublin-Überstellungen von syrischen Flüchtlingen aus," *Border Monitoring*, <https://goo.gl/gGZtJS> (accessed 18.12.2015).

that Germany no longer enforced the Dublin processes for Syrian citizens, which triggered unstoppable new arrivals.<sup>3</sup>

Heading the way towards Europe, refugees realised that the reality diverges from virtual promises, while human dignity got lost in numerous European regulations. Upon the German open-armed invitation refugees certainly did not await numerous obstacles they faced on their way and the general reluctance of states alongside the way to accept their mere passage. Approximately 1,500 km long journey from the southern Greek islands to the first northern Schengen states, Hungary or Slovenia, consisted of several short- and long-term stops and could have taken more months. Avoiding human traffickers and criminal gangs and crowded in boats and vans, refugees often spent a fortune to make small but safe progress on the way. On the borders, they were regularly sent back and forth and often stopped for lengthy proceedings with an unknown ending. Further uncertainties revolved around the destination, although many refugees on the way have never made it until the end.

Only in 2015, 1.3 million refugees came to Europe by sea to Spain, Italy or Greece and sought asylum in one of the European Union (EU) member states.<sup>4</sup> In the same year, almost 3,800 people went missing or died crossing the deadly Mediterranean Sea.<sup>5</sup> Neither was safe the continental route through the Western Balkans. In addition to exhaustion, extreme cold, and dangerous terrain, in some countries, refugees ended up as victims of extreme-right and racist gangs as well as violent actions of border authorities.<sup>6</sup> Due to various refugee-producing areas around

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<sup>3</sup>Ibid.

<sup>4</sup>“Asylum and first time asylum applicants by citizenship, age and sex Monthly aggregated data (rounded),” *Eurostat*, <https://goo.gl/qszp9i> (accessed 01.04.2017).

<sup>5</sup>Global Migration Data Analysis Centre, *Migrants deaths and disappearances worldwide: 2016 analysis*, briefing, [Berlin], March 2017, 2. <https://goo.gl/rcbzzp> (accessed 02.04.2017).

<sup>6</sup>The number of total deaths on the Western Balkan route is not known. Non-governmental organisations (NGOs) reported several cases, which were generally denied by authorities and investigations refused. UNHCR, *Desperate Journeys: Refugees and migrants entering and crossing Europe via the Mediterranean and Western Balkans routes*, [Geneva], January 2017, 3,

Europe, from North Africa to the Middle East and Central Asia and geography, besides other human-constructed obstacles directing the migration flow, seven different migration routes were consolidated as of the end of 2015.<sup>7</sup> The most crowded in 2015 was the Eastern Mediterranean route, which started in Turkey and leads via the Aegean Sea to the Greek or Cypriot shores. From there, the route eventually continues into the Western Balkan route – in the first phase, refugees passed from Macedonia and Serbia to Hungary, while the route was redirected through Croatia and Slovenia in the second phase due to border restrictions introduced by the Hungarian authorities in September 2015.

The Western Balkan route gained its popularity among refugees in autumn 2015 as a substitute to generally more dangerous and in winter difficult and cold seaway through the Mediterranean which had become too risky. Largely owing to its strategic geopolitical location, connecting Europe with the Middle East and Eurasia, the Balkan Peninsula offered a new way which was previously rather avoided due to several border crossings on the way. Overall regional economic development and its gradual inclusion in the Western institutional arrangements in recent years have contributed to a regional transformation from a region of origin, with some exceptions for Albania and Kosovo, into a region of transit. The majority of refugees passing the Balkans were part of secondary movements from safe countries close to the regions of conflicts,<sup>8</sup> especially Turkey. Only in one year, the number of detected illegal border crossings into the EU via Turkish-Greek border increased for

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<https://goo.gl/rzSWa5> (accessed 02.04.2017); “Enough is enough: Deaths on the Western Balkans route,” *Institute of Race Relations*, <https://goo.gl/MPB0lm> (accessed 02.04.2017).

<sup>7</sup>“Migratory Routes Map,” *Frontex*, <https://goo.gl/cDioS2> (accessed 08.12.2015).

<sup>8</sup>Secondary movement refers to migration from the initial safe state (first state of asylum) to new destinations with the aim to claim asylum. The movement occur no matter whether asylum has been granted to him in the first safe state. Movements are generally unauthorised and lack proper travel documentation. Susan E. Zimmermann, “Irregular Secondary Movements to Europe: Seeking Asylum beyond Refuge,” *Journal of Refugee Studies* 22, no. 1 (2009): 75, <https://goo.gl/d98NYa> (accessed 26.02.2016).

more than 10-times, from 77,163 in 2014 to 911,471 in 2015,<sup>9</sup> while the number of undetected crossings is likely much higher. Leaving aside refugees arriving in Europe elsewhere, already the Greek arrivals alone surpassed half a million refugees arriving in Western Europe after the 1990s Yugoslav war,<sup>10</sup> what makes an unprecedented inflow of migrants in the modern European history and the history of the EU as such.

“The plight of thousands of migrants putting their lives in peril to cross the Mediterranean has shocked” the EU.<sup>11</sup> In response, the European Commission (EC) put Migration Agenda forward among the ten priorities of its mandate. It stresses out that “no EU country can or should be left alone to address huge migratory pressures.”<sup>12</sup> Two European Agenda packages accepted in 2015<sup>13</sup> concurrently reaffirm the European “safe haven for those fleeing persecution” and roll out proposals for comprehensive actions to enhance “principles of solidarity and shared responsibility” among member states. Agenda’s careful framing implies the need for seeking the balance between the offered humanitarian assistance and security as perceived in a wider sense. Accordingly, the EU’s actions should be aimed at “upholding our [EU’s] international commitments and values while securing our [EU’s] borders and at the same time creating the right conditions for Europe’s economic prosperity and societal cohesion.” The wording introduces a new factor in

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<sup>9</sup>“Στατιστικά στοιχεία παράνομης μετανάστευσης 2015,” *Hellenic Police*, <https://goo.gl/1KlrmW> (accessed 19.04.2017).

<sup>10</sup>579,750 asylum claims were submitted in the then EU member states between 1990 and 1994. Eurostat, *Statistics in Focus: Population and social conditions*, [Luxembourg], January 2016, 5, <https://goo.gl/t5V2aZ> (accessed 19.04. 2017).

<sup>11</sup>“Priority: Migration - Towards a European agenda on Migration,” *EC*, [http://ec.europa.eu/priorities/migration/index\\_en.htm](http://ec.europa.eu/priorities/migration/index_en.htm) (accessed 07.12. 2015).

<sup>12</sup>Ibid.

<sup>13</sup>EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration*, COM (2015) 240 final, May 13, 2015, <https://goo.gl/6VdLMA> (accessed 07.12.2015); EC, *Joint Communication to the European Parliament and the Council addressing the Refugee Crisis in Europe: the Role of EU External Action*, JOIN (2015) 40 final, September 9, 2015, <https://goo.gl/yLsJu4> (accessed 07.12.2015).

the always existing dilemma between humanitarian responsibility to grant international protection to those in need or to secure (trans) national borders. Based on the prudent choice of words in the EC Agenda on Migration, the thesis questions the importance of the “right conditions for Europe’s economic prosperity and societal cohesion” for asylum policy-creation and definition of the humanitarian-security balance.

On one side, humanitarian responsibility to grant international protection originates from international law and responsibility to grant international protection is enshrined in the 1951 Convention Relating to the Status of Refugees accepted under the provision of the United Nations (further referred to as the Refugee Convention).<sup>14</sup> According to the Refugee Convention, states should grant protection to those who are “unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”<sup>15</sup> As contracting parties to the Refugee Convention, the EU member states are not only morally, but also legally obliged to adhere to main humanitarian protection principles. On the other side, the humanitarian provisions are presented as being in conflict with rising security concerns of the EU member states, such as increased levels of religious terrorism that consequently contributed to enhanced xenophobia and racism all across Europe. This trend tends to consolidate illiberal behaviours among different sections of societies all over the world.

The 2015 migration inflow evidently caused some important challenges. Instead of a migration crisis, it was rather the political one that led to a crisis within the EU since it challenged the established mechanisms and their ‘fair’ application for all member

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<sup>14</sup>*Convention Relating to the Status of Refugees accepted under the provision of the United Nations*, adopted on July 28, 1951 in Geneva, entered into force on April 22, 1954, <https://goo.gl/5hjluH> (accessed 01.12.2015).

<sup>15</sup>UNHCR, *Convention and Protocol relating to the Status of Refugees with an Introductory Note by the Office of the United Nations High Commissioner for Refugees*, [Geneva], December 2010, 3, <https://goo.gl/GVzdsa> (accessed 01.12.2015).

states. Member states tended to securitize the humanitarian imperative to make the Schengen ‘membrane’ completely adhesive. However, contrary to politicians’ statements, refugees are not the ones who perpetrate terrorist acts. The EU, as well as refugees, are primarily endangered by the EU’s inactiveness and tacit support of the big powers’ gamble in the Syrian conflict. Secondary, the restrictive asylum policies and failed integration approaches are the ones causing the so-called refugee-threat by pushing ‘undesired refugees’ to surrender to various criminal acts. In contrast to adhesiveness proponents, the EU’s ‘biggest player’ decided to “spill-back” the Dublin mechanism to regulate the added-value a limited number of refugees (skilled but cheap labour) could bring to state’s “economic prosperity.” Based on the care for “economic prosperity” rather than refugees, it is not a surprise that it was Germany, the EU economic stronghold, that unilaterally abolished the Dublin system and balanced the vogue humanitarian-security dilemma in favour of seemingly extensive humanitarian approach. With the net migrants’ inflow, Germany tends to substitute its shrinking and ageing population. While the immigration from other EU member states is likely to decline in the following decades, recent population forecasts show that Germany faces an annual demand of almost half a million immigrants from outside the EU to keep its labour force at a constant level.<sup>16</sup> In addition to continuity, immigrants’ inflow is a perfect source of the cheaper labour force<sup>17</sup> that might eventually render German economy even more competitive. German soloing, or in other words its hijacking of the supranational common European asylum system (CEAS) back under its authority to adjust the benefits according to its unique position reversed premises of neo-functionalist integration. By the acceptance of refugees, no other EU member state did perceive the same level economic benefits. On the contrary, refugees were understood as an additional burden and all efforts made to preserve restrictive nature of the CEAS.

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<sup>16</sup>“Bertelsmann Stiftung, *Germany’s labour market needs more immigrants from non-EU countries*, press release, March 27, 2015, <https://goo.gl/FJeKvz> (accessed 02.01.2017).

<sup>17</sup>On average, immigrants earn 20 % less than native workers. IMF, *IMF Working Paper - The Labor Market Performance of Immigrants in Germany*, WP/16/6 [Washington], January 2016, 14, <https://goo.gl/13duV9> (accessed 01.12.2015).



The thesis questions how did the divided EU and its member states overcome the political crisis that emerged after the established CEAS seemed to please some and anger the others. Following the neo-neofunctionalist assumption that solutions are sought in further integration by expected “spill-overs” to new policy areas, the thesis exposes new powers gained at the EU level in the asylum policy and analyses their nature. Special attention is given to the EU’s ‘response’s’ implications for the Balkan transit countries on one side and refugees on the other side. The assumption is that the EU, no matter its internal political discrepancies, had to stay committed humanitarian assistance based on international asylum law. Therefore, the main driver of the EU action is sought, whether it was the humanitarian imperative combined with international obligations or did the EU opt to adhere it measures to security concerns and tend to avoid the responsibility by transferring the burden to neighbouring states. Since all of the Balkan transit states are (aspiring) candidates for the EU membership, the migration and its regional political management are seen through the prism of enlargement.

To firstly grasp the humanitarian vs. securitized nature of the existing EU migration and asylum regime, known as Dublin II, the second Chapter provides a chronological integration overview accompanied by the major influencing milestones and desired objectives. Its content is important since it was nevertheless the existing CEAS that was challenged by the 2015 migration wave and which certain provisions ceased to function. Special attention is given to the relation between EC’s supragovernmental role and sovereign rights of member states in policymaking and enforcement process. Firstly, the regime’s internal dimension, regulating burden sharing and refugees’ relocations among the member states is taken into consideration, followed by a special emphasis on an intra-EU dimension by which the EU tends to transfer its migration and asylum regime on neighbouring states, whether in terms of neighbourhood programmes or association processes. Although such cooperation assures high standards and increased capacities, the majority of cooperating states concluded bilateral readmission agreements with the EU in exchange for financial incentives and other concessions. By readmission

agreements, they are obliged to accept back their nationals and third countries' nationals that had passed their soil on the way to seek asylum in the EU. The chapter asks to what extent the EU transfers its responsibility within the intra-external dimension of its asylum regime and what kinds of obligations fall on the neighbouring states.

The third Chapter proceeds on with the unprecedented migrant wave in 2015 that has challenged the EU's and Balkans' asylum regimes. It questions what the specifics of the wave coming to Europe through the Mediterranean and the Balkans are, further focusing on refugee's origins, their objectives as well as their way through the Balkans. The second part of the Chapter concentrates on the EU's solutions for the migration wave and their implementations.

The last Chapter explores what the positions of particular Balkan states regarding the migrant wave and issues they took into consideration while creating policies regulating the migration flow are. Special attention is given to the policies enforcement and potential obstacles they have encountered as well as the time frame of policies in relations to decisions of other neighbouring countries and the EU. In its conclusion, the thesis asks what the position of the Balkans in the 2015 migration wave and its solutions was. It is questioned whether the external common 'threats' have brought the highly disintegrated region together and drove it closer to the prospect of the EU membership or not.

## CHAPTER 2

### AN OVERVIEW OF THE EU IMMIGRATION POLICY AND THE BALKAN STATES' ADJUSTMENT

#### 2.1. Introduction

The development of the EU common immigration policy was induced by a strong intergovernmental drive. On one side, the EC aimed to secure the European internal market, while on the other side member states found the EC fostering useful to transfer their responsibility for resolving domestic problems related to migration issues and seek benefits from related trade-offs. Common policy enabled member states to slip their political and judicial constraints, enhance authority in the *domain réservé* of national executive authorities and thus seemingly reinforce national sovereignty. States are 'venue shopping' by applying vertical policy-making<sup>18</sup> and 'contracting out the responsibility'<sup>19</sup> for immigration in cases it makes little or no sense to deal with issues separately or where cooperation brings benefit in the construction of a 'first line of defence'.<sup>20</sup> The main aim of the common EU immigration policy is to ensure "the efficient management of migration flows, fair treatment of third-country nationals residing legally in member states, and the prevention of, and enhanced measures to combat illegal immigration and trafficking

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<sup>18</sup>Guiraudon argues that member states escaped to the EU level while circumventing liberal domestic pressures and obstacles. Virginie Guiraudon, "European Integration and Migration Policy: Vertical Policy Making as Venue Shopping," *Journal of Common Market Studies* 38, no. 2 (2000): 253, <https://goo.gl/JqZI17> (accessed 03.01. 2016).

<sup>19</sup>Responsibility is being 'contracted out' to private actors, such as airlines and shipping companies, which became financially liable for carrying passengers without appropriate documentation. Tim Bale, *European Politics – A Comparative Introduction* (Basingstoke and New York: Palgrave Macmillan, 2013), 370.

<sup>20</sup>Bale, 366; Guiraudon, 254; Andrew Geddes, *Immigration and European integration: Towards Fortress Europe* (Manchester and New York: Manchester University Press, 2000), 13.

in human beings.”<sup>21</sup> The premise includes full integration of third country nationals (TCNs) and recognises the capability of international immigration in enhancing economic growth and prosperity.<sup>22</sup> However, the EU migration principles are not well reflected in the migration related interest of member states, since they mostly link migration to security, employment, and social policies. This often makes them sacrifice refugees like pawns at the expense of common internal market and free movement.

The Chapter aims to point out the rationale behind the EU harmonisation of the asylum policies. Did it manage to improve international protection for asylum seekers in line with the EU normative power and model position within the international community or did it restrict the access to the protection making the walls of the European ‘fortress’ even higher? It further questions the European readiness to accept a sudden mass influx of refugees. The Chapter firstly looks into the incentives for harmonisation of asylum policies and circumstances that laid the ground. It further offers a historical and content-wise overview of the harmonisation process and proceeds to relations between member states as dictated by three different mechanisms of responsibility sharing. The relations with non-member states are considered through the application of the *safe third country* and readmission concept, which enable the possibility of ‘burden’ diversion from member states towards neighbouring countries. Special attention is given to migration issues within the EU enlargement processes of aspiring (potential) candidates from the Western Balkans. It is argued that asylum *acquis* transposition assists and formalises the relations with non-member states or between the ‘core’ and ‘periphery.’ Since the relation breaks as soon as the ‘periphery’ is included into the ‘core’, it is paradoxical and unsustainable. This urges the EU to consider new

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<sup>21</sup>Art. 79, *Treaty on the Functioning of the European Union* (TFEU), adopted on December 13, 2007 in Lisbon, entered into force on December 1, 2009. Official Journal of the European Union C 326/47, October 26, 2012, <https://goo.gl/7L2OG9> (accessed 23.11. 2015).

<sup>22</sup>Council of the European Union, *European Pact on Immigration and Asylum*, EU Doc. 13440/08, September 24, 2008, <https://goo.gl/Bge9aG> (accessed 03.01.2016).

approaches to refugee processing apart from the Europeanization of candidate countries' asylum systems. New extraterritorial mechanism and their controversies are discussed at the end of the Chapter.

## 2.2. EU immigration policy until 2015

EU migration policy is a relatively young area of the EU policy making.<sup>23</sup> It became more salient only in the 1990s when the migration policies regulating free movement were successfully put in, and the Yugoslavian asylum crisis was seen as justifying factor for making migration an issue of high politics. It was Germany that was especially keen on common European policy that would prevent states from receiving a disproportional number of refugees in future crises.<sup>24</sup> Immigration was thus more than ever considered as bound to the European political, economic, and social well-being, as well as its future economic interests.<sup>25</sup>

Creation of the European-wide asylum system was and still is necessarily bound to the idea of free movement of people that would assist fully functional single market. Despite being originally an EU objective, it was ironically first accomplished by the

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<sup>23</sup>Arne Niemann, "The Dynamics of EU migration policy: from Maastricht to Lisbon," in *Constructing a policy-making state? Policy dynamics in the European Union*, ed. Jeremy Richardson (Oxford: Oxford University Press, 2013), 209.

<sup>24</sup>Carl Levy, "The Geneva Convention and the European Union: A Fraught Relationship," in *The Refugee Convention at Fifty: A view from Forced Migration Studies*, ed. Joanne Van Selm, Khoti Kamanga, John Morrison et al. (New York: Lexington Books, 2003), 133.

<sup>25</sup>Until the 1990s, each member state had developed separate immigration policy tailed upon its own needs and values. Moses draws parallels with the mercantilist period when European countries 'imported' labour, which was considered as an economic arsenal from their colonies. While France and Great Britain still relied on ex-colonies and migrants from southern European states, Germany concluded bilateral agreements establishing legal framework for recruitment of foreign workers with Italy in 1955, then with Greece, Spain, Morocco, Portugal, Turkey, Tunisia and Yugoslavia in the 1960s in order to facilitate post-war reconstruction. With the recession of 1973 unemployment rose and immigration alongside ethnic minorities became increasingly politicized issues. It is not a surprise that the need for harmonization of immigration policy on the European level was for the first time mentioned in 1975 Tindermans Report. Jonathon W. Moses, *International Migration: Globalization's Last Frontier* (London et al.: Zed Books Ltd., 2006); Gareth Dale, "Germany: Nation and Immigration," in *The European Union and Migrant Labour*, ed. Gareth Dale and Mike Cole (Oxford and New York: Berg, 1999), 116–20; Niemann, 209.

Schengen Agreement (1985/90)<sup>26</sup> outside the EU legal framework. The agreement proposed a gradual abolition of internal borders in favour of commonly agreed external border checks and other relevant procedures. The absence of internal borders in the Schengen area soon required a coordinated approach towards non-Schengen nationals and consistent *stricto sensu* approach to migration.<sup>27</sup> Dublin Convention I (1990/97)<sup>28</sup> superseded the 7th Schengen Convention Chapter and became the first European document dealing with the European asylum regime,<sup>29</sup> by establishing an ‘effective system’ for allocation of the responsibilities between Schengen states in examining asylum claims.<sup>30</sup> However, an effective allocation of responsibilities could not have worked without simultaneous efforts towards the harmonisation of the European asylum system. The course of its creation and further development together with faced obstacles is analysed in the following section.

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<sup>26</sup>Schengen Agreement was initially concluded between five European Economic Community (EEC) member states (Belgium, France, West Germany, Luxemburg, Netherlands) and in 1990 supplemented by Schengen Convention which provisions came fully in force not earlier than in 1995. The main obstacle for full implementation of Schengen had been political – unwillingness of states to remove border controls for non-EEC nationals. Maissner, M. Doris, Robert D. Hormats, Antonio G. Walker et al. *International Migration – Challenges in a New Era* (New York, Paris and Tokyo: The Trilateral Commission, 1993), 56–7.

<sup>27</sup>Papagianni emphasises the European preference of *stricto sensu* migration understanding over the ‘migration in the classic sense’. The former relates to border and visa policy issues administrated through bureaucracy and driven on the security aspirations, while the latter understanding takes into account demographic and economic needs. In this sense Dublin regime only created technical rules for approaching the asylum issue, not a content policy related to the given circumstances. Georgia Papagianni, “EU Migration Policy,” in *European Immigration – A Sourcebook*, ed. Anna Triandafyllidou and Ruby Gropas (Farnham: Ashgate, 2012), 379.

<sup>28</sup>*Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention*, signed on June 15, 1990 in Dublin, entered into force on October 1, 1997 and valid till March 16, 2003, <https://goo.gl/lzXhjR> (accessed 05.12.2015).

<sup>29</sup>*Regime* defines a composition of legal norms and standards embraced in regional instruments, both binding and non-binding in the asylum policy of the EU. Rosemary Byrne, “Harmonization and Burden Redistribution in the Two Europas” *Journal of Refugee Studies* 16, no. 3 (2003), 337, <https://goo.gl/sdv11F> (accessed 28.02.2016).

<sup>30</sup>Nika Bačić, “Asylum Policy in Europe - Competences of the European Union and Inefficiency of the Dublin System,” *Croatian Yearbook of European Law and Policy* 8, no. 1 (2012), 46, . <https://goo.gl/zyTMTm> (accessed 06.02.2016)

### 2.2.1. Development of the common European asylum system

The first steps towards the *sui generis* harmonisation of migration policies on the EU level were taken already with the Maastricht Treaty (1992/93) creation of the Third Pillar.<sup>31</sup> Although outside the EU legal framework, it nevertheless foresaw intergovernmental cooperation and coordination of migration policies by Justice and Home Affairs (JHA) ministries.<sup>32</sup> A major turning point in the EU migration policies represents the Amsterdam Treaty (1997/99),<sup>33</sup> which among others institutionalised Schengen provisions together with the Dublin regime into the EU framework.<sup>34</sup> Amsterdam Treaty divided the existing Third Pillar into two sections; the Title IV established the area of freedom, security and justice concerning visa, asylum and other policies regarding free movement of people, while the Title VI relates to police and judicial cooperation. While the second section stayed in the intergovernmental sphere with unanimous decision-making procedure, the first section fell under five-year transitional period during prescribing Council's unanimous decisions, before the qualified majority voting (QMV) and co-decision rules with the exclusive EC initiative right came to power. Besides, it the treaty introduced the full application of Community legal instruments (directives and regulations) in asylum area. Content wise the Amsterdam Treaty did not introduce major changes, but only established minimum standards with which member states had to comply.<sup>35</sup> Provisions'

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<sup>31</sup>The Maastricht Treaty's Third Pillar was supposedly created upon the German initiative for communitarising of migration and asylum policies in face of mass influx danger after the fall of the Berlin Wall. Papagianni, 377.

<sup>32</sup>Meissner et al., 59.

<sup>33</sup>*Treaty of Amsterdam Amending the Treaty of the European Union, the Treaties Establishing the European Communities and Certain Related Acts*, adopted on October 2, 1997 in Amsterdam, entered into force on May 1, 1999, <https://goo.gl/2028mm> (accessed 02.01.2016).

<sup>34</sup>Marinko Banjac, "European Identity through Practices of Enumeration: the formation of EU Citizenship and European Migration Policy," *Dve Domovini – Two Homelands* 12, no. 35 (2012): 39, <https://goo.gl/CIhixR> (accessed 25.02.2016).

<sup>35</sup>Niemann, 218. Treaty of Amsterdam (Art. 73k) obliged the Council to adopt (a) criteria and mechanisms for determining which member state is responsible for considering an applications for asylum submitted by TCNs in one of the member states, and minimum standards regarding the

implementation was outlined in following multiannual programmes, namely Tampere milestones (1999–2004), the Hague programme (2005–09) and the Stockholm programme (2010–14).

In Tampere milestones, member states for the first time declared the intention to create a common EU asylum and migration policy by creating a basis for a Common European Asylum System (CEAS).<sup>36</sup> Based on the Refugee Convention, the CEAS should included a “clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status” as well as forms of subsidiary protection.<sup>37</sup> Kaunert and Léonard<sup>38</sup> assert that all CEAS measures foreseen in Tampere were successfully adopted and introduced into the *acquis* by The Temporary Protection Directive (2001)<sup>39</sup>, The Reception Conditions Directive (2003)<sup>40</sup>, The Dublin II Regulation (2003)<sup>41</sup>, The Asylum

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following; (b) the reception of asylum seekers in member states, (c) qualification of TCNs as refugees, (d) procedures in member states for granting or withdrawing refugee status and (e) temporary protection conditions.

<sup>36</sup>Papagianni, 377.

<sup>37</sup>Tampere European Council, *Presidency Conclusions*, October 15 and 16, 1999, <https://goo.gl/WcTK1f> (accessed 25.02.2016).

<sup>38</sup>Christian Kaunert and Sarah Léonard, “The European Union Asylum Policy after the Treaty of and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?” *Refugee Survey Quarterly* 31, no. 4 (2012): 10–3, <https://goo.gl/uosgGg> (accessed 02.01.2016).

<sup>39</sup>*Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, OJ L 212/12, August 7, 2001, <https://goo.gl/uoSYOT> (accessed 03.01.2016).

<sup>40</sup>*Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, OJ L 31/18, February 6, 2003, <https://goo.gl/78cQYc> (accessed 03.01.2016).

<sup>41</sup>*Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*, OJ L 50/1, February 25, 2003, <https://goo.gl/FFGbc6> (accessed 03.01.2016).



Qualification Directive (2004)<sup>42</sup>, and The Asylum Procedures Directive (2005).<sup>43</sup> Those directives and regulations create the internal dimension of the EU asylum regime and are among others aimed at stopping secondary migration movements between member states. With the aim of deepening harmonisation, the Reception Conditions, the Asylum Qualification, and the Asylum Procedures Directives were amended in the context of the Stockholm Programme in 2011 and 2013 respectively. While the Temporary Protection Directive and the Dublin II Regulation will be discussed later, a brief overview of the remaining three directives in respect to their content is offered here.

The Reception Conditions Directive establishes minimum standards for the reception of asylum-seekers, including information, residence, and freedom of movement, employment, education and vocational training, material reception conditions, and health care. The amended directive (2013)<sup>44</sup> determines precise minimum standards by defining living conditions, reducing the maximum period of which asylum-seekers may be excluded from the labour market, defining reasons for possible detention of asylum seekers and improving their access to free legal service. An asylum seeker should not be held in detention for the sole reason of seeking international protections. Detention could only be justified in cases of identity or nationality verification if elements on which the application is based cannot be determined otherwise and after he was recognised as an illegal migrant who will be returned. The Dublin system allows detentions before the responsible state application assessment is found. Exceptionally, asylum seeker could be detained

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<sup>42</sup>*Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, OJ L 304/12, September 30, 2004, <https://goo.gl/Umjchu> (accessed 03.01.2016).

<sup>43</sup>*Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, OJ L 326/13, December 13, 2005, <https://goo.gl/GAZHq9> (accessed 03.01.2016).

<sup>44</sup>*Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, OJ L 180/96, June 29, 2013, <https://goo.gl/aTh7T8> (accessed 16.01.2016).

based on national security or public order protection concerns. States should ensure that the time spent in detention is the shortest possible and not beyond reasonable.

The Asylum Qualification Directive as qualification criteria for granting asylum adopts Art. 1 of the Refugee Convention. It introduces the harmonised institute of complementary protection named as subsidiary protection. It is aimed at persons who do not qualify for refugee status but are nevertheless at risk of suffering serious harm in their countries of origin. The directive is innovative in two aspects, firstly for recognising non-state actors as perpetrators of persecutions,<sup>45</sup> and secondly for outlining various examples of acts of persecutions what significantly broadens the concept as understood in national legislations. The amended directive (2011)<sup>46</sup> further excludes possible existence of safe-heavens in the country of origin as a reason for asylum rejection, introduces gender-specific forms of persecution and puts characteristics of subsidiary protection and refugee status on equal footing.

The Asylum Procedures Directive determines minimum procedural standards, regarding issues such as access to the asylum procedure (“each adult having legal capacity has the right to make an application for asylum on his/her own behalf”), the right to remain in the member state pending the examination of the application, guarantees and obligations for asylum-seekers, personal interviews, legal assistance and representation, detention, and appeals. While the original Directive only

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<sup>45</sup>The latter has influenced many member states’ asylum legislations to opt for the protection approach that emphasized the lack of protection by states instead of the accountability approach that demands a connection between persecution and state. Vincent Chetail, “The Implementation of the Qualification Directive in France: One Step Forward and Two Steps Backwards,” in *The Qualification Directive: Central Themes, Problem Issues and Implementation in Selected Members States*, ed. Karin Zwaan (Nijmegen: Wolf Legal Publishers, 2007), 95.

<sup>46</sup>*Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, OJ L 337/9, December 12, 2011, <https://goo.gl/7PIVtn> (accessed 16.01.2016).

concentrates on procedural steps, the amended Directive (2013)<sup>47</sup> introduces deadlines to which states should adhere. Applications must be processed within six months of application, with a possible exception in cases of the absence of cooperation by the applicant or a large volume of applications, when it allows an extension to the period of 15 to 21 months. The original Directive is innovative as it introduces the concepts of *safe country of origin* and *safe third country*. Regarding the first one, the Directive requires Council that it should “acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by the member states as safe countries of origin.” The application of the concept renders applications of safe countries of origin nationals or stateless persons who had resided in such a country before unfolded.<sup>48</sup> The *safe third country* concept will be discussed in the subchapter on the external dimension of the EU asylum policy.

In 2005 adopted Hague programme called for further CEAS development beyond minimum standards. The second phase introduced common asylum procedure and a uniform status for those granted asylum or subsidiary protection. Apart from initiatives, there was a notable slowdown in the adoption of asylum legislation after 2004. Lots of energy put in negotiations for the first phase instruments demanded additional time for assessment of minimum standards’ functionality. Policy Plan on Asylum<sup>49</sup> proposed improvement and harmonisation of international protection standards through amendments of existing directives, enhanced practical cooperation, solidarity and responsibility within the EU and in relations with non-

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<sup>47</sup>Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180/60, June 29, 2013, <https://goo.gl/s81jfn> (accessed 16.01.2016).

<sup>48</sup>Art. 31 of the Directive still requires individual examination of the application in which “no serious grounds for considering the country not to be a safe country of origin” shall be found.

<sup>49</sup>Commission of the European Communities, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum – An Integrated Approach to Protection across the EU*, COM (2008) 360, June 17, 2008, <https://goo.gl/xCsvNH> (accessed 04.01.2016).

EU countries. Much higher goals were set in the Stockholm Programme (2009–14) that advocated uniform asylum procedure on the European level and a uniform status for those who are granted asylum or subsidiary protection. It further advocated the EU accession to the Refugee Convention and its Protocol and respect for solidarity principle based on voluntarily shared responsibility among member states. For the first time, the external dimension is seriously considered by advised capacity-building in third countries and development of a joint EU resettlement programme.<sup>50</sup>

The Lisbon Treaty (2007/09)<sup>51</sup> brought a major change as it abolished the minimum standards criteria and put greater importance on the human rights protection. Before member states bore full responsibility for legal framework development and implementation regarding protection of asylum seekers' fundamental rights.<sup>52</sup> Lisbon Treaty granted more competences in the asylum field to the EC<sup>53</sup> and reinforced the EP and the Court of Justice of the European Union (CJEU). Moreover, the Charter of Fundamental Rights of the European Union – CFREU (2000/2009)<sup>54</sup> became binding,<sup>55</sup> the accession of the EU to European Convention

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<sup>50</sup>Kaunert and Léonard, “The European Union Asylum Policy ...”, 18.

<sup>51</sup>*Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, adopted on December 13, 2007 in Lisbon, entered into force on December 1, 2009, <https://goo.gl/SjKYIT> (accessed 02.01.2016).

<sup>52</sup>Laurens Lavrysen, “European Asylum Law and the ECHR: An Uneasy Coexistence,” *Goettingen Journal of International Law* 4, no. 1 (2011): 231, <https://goo.gl/is8aDz> (accessed 02.01.2016).

<sup>53</sup>With the Treaty of Lisbon member states conferred upon the EU the adoption of the following measures: (a) a uniform status of asylum valid, (b) a uniform status of subsidiary protection, (c) a common system of temporary protection, (d) common procedures for granting and withdrawing asylum and subsidiary protection, (e) criteria and mechanisms for determining the member state responsible for assessing an application for protection, (f) standards on reception conditions of applicants, and (g) partnership and co-operation with third countries for the purpose of managing inflows of people. Kaunert and Léonard, “The European Union Asylum Policy,” 15.

<sup>54</sup>*Charter of Fundamental Rights of the European Union*, adopted on December 7, 2000 in Nice, entered into force on December 1, 2009, <https://goo.gl/MhL7nG> (accessed 03.01.2016).

<sup>55</sup>Art. 3b (8) of the Lisbon Treaty states that CFREU provisions “shall have the same legal value as the Treaties.” However, the CFREU legal nature is dubious, as it cannot be understood as a treaty

on Human Rights (ECHR) was foreseen, and emphasis put on the principle of interstate solidarity.<sup>56</sup>

QMV and co-decision policy-making procedure in the field of asylum matters achieved with the Amsterdam Treaty were to be upgraded by the standard policy-making procedure with QMV in the Council of the European Union while granting co-decision powers to the EP.<sup>57</sup> CFREU specific provisions legally bind EU institutions and member states to “guarantee the right to asylum with due respect for the rules of the Geneva Convention ...”<sup>58</sup> Battjes divides the provision into two elements – the right to asylum and the obligation to guarantee this right.<sup>59</sup> Asylum should be considered as durable international protection for refugees opposed to temporary and subsidiary protection. On the other side, the obligation to guarantee the right to asylum does not oblige the state to grant asylum, rather it obliges the state to guarantee that a refugee will have access to asylum – a durable protection with the necessary secondary rights – if expelled to a safe third country. For refugees that are not expelled, it means that the granting of a long-term residence permit cannot postpone the application of the asylum seeker status.<sup>60</sup> CFREU further urges states not to remove, expel or extradite anyone “to a state where there is a serious risk that he or she would be subjected to death penalty, torture or other inhuman or

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under Vienna Convention on the Law of Treaties since it was not adopted and ratified by party states. Gil-Bazo therefore argues that the provisions should have the status of the Union law which EU should respect in its secondary legislation, such as Directives and Regulations. Mari'a-Teresa Gil-Bazo, “The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union’s Law,” *Refugee Survey Quarterly* 27, no. 3 (2008): 35, <https://goo.gl/94s7SG> (accessed 05.01.2016).

<sup>56</sup>Kaunert and Léonard, “The European Union Asylum Policy...”, 15.

<sup>57</sup>TFEU, Art. 294.

<sup>58</sup>CFREU, Art. 18.

<sup>59</sup>Hemme Battjes, *European Asylum Law and International Law* (Boston and Leiden: Martinus Nijhoff Publications, 2006), 14.

<sup>60</sup>CFREU is the first binding document imposing the right to guarantee the asylum. Before such a wording was used only in the United Nations Universal Declaration of Human Rights (Art. 14). Lavrysen, “European Asylum Law and the ECHR,” 223.

degrading treatment or punishment.”<sup>61</sup> It obliges states to to entitle everyone “to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law with having the “possibility of being advised, defended and represented”.<sup>62</sup> Last but not least, CFREU Art. 6 states that “everyone has the right to liberty and security of person” which might also be relevant in cases of refugee detentions. Once the EU becomes a party also to the ECHR, its international responsibility for human rights violations will be able to be evoked.

Although many authors argue that the EU asylum cooperation led to more restrictive legislation ‘on behalf’ of member states, Kaunert and Léonard<sup>63</sup> advocate the opposite. In their opinion, asylum protection standards in the EU gradually improved as the role of ‘refugee-friendly’ institutions was increased and the asylum brought under the judicial control. However, the EU competences stay limited in the field of integration. They are conferred only upon migration management, the regulation of the rights of TCNs residing legally in the EU and the prevention and combat of illegal immigration.<sup>64</sup> Despite higher asylum protection standards, the access to protection is decreasing due to restrictive border controls and other *non-entre policies* favoured by member states to lessen the ‘refugee burden’. Noll<sup>65</sup> sees the creation of the EU asylum policy as a “collectivization of the protectionist side of the nation state,” the latter, being a mere reproduction on a higher level of complexity. Problems emerge when it comes to the application of solidarity principle non-familiar to the concept of a sovereign state, but indispensable in

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<sup>61</sup>CFREU, Art. 19.

<sup>62</sup> CFREU, Art. 47.

<sup>63</sup>Christian Kaunert and Sarah Léonard, “The European Union and Refugees: Towards More Restrictive Asylum Policies in the European Union?” *GRITIM Working Paper Series*, no. 8. (2011): 16, <https://goo.gl/8xV7um> (accessed 05.01.2016).

<sup>64</sup>Eleftheria Neframi, *Division of competences between the European Union and its Member States concerning immigration* (Brussels: European Parliament, 2011), <https://goo.gl/VSJkQe> (accessed 06.01.2016).

<sup>65</sup>Gregor Noll, “Why the EU gets in the way of refugee solidarity,” *openDemocracy*. <https://goo.gl/M70prR> (accessed 22.09.2016).

supranational regimes. The following section analyses ‘burden-sharing’ methods among member states, afterwards proceeding to *non-entre policies* aimed at burden diversion or shift to transit countries.

### 2.2.2. The internal dimension: Regulating member states’ responsibility

The idea of burden-sharing in asylum matters is as old as the current asylum regime incepted by the creation of the United Nations Commissioner for Refugees (UNHCR). Paragraph 4 of the Preamble of the 1951 Refugee Convention acknowledges that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefore be achieved without international cooperation.” Thielemann identifies three different driving factors for states being interested in burden-sharing.<sup>66</sup> The *insurance rationale* makes a state a net contributor in a short term when there exists the possibility that the same state might become net beneficiary later. Secondly, states take over parts of burdens out of *solidarity*, which exists mostly inside the group of actors committed to the process of collective decision-making.<sup>67</sup> Thirdly, contributors might take part in a distribution scheme when they at the same time plan to achieve other goals, making it easier to make a deal in a *quid pro quo* fashion.

Implying the language of costs and benefits, the *burden-sharing* term’s use in the context of human rights might be controversial.<sup>68</sup> The term has been criticised for

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<sup>66</sup>Eiko R. Thielemann, “Symbolic Politics or Effective Burden-Sharing? Redistribution, Side-payments and the European Refugee Fund,” *Journal of Common Market Studies* 43, no. 4 (2005): 809–10, <https://goo.gl/GIMxlQ> (accessed 05.01.2016).

<sup>67</sup>The principle of *solidarity* in burden-sharing has been for the first time invoked by Germany and elaborated in Council resolution on displaced persons adopted in 1995. Elena Jileva, “Larger than the European Union: The Emerging EU Migration Regime and Enlargement,” in *EU Policies in a Global Perspective: Shaping or taking international regimes?*, ed. Gerda Falkner and Patrick Müller (London: Routledge, 2002), 84.

<sup>68</sup>Stephen H. Legomsky, “Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The meaning of Effective Protection,” *International Journal of Refugee Law* 15, no. 4 (2003): 607, <https://goo.gl/Rq54Hr> (accessed 28.01.2016).

only associating refugees with burdens while forgetting that the burden does not eliminate the obligation on one side and ignoring added value refugees can bring on the other side.<sup>69</sup> Therefore, it is better to consider state's responsibility, either as the duty to assure relocations of refugees from countries with greater pressure to ones with lesser refugee pressure or the duty to assist those countries which due to their geographical location deal with the highest numbers of arriving asylum seekers. Because all states are not able to contribute to refugee protection in an identical manner, Hathaway and Neve<sup>70</sup> recommend the introduction of the term *common, but diversified responsibility* which would provide a balance between responsibility to grant asylum on one side and contributions to the burden of financing protection. However, despite its controversial semantics the term reflects the way the debate about inequalities in the distribution of displaced persons and refugees has been conducted in the EU over recent years.

On the European level, the concept of responsibility-sharing in asylum matters was for the first time included in the Amsterdam Treaty. It required the Council to adopt measures “promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced person.”<sup>71</sup> There were numerous rejected and some approved mechanism for refugee distribution since then. The chapters below follow Thielemann's classification of common but diversified responsibility existing in the EU,<sup>72</sup> firstly considering harmonisation of asylum laws as a guarantee for equal distribution of asylum seekers (norm-sharing),

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<sup>69</sup>The attempts to replace the term with ‘responsibility sharing’ or ‘equal balance of efforts’ between the member states had little success. Eiko R. Thielemann, “Towards Refugee Burden-Sharing in the European Union State Interests and Policy Options,” (*prepared for the Ninth Biennial International Conference of the European Union Studies*, 2005), 3, <https://goo.gl/VrhQoI> (accessed 10.01.2016).

<sup>70</sup>James C. Hathaway and Alexander R. Neve, “Making International Refugee Law. Relevant Again: A Proposal for Collectivized and. Solution-Oriented Protection,” *Harvard Human Rights Journal* 10, no. 1 (1997): 144–5, <https://goo.gl/D4FFP6> (accessed 10.01.2016).

<sup>71</sup>*Treaty of Amsterdam*, Art. 73k.

<sup>72</sup>Thielemann, “Symbolic Politics or Effective Burden-Sharing ...”, 815.



then proceeding to proportional allocation or resettlement of asylum seekers (people-sharing) and ending with actual financial contributions (costs-sharing).

The most indirect approach for equal distribution of burdens is harmonisation of national asylum legislations. Despite different primary objective (see Chapter 2.2), a side effect of harmonisation should, in theory, mean equal application procedures, acceptance criteria and rates putting more generous and preferable states on equal footing with those with more restrictive systems, making no difference in which member state the asylum application is made.<sup>73</sup> However, Foster<sup>74</sup> assessed that theoretically ‘harmonised’ system has not brought the desired results as acceptance rates for different refugee categories still to a large extent varies among member states, resulting rather in a system of ‘asylum lottery.’ For example, a Chechen’s chances to be granted an asylum sink from 80 % in Poland to zero with his transfer to Austria. The same was valid for Iraqis that were transferred from Cyprus to Slovenia or Greece in 2007 where the chances decreased from 87.5 % to zero.<sup>75</sup>

The second approach represents the most tangible solution, namely physical ‘people-sharing’ or redistribution of asylum seekers from one member state to another. Related to particular migration ‘crisis,’ the EU developed a system for acceptance of migrants in need of urgent and temporary protection and various *ad hoc* resettlement and allocation schemes,<sup>76</sup> while on the ordinary basis asylum applicants should be distributed according to the Dublin mechanism.

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<sup>73</sup>Ibid.; Christina Boswel, “Burden-sharing in the New Age of Immigration,” *Migration Policy Institute*, <https://goo.gl/45YdZ2> (accessed 10.01.2016).

<sup>74</sup>Michelle Foster, “Responsibility Sharing or Shifting? “Safe” Third Countries and International Law,” *Canada’s Journal on Refugees* 25, no. 2 (2008): 65, <https://goo.gl/XEApdN> (accessed 11.01.2016).

<sup>75</sup>For a telling example of variety in exception rates and differences in accepting conditions see Liza Schuster, “Turning refugees into ‘illegal migrants’: Afghan asylum seekers in Europe,” in *Irregular Migrants: Policy, Politics, Motives and Everyday Lives*, ed. Alice Bloch and Milena Chimienti (London and New York: Routledge, 2012).

<sup>76</sup>UNHCR defines refugee resettlement as “the selection and transfer of refugees from a state in which they have sought protection to a third country that admits them” In EU terms, resettlements means the movement of refugees from outside EU into one of the EU member states, while allocation

In the EU context, the idea for the first time emerged in the beginning of the 1990s, coinciding with the Yugoslav war and greater migration pressure on European countries.<sup>77</sup> The first modest attempt dealing only with temporary protection represents Council Resolution on burden-sharing (1995).<sup>78</sup> It states that burden contributions to United Nations (UN) and Organisation for Security and Cooperation in Europe (OSCE), military and humanitarian missions in conflict areas as well as economic, social and political factors should be taken into account when considering burden-shares in a form of asylum seekers acceptance by particular member states, any shares being agreed upon “in a spirit of solidarity”. Similar attempt for cases of mass influxes is a Temporary Protection Directive (2001) which established provisions on temporary protection for displaced persons in need of protection. Temporary protection is understood as a transitional substitute for a durable solution and has thus an “exceptional character.” It shall be applied when there is a risk “that the asylum system will be unable to process this influx without adverse effects for its efficient operation.” According to the Directive, it is upon the Council to recognise the state of mass influx with the QMV upon the EC proposal. A decision is binding for member states, although they are not obliged to accept a specific number of persons in need of protection, but should rather ascertain its reception capacity in a spirit of community solidarity. The release of the directive was driven by Kosovo humanitarian crisis in 1999. The directive was never implemented in practice,<sup>79</sup> although its activation was considered when the number of asylum-

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refers to the transfer of refugees among member states. “Resettlement, Relocation or Humanitarian admission?! We explain the terminology,” *European Resettlement Network*, <https://goo.gl/fTkoub> (accessed 05.02.2016).

<sup>77</sup>In 1994, Germany unsuccessfully proposed a system of physical dispersal of temporary protection seekers among member states based on criteria of population and territory size, and GDP Boswell, “Burden-sharing in the New Age of Immigration.”

<sup>78</sup>*Council Resolution 95 /C 262/01 of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*, OJ No C 262/ 1, October 7, 1995, <https://goo.gl/gDGk7W> (accessed 03.01.2016).

<sup>79</sup>EC, *Study on the Feasibility of Establishing a Mechanism for the Relocation of Beneficiaries of International Protection*, Directorate-General Home Affairs, Final Report JLX/2009/ERFX/PR/1005, 2010, 6, <https://goo.gl/hpCUzB> (accessed 08.01.2016).

seekers from Iraq and Afghanistan rose in the beginning of the 2000s and should, but was not considered during the increased refugee flow to Europe in the time of Arab revolutions. Ineli-Ciger ascribes the non-implementation of the Directive to fear of potential fear-factor activation and unsuccessful QMV in the Council as such influxes seriously affected only limited number of member states.<sup>80</sup>

The EU has relatively poor experiences with coordinated resettlement and relocation schemes. The only resettlement scheme was Humanitarian Evacuation Programme for Kosovo in 2000 dedicated to Kosovar refugees staying in Macedonia and based on unilateral voluntary quotas rather than a binding system. As the Kosovo crisis occurred almost at the European gates, member states have crushed under the pressure of population which felt sympathy with refugees and offered extremely generous quotas for refugee.<sup>81</sup> Based on the 2003 Thessaloniki Council call for the “examination of all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection”, the 2004 EC Communication on Improving Access to Durable Solutions<sup>82</sup> proposed an EU-wide approach for the resettlement. EU Resettlement Scheme shall be individually tailored, situation-specific, targeted and adaptable to the ability of member states to resettle certain caseloads in given years. The EU was to announce yearly unbinding targets of resettled refugees rather than quotas or ceilings, and member states were to frame their resettlement targets. However, due to the lack of member states’ interest, the plan was not realised earlier than with the Joint EU Resettlement Programme launched in 2012. It was accompanied by extensive financial support for

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<sup>80</sup>Meltem Ineli-Ciger, “Has the Temporary Protection Directive Become Obsolete? An Examination of the Directive and Its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean,” in *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common European Asylum System*, ed. Celine Bauloz, Meltem Ineli-Ciger, Sarah Singer and Vladislava Stoyanova (Leiden and Boston: Brill, 2015), 223.

<sup>81</sup> EC, *Study on the Feasibility ...*, 6.

<sup>82</sup>EC, *Communication from the Commission to the Council and the European Parliament on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin “Improving Access To Durable Solutions”*, COM (2004) 410 final, June 4, 2004, <https://goo.gl/UJDNJw> (accessed 01.02.2016).

participating member states and implemented as a part of Regional Protection Programmes (RPPs). Until 2013, 16 EU member states have participated in the resettlement programmes but the numbers of resettled refugees are relatively low.<sup>83</sup>

The only relocation programme was initiated in 2009 as a pilot scheme for refugees from Malta to France (95 relocations in 2009) and had eventually evolved into the ongoing EU Relocation Malta (EUREMA) project, relocating beneficiaries of international protection from Malta to several member states.<sup>84</sup> There are two other relocation schemes based on bilateral agreements that Lithuania (6 relocations) and the Netherlands (30 relocations) concluded with Malta.<sup>85</sup> Regarding relocations from Malta, the EC assessed that a successful relocation demands fully coordinated cooperation of member states to ease the process of relocation and further integration. Although states preferred to relocate protection seekers with already granted asylum status, the lack of trust among member states sometimes led to status reassessment and additional administration work. Although some states refused to participate in relocation schemes with the argument that a prospect of living in one of more prosperous member states would attract even more refugees to the shores of Europe, the study reveals that the relocation scheme did not trigger any pull effect.<sup>86</sup>

The cornerstone of refugees' distribution among member states represents Dublin Regulation which determines the responsibility of a particular member state for granting the asylum. Dublin Regulation issued in 2013 and also known as Dublin II converted the already existing Dublin Convention into an EU regulation. The

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<sup>83</sup>Delphine Pelin and Frank McNamara, "Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames," *KNOW RESET Research Report*, 2012/03 EU Comparative Report, 47, <https://goo.gl/s6EiQV> (accessed 04.02.2016).

<sup>84</sup>10 EU member states participate in the project, with Germany and France taking each around 100 beneficiaries of international protection, while Slovenia, Slovakia, Hungary, Poland, Romania, United Kingdom (UK), Luxemburg and Portugal each pledge to take 6-10 persons. EC, *Study on the Feasibility ...*, 15.

<sup>85</sup>Ibid., 13–6.

<sup>86</sup>Ibid., 17–8.

Convention defines hierarchical criteria for determining “the most responsible state” for examining the asylum application.<sup>87</sup> Being easy to track since the adoption of the Eurodac Regulation (2000)<sup>88</sup>, asylum seekers are returned to the member state through which they had irregularly crossed the border into EU. The state is assigned responsible for accessing the application and granting asylum if the application is justified.<sup>89</sup> In other words, the state that allowed an asylum seeker to enter the EU is ‘punished’ with additional work of asylum claim assessment. However, no provision exists that would prevent another member state through which the asylum seeker had not entered the EU to examine the application if it is willing to do so.<sup>90</sup> Amended Dublin Regulation known as Dublin III (2013)<sup>91</sup> introduced safeguards by explicitly noting that when the responsible state cannot be designated on the basis of the given criteria and relevant facts or when the transfer of the applicant is not possible due to a risk of inhuman or degrading treatment, the member state in which the application was lodged shall be responsible for assessment.<sup>92</sup> The Dublin system is aimed to prevent asylum seekers from asylum shopping, namely applying in

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<sup>87</sup>The definition of ‘the most responsible state’ shall follow the following hierarchical criteria in the given order: member state in which the asylum seeker has a family member (Art. 7, 8), member state in which asylum seeker is in a possession of a valid residence document or visa (Art. 9) and the member state through which “an asylum seeker has irregularly crossed the border into ..., by sea or air having come from a third country, ...” (Art. 10). Further, if a TCN territory of a member state in which the need for him/her to have a visa is waived (Art. 11) or if the application is made at the international transit area of an airport of a member state (Art. 12) the respective member state is responsible for considering the application. If none of the criteria can be tracked, the first member state with which the application was lodged shall be responsible (Art. 13).

<sup>88</sup>Eurodac Regulation was adopted to enable the functioning of the Dublin system as it requires the collection of all asylum-seekers’ fingerprints to be kept in an EU-wide database accessible to all member states. Kaunert and Léonard, “The European Union Asylum Policy ...”, 11.

<sup>89</sup>If the member state of the first entering is determined as responsible to examine the examination, such an obligation ceases “12 months after the date on which the irregular border crossing took place” (Art. 12).

<sup>90</sup>Kaunert and Léonard, “The European Union Asylum Policy ...”, 11.

<sup>91</sup>*Regulation (EU) No 604/2013 of the European Parliament and of the Council of June 26, 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 180/31, June 26, 2013, <https://goo.gl/yZZg13> (accessed 20.01.2016).

<sup>92</sup>Dublin III, Art. 3.

several member states what brings additional troubles and costs for the EU and enables asylum seeker longer stay in EU. Escape to another member state after the application is rejected seems to be less likely successful under the functioning Dublin Regulation, as the Regulation allows other member states to return the person to the country that originally considered the case.<sup>93</sup> Proponents of the ‘the most responsible state’ principle like to present the principle as benefiting the asylum seekers as it prevents states from transferring their responsibility onto others and causing the effect of ‘refugees in orbit’ for which no member states take responsibility to consider the application.<sup>94</sup> However, the Dublin system does exactly the latter. Enormous numbers of ‘dublinized’ asylum seekers in limbo, the term coined by Schuster,<sup>95</sup> circling from one member state to another for years waiting to see whether and when their application will be accessed.

Although the Dublin Regulation regulates the asylum seekers distribution among member states, it does not do it in an equitable manner. It has negative consequences for border member states through which most of the asylum seekers enter the EU as well as for asylum seekers. The latter was recognised even by the European Parliament already in 2008.<sup>96</sup> In its resolution, it stated that the Dublin system “fails to serve as a burden-sharing mechanism” as it puts “a lot of pressure on the border Member States.” Lavrysen<sup>97</sup> argues that unequal burdens depending on member state’s geographical location even violate TFEU Art. 80, which states that “the policies of the Union ... shall be governed by the principle of solidarity and fair

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<sup>93</sup>Santel, Bernhard, “Loss of Control: the build-up of a European migration and asylum regime,” in *Migration and European Integration*, ed. Robert Miles and Dietrich Thänhardt (London: Pinter, 1995), 88.

<sup>94</sup>Jon Gubbay, “The European Role in the Formation, Legitimation and Implementation of Migration Policy,” in *The European Union and Migrant Labour*, ed. Gareth Dale and Mike Cole (Berg, Oxford, 1999), 58.

<sup>95</sup>Schuster, 124.

<sup>96</sup>*European Parliament resolution of 2 September 2008 on the evolution of the Dublin system (2007/2267(INI))*, September 2, 2008, <https://goo.gl/Wlb2GR> (accessed 05.02.2016).

<sup>97</sup>Lavrysen, 241.

sharing of responsibility, including its financial implications”.<sup>98</sup> The violation in practice means that the majority of the burden falls on southern and eastern member states (Spain, Italy, and Greece). Those are the states that have in regard to their economic situation in comparison with the Western Europe less resources and hence handle the application with more difficulties what might cause a vicious circle of human rights violations, such as delays in the process, absence of appropriate legal assistance or even poor or none examination of the application before its rejection.<sup>99</sup> Thus the Convention eventually acts against its primary goal of reaching efficiency, rather causing inefficient, time-consuming, costly, and cumbersome operations. It is the law itself that creates an imbalance in the reception responsibility, what in turn leads to sidestepping of the law. However, although the destructive structure has been well known among the EU authorities since the 1990s, the member states rejected fundamental amendments to re-balance the burden by further paving the way to continuing trend of de-solidarization in refugee reception.<sup>100</sup>

Based on the non-functioning Dublin system, the UNHCR called in 2008 on the EU to refrain from returning asylum-seekers to Greece due to state’s inability to ensure

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<sup>98</sup>The solidarity in the Art. 80 is mostly interpreted as solidarity between member states, omitting possible solidarity between member states and refugees or member states and other non-member states from the crisis regions, such as Lebanon, Jordan, or Turkey which carry disproportional burden of Syrian refugees. Noll, “Why the EU gets in the way of refugee solidarity.”

<sup>99</sup>Additional delays are caused with transfers of asylum seekers from inside EU back to border member states – the host state has 3 month time limit to request the ‘responsible state’ to *take charge* of a person, but there is no deadline for border member state to submit request to *take back* the asylum seeker what often results in long time periods asylum seekers have to wait before the transfer might begin. Generally, a failure to reply to a *take charge* or *take back* request within the established deadlines is stipulated to mean that it has been tacitly accepted. In case that an applicant is detained in the period of ‘the responsible state’ recognition, the *take charge* should be submitted within one month of detention with the request of an emergency response within two weeks. Third state’s failure to respond in the given time is considered tantamount to accepting the request (Art 28, Dublin III). Medaline Garlick, “The EU Discussions on Extraterritorial Processing: Solutions or Conundrum?” *International Journal of Refugee Law* 18, no. 3-4 (2006): 606, <https://goo.gl/j5LZfN> (accessed 03.03.2016); Violeta Moreno-Lax, “The Legality of the “Safe Third Country” Notion Contested: Insights from the Law of Treaties,” in *Migration & Refugee Protection in 21st Century: Legal Aspects*, ed. Guy S. Goodwin-Gilland and Philippe Weckel (Hague: The Hague Academy of International Law Centre for Research, 2015), 675.

<sup>100</sup>Noll, “Why the EU gets in the way of refugee solidarity.”

access to fair and effective asylum procedure.<sup>101</sup> It advised member states to examine applications even if this is not their responsibility as laid down in the Regulation. Based on the 2007 European Court of Justice (ECJ) decision that Greece had failed to adopt minimum Reception Directive standards, Foster argues that the latter represents *prima facie* evidence that the state also violates other obligations of Refugee Convention, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.<sup>102</sup> The applications of most returned asylum seekers to Greece are considered as implicitly withdrawn, as the Greek national law provides that a procedure will be ‘interrupted,’ meaning that the claim will not be fully examined and can be formally rejected when the claimant had been absent from Greek territory for more than 3 months.<sup>103</sup> Council of Europe put under the spotlight Greece and Malta which had “been unable to provide adequate protection because the numbers of asylum seekers have exceeded their capacity,” putting refugees’ lives at risk and making them victims of the system. It further criticises northern European states which have not been co-operative and have not even been willing to use the possibility of ‘sovereignty clause’ which would avoid transfers to Greece.<sup>104</sup> Going through a severe economic crisis without the support of the EU the Greek asylum system simply collapsed.

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<sup>101</sup>“Asylum-seekers continue to remain effectively in limbo, unable to exercise their rights, for prolonged periods of time. UNHCR further notes that the procedure does not guarantee a fair evaluation of asylum claims at first and second instances. Finally, essential procedural safeguards are not guaranteed throughout the refugee status determination process to the detriment of asylum-seekers who often lack the most basic entitlements, such as interpreters and legal aid to ensure that their claims receive adequate scrutiny from the asylum authorities” UNHCR, *UNHCR Position on the Return of Asylum-Seekers to Greece under the “Dublin Regulation”* [Geneva], 2008, 6–8. <http://www.unhcr.org/482199802.html> (accessed 02.01. 2016).

<sup>102</sup>Foster, 68.

<sup>103</sup>Garlick, 606. Greek authorities justify the decision on the basis of Asylum Procedure Directive which states that an application of a person who has “absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time” (Art. 28). In practice almost all asylum seekers return to Greece in more than 3 months.

<sup>104</sup>Council of Europe, “The ‘Dublin Regulation’ undermines refugee rights,” press release 683, (2010), September 22, 2010, <https://goo.gl/t2rIqk> (accessed 08.03.2016).



Collapse is also reflected in record low acceptance rates in 2013 with 99.2 % of all applications refused.<sup>105</sup>

The last form of responsibility-sharing represents the distribution of financial resources. After some minor pilot projects, the EU institutionalised the European Refugee Fund (ERF) in 2000, based on the Tempere call for the establishment of a fund for necessary measures providing temporary protection in cases of mass influxes. Although the EC proposed a proportional distribution of the fund, jointly financed by member states based on the absolute number of asylum seekers registered in a state, the Council included minimum fixed amount for each year. Each member state received € 500,000 in 2000, and the amount decreased for € 100,000 every year until 2004. States devoted the resources mainly to special reception projects and new facilities (Italy, Spain, Portugal and Greece), integration and repatriation of refugees and displaced person (the Netherlands, Germany, the UK, Sweden and Finland) or simply for activities which are already in action.<sup>106</sup> EFR was extended by the Council decision<sup>107</sup> into ERF II for 2005–10 period. The budget significantly increased to € 684 million, with annually fixed allocations of € 300,000 to old member states and € 500,000 to new ones. The remainder shall be allocated proportionally in respect with the number of granted internationally protections (30 %) and the number of unprocessed applications for and people under temporary protection in case of a mass influx (70 %). The decision was repealed in 2007, protracting the programme till 2013 (ERF III).<sup>108</sup> Alongside with the ERF III, three new funds were created, the External Border Fund of € 1,820 million (2007–

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<sup>105</sup>“National Country Report – Greece,” *AIDA*, <https://goo.gl/6r8gsn> (accessed 04.03.2016).

<sup>106</sup>Thielemann, “Symbolic Politics or Effective Burden-Sharing? ...,” 816–7.

<sup>107</sup>*Council Decision of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010 (2004/904/EC)*, OJ L 381/52, December 28, 2004, <https://goo.gl/i0EQVh> (accessed 16.01.2016).

<sup>108</sup>*Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ and repealing Council Decision 2004/904/EC*, OJ L 144/1, June 6, 2007, <https://goo.gl/S4y0YS> (accessed 16.01.2016).

13),<sup>109</sup> the European Integration Fund<sup>110</sup> of € 825 million (2007–13), and the European Return Fund of € 676 million (2008–13)<sup>111</sup>. The last one was aimed to improve return management as well as to encourage the development of cooperation between EU countries and countries of return. In 2014, the existing funds were merged into the Asylum, Migration and Integration Fund (AMIF)<sup>112</sup> what has eased the administration. The AMIF is set up for the period 2014–20 with a total of € 3,137 billion for the seven years. The fund’s objectives are broad – strengthening and developing CEAS by efficiently and uniformly applied EU asylum legislation, supporting legal migration to EU states in line with the labour market needs and promoting the effective integration of non-EU nationals, enhancing fair and effective return strategies, which contribute to combating irregular migration, with an emphasis on sustainability and effectiveness of the return process, and establishing solidarity among member states. Vandystadt presents the AMIF creation as the victory of the EP over the Council leaning towards lowering of the resources.<sup>113</sup> Minimum 20 % of the annually received financial support should be spent on migration measures, such as integration of refugees. States are also obliged to involve international organisations and NGOs in determining how EU funds will be

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<sup>109</sup>*Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’, OJL 144/22, June 6<sup>th</sup> 2007, <https://goo.gl/xsrrPn> (accessed 16.01.2016).*

<sup>110</sup>*Council Decision of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ (2007/435/EC), OJ 168/18, June 28, 2007, <https://goo.gl/eSL1IS> (accessed 16.01. 2016).*

<sup>111</sup>*Decision No 575/2007/EC of the European Parliament and of the Council of May 23, 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’, OJ L 144/45, June 6, 2007, <https://goo.gl/NCzVpJ> (accessed 16.01.2016).*

<sup>112</sup>*Regulation (EU) No 516/2014 of the European Parliament and of the Council of April 16, 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, OJ L 150/168, May 20, 2014, <https://goo.gl/LMT5JX> (accessed 20.01.2016).*

<sup>113</sup>Nathalie Vandystadt, “Asylum fund potentially more beneficial to migrants,” *Politiques Françaises et Européennes*, <https://goo.gl/zPiL38> (accessed 17.01.2016).

spent. Although the AMIF supports inter-European relocations of refugees with up to € 6,000 per person,<sup>114</sup> the EP failed to get a legal basis for the principle of solidarity written into the financial regulation.

### **2.2.3. The intra-EU dimension: Responsibility transfer to third states**

In respect to the above outlined inter-EU responsibility-sharing, the EU is also taking responsibility for refugees in other regions through the resettlement programmes and hence acting in the spirit of solidarity within a greater international community, taking over responsibility also from other states. Although the latter is true to a certain extent, the EU, accepting great amounts of ‘regular’ refugees on its border, the numbers of relocated refugees cannot be compared with those of the United States (US) or Canada. On the contrary, the EU sought legal ways how to refuse the entrance of regular refugees in Europe by assigning the responsibility for their protection to other states. By the application of the *safe third country* concept, readmission agreements or *a priori* denial of individual refugee status determination when a person comes from a state listed as a *safe country of origin* the EU significantly limited access to asylum. The European Return Fund (ERF) is beside returns of rejected asylum seekers, also aimed to assist returns of refugees into the safe third countries and returns of people into safe countries of origin. The section covers the EU ‘transfer of responsibility’ to other states in terms of *safe third country* concept application, considering its vertical implications on refugees and horizontal implications on other states, while also questioning its legality.

#### **2.2.3.1. Safe third country concept**

Dublin Convention retains the right of the ‘state responsible for the application assessment’ “to send an applicant for asylum to a third State.”<sup>115</sup> This eliminates the

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<sup>114</sup> Up to € 10,000 are foreseen for vulnerable persons or those coming from priority areas, such as Syria today (ibid.).

<sup>115</sup> Dublin III, Art. 3.

EU commitment that the asylum application should be examined by at least one member state. Soon after the Dublin system adoption, the Resolution on host third countries (1993) interpreted the controversial provision. Accordingly, it allows member states to return the applicant to a state where he has already been granted protection, where he had had an opportunity to contact country's authorities in order to seek protection, or when there is clear evidence of his admissibility to a third country.<sup>116</sup> The practice developed afterwards represents the starting point for bringing the *safe third country* concept into operation.<sup>117</sup> The concept was further developed by the Asylum Procedure Directive (2005). Its Art. 36 states that a member state "may provide that no, or no full, examination of the asylum application ... shall take place in cases where a competent authority has established ... that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country." The article does not contain any geographic limitation, except in the title where it refers to the "European safe third countries." It is on the Council to prepare a list of safe third countries, defined as countries that have ratified and observe the Refugee Convention without any geographical restrictions, have by law defined asylum procedure, and have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and

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<sup>116</sup>Reinhard Marx and Katharina Lump, "The German Constitutional Court's Decision of 14 May 1996 on the Concept of Safe Third Countries' — A Basis for Burden-Sharing in Europe?" *International Journal of Refugee Law* 8, no. 3 (1996): 10, <https://goo.gl/eQY0C6> (accessed 10.01.2016).

<sup>117</sup>The *safe third country* concept developed from the *first country of asylum* concept introduced by the Scandinavian countries in the mid-1980s. *First country of asylum* concept aimed primarily for impoundment of irregular secondary movements and became also part of Procedure Directive, allows asylum seeker to be returned to the country where he/she has first applied for the asylum. In its change form *safe third country* concept which justifies the return only on the basis that asylum seeker could have submitted application in a safe third country but did not, was for the first time introduced in Danish national law in 1986 and in 1990s rapidly became part of other state's national practices as the number of asylum seekers in Europe reached its peak. It gained support in academia with the support of influential German author Hailbronner in his article "The Concept of "Safe Country" and Expeditious Asylum Procedures: A Western European Perspective." Rosemary Byrne, Gregor Noll, and Jens Vedsted-Hansen, "Understanding Refugee Law in an Enlarged European Union" *European Journal of International Law* 15, no. 2 (2004): 360, <https://goo.gl/4SRDPU> (February 2, 2016); Susan Kneebone, "The Legal and Ethical Implications of Extra-territorial Processing of Asylum Seekers: the Safe Third Country Concept," *Paper based on the presentation on the 'Moving On: Forced Migration and Human Rights' Conference in Sydney on November 22, 2005*, 12, . <https://goo.gl/w4DFxF> (accessed 12.01.2016); Moreno-Lax, 664.

observe its provisions.<sup>118</sup> Furthermore, Art. 37 allows member states to form their own lists of safe third countries. In the countries from the lists (a) life and liberty should not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) there should be no risk of serious harm; (c) the principle of *non-refoulement* is respected; (d) the prohibition of removal, in violation of the right to freedom of torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (e) the possibility exists to request refugee status and, if asylum is granted the state assures adequate protection (art. 38).<sup>119</sup> These criteria reiterate the Refugee Convention Art. 33 on the prohibition of *refoulement*,<sup>120</sup> ECHR Art. 3 on the prohibition of torture, Convention against Torture Art. 3 prohibiting state parties to expel a person to a state in which he might be tortured, and the ICCPR Art. 7 forbidding torture and exposition to cruel, inhuman or degrading treatment or punishment. Since the creation of the EU list requires that countries on the list are party to some of those conventions, this is not the case of national lists.<sup>121</sup> Leaving the option of specified national lists denies the harmonisation of legislation on European level providing asylum seekers with no guarantee that the *safe third state* concept will be applied according to the same standard of safety, but rather only according to a common minimum and differently interpreted standards. A member state can apply the *safe third country* rule before resorting to the Dublin system and examining which is ‘the responsible’ state inside the EU or even after the state has received an asylum seeker due to its ‘responsibility’ as a state to examine the application.<sup>122</sup> Possible returns of

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<sup>118</sup>Asylum Procedure Directive, Art. 39.

<sup>119</sup>UNHCR has on several occasions opposed to safe third countries lists arguing that applications should be assessed on individual basis. UNHCR, *The application of the ‘safe third country’ notion and its impact on the management of flows and on the protection of refugees*, background paper No. 2, [Geneva], May 2001, <https://goo.gl/vsvpnR> (accessed 15.01.2016).

<sup>120</sup>“No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social “group or political opinion” (Art. 33).

<sup>121</sup>Nils Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights* (Leiden and Boston: Martinus Nijhoff Publishers, 2009), 289.

<sup>122</sup>Garlick, 607.

asylum seekers to a safe third country were denounced as “problematic” by the UNHCR.<sup>123</sup> Returns encompass elements that demand special caution. Since there are fewer safeguards its implementation is liable to misuse.

Firstly, the vertical dimension between the asylum seeker in need of international protection and the state which is supposed to grant it will be considered. The return of applicants to safe third country exposes asylum seekers to human rights violations, such as denial of the right to seek asylum, deficient procedures for deciding whether to return an applicant to the third country, absence of links between the applicant and the third country, creation of orbits and chains, denial of fair refugee status determination by third state, violations of privacy and confidentiality, and denials of human rights and human needs.<sup>124</sup> The application of the *safe third country* concept means that the asylum seeker is denied the right to seek asylum in the destination state and his choice of the destination is understood as an “abuse of the system.”<sup>125</sup> However, the international asylum law does not impose a duty on an asylum seeker to seek protection in the first state in which effective protection might be available but rather recognises a right to a limited choice of the destination state.<sup>126</sup> Accelerated procedures or sometimes even the absence of procedures for admissibility decisions<sup>127</sup> raise questions about the accuracy of

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<sup>123</sup>UNHCR, *Inter-State agreements for the re-admission of third country nationals, including asylum seekers, and for the determination of the State responsible for examining the substance of an asylum claim*, background paper No. 3, [Geneva], May 2001, <https://goo.gl/NTE3Pj> (accessed 15.01.2016).

<sup>124</sup>Legomsky, 583–88.

<sup>125</sup>Kneebone, 2.

<sup>126</sup>EXCOM Conclusion No. 15 (XXX) of 1979 on Refugees without an Asylum Country opposes the whole *safe third country* concept arguing that asylum should not be denied solely on the fact that application could have been submitted to another state, adding that intentions of the refugee regarding the country in which he/she wishes to apply for protection should be taken into account. UNHCR, *EXCOM Conclusion No. 15 (XXX) of 1979 on Refugees without an Asylum Country*. <http://www.unhcr.org/41b041534.html> (accessed 10.02.2016); Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007).

<sup>127</sup>For an example see European Court of Human Right (ECtHR), *Hirsi Jamaa And Others V. Italy* [GC], no. 27765/09, February 23, 2012, <https://goo.gl/nmxBCn> (accessed 20.02.2016).

decisions. This is even more important since the asylum seeker appeal against the decision to be transferred to a third country has no suspensive effect.<sup>128</sup> Such procedure may as a *safe third country* designate a country with deficient links to the asylum seeker, taking into consideration that a mere transit or airline stop-over does not provide sufficient ground for transferring the responsibility for status determination to another non-EU state, but rather serves as an excuse to shift the obligation.<sup>129</sup> According to the UNHCR, the fact that the asylum seeker has been in a country where he could have had applied for asylum does not provide sufficient justification to refuse the application.<sup>130</sup> EU member states' practice is not uniform; some require that the asylum seeker has resided in a third state for months; while others demand the return already on the basis of a day or two stay or even very brief stay, such as disembarkation into a transit lounge. Transfer to the third country may only be justified when there are meaningful links between the applicant and the third country, such as family, cultural ties, or legal residence. Forced transfer to the *safe third country* raises a question of possible indirect *refoulement*. If the third country does not specifically consent to readmit the asylum seeker, there is a danger of *chain refoulement* till the country of origin or *refugee orbit*. Asylum seekers end up in repeated attempts to reach back into the Western Europe by avoiding border controls what results in uncontrolled migration and unprotected asylum seekers.<sup>131</sup> Although the Dublin Regulation requires a *safe third state* to be a party to the Refugee Convention, there is no provision which would prohibit that particular *safe third*

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<sup>128</sup>Legomsky, 588. The absence of suspensive effect originates from German Constitutional Court decision in 1993 that presumption of 'safety' in third countries should not be individually rebuttable and returns can be implemented immediately, what was backed with safe third state incorporation into Constitution and creation of *normative establishment of certainty* rule regarding third safe countries. Marx and Lumpp, 426. However, the practice is contrary to the ECtHR decision that asylum seeker must benefit from a remedy with automatic suspensive effect if there exists a risk that he/she might be submitted to torture or degrading treatment. ECtHR, *Gebremedhin v. France* [GC], no. 25389/05, April 26, 2007, <https://goo.gl/Iv2DHt> (accessed 03.02.2016).

<sup>129</sup>Reinhard Marx, "Adjusting the Dublin Convention: New Approaches to Member State Responsibility for Asylum Applications" *European Journal of Migration and Law* 3, no. 1 (2001): 10, <https://goo.gl/QSFyxb> (accessed 10.01.2016).

<sup>130</sup>UNHCR, *The application of the 'safe third country' notion ...*

<sup>131</sup>Ibid.

country to return an asylum seeker to another country which is not a party to the Refugee Convention.<sup>132</sup> Even if the third country accepts an asylum seeker but does not offer him an adequate and fair determination status procedure, the situation equals *refoulement*. One of the worst violations represents a violation of asylum seeker's privacy with some third country states revealing applicant identity to his country of origin. Furthermore, Moreno-Lax argues that the *safe third states* concept is based on wrong premises and does not have the backing in the Refugee Convention.<sup>133</sup> Besides the lack of explicitly written right to choose the destination state, another generally cited provision in support of the *safe third states* concept is the provision of refugees' unlawful stay in state's territory (Art. 31).<sup>134</sup> However, this could be rebutted by reading the text according to the principle of good faith that requires the understanding of terms in their ordinary meaning in their particular context and in consideration of the object and purpose of the treaty. It can be argued that the legal wording of *direct arrival* in Art. 31 is specific, providing an exemption from penalties of a certain category of refugees who enter or are present unlawfully in the country of refuge and cannot be understood in *a contrario* meaning, that applicants who travel through transit countries may be penalised. The latter only redirects the focus to travel route instead of focusing on motives for fleeing.

The return policies of chosen destination states do not influence only asylum seekers themselves but also have implications for receiving third countries. The horizontal dimension of *safe third country* concept which arises between sending and receiving state is considered hereafter. On the European level, the concept was established in the spirit of responsibility-sharing but is commonly put into practice unilaterally and

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<sup>132</sup>It is not a surprise that many countries of Central, Eastern, and South-Eastern Europe that are considered as safe third countries in some EU member states have also adopted the concept of *safe third country* into their national legislation what made chains longer and guarantees for protection weaker (Ibid.).

<sup>133</sup>Moreno-Lax, 987–91.

<sup>134</sup>In cases of unlawfull presence, state “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ..., enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”



without a legal background. Its implementation poses a risk that economically and politically strong countries shift their responsibility by means of harmonised asylum instruments to less powerful neighbours.

The *safe third country* concept is one of the *non-admission policies* developed by the EU alongside *non-arrival policies* (common visa lists, carrier sanctions acts, pre-frontier immigration inspection). Together they create deflection policies with the aim of shifting the burden and responsibility towards third states.<sup>135</sup> EU member states responded to the increased refugee ‘burden,’ receiving 75 % of the 8 million refugees that have arrived in the industrialised states over the past two decades, by maximisation of deflection capacities.<sup>136</sup> Analysing the introduction of *safe third country* concept into German national law in 1993, Marx and Lumpp<sup>137</sup> argued that the concept opposes fair responsibility sharing and works primarily in national interest and against interests of third safe states.<sup>138</sup> They correctly predicted that the multilateral system of responsibility-sharing being slowly built on the European level at that time allowed a unilateral shift rather than an agreed sharing of the burden towards eastern and south-eastern states. This has eventually led to a domino-effect of *safe third country* principle and other increasingly restrictive measures that were later applied by the ‘safe third countries,’ too,<sup>139</sup> in a desperate

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<sup>135</sup>Byrne, “Harmonization and Burden Redistribution ...”, 341.

<sup>136</sup>Ibid., 336.

<sup>137</sup>Marx and Lumpp, 435.

<sup>138</sup>Moreno-Lax backs the argument providing the circumstances in 1990s when the fear of possible immigration from East existed combined with Yugoslavian refugees. After suspension of ‘guest-working’ agreements in 1980s humanitarian admission became the only way to seek migration in Europe. Due to the fear of abuses by economic migrants, overload by regular refugees and fear of attracting disproportionate number of applicants many countries introduced more restrictive measures, one of them being the concept of *safe third state*. Moreno-Lax, 664.

<sup>139</sup>Byrne et. al. beside national circumstances and relations between EU and peripheral states focus also on the importance of sub-regional relations, between bordering EU member states and their non-EU neighbours, and note the time consequence of *safe third state concept* introduction. For example, after Germany introduced it in 1993, Poland followed in 1997 by directly mirroring safe-third state criteria from German legislature, Hungary doing so only a year later. Byrne et al., “Understanding Refugee Law ...”, 361–2.

manner to seek solutions from becoming a victim of the ‘closed sack’ effect. By displacing the responsibility to provide international protection rather than diminishing the global numbers of asylum, the mechanism represents a pure responsibility shift in the interest of powerful actors.<sup>140</sup> One of the common receiving third states, Turkey, regularly voices its opposition to returns, emphasising unfairness and regionalization of protection while concentrating the responsibility on states geographically closer to the origin of refugees. Since conflicts emerge mostly in destabilised regions surrounded by more or less developing states, the *safe third country* concept incurs most responsibility and burden on the later thus assuring the containment of refugees close to their countries of origin.

Geddes developed a thesis about movement through the circles and away from the inner EU core, what he ascribes to the differentiated EU external strategy.<sup>141</sup> Before the Eastern enlargement in 2004 (Figure 1), the inner core consisted of Schengen states, the UK, and Ireland with well-established border control and internal security measures. Core’s main priority was an elaboration of restrictive policies and incorporation of neighbouring states into a regime of control. Neighbouring states in central, eastern and southern Europe, located in the second circle, were included in the EU restrictive policy framework either unilaterally with returns to third states or by bilateral or multilateral arrangements in the form of pre-accession agreements as their main priority at that time was the accession to the EU. The third circle with transit countries, such as Turkey, the Balkans, and some northern African states were encouraged to combat illegal migration by establishing transit checks and actively combat against criminal networks. In the outer circle are refugee-producing states, ‘targets’ of the European control regime, while the commitment to solve ‘root causes’ on the EU level was vague. Once the inner core’s restrictive measures were successfully transered to the second circle as a part of the EU accession conditions, the inner core became bigger, while new frontier member states stayed in the second

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<sup>140</sup> Moreno-Lax, 673.

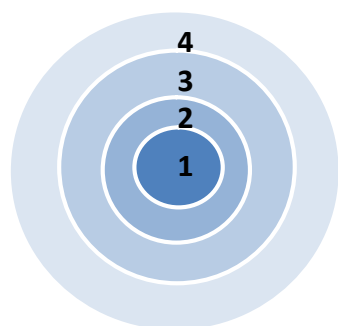
<sup>141</sup> Geddes, *Immigration and European integration ...*, 105–7.

circle, being ‘the responsible ones’ both for the border control and examination of asylum applications (Figure 2). By the application of the *safe third country* concept, applicants are sent back to the third circle of transit countries outside the EU. In the case of the Balkans, the circle of transit countries at the same time comprises a ‘buffer zone’ to which the EU transfers restrictive measures as it was the case of the circle 2 before the 2004 enlargement. Concurrently, the Balkan states still represent countries of origin. Coleman backs the argument of the ‘repeated history’ by the creation of a new ‘buffer zone’ or ‘cordon’ in the outer circle arguing that the *safe third country* is especially keen on bordering third safe countries since this render the first country “super safe.”<sup>142</sup>

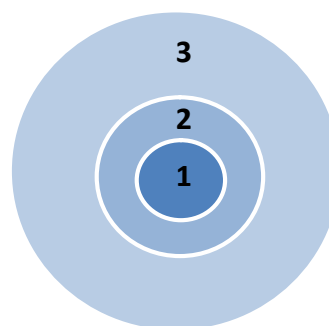
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<sup>142</sup>Coleman, 291.

Before 2004 Enlargement:



After 2004 Enlargement:



**CIRCLE 1: “Schengenland”** (plus The UK and Ireland)



**CIRCLE 1: Enlarged inner core** with free movement, compensating Schengen system for internal security

**CIRCLE 2: “Aspirants”** in central, eastern and southern Europe



**CIRCLE 2: Border EU member states**, “the responsible ones” for border control and examination of asylum applications

**CIRCLE 3: “Transit Countries”:** Turkey, African and former Soviet states



**CIRCLE 3: Buffer zone of transit states and the excluded ones** at which the restrictive measures are directed

**CIRCLE 4: “The excluded”:** China, Middle Eastern and African states

**Figure 1:** Emergent EU immigration and asylum policy.<sup>143</sup>

**Figure 2:** EU immigration and asylum policy after 2004 enlargement (author’s own display).

The *safe third country* concept establishes specific relations between groups of sending and receiving state. It should be questioned whether the receiving states are obliged to comply with the *safe third country* concept since the concept is not mentioned in the Refugee Convention to which receiving states are should be parties

<sup>143</sup>Geddes, *Immigration and European integration ...*, 106.

to, but is rather an EU principle. Vienna Convention on the Law of Treaties (VCLT) contains the notion of *independent responsibility*, according to which a particular treaty is binding only upon its parties. Thus a state entering an international treaty contracts an obligation only for and by itself.<sup>144</sup> Although the VCLT Art. 35 foresees an option that some obligations from a treaty arise also for third states, the latter is valid only when “the parties to the treaty intend the provision to be the means of establishing the obligation, and the third state expressly accepts that obligation in writing.” While written consent of third countries is for sure missing, this being enough for such an obligation to be rebutted, it should be further questioned whether the provision presents means of establishing the obligation for third states. Since the Dublin Regulation Art. 3 and the Procedures Directive Art. 35 and 38 do not clearly create an obligation for any particular third state, but rather allow the possibility for applicants to be returned to the third state if requirements for that are fulfilled in national law,<sup>145</sup> it may be concluded that the Dublin Regulation and correspondent directive do not create any obligations for third states to re-admit non-nationals. As an obligation regarding readmission of non-nationals does not exist even under the customary international law, the duty can only be invoked by explicit agreements on readmissions.

### **2.2.3.2. Readmission agreements**

Readmission agreements bound party states to readmit certain individuals on the request of one of the parties. In all cases, agreements are valid for country nationals,<sup>146</sup> while sometimes extend also to TCNs transiting the requested state on

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<sup>144</sup>Art. 26 of the *Vienna Convention on the Law of Treaties*, adopted on May 23, 1969 in Vienna, in force since January 27, 1980, <https://goo.gl/kYff1v> (accessed 28.02.2016).

<sup>145</sup>Moreno-Lax, 705–11.

<sup>146</sup>Under the international customary law each state is obliged to readmit its own nationals. The provision is incorporated also in International Covenant on Civil and Political Rights (1966/76) (“No one shall be arbitrarily deprived of the right to enter his own country”, Art. 12 (4)). The right of a state to expel non-nationals coexists with the state duty to accept the nationals expelled from other states. Gregou, 506.

the way to requesting state to which they either entered legally or remained there irregularly.<sup>147</sup> Agreements facilitate rapid and effective identification procedures and safe returns of people who do not, or no longer, fulfil conditions for entry to, presence in, or residence on territories of one of the parties.<sup>148</sup> They could be concluded between two states, generally one EU member state and one non-member. As the Amsterdam treaty conferred competences regarding all issues relating to the return of illegal migrants upon the EU, the EU too became capable of concluding readmission agreements.<sup>149</sup> Readmission agreements do not contain specific provisions and guarantees for asylum seekers and leave more space for potential abuses. Since they enable easier returns to third states most of the implemented returns are regulated in terms of readmission provisions.

Readmission agreements do not provide legal background for the rejection of protection seekers nor their expulsion. However, since applicants refused on the basis of the Qualification or Procedures Directive, fall into the category of irregular immigrants, the readmission provisions are applied to guarantee smooth transfer to the third country of transit or country of origin.<sup>150</sup> Thus the legality of rejection or inadmissibility decision in accordance with the *safe third country* concept determines the legality of a consequent readmission.<sup>151</sup> Readmission agreements

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<sup>147</sup>Legomsky, 576.

<sup>148</sup>Mariagiulia Giuffr , "Readmission Agreements and Refugee Rights: From a Critique to a Proposal," *Refugee Survey Quarterly* 32, no. 3 (2013): 81, <https://goo.gl/01t7lQ> (accessed 15.02.2016).

<sup>149</sup>Martin Schieffer, "Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations," *European Journal of Migration and Law* 5, no. 1 (2003): 343, <https://goo.gl/zALSby> (accessed 03.02. 2016).

<sup>150</sup>Silvia Morgades, "The Externalisation of the Asylum Function in the European Union," *Interdisciplinary Research Group on Immigration (GRITIM)*. Working Paper no. 4, 2010, 16, <https://goo.gl/A3Q2oI> (accessed 15.02.2016). International regime of asylum seeker protection is triggered the moment when a person expresses his/her claim for protection. Until such a claim is disapproved as a result of status determination process the person must be granted protection against expulsion. The later applied for people claiming protection either on the border or in-country. Coleman, 305; Hathaway and Neve, 158.

<sup>151</sup>Coleman, 286.

should be thus considered merely as a supportive tool for transfer of denied applicants and those whose applications are inadmissible. Agreements should always be in compliance with asylum law and refugee protection standards since the contracting parties to the readmission agreement shall not intend to affect their previous obligations under international refugee law.<sup>152</sup> To this end, some of the agreements contain a *non-affected clause* which explicitly requires parties that agreements' application shall not affect parties' other international obligations.<sup>153</sup> However, the possibility of accelerated expulsion procedures and informal border practices in cases of intensified pressure make states forgetful about their legal obligations, and readmission agreements may become detrimental for refugees. Firstly, accelerated procedure allows rapid returns and shortens the time needed for appropriate status determination. In some cases, it can prevent even the submission of application.<sup>154</sup> Secondly, although states bound themselves to refugee rights protection by accession to various international treaties, their implementation in the absence of an effective control mechanism and refugees' weakness depends mostly on state's good will. Giuffré analyses examples of Slovakia, Poland and Italy automatically returning migrants who claimed to be refugees to states with which they have concluded readmission agreements.<sup>155</sup> Wide violations of readmission

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<sup>152</sup>The latter is not always the case, as for example the EU-Iraqi Partnership and Cooperation Agreement from May 2012 supposes readmissions of respective nationals, although Iraq is not a party to Refugee Convention and did its Parliament also prohibit forced returns of rejected asylum-seekers from Europe to Iraq for security reasons in June 2012. "EU-Iraq Partnership And Cooperation Agreement," *European Parliamentary Research Service Blog*, <https://goo.gl/tta6tb> (accessed 13.02.2016).

<sup>153</sup>Giuffré, 93.

<sup>154</sup>The Readmission Agreement between Italy and Albania for example allows immediate return of TCNs and nationals of one of the contracting parties whose nationality is presumed if apprehended while illegally crossing the border of the requesting party. If they are already illegally present in the territory of one of the contracting countries, return may be implemented even in the absence of a formal reply to the readmission request within 8 days if nationality is presumed, the time limit is shortened on 7 days (Ibid., 86).

<sup>155</sup>Ibid., 87–92.

safeguards were further reported in cases of returns to Albania.<sup>156</sup> Questionable implementation of the readmission agreement is sometimes further enhanced by the provision that “their implementation shall not affect the contracting parties’ duties under other readmission or transit conveyance accords on the removal of persons.” In other words, the agreement allows contracting parties not to comply with standard readmission provisions in transfer implementation, but rather rely on other formal or informal arrangements to expel illegal migrants from their territories, as Memoranda of Understanding, exchange of letters, and *ad hoc* diplomatic or consular exchanges of notes.<sup>157</sup> Lack of subjection to public scrutiny and monitoring allow great degree of refugee protection violations.

The added value of bilateral readmission agreements in comparison to the *safe third country* concept is the consent of both contracting parties what makes return decisions effective and smooth. This might explain relatively rarely applied *safe third country* concept and often encountered difficulties in obtaining the cooperation of the readmitting country.<sup>158</sup> The objective of the party with the net inflow of irregular migrants is thus obvious and enhanced with expected strengthened border control by the other party. Other states generally accept the imbalance out of its lack of choices or offered incentives by the other party, such as good relations, visa liberalisation processes, financial and technical support or trade concessions.<sup>159</sup>

Initially, readmission agreements between EU member states and the states from the Central and Eastern Europe were concluded bilaterally, based on the Maastricht

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<sup>156</sup>Luljeta Ikonimi Caraoshi and Nikoll Ndoci, “Do EU Member States Need Readmission Agreements? Analysis of the EC-Albania Readmission Agreement,” *British Journal of Immigration, Asylum and Nationality Law* 25, no. 1 (2011): 12, <https://goo.gl/7JxcGz> (accessed 12.02.2016).

<sup>157</sup>Giuffré, 92.

<sup>158</sup>Giuffré, 86. Between September 2003 and December 2005, 11 % (55 300 people) of asylum application made in EU were examined according the Dublin Regulation and only 2.8 % returned. Low returned rates could be also ascribed to missing fingerprints in Eurodac database, failure of member states to issue travel documents or failure of applicants to cooperate. Schuster, 125.

<sup>159</sup>Legomsky, 577–8; Gregou, 507.



Treaty JHA creation. Lavenex claims that the first readmission agreements were not a sign of an “emerging pan-European system of cooperation and burden-sharing in which states cooperate on an equal basis” but rather an attempt of major Western refugee receiving countries to relieve their asylum procedures by transferring their responsibilities to other usually less wealthy states.<sup>160</sup> This confirms Geddes’ thesis of circles (see 1.2.2).<sup>161</sup> Readmission clauses are included in various agreements related to trade and cooperation. With the gained legal subjectivity by the Amsterdam Treaty, the EU got the authority to conclude readmission agreements.<sup>162</sup> Since then, agreements have become a backbone of the EU immigration and asylum policy. Their effectiveness was confirmed by the Lisbon Treaty, which explicitly gives the EU authority to stipulate agreements with third states for the readmission of third-country nationals.<sup>163</sup> So far, the EU has concluded 17 readmission agreements, while the EC currently has 5 more negotiation mandates, namely with Morocco, China, Algeria, Belarus, and Tunisia.<sup>164</sup>

Readmission agreements have been concluded with all candidate countries for the EU membership – Macedonia, Serbia, Albania, Montenegro, and Turkey as well as with Bosnia and Herzegovina (BiH) which has a status of the potential candidate being promised the prospect of joining. Another potential candidate, Kosovo, is the only country in the area without a readmission agreement with the EU. The first mandate for negotiation was given in 2002 for the Albanian and Turkish readmission agreements. The former was the first one concluded in 2006. The Readmission Agreement with Turkey was concluded the last one in 2014. Mandates

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<sup>160</sup>In Morgades, 16.

<sup>161</sup>The first readmission agreement was signed between Poland and Germany in 1991. Jileva, 84.

<sup>162</sup>Moreover, European Council in Seville in 2002 concluded that any future cooperation, association or other agreement between EU and third countries should include a clause “on joint management of migration flows and on compulsory readmission in the event of illegal migration.” Morgades, 17.

<sup>163</sup>Giuffré, 82.

<sup>164</sup>“Return & readmission,” *EC*, <https://goo.gl/A9Ry7k> (accessed 15.02.2016).

for other readmission agreements negotiations were given in 2006 and were all concluded in a period of two years. The period of agreements negotiations more or less coincided with the 2003 EU-Western Balkan Summit in Thessaloniki Summit, just a doorstep before the EU great enlargement in 2004, which has given all at that time existing Balkan states the status of a potential candidate.<sup>165</sup> This confirms that the EU was already thinking a step ahead by creating a new ‘buffer zone’ for containment of irregular immigrants. Prospect of the EU membership was as an incentive for concessions such as the conclusion of readmission agreements. Agreements incur more ‘burden’ on the peripheral states ending up to become net receivers of migrants while on the other side incorporation of *acquis* into national legislations of candidate countries serves as an ‘excuse’ for more restrictive measures and lower permeation of irregular migrants and refugees into the ‘fortress Europe’. Phuong ascribes the EU and above all German interest and assistance to candidate states in asylum matters firstly to the adoption of deterrence measures that would not render new states too attractive to asylum seekers and secondly to assure the same level of refugee protection as in the EU. This would eventually provide easier justification for asylum applicants’ returns according to the Dublin system.<sup>166</sup> The following section analyses which concrete requirements in the field of asylum a candidate state shall fulfil to be accepted into the EU.

### **2.2.3.3. Asylum as a criterion for the EU accession**

The initial requirements for the accession of new member states did not include any reference to asylum policies simply because the EU enlargements before 2004 were done on an *ad hoc* basis and without any structural approach. Moreover, common asylum policies only gained ground in the beginning of the 1990s. Copenhagen

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<sup>165</sup>EC, *EU-Western Balkans Summit Thessaloniki*, press release - presse 163, June 21, 2003, [http://europa.eu/rapid/press-release\\_PRES-03-163\\_en.htm](http://europa.eu/rapid/press-release_PRES-03-163_en.htm) (accessed 02.01. 2016).

<sup>166</sup>Chatrine Phuong, “Enlarging ‘Fortress Europe’: EU Accession, Asylum, and Immigration in Candidate Countries,” *The International and Comparative Law Quarterly* 52, no. 3 (2003): 649–50, <https://goo.gl/lwyS2R> (accessed 10.01.2016).

accession criteria from 1993 focused on the stability of democracy-guaranteeing institutions, the rule of law, human rights, protection of minorities, and last the functioning market economy. Two years later, complete EU *acquis* transposition into national legislations was added among the requirements.<sup>167</sup> Since then, the criteria for accession have been rather progressive and piecemeal. Although the eastward enlargement requirements were primarily concentrated on closing the existing economic gap, the need for the inclusion of JHA issues became imminent following the crisis in the Balkans. This only became possible by the inclusion of asylum and immigration matters among communitarian issues with the Amsterdam Treaty in 1997. Hence the EU horizontal policy export dates back only to the Eastern enlargement where the asylum field contained in Chapter 24 on JHA became part of the accession conditions.<sup>168</sup>

At the European Council in Essen in 1994, the JHA issues including asylum and migration matters were put on the agenda for dialogue with applicant countries.<sup>169</sup> However, the explicit criteria for accession states in the field of asylum were not stipulated before the 1997 EC Communication.<sup>170</sup> It demanded the accession states (a) to adopt the Refugee Convention and its necessary implementing machinery, (b) to adopt the Dublin Convention, and (c) to adopt related measures in the EU *acquis* to approximate the asylum measures. The EC further underlined the importance of efficient border management as the burden of controlling the frontiers of the enlarged EU would fall on the new member states. Through the conclusion of the

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<sup>167</sup>Liv Feijen, “Asylum Conditionality: Development of Asylum Systems in the Western Balkans in the Context of the European Union’s External Dimension,” *European Academy Law Forum Publication*, no. 8 (2007): 500–2, <https://goo.gl/Bvsrxd> (accessed 10.03.2016).

<sup>168</sup>Florian Trauner, “Migration policy: an ambiguous EU role in specifying and spreading international refugee protection norms,” in *EU Policies in a Global Perspective: Shaping or taking international regimes?*, ed. Gerda Falkner and Patrick Müller (London: Routledge, 2014), 161.

<sup>169</sup>Johannes van der Klaauw, “European Asylum Policy and the Global Protection Regime: Challenges for UNHCR,” in *Migration and the Externalities of European Integration*, ed. Sandra Lavenex and Emek M. Uçarer (Lanham: Lexington Books, 2002), 38.

<sup>170</sup>EC, *Agenda 2000: For a stronger and wider Europe*, Bulletin of the European Union, Supplement 5/97, 1997, <https://goo.gl/xv7hM0> (accessed 10.03.2016).

Accession Partnerships with candidate states, priorities and intermediate objectives were set for each state alongside financial assistance targeted to facilitate their realisation.<sup>171</sup> The EU offered support in *acquis* adaptation and provided equipment, software and financial support, consultations for capacity- and institution-building and contributed to the strengthening of the asylum agencies' capacities and improvement of reception centres.<sup>172</sup> Until the adoption of the 2005 Hague programme and the 2007 Green Paper on the future of the CEAS, the EU migration and asylum policies transposition main principle was the establishment of asylum systems compatible with the Refugee Convention. However, the Green Paper inclusion of burden-sharing and solidarity principle put the expected contributions to effective and efficient CEAS over the compliance with the Refugee Convention.<sup>173</sup>

Byrne et al. expose the conflicting situation of states aspiring the membership.<sup>174</sup> Since the migration and asylum represent one of the state primary sovereignty elements, aspiring states should constrain their sovereignty in dependency on Western neighbours. Although the same dilemma appeared already with the harmonisation of asylum matters among the EU member states, unlike them, the aspiring states do not have any influence over the content of asylum *acquis*. Furthermore, the situation was even more controversial with the 2004 accessing new member states which had to adopt various upon member states non-binding

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<sup>171</sup>Rosemary Byrne et al., "Western European Asylum Policies for Export: The Transfer of Protection and Deflection Formulas to Central Europe and the Baltics," in *New Asylum Countries?: Migration Control and Refugee Protection in Enlarged Europe*, ed. Rosemary Byrne et al. (The Hague, London and New York: Kluwer Law International, 2002), 9.

<sup>172</sup>Trauner, 161. Eastern States were included into PHARE (*Pologne, Hongrie Assistance à Reconstruction Economique*) programme consisting of five round of table bringing together member states, candidates, EC and UNHCR. It is not a surprise that a programme was coordinated by the German Federal Office for the Recognition for Foreign Refugees. Stephan Anagnost, "Challenges Facing Asylum System and Asylum Policy Development in Europe: Preliminary Lessons learned from the Central European and Baltic States (CEBS)," *International Journal of Refugee Law* 12, no. 3 (2000): 381, <https://goo.gl/2Y4ek9> (accessed 11.03.2016).

<sup>173</sup>Ridvan Peshkopia, *Conditioning democratization: institutional reforms and EU membership conditionality in Albania and Macedonia* (London and New York: Anthem Press, 2014), 153.

<sup>174</sup>Byrne et al., "Understanding Refugee Law ...", 369.

instruments<sup>175</sup> and thus harmonising something that has not been harmonised and uniform on the European level yet. Candidate states are bound to adopt complete *acquis* in the JHA matters without any opt-out options that exist for member states and have to incorporate also the Schengen *acquis* although their accession to the EU does not automatically mean also the accession to the Schengen area.<sup>176</sup> Although the UNHCR recognized beneficial role of the EU as leverage in the asylum system building it also expressed dissatisfaction with the downgrading effect of changes that occurred due to the adopted *acquis* in accession state, such as accelerated asylum procedures, measures that provide restrictions to asylum access, and increased role of border guards in decision-taking in asylum matters. The latter is mostly the consequence of objectives variation between the EU and UNHCR – while the first primarily peruses the implementation of the Schengen *acquis* and concentrates on secure border controls, the UNHCR gives priority to the asylum system development in line with the Refugee Convention.<sup>177</sup>

#### **2.2.3.3.1. Balkan states asylum adjustments**

The EU played a role in the Balkan asylum systems creation already before all the countries of the Western Balkans were recognised as potential candidates for the EU membership at the Feira European Council in 2000. Initially, the EU participation in the asylum building processes was based on the Agreement of stability and peace enforcement in the region. In 1999 initiated Stabilisation and Association Process (SAP) that foresaw cooperation in the JHA matters was launched to assist countries in the region to meet criteria set by individual Stabilisation and Association

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<sup>175</sup>Chatrine Phuong, “Controlling Asylum Migration to the Enlarged EU: The Impact of EU Accession on Asylum and Immigration Policies in central and Eastern Europe,” in *Poverty, International Migration and Asylum*, ed. George J. Borjas and Jeff Crisp (London: Palgrave Macmillan, 2005), 394.

<sup>176</sup>Sandra Lavenex, *The Europeanisation of Refugee Policies: Between human rights and internal security* (Hampshire: Ashgate, 2001), 135–6.

<sup>177</sup>van der Klaauw, 40.

Agreements (SAA), which were later included into pre-accession processes.<sup>178</sup> In the pre-accession strategies for the Western Balkans, stabilisation effect was substituted with concerns for reinforcement of the EU external borders what came in line with the Balkans transformation from the region of origin of asylum seekers to a region of transit. Border management and measures against organised criminal, besides transferred knowledge, standards and practices, represent key elements of the EU financial assistance to Balkan states.<sup>179</sup>

The UNHCR assessment of asylum systems of the countries in the region, except Serbia, Montenegro and Kosovo, before the initiation of the EU assistance programmes in the region, was positive. It noted that the asylum systems had met international standards in most of the fields, encompassing principle of *non-refoulement*, assignment of authorities for first and second instances, contained procedure descriptions and necessary safeguards. The only shortcomings were noted regarding the reception rights and integration, what was at that time irrelevant with respect to absent asylum applicants.<sup>180</sup> Since the Balkans was a region of refugee origin with comprehensive economic and political problems and at the same time also a region of transit due to its geographical position, states were not eager to develop more functioning asylum system that would deter transiting refugees and put more burden on weak national economies and social welfares. In contrary, they rather preferred to turn a blind-eye on the enduring problem. On the other side, Peshkopia uses relatively low numbers of asylum applicants and states' eagerness to become EU members to explain more or less smooth and easy process of the EU

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<sup>178</sup>Each SAA has a chapter on JHA with sub-chapters on asylum and migration. Based on conditionality, i.e. 'carrot and stick approach', by which the extent to which a particular state fulfil the conditions set by the EU determines the level of future cooperation and assistance, EC is supposed to issue yearly progress reports and opinion with an update on the development of asylum system. Feijen, "Asylum Conditionality ...", 500–2.

<sup>179</sup>Liv Feijen, "Facing the Asylum-Enlargement Nexus: the Establishment of Asylum Systems in the Western Balkans," *International Journal of Refugee Law* 20, no. 3 (2008): 416–8, <https://goo.gl/FHtPSQ> (accessed 13.02.2016).

<sup>180</sup>*Ibid.*, 420.

asylum legislation transposition.<sup>181</sup> No need for asylum institutions in the Balkan countries made governments reluctant to transfer money and energy from acute political and economic problems into asylum matters. The way was open for the EU to form its demands, including the readmission of illegal migrants.<sup>182</sup> Content-wise, harmonisation priority was given to the Procedures Directive. Other novelties included the introduction of subsidiary protection, the content of granted protection, and manifestly unfounded claims on grounds of the *safe country of origin*.<sup>183</sup>

Taking in consideration relatively different starting positions of the Balkan states, the EU has developed two different approaches. The first one was dedicated to countries with short- and medium-term accession prospect – Slovenia, Bulgaria, and Romania (the first one accessed the EU in 2004, and the latter two in 2007). The second approach was dedicated to the remaining Western Balkan countries – Albania, BiH, Croatia, Macedonia, Serbia, and Montenegro. The Stability Pact in Southern Europe, the EU Community Assistance for Reconstruction, Development, and Stabilization Programme (CARDS) were designed for the most problematic area of the Balkans in 2002–6 period and in 2007. They were followed by two Instruments for Pre-Accession Assistance (IPA) in 2007–13 and 2014–20 which treat candidate countries and potential candidate countries equally in term of their obligations to transpose the *acquis*.<sup>184</sup> PHARE<sup>185</sup> and OBNOVA<sup>186</sup> programmes were implemented in the first group of countries.<sup>187</sup>

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<sup>181</sup>Ridvan Peshkopia, “Asylum Capacity Building in the Balkans: A Rational Answer to Leaders’ Concerns,” *Albanian Journal of Politics* 1, no. 1 (2005): 27, <https://goo.gl/IiJ60c> (accessed 22.03.2016); Peshkopia, *Conditioning democratization ...*, 154.

<sup>182</sup>The exception was Slovenia, which had as a response to higher numbers of asylum seekers developed its own solutions and asylum regime and had consequently made stronger resistance to transposition of EU *acquis* than other Balkan countries. Peshkopia, “Asylum Capacity Building in the Balkans ...”, 44.

<sup>183</sup>Feijen, “Facing the Asylum-Enlargement Nexus ...”, 420.

<sup>184</sup>Feijen, “Asylum Conditionality ...”, 501.

<sup>185</sup>Initially both the Balkan and eastern candidate states were included into PHARE programmes, BiH, Albania, and Macedonia being transferred into the CARDS programme (€ 4.36 billion) once it was initiated. The total budget for Bulgaria, Slovenia and Romania was € 13.550

#### 2.2.4. 'Other' extraterritorial measures: Ideas and reality

The asylum *acquis* transfer to (potential) candidate countries, which eases the implementation of the *safe third country* concept and is supported by readmissions is however not the only mechanism for deterrence of asylum applicants in a 'buffer zone' outside the 'fortress Europe'. Various ideas on concrete extraterritorial refugee processing were debated within the EU. The core of the 'external', 'extraterritorial', 'offshore', 'transit', or 'regional' processing is an examination of a protection claim before arrival in an asylum country. This could be done either by the establishment of processing zones or areas close to the refugee producing regions where people could flee and find 'safe havens' until the conflict ceases, or by the creation of transit processing centres on the other side of the EU border from where the eligible refugees would be resettled into the EU according to set burden-sharing criteria.<sup>188</sup> As a major positive consequence of extraterritorial procession supporters mostly cite the removal of long and dangerous way asylum seekers have to embark to reach their destinations. This saves lives and cuts profits of illegal smugglers. Offering protection closer to the region, extraterritorial processing might assist returns to their homelands. For the EU, extraterritorial centres might contribute to more efficient use of resources and harmonisation of status determination processes. Despite many

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million, with EU financing only € 6 million. Ridvan Peshkopia, "Asylum in the Balkans: European Union and United Nations High Commissioner for Refugees Assistance to Balkan Countries for Establishing Asylum Systems," *Southeast European and Black Sea Studies* 5, no. 2 (2005): 222, <https://goo.gl/N5J5vR> (accessed 22.03.2016).

<sup>186</sup>OBNOVA programme was mostly dedicated for reconstruction and rehabilitation of countries in the former Yugoslavia. It aimed at the return of refugees to their countries of origin – BiH, the Federal Republic of Yugoslavia and latter also Kosovo (ibid.).

<sup>187</sup>Ibid., 221.

<sup>188</sup>Maarten den Heijer, *Europe and Extraterritorial Asylum* (Oxford: Hart publishing Ltd., 2012), 3–4. The very first idea was Danish sponsored UN General Assembly draft resolution in 1986 to create UN processing centers near the areas of conflict and not near the EU border. As the centers would coordinate the resettlement of refugees among all states, the proposal aimed primarily at equal responsibility distribution in the international community, and not shifting the later away from the EU. Carl Levy, "Refugees, Europe, Camps/State of Exception: "Into the Zone", the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-Seekers (Theories and Practice)," *Refugee Survey Quarterly* 29, no. 1 (2010): 109, <https://goo.gl/faAcZJ> (accessed 25.03.2016).



initiatives, none of the concrete external processing proposals has been implemented so far. The following sections firstly provide an overview of the European initiatives for extraterritorial processing combined with controversies and oppositions that they have raised. In the end, the attention is given to The Hague Programme as a basis for the potential development of extraterritorial processing.

Already the creation of ‘safe areas’ in the Yugoslav war in the early 1990s bore some elements of extraterritorial processing. If successful it had a potential to develop further. However, their tragic end alongside other controversies led to the relatively slow development of other extraterritorial measures in Europe.<sup>189</sup> The 1998 Austrian Presidency Strategy paper on immigration and asylum policy contained further elements of extraterritorial measures in the form of *non-entre policies*. Other more radical proposals faced opposition in their early stages. The establishment of regional processing centres was for the first time proposed in the mid-1990s by the Dutch delegation at the Europe’s intergovernmental consultations on refugees and exiles. However, the idea seemed infeasible due to legal and practical concerns.<sup>190</sup> The most resounding proposal which gave the momentum to further zealous discussions on extraterritorial processing was the 2003 British Government Vision Paper.<sup>191</sup> The UK proposed creation of ‘regional protection areas’ near regions of conflict and ‘transit processing centres’ managed by the IOM just outside Europe, where the asylum applicants that have reached Europe would be returned to and detained until their applications are processed. The applicants in need of protection would be later resettled in Europe, while the rejected ones would be denied the entrance and deported back to their safe countries of origin. The process would be applied to screen applicants from the controversial ‘white list’ of

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<sup>189</sup>Ibid.

<sup>190</sup>Jane McAdam, “Extraterritorial processing in Europe: Is ‘regional protection’ the answer, and if not, what is?” *Andrew&Renata Kaldor Centre for International Refugee Law*, Policy Brief 1, 2015, 4, <https://goo.gl/n7BZRM> (accessed 22.03.2016).

<sup>191</sup>The proposal was first expressed in UK Prime Minister Blair's letter to Greek Prime Minister Simitis, titled *New International Approached to Asylum Processing and Protection*, dated March 10<sup>th</sup> 2003. Morgades, 26.

states that are suspected of having ‘unfounded claims’.<sup>192</sup> The idea supported containment strategy by shifting to discretionary resettlement process. In leaked documents, possible venues’ suggestions included Tanzania, Albania, Ukraine and Croatia. Unsurprisingly, the idea was supported by Denmark and the Netherlands, as well as the majority of southern European receiving states, such as Italy and Spain. On the other side, Sweden, France, and initially also Germany, objected the initiative on the grounds of the dubious effectiveness of regional protection. The main question was which country would be responsible for the protection and under which legal arrangement and how refugees would be prioritised for further resettlement.<sup>193</sup> At that time, German Interior Minister Schily rejected the proposal as an ineffective form of *non-entre policy* that only reduces the distance asylum seekers would have to travel to have their claim heard by the EU.<sup>194</sup>

Shortly after the Vision Paper, the UNHCR issued the Convention Plus initiative. The initiative supported separate proceeding of groups that are thought of misusing the system (applicants from countries that produce hardly any refugees). They would be sent to reception centres within the EU, where their claims would be rapidly examined by joint EU teams. The initiative was on many occasions, especially by the British media and representatives, wrongly interpreted as supporting the British proposal. Although the key principles are identical, the legal grounds differentiate. British proposal is based on the presumption that the Refugee Convention obliges states to provide protection, stressing no obligation that the claims should be processed in the country of application. On the other side, the UNHCR confirms the latter but argues that the responsibility transfer requires certain circumstances. In other words, asylum-seekers can be transferred within the EU since it has common

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<sup>192</sup>Applicants from suspected countries are already being detained and fast-tracked, for example, in the UK’s Oakington Reception Centre. Alexander Betts, “The International Relations of the “New” Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR,” *Canada’s Journal on Refugees* 22, no. 1, (2004): 59, <https://goo.gl/IDRHUp> (accessed 23.03.2016).

<sup>193</sup>Garlick, 616–17.

<sup>194</sup>Levy, “Refugees, Europe, Camps/State of Exception ...”, 111.

directives on human rights that ensure checks and balances and only transfers unilateral responsibility to a system of common responsibility.<sup>195</sup>

The EC initially distanced itself from the British proposal and took a firm position that any process of external processing should be complementary to the processing of applicants arriving at the EU territory.<sup>196</sup> Based on the proposal, the EC requested the European Council to further explore the British initiative. The 2003 EC Communication “Towards more accessible, equitable and managed asylum systems”<sup>197</sup> gave priority to orderly and managed arrival of refugees and persons in need of international protection from their region of origin; development of burden- and responsibility-sharing within the EU as well as with regions of origin; and the development of efficient and enforceable asylum decision-making and return procedures while at the same time ensuring full implementation of the Refugee Convention. The call, this time of the European Council to the EC, for the exploration of all parameters to ensure more “orderly and managed” entry in the EU of asylum seekers and exploration of further possibilities of protection capacity enhancement in the region of origins was again repeated at the Thessaloniki European Council.<sup>198</sup> As a response, the EC issued a Communication in 2004 in which it did not foresee any steps towards external processing of asylum applicants arriving at the borders of the EU. It rather reiterates the need for efficient resettlement scheme and called for a funding of protection capacities of the countries in the regions of conflict and transit what would, in theory, caused fewer people to move from third host countries further to Europe. It is important to add that the

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<sup>195</sup> Betts, 60.

<sup>196</sup>Kris Pollet, “A Common European Asylum System under Construction: Remaining Gaps, Challenges and Next Steps,” in *Reforming the Common European Asylum System: The New European Refugee Law*, ed. Vincent Chetail et al. (Leiden: Koninklijke Brill NV, 2016), 92.

<sup>197</sup>EC, *Communication from the European Commission to the Council and the European Parliament: “Towards more accessible, equitable and managed asylum systems”*, COM 315 final, June 3, 2003, <https://goo.gl/YJX7ip> (accessed 28.03.2016).

<sup>198</sup>Council of the European Union, *Thessaloniki European Council 19 and 20 June 2003 Presidency Conclusions*, 11638/03 POLGEN 55, 2003, <https://goo.gl/tqJiCN> (accessed 20.03.2016).

Communication warned that new measures adopted to facilitate orderly entries shall not be a substitute, but rather a complement, of the guaranteed international protection.<sup>199</sup> The Communication was accepted with the approval by the majority of member states. German Interior Minister Schily went even further, proposing the creation of “safe zones” or “camps” in North Africa where refugees would be identified and resettled to Europe, while illegal migrants would be delivered information on possible legal migration to Europe.<sup>200</sup> The idea was later elaborated by Austrian Interior Minister who would establish such facilities at the European Eastern border, namely in the Baltic region, Slovakia, and Ukraine.<sup>201</sup>

Ideas on extraterritorial processing progress slowly as their legality is dubious, while at the same time their realisation might raise political and practical problems and moral dilemmas. For example, numerous elements of the British proposal have been criticised by human rights NGOs, international organisations, and academics. Firstly, both the Recast Asylum Procedures Directive and Recast Reception Conditions Directive explicitly exclude requests submitted to representations of member states.<sup>202</sup> Secondly, extraterritorial processing does not eliminate the legal responsibility of the destination state under norms prohibiting *refoulement* and norms protecting human rights on one side, and it does also not exclude the responsibility of the state hosting extraterritorial facilities.<sup>203</sup> Hence, a transfer of a refugee seeker cannot be implemented before it is clear that a state where facilities

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<sup>199</sup>Garlick, 618.

<sup>200</sup>Despite opposition Schily’s idea survived and emerged in a written statement not earlier than at the September 2005 informal meeting of EU JHA ministers. It concentrated on the need of intercepting measures against migrants in the boats on the way to EU in the international waters, before entering EU territorial waters, since it was argued that Refugee Convention has no application in the high seas. Although the document as a possible states for hosting “reception facilities” notes parties of Refugee Convention, it does not take into account that North African states have not accede to the later. *Ibid.*, 620–1.

<sup>201</sup>Levy, “Refugees, Europe, Camps/State of Exception ...”, 111.

<sup>202</sup>Pollet, 93. Art. 3(2) of the Recast Asylum Procedures Directive and Art. 3 (2) of the Recast Reception Conditions Directive.

<sup>203</sup>Noll, “Why the EU gets in the way of refugee solidarity.”

are located in a safe state for a particular asylum seeker and precautions steps taken to prevent the detention of applicants in unacceptable conditions. The Refugee Convention explicitly obliges receiving states to ensure effective protection or at least to afford access to fair determination procedure. The latter is confirmed in the CFREU Art. 18 noting that “the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention”. However, nothing in the CFREU suggests that the right to asylum refers to asylum only within the EU. McAdam further warns that a transfer to such facilities might not be easily legally based if it is not proven that the asylum seeker has passed the country of the facility on the way to Europe.<sup>204</sup> Another major question was which law, the European or the national law of the host country, would be enforced upon the facility, the latter to a large extent determining the protection criteria. In political terms, firstly, the needed resettlement scheme among the EU member states has never been successfully formed so far and secondly, it is difficult to find a country that would accept the hosting of processing facilities as the latter is likely to harm state’s reputation unless the EU offers great concession deals. Even if this is the case, the arrangement could be morally disputable since it only deepens the gap between the wealthy group of desired destination states and periphery by leaving the great bulk of the burden to the latter. By paying more, less protection is granted, since member states finance complete functioning of processing zones outside the EU and as receive fewer asylum seekers.

The EU only approached possible external treatment of application seekers in the 2004 Hague programme. Under the domain of *external dimension of asylum and migration* it initially foresaw careful assessment of the area. Based on the programme, the EU should aim at

assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing

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<sup>204</sup>McAdam, 8.

better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return.<sup>205</sup>

The emphasis was put on the cooperation with third countries and countries of origin to guarantee international protection at the earliest stage possible. It expressed the need for further elaboration on possible joint processing inside and outside the EU territory but did not openly mention processing camps or transit zones. However, the vague promise to investigate extraterritorial processing was weakened by a clause providing for “careful assessment of the legality of any potential processing scheme.”<sup>206</sup> By the programme, the EU developed *Regional Protection Programmes* (RPPs) with extensive financial support for third countries and endorsed more comprehensive *Global Approach on Migration* (GAM) in 2006.<sup>207</sup> RPPs exist of two main components, the capacity building and strengthening activities funded by the EU in chosen regions and a resettlement programme for selected refugees. Two pilot RPPs were launched in 2005 and prolonged in 2010 in newly independent Eastern European states considered as a major transit route to Europe (Belarus, Moldova, and Ukraine) and in the African Great Lakes Region (especially Tanzania) considered as a region of origin.<sup>208</sup> Two more regions were included into the RPP afterwards, the Horn of Africa (including Kenya, Yemen and Djibouti) and the eastern North Africa (Egypt, Libya and Tunisia).<sup>209</sup> The last RPP was initiated in 2013 in the Middle East, aimed to support Jordan, Lebanon and Iraq to develop sustainable capacities to respond to the refugee crisis. While it will focus on

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<sup>205</sup>Council of the European Union, *The Hague Programme: strengthening freedom, security and justice in the European Union*, 16054/04, JAI 559, December 13, 2004, <https://goo.gl/GMCR2s> (accessed 23.03.2016).

<sup>206</sup>Levy, “Refugees, Europe, Camps/State of Exception ...”, 111.

<sup>207</sup>Morgades, 21.

<sup>208</sup>EC, *Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes*. COM (2005), 388final, September 9, 2005, <https://goo.gl/m1ksnU> (accessed 12.03.2016).

<sup>209</sup>“Regional Protection Programmes,” *European Resettlement Network*, <https://goo.gl/T1BKJ8>. (accessed 22.03.2016).

promoting local integration, it is also expected to have a resettlement component.<sup>210</sup> The first two pilot RPPs were evaluated as overall successful. They enhanced cooperation between the EU and third countries and exposed the need for more coordinated fundraising within the EU as well as more commitment to resettlement based on voluntary contributions.<sup>211</sup> The second component of the Hague programme, GAM from 2006, was more broadly designed. It addressed migration issues in their roots and indirectly, by stressing the importance of partnerships with third countries to create new livelihood opportunities, eradicate poverty, promote economic growth, good governance, and human rights. In the asylum matters, it promotes protection of refugees, enhances reception conditions, promotes readmissions and includes co-development projects in capacity building that would enable more effective ways of migration control, and reintegration of returnees.<sup>212</sup>

However, the cautiousness of the EU on extraterritorial processing combined with the European normative power and declarative liberal orientation did not prevent intergovernmental cooperation in migration control. Particular member states concluded partnerships with neighbouring states with the aim of stopping departures of asylum seekers from their regions of origin or their containment before reaching the EU. There were two multilateral initiatives securing border controls and fighting illegal migrations. Upon the German initiative, Budapest Group on the East was launched in 1993 for Eastern Europe and “5+5 Dialogue” in 2001 for the South. The first one provides a forum for the cooperation of Eastern European countries after the enlargement focusing primarily on Russia, Ukraine, and Moldova, including other Commonwealth of Independent States (CIS) countries. The “5+5 Dialogue”, consisting of cooperation between Algeria, France, Italy, Libya, Malta, Mauritania,

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<sup>210</sup>EC, *New EU regional development and protection programme for refugees and host communities in Lebanon, Jordan and Iraq*, press release, December 16, 2013, <https://goo.gl/qPhPP7> (accessed 23.03.2016).

<sup>211</sup>EC, *Evaluation of pilot Regional Protection Programmes*, DG Justice, Freedom and Security, 2009, 133–5, <https://goo.gl/bhDo2a> (accessed 13.03.2016).

<sup>212</sup>Morgades, 23.

Morocco, Portugal, Spain, and Tunisia under the IOM supervision, is far more comprehensive than Budapest group since countries actively participate with their own initiatives.<sup>213</sup> To prevent potential asylum seekers from emigration, bilateral partnerships were concluded between Italy and Libya<sup>214</sup> and Spain and Morocco, Senegal, Mauretania, and Cape Verde,<sup>215</sup> as well as by France, Germany, Tunisia and Algeria. By 2010, more than twenty secret detention camps were detected in Libya, three of them sponsored by Italy. Not being a party to the Refugee Convention and none of the international asylum and human rights treaties and with only symbolic presence of the IOM, Libya cannot assure international protection for asylum seekers according to international standards. Series of illicit detention camps were detected in Morocco and other frontier countries. Since they are under the jurisdiction of host countries, their certain numbers and locations are difficult to detect, but their relationship with the EU member states cannot be denied.<sup>216</sup> Despite the northern African states' imbalanced position *vis a vis* northern Mediterranean forces them to cooperate in border management processes, they most of the time willingly participate in exchange for political concessions, such as legal movements of their own nationals into particular EU member states.<sup>217</sup> Levy explains the bilateral approach to migration management with the division of interests between the EU and its member states.<sup>218</sup> On one side, the supranational institutions advance human rights and link migration to development. On the other side, member states expose migration linkage to security issues and push forward for greater migration

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<sup>213</sup>Lavenex, 339–40.

<sup>214</sup>In the 2009 agreement, Italy paid compensation for past colonial war crimes to Libya in exchange for joint interventions pushing back boat people in the Mediterranean. Levy, “Refugees, Europe, Camps/State of Exception ...”, 113.

<sup>215</sup>McAdam, 6.

<sup>216</sup>Levy, “Refugees, Europe, Camps/State of Exception ...”, 113; Morgades, 28.

<sup>217</sup>Libya has even exaggerated reporting the migrant flow across the Mediterranean and thus increasing its bargain power (Ibid.).

<sup>218</sup>Levy, “Refugees, Europe, Camps/State of Exception ...”, 113.



control with the enhanced Integration Border Control, Frontex, Rapid Border Intervention Team (RABITs), and the dissemination of readmission agreements.

Despite controversies and unsolved questions regarding the external asylum application processing, the proposals for such models on the European level resurrected with the 2015 ‘migration crisis’. Many member states’ representatives made statements supporting the establishment of centres in third countries. For example, German Interior Minister de Maizière in November 2014 suggested the establishment of “welcome and departure centres” in North Africa, especially mentioning Egypt.<sup>219</sup> Besides, Italian Presidency in the preparation of the October 2014 JHA Council made a document proposing the establishment of transit centres in transit countries managed jointly by the UNHCR and IOM. Those centres shall contribute to new RPPs, bring alongside a credible number of resettlement places, though still on the voluntary basis, and strengthen joint EU action.<sup>220</sup>

### 2.3. Conclusion

The CEAS creation was initiated as a securitization of the European common internal market. However, member states were unwilling to take over the ‘burden’ of proportional responsibility and obstructed CEAS’ full development, until mechanism and circumstances that enable diversion of responsibility towards neighbouring states were developed and the EU actively assisted in the creation of such conditions. The initial minimum asylum standards with the binding nature for member states were only raised proportionally in respect with improved asylum systems in the European neighbourhood and mechanisms for applicants’ returns put in force. In other words, as the Lisbon Treaty bound all existing European asylum legislation upon member states, increasing the standards as well as most likely also

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<sup>219</sup>“German minister proposes migrant ‘approval’ centres,” *The Telegraph*, November 14, 2014, <https://goo.gl/O9cJ30> (accessed 22.03.2016).

<sup>220</sup>Pollet, 92.

per capita costs of protection, the non-entre policies have developed to such a degree that they efficiently protected the ‘fortress Europe’.

The EU enlargement process is the main driver of the European responsibility transfer. In the process of accession, the EU has reflected all three methods of intra-EU ‘burden’ sharing – supporting norms-transposition, people-returns, and assisting the both with extensive financial and expert programmes. In respect to the Balkan (potential) candidate countries, the processes are still underway. Additionally, some asylum assistance is also devoted to non-potential candidates, such as Kosovo, what only proves the importance of asylum matters for the EU. The transposition of asylum norms into national legislation of Balkan states serves the EU to justify returns of refugees under the international law dubious concept of (un)*safe third countries*. Complementary are readmission agreements, applied for returns of irregular migrants. In a way, readmission agreements assist smoother returns under the premise of *safe third country* concept. Once an asylum application is assessed according to accelerated procedure permitted in cases of *safe third countries*, what in practice often means automatic denials, asylum applicant becomes irregular migrant, eligible to fall under the conditions of readmission. Since readmission agreements are usually negotiated in packages with other concessions by the EU, they are a sign of power imbalances between EU member states and other agreements’ parties.

Considering primary ‘defence’ nature of the CEAS creation and lack of actual solidarity among member states, since the system supports the allocation of responsibility and ‘burdens’ towards few frontier member states, the EU is not well prepared for sudden migration crisis. Despite the existing mechanism of temporary protection in case of mass influx, the latter is not likely to be successful due to its QMV based triggering and still voluntary quotas for reception of refugees. In accordance to otherwise existing procedures of the Dublin regime, *safe third countries* and readmissions, the greatest pressure could be expected in frontier countries and transiting countries on the way to the EU which fairly bear the potential to become ‘containment’ or ‘buffer zones’.

## CHAPTER 3

### 2015 MIGRANT WAVE AND ITS CHALLENGE TO THE EU AND THE BALKANS

#### 3.1. Introduction

In 2014, the number of refugees and internally displaced people (IDPs) worldwide reached its highest point since the Second World War and has only increased since then. From the mid-2014 till mid-2015, the number has risen from 51.2 to roughly 60 million.<sup>221</sup> The majority of IDPs are concentrated or originate from the Middle East and North Africa (MENA) region, where the eight-year trend of deteriorating peace has been the worst<sup>222</sup> with an upsurge of sectarian strifes and civil conflicts, as well as a rise in actions by Islamist extremist groups. A third of all IDPs in 2014 were displaced by the advance of the Islamic State of Iraq and Syria (ISIS) and lasting Syrian civil war. The country has become the world's largest source of refugees with every 5<sup>th</sup> globally displaced person being a Syrian.<sup>223</sup> Due to geographical proximity and general wealth, the majority of asylum seekers headed

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<sup>221</sup>UNHCR, *World at War – UNHCR Global Trends: Forced Displacement in 2014*, [Geneva], June 2015, 5. <https://goo.gl/2E3cVH> (accessed 12.04.2016).

<sup>222</sup>Global peace index over the past eight years has on average deteriorated for 2.4 % indicating that the world has become slightly less peaceful. Decrease is not evenly spread, with 86 countries deteriorating and 76 improved. MENA has suffered the sharpest decline (11 %). Among the factors deteriorating for more than 5 % are refugees and IDPs as a percentage of the population, deaths from internal conflict, the impact of terrorism, the likelihood of violent demonstrations and perceptions of criminality. Institute for Economics and Peace, *Global Peace Index 2015*, [Sydney, New York and Mexico], 2016, 3. <https://goo.gl/qZv0I9> (accessed 12.04.2016).

<sup>223</sup>UNHCR, *World at War*, 5. In absolute terms there were 7.5 million IDPs in Syria and 3.8 million Syrians seeking asylum abroad at the end of 2014 (ibid., 14). Till February 2016, the number of IDPs decreased to 6.5 million due to deaths and fleeing abroad, while the number of registered asylum seekers from Syria abroad increased to 4.6 million. Humanitarian Aid and Civil Protection, *Syria crisis – EHCO Factsheet*, fact sheet, [Brussels], March 2016, 2. <https://goo.gl/xiFdLS> (accessed 13.04.2016).

towards Europe, where the number of monthly asylum applications increased from average 22,000 in 2010 to 110,000 in 2015. On a yearly basis, the number of applications increased from 310,000 in 2011 to 1.3 million in 2015,<sup>224</sup> not considering all other unregistered irregular immigrants. Asylum seekers arrived in the EU either via the Mediterranean that has taken several thousand lives<sup>225</sup> or through continental routes in the Eastern and South-Eastern Europe. The Western Balkan route turned out to be high on the political agenda since high numbers of refugees in a relatively short time passed the fragile region which was not more than a century ago the main source of refugees in Europe.

The Chapter questions the reactions of the EU authorities in respect to the 2015 migration flow through the Western Balkan route. Did the EU follow the arranged asylum legislation when accepting arriving asylum applicants or did it develop special *ad hoc* arrangements? What has determined the rules and for most how has the EU plan for solutions intended to influence Balkan states' asylum policies. To this end, the following sections firstly take a look at the origins and composition of the flow and based on the later determine to what extent the readmission policies for irregular immigrants might be justified. Secondly, it analyses the specifics of the Balkan route and further analyses how the EU addressed it.

### **3.2. Origins and composition of the flow: Migrants or refugees?**

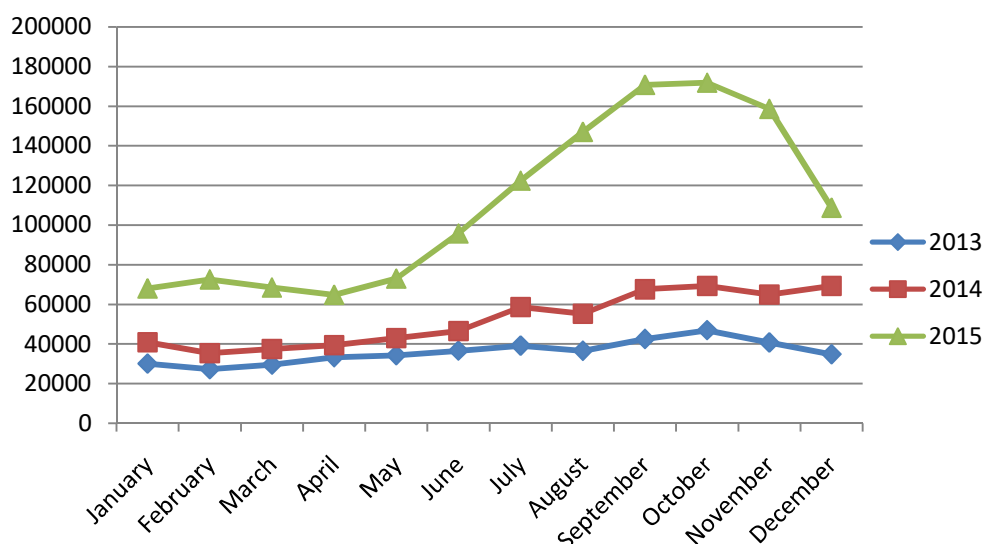
Although migration flows intensify every summer due to favourable weather conditions for longer and perilous journeys towards Europe, the scale of the increase in 2015 has never been witnessed before. Between April and October 2015, the

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<sup>224</sup>“Asylum and first time asylum applicants by citizenship...”, *Eurostat*.

<sup>225</sup>Mediterranean death toll comprises the largest proportion of global missing migrants since 2014. From 3,283 deaths recorded in 2014, the numbers only went up to 3,784 in 2015 and increased even by 35 % to the record high 5,098 in 2016. Global Migration Data Analysis Centre, *Migrants deaths and disappearances*, 2.

number of arriving asylum applicants had been constantly increasing, reaching the highest point of 171,710 in October (see Figure 3).<sup>226</sup>



**Figure 3:** The number of asylum applicants in EU by months in 2013–15 period.

The right combination of push and pull factors has affected people decisions to head towards Europe. Although the majority of the factors have existed already before, their impact had been intensified as the time passed and in combination with other factors made living conditions almost impossible. Even though the migration wave did not consist only of Syrian refugees, the wave was initially triggered by durable Syrian crisis and escalation of international involvement. Five years of Syrian civil war, spilled over the region and even more appealing with the presence of ISIS and other extremist groups as well as the involvement of international powers since September 2014,<sup>227</sup> have made any peace in short term impossible and returns of

<sup>226</sup>“Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>227</sup>In September 2014, US in a coalition of five Arab states (Bahrain, Jordan, Qatar, Saudi Arabia, and the United Arab Emirates) launched air-strikes against ISIS. Turkey joined with the authorisation of strikes in Syria in Iraq a month later. In September 2015, Russia announced intervention against ISIS, but has allegedly targeted also Assad’s opposition groups. UK joined US-led coalition in December 2015.

refugees to their homeland out of option in a short time. On the other hand, the reception capabilities of the neighbouring host countries have become completely exhausted as the longer the displacement, the greater the burden of host countries are.<sup>228</sup> In addition, some of the host countries in the region also faced enormous political and economic struggles.<sup>229</sup> Although contributions of international humanitarian agencies are able to improve the situation slightly, the approach is not sustainable in the long term as it does not make the refugees self-sustainable but rather even more dependant. The latter might have led the initial hospitality towards ‘guests’ and public opinion to sour. Deteriorating conditions in the first countries of asylum led to tightened border measures and limited access to the nearby *safe havens*. For those who found the way in *safe havens*, the lack of working opportunities or children’s school enrolment have been the major drivers of onward secondary movements. In addition, the key UN humanitarian agencies (such as World Food Programme and World Health Organisation) are on the verge of bankruptcy and unable to meet the needs of increasing number of people in emergency situations. In comparison to 2014, the funding of humanitarian agencies was lowered by 10 % in 2015, while the number of displaced people per day increased from 11,000 in 2010 to 42,000 in 2015.<sup>230</sup> This has significantly contributed to deteriorating conditions in refugee camps all over the MENA region. Other push factors were geopolitical and economic changes. Libyan and Egyptian destabilisation destroyed migration-workers hubs and opened the way up to Europe. On the pull side, there are initial European authorities’ welcoming notes and

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<sup>228</sup>At the beginning of March 2016, there were 4.8 million Syrians displaced in the region; the most in Turkey (2.7 million), followed by Lebanon (1 million), Jordan (640,000), Iraq (250,000), and Egypt (120,000). “Syria Regional Refugee Response,” *UNHCR Inter-agency Information Sharing Portal*, <https://goo.gl/PRMiul> (accessed 14.04.2016).

<sup>229</sup>A study on the welfare of Syrian refugees in Jordan and Lebanon estimated that 90 % of refugees there could be considered poor in accordance of host countries’ poverty lines and while the percentage has increased constantly since 2013. World Bank and UNHCR, *The Welfare of Syrian Refugees: Evidence from Jordan and Lebanon*, [Washington], 2016, xvi. <https://goo.gl/Lldbyd> (accessed 14.04.2016).

<sup>230</sup>“UN agencies ‘broke and failing’ in face of ever-growing refugee crisis,” *The Guardian*, September 6, 2015, <https://goo.gl/43ZFQy> (accessed 15.04.2016).

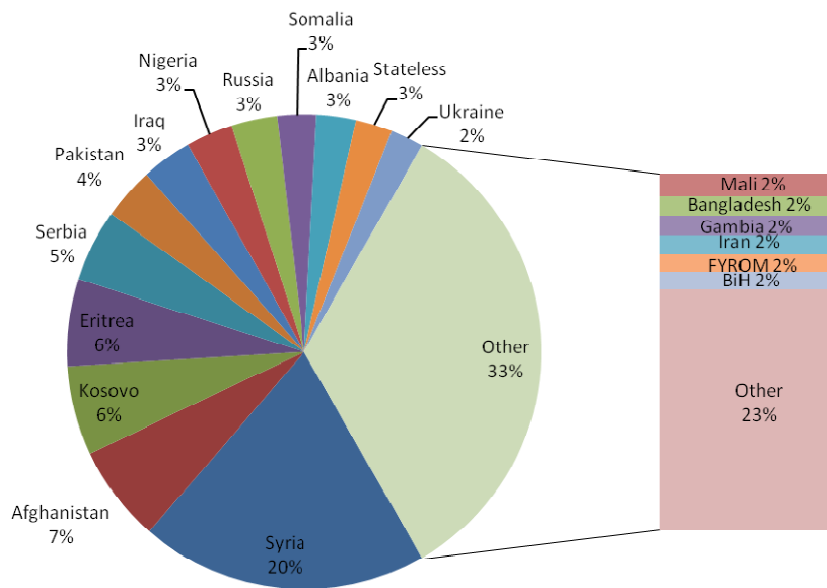
efficient use of social media in spreading successful stories and useful information for migrants on the way. German Chancellor Merkel on several occasions expressed support and welcoming addresses to refugees by recalling German as well as the wider European responsibility to provide protection for people in need.<sup>231</sup>

Although the public has been mainly concentrated on the inflow of Syrians, the origins of migrants in the wave were very heterogeneous. In 2014, 624,935 people sought asylum in the EU. The main countries of origin were Syria (20 %), Afghanistan (7 %), Kosovo (6 %), Eritrea (6 %), Serbia (5 %), Pakistan (4 %), and Iraq (3 %) (see Figure 4). The year after the number of asylum seekers in the EU almost doubled and increased to 1.322 million people. Almost every third came from Syria (31 %), followed by Afghans (15 %), Iraqis (10 %), Kosovans and Albanians (each 6 %), Pakistanis (4%), and Eritreans (3 %) (see Figure 4).<sup>232</sup> The largest relative increase in the number of asylum applicants was recorded among applicants from Iraq (more than six-fold). Considerable increases were observed in cases of asylum seekers from other MENA countries, Afghanistan (more than quantified), Syria (almost tripled) and Pakistan in Asia (doubled). On the other side, the biggest relative fall of the applications was recorded for Mali (see Figure 5).

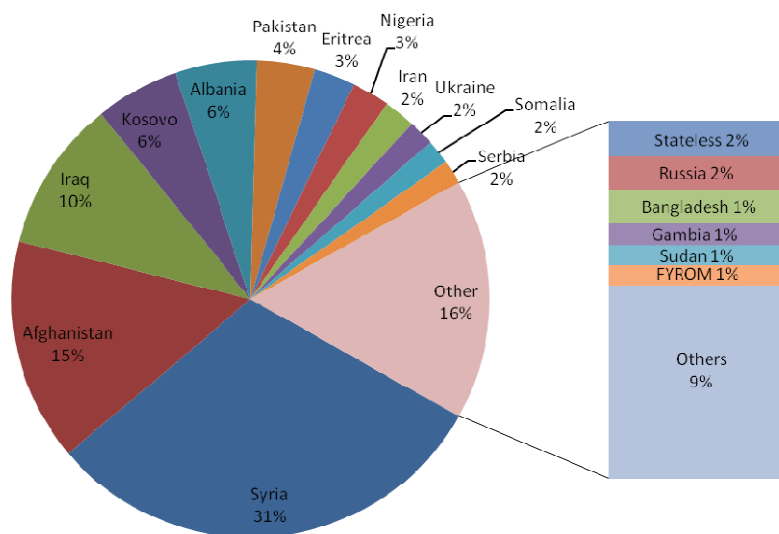
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<sup>231</sup>Chancellor Merkel is reported saying that “if Europe fails on the question of refugees, then it won't be the Europe we wished for”, “Germany is a strong country - we will manage”, and “Those who bear the responsibility of being in government like we do have a different role. We have to provide the people with answers and solutions”. “Angela Merkel’s Immigration Quotes Show Germany’s Response to Refugees is Wildly Different to Britain’s,” *The Huffington Post*, September 1, 2015, <https://goo.gl/xR7hik> (accessed 24.04.2016); “Mother Angela: Merkel’s Refugee Policy Divides Europe,” *Spiegel*, September 21, 2015, <https://goo.gl/o1UUVc> (accessed 24.04.2016).

<sup>232</sup>“Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.



**Figure 4:** Asylum applicants in EU in 2014 by countries of origin.<sup>233</sup>



**Figure 5:** Asylum applicants in EU in 2015 by countries of origin.<sup>234</sup>

<sup>233</sup>Countries of origins with less than 10,000 applicants are included in category of ‘others’. For absolute numbers see Appendix A. Eurostat, *Asylum Quarterly Report*, [Luxembourg], June 2016, 3, <https://goo.gl/UmmhK6> (accessed 15.08.2016).

<sup>234</sup>Countries of origins with less than 10,000 applicants are included in category of ‘others’. For absolute numbers see Appendix B. Eurostat, *Asylum Quarterly Report*, 4.



An alarming increase of asylum applicants from the Western Balkan countries contributed to diversity of the flow, too. In 2015, asylum applicants from Albania in the EU almost quadrupled and from Kosovo almost doubled in comparison to the previous year, the first one reaching 2.28 % of its population seeking asylum and the latter 3.64 %, each producing more than 60,000 asylum seekers in the EU. Increased were also the numbers of asylum applicants from Macedonia and Montenegro, while applications of Bosnians and Serbs decreased, but still stayed above 10,000 in the case of the latter (see Figure 6). Out of 196,000 people who had filed an initial application for asylum in Germany by the end of July 2015, 42 % were from former Yugoslav republics.<sup>235</sup> Although the numbers may have escalated due to visa liberalisation, with exception of Kosovo, as well as the opportunity for desperate people simply to join and be part of a greater transit migration flow, the conditions accelerating immigration from the region existed far before. There is a patriarchal ruling structure with organised crime and mafia in prematurely independent Kosovo, while Serbia is still wounded by its break up in 2008. Neighbouring BiH is struggling to keep its complex political system functioning and is on the verge of collapse, while Macedonia got stuck in the EU and NATO waiting lounge for more than 20 years. Among the consequences, there is a lack of investments, high level of corruption and unemployment caused by rapid deindustrialization due to unsuccessful market transition.<sup>236</sup> Degrading welfare systems accompanied by increased poverty rates all together led to the frustration of people that seek for a better life. More than two-thirds of young Albanians express a wish to leave the country and over half of the youth in Macedonia, Kosovo, and BiH is considering the same.<sup>237</sup> As desperation due to the bad economic situation does not justify for the asylum, most of the applicants from those countries are refused. Although the

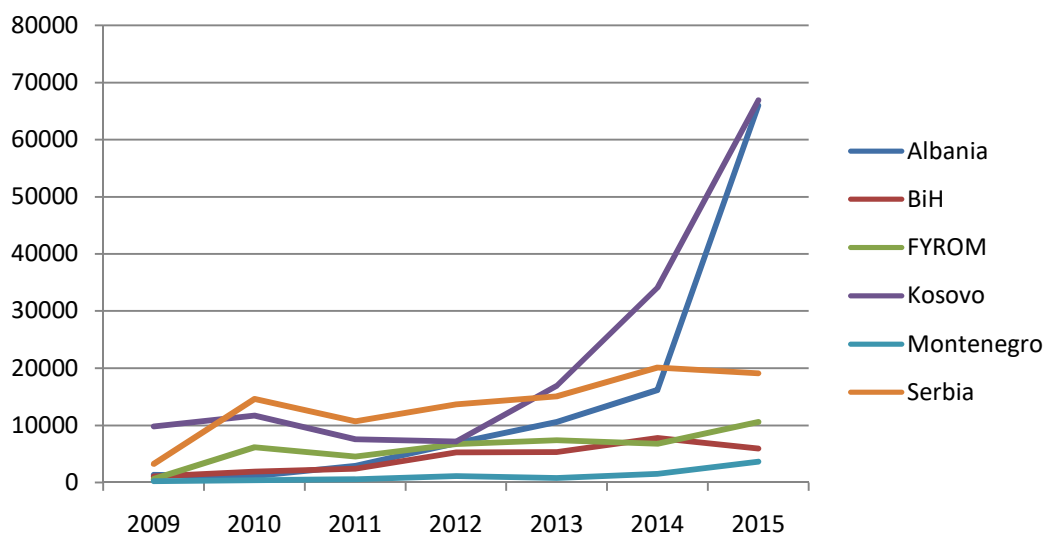
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<sup>235</sup>“Mass Migration: What Is Driving the Balkan Exodus?” *Spiegel*, August 26, 2015, <https://goo.gl/bIufmP> (accessed 26.04.2016).

<sup>236</sup>Goran Musić, “Serbia’s protracted transition under state-led and neoliberal models of capitalist development,” *METU Studies in Development* 41, no. 3 (2014): 381–4.

<sup>237</sup>Friederich Robert Stiftung, *Lost In Democratic Transition? Political Challenges and Perspectives for Young People in South East Europe - Results of Representative Surveys in Eight Countries*, [Sarajevo], 2015, 42. <https://goo.gl/nhBEa4> (accessed 27.04.2017).

number of asylum seekers from the region has been increasing in the past 5 years, from 30,400 in 2011 to 118,495 in 2015, the recognition rates have been decreasing, from 6.11 % in 2011 to 2.07 % in 2016.<sup>238</sup>



**Figure 6:** Number of asylum seekers in EU from Western Balkan states in 2009–15 period.<sup>239</sup>

The heterogeneous origins of migrants and their motives indicate that all of them may not qualify for a refugee status (for a definition see 2.2.1), although a careful individual assessment could only approve this. This stipulates a question, how immigrants should be treated until the authorities issue an appropriate, relevant decision regarding their status. The UNHCR criteria for refugee status determination are clear, outlining that a person becomes a refugee within the meaning of the Refugee Convention as soon as the criteria contained in the definition are fulfilled, what necessarily occurs before a host country could formally determine refugee status. It is exposed, that a refugee “does not become a refugee because of

<sup>238</sup>For absolute numbers see Table 4, p. 94.

<sup>239</sup>“Asylum and first time asylum applicants by citizenship,” *Eurostat*.

recognition, but is recognised because he is a refugee.”<sup>240</sup> The refugee rights regime lays down different levels of refugee rights that should be granted to a person who claims to be a refugee according to the level of attachment to a particular state.<sup>241</sup> This establishes an international norm and prevents the level of granted rights to be a consequence of state’s free will, no matter whether a migrant who claims to be a refugee truly is a refugee or ordinary irregular migrant. The first level of attachment is triggered once an individual becomes a subject to state’s jurisdiction although he or she is not physically present in the territory of a particular state.<sup>242</sup> The rights of first level attachment<sup>243</sup> should also be respected once a person becomes physically present in the state’s territory, inland waters, and territorial sea or at border posts and international zones at the airports, and the second level attachment rights’ implication should start.<sup>244</sup> On the third level, once a person is also lawfully present in the territory of a state, meaning that he or she is permitted to stay in the territory of the state, that the status assessment is still undergoing, or that he or she is present in a state which has elected either not to establish or to suspend refugee status assessment, a person should be entitled the right to self-employment (Art. 18), freedom of movement (Art. 26), and protection against expulsion (Art.32). On the fourth level of attachment, when a person’s presence at the territory is ongoing, no matter if there was a formal declaration of the status, refugees benefit from series of

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<sup>240</sup>UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1. [Geneva], 1992, paragraph 28, <https://goo.gl/e41SFo> (accessed 30.04.2016).

<sup>241</sup>Hathaway and Neve, 157–8.

<sup>242</sup>In cases when a state exercise *de facto* control over a territory over which it has no valid claim to jurisdiction (high seas, control after an invasion). Yonatan Berman, *Rights of Refugees in International Law (Non-Refoulement and beyond)*, Lecture, January, 2012, <https://goo.gl/y0d046> (accessed 03.05.2016).

<sup>243</sup>Non-discrimination of Refugee application as to race, religion or country of origin (Art. 3), favourable treatment as regard to moveable and immoveable property (Art. 13), right to access to courts, (Art. 16(1)), equal rights in rationing systems (Art. 20), equal right to education (Art. 22), and equal fiscal charges as nationals (Art. 29), and prohibition of expulsion or return - refoulement (Art. 33). Hathaway and Neve, 157–8.

<sup>244</sup>Second level of attachment rights consists of freedom of religion (Art. 4), obligation of the hosting state to issue identity papers to refugees without travel documents (Art. 27), prohibition of illegal entry or presence sanctioning and non-necessary free movements’ restrictions (Art. 31). Ibid.

other rights.<sup>245</sup> The fifth level equalises their rights with the rights of nationals once a durable stay is permitted. Thus, refugee rights were not created to be bestowed at the moment of status recognition, but are rather to be granted incrementally, based on the deepening relation between the hosting state and asylum seekers. Hathaway and Neve as the only acceptable solution suggest that any person who claims to be refugee should be temporarily entitled to receive the benefits of minimum the first two levels of the Convention rights.<sup>246</sup> Accordingly, the question whether the incoming migrants are refugees or not should be irrelevant for hosting authorities so far as the status determination process is concluded, what was not the case of the majority of the policies undertaken to address the migration wave coming towards Europe through the Western Balkan route. The following section firstly offers an overview of the Western Balkan route, while the next sections discuss policies the EU and Western Balkan states have undertaken in order to address the route.

### **3.3. The Western Balkan route: A bridge or a final destination?**

Among various sea and land migration routes to Europe, the Western Balkan route was the busiest one and faced the greatest increase of migrants that started in spring 2015.<sup>247</sup> The route started in Turkey and continued westwards into Greece and further into the Western Balkans, primarily via Macedonia and Serbia, from where it continued towards Hungary until the latter eventually closed its border in September 2015, and the migrant flow was redirected through Croatia and Slovenia (see Figure 7).

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<sup>245</sup>Fourth level of attachment rights consists of right of artistic and industrial property (Art. 14), right of association (Art. 15), wage-earning employment (Art. 17), liberal professions (Art. 19), housing (Art. 21), public relief (Art. 23), equal standing in labour legislation and social security as nationals (Art. 24), and the obligation of the hosting state to issue travel documents (Art. 28). Ibid.

<sup>246</sup>Ibid., 158–9.

<sup>247</sup>The route for the first time gained its popularity in 2012 when Schengen visa restrictions were removed for five Balkan countries – Albania, BiH, Montenegro, Serbia, and Macedonia. “Western Balkan Route,” *Frontex*, <https://goo.gl/YAUqzs> (accessed 22.03.2016).



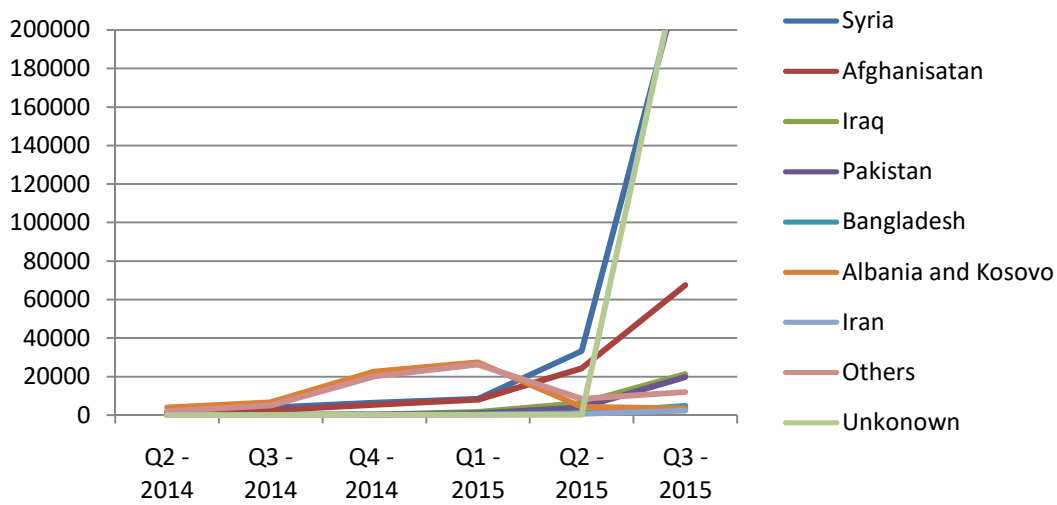
Figure 7: Western Balkan migration route.<sup>248</sup>

Visa-free travel for the Western Balkan citizens within the EU accelerated regional emigration. Additionally, Balkan geographic proximity to conflict regions in the Middle East and Asia contributed to the Western Balkan route popularity. Despite the fence built on the border with Turkey by Greece (2012) and Bulgaria (2014) initially diverted the flow from to the sea, the continental route provided shorter, safer and cheaper option. An additional accelerating factor was the victory of the radical left party Syriza in the Greek national elections in January 2015. The newly formed government promoted radical change in the country asylum system, which was overburdened by numerous applications that should be according to the Dublin system firstly processed in Greece. Greek frustration after being left by itself in an economic and financial crisis, accompanied by an open German declaration that there was no upper limit to the right of asylum in Germany, contributed to Greek decision to open the Balkan gates simply by omitting the Eurodac registrations.<sup>249</sup>

<sup>248</sup>Taken from: European Parliamentary Research Service, *The Western Balkans - Frontline of the migrant crisis*, briefing, January 2015, 3, <https://goo.gl/XWHnAv> (accessed 23.03.2016).

<sup>249</sup>“Greece is accused by the EC to only register 492,000 arrivals and 121,000 fingerprints in between July and December 2015. “EU launches migration cases against Croatia, Greece, Hungary, and Italy,” *EUObserver*, December 10, 2015, <https://goo.gl/ZJz3x2> (accessed 28.02.2016).

In the first two months most of 2015, illegal border crossing detections concerned mostly the Western Balkan countries nationals, foremost Albanians and Kosovars. In the second quarter, they were outnumbered primarily by Syrians and Afghans (see Figure 8). The illegal border crossings in the Western Balkans increased for 1,662 %, from 43,357 in 2014 to 764,038 in 2015. Illegal border crossings in the region represented 42 % of all illegal border crossings into the EU in 2015.<sup>250</sup>



**Figure 8:** Number of illegal border crossings between border checkpoints on the Balkan migration route by nationality between the second quarter of 2014 and third quarter of 2015.<sup>251</sup>

Although thousands of migrants passed the Western Balkan route in 2015, only a few decided to seek asylum in the region, which has thus only become a corridor, through which migrants attempted to reach the ‘promised lands’ of the Western Europe.<sup>252</sup> Despite the increased number of the asylum applications in the countries

<sup>250</sup>Ibid.

<sup>251</sup>Frontex, *Western Balkans Quarterly, Q3*, [Warsaw], 2016, 17, <https://goo.gl/AQT68G> (accessed 26.03.2016).

<sup>252</sup>Out of 1.255 million newly registered asylum applicants in 2015 in the EU, more than a three quarters refugees submitted their applications in only one of the five EU member states

of the region, few protections were granted since the majority of refugees only applied for protection to ‘buy’ time for the passage (Table 1).

**Table 1:** Asylum seekers in Balkan countries in 2015 and 2016.<sup>253</sup>

	Applications submitted		Granted refugee or subsidiary protection status	
	2015	2016	2015	2016
<b>Greece</b>	13,205	51,110	4,030	2,715
<b>Romania</b>	1,260	1,880	480	805
<b>Bulgaria</b>	20,391	19,420	5,595	1,350
<b>Macedonia</b>	1,896	759	0	
<b>Serbia</b>	583	574	30	42
<b>Kosovo</b>	70	44	8	
<b>Albania</b>	581	2,180	39	
<b>Montenegro</b>	1,611	328	19	8
<b>BiH</b>	36	66	0	
<b>Croatia</b>	210	2,225	40	100
<b>Slovenia</b>	275	1,310	45	170
<b>Hungary</b>	177,135	29,430	505	430
<b>TOTAL</b>	217,288	109,326	10,791	5,612

(Germany, Hungary, Sweden, Austria, and Italy) and almost half of them submitted applications whether in Germany or in Hungary. On the bottom of refugee application rates were Croatia and Slovenia, Baltic states, Portugal, Romania, as well as two Visegrad group countries, Czech Republic and Slovakia. “Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>253</sup>For the empty cells no data could be found. The rest of the data is taken from “Asylum and first time asylum applicants by citizenship ...”, *Eurostat*; “Population Statistics,” *UNHCR*, <https://goo.gl/n51GRq> (accessed 13.04.2017); “Edhe në Kosovë kërkohet azil,” *lajmi.net*, March 1, 2017, <https://goo.gl/8W68kn> (accessed 20.04.2017), EC, *Report from the Commission to the European Parliament and the Council, Fourth report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap*, COM (2016) 276 final, May 4, 2016, 5, <http://goo.gl/qBu81o> (accessed 05.09.2016); Ministarstvo unutrašnjih poslova, *Strategija za integrisano upravljanje migracijama u crnoj gori za period 2017-2020. Godine*, [Podgorica], 2017, 41, <https://goo.gl/jmXOfh> (accessed 20.04.2017).

Though the region was in the beginning of 2015 mostly a source of migration, it was clearly transformed into a transit region by the end of the year. The countries on the route were (intentionally) late in recognising the challenge, allowing many organised criminals to smuggle irregular migrants mixed with refugees through the region. However, once the numbers became too high to keep the secrecy of smuggling, authorities, after the initial tensions and security precautions, developed policies aimed to assist the migrants' transfer from one border to another and thus lower the burden of transit.<sup>254</sup> The policies were based on developments in the southern parts of the countries where the flow stemmed from, on one side, and policies of the countries on the north on the other side, since any change might leave migrants stuck in the region. On the north, bordering EU and Schengen countries started to signal the potential lowering of the capacity to accept new migrants in late summer. Already in June 2015, Austria stopped processing new asylum applications except for Dublin cases – those who came to Austria after applying for asylum in one of the EU border member state.<sup>255</sup> Hungary, out of the protest against unequal distribution of the burden within the EU, tightened up its asylum legislation with the introduction of additional conditions<sup>256</sup> and completed the construction of a fence on the Serbian border in mid-September. The latter brought the Balkan fears of becoming a 'closed sack', a buffer zone filled with migrants, closer to reality.

States in the region perceived the migration flow mostly as a security threat, doing its best to prevent the flow entering by redirecting it or processing it as quick as possible. Early convening of top security bodies in Macedonia,<sup>257</sup> Croatia,<sup>258</sup> and

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<sup>254</sup>“A tumultuous year for the Balkans,” *Deutsche Welle*, December 21, 2015, <http://www.dw.com/en/a-tumultuous-year-for-the-balkans/a-18932799> (accessed 02.04.2016).

<sup>255</sup>“Avstrija protestno ustavlja reševanje prošelj za azil,” *Delo*, June 13, 2015, <https://goo.gl/094SAI> (accessed 05.04.2016).

<sup>256</sup>“Madžarski parlament postavil temelje za zid na meji,” *Delo*, June 7, 2015, <https://goo.gl/wlKj4T>.

<sup>257</sup>Delino, Chris, “Macedonian Migration Policy and the Future of Europe,” *Balkan Analysis*, December 23, 2015, <https://goo.gl/fFMlIr>.



Slovenia<sup>259</sup> indicated the security first approach, while Serbia opted for more patient policy, expressing full trust in the European solution, openly welcoming refugees and promoting itself to be more European in a humanitarian sense than some other European countries.<sup>260</sup> On the other side, Hungary<sup>261</sup> and Macedonia<sup>262</sup> declared emergency situations in the regions close to the borders what enabled them mobilisation of army forces. Slovenia<sup>263</sup> enforced the same by legislative amendment, and Croatia only opened the way for such reaction if necessary in the future.<sup>264</sup> The state of panic and lack of readiness that was brought alongside the migration flow was well represented in the use of extreme force by state authorities as the Macedonian, Slovene, and Hungarian police used pepper spray, batons, and water tanks.<sup>265</sup> The violent escalation firstly occurred in the southern part of the route, when Macedonia first faced capacity deficit to orderly manage the flow of thousands of migrants entering the country on a daily basis. Modelled upon the

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<sup>258</sup>“Migrant crisis: Dozens reach Croatia as Hungary border sealed,” *BBC*, September 16, 2015, <http://www.bbc.com/news/world-europe-34264942>.

<sup>259</sup>The Government of the Republic of Slovenia, *Predsednik vlade Cerar: Zavarovali bomo slovenske interese in ravnali humano*, press release, October 28, 2015. <https://goo.gl/DqL9FO> (accessed 12.04.2016).

<sup>260</sup>“Beograd: Samo želimo da se ponašamo evropski,” *Danas*, September 4, 2015. <https://goo.gl/uN7seq> (accessed 02.04.2016).

<sup>261</sup>“Vanredno stanje u dva okruga u Mađarskoj,” *Beta*, September 15, 2015, <https://goo.gl/IjhomF> (accessed 02.04.2016).

<sup>262</sup>“Migrantima dozvoljeno da iz Đevđelije odu za Srbiju,” *Beta*, August 21, 2015, <https://goo.gl/3VSM7w> (accessed 02.04.2016).

<sup>263</sup>“Poslanci vojski podelili dodatna pooblastila za varovanje meje,” *RTV Slovenija*, October 20, 2015, <https://goo.gl/vabAOZ> (accessed 05.04.2016).

<sup>264</sup>“Sabor Vladi omogućio slanje vojske na granicu, oporba najavila ustavnu tužbu,” *Jutranji list*, March 21, 2016, <https://goo.gl/Cx1Zxd> (accessed 05.04.2016).

<sup>265</sup>“Makedonija zaradi prebežnikov pošilja na mejo okrepljene enote,” *RTV Slovenija*, December 1, 2015, <https://goo.gl/utFodb> (accessed 05.04.2016); “Hungary Diverts Migrants to Croatia,” *Macedoniaonline*, September 17, 2015, <http://macedoniaonline.eu/content/view/28098/2/> (accessed 05.04.2016); “Slovenačka policija na granici upotrebila suzavac,” *Beta*, October 19, 2015, <https://goo.gl/HC6AZE> (accessed 05.04.2016).

Hungarian example, Macedonia built a shorter fence on its Greek border.<sup>266</sup> After special police forces' clashes with migrants who also protested by lying down on train railroad, the agreement was reached with the UNHCR and Serbia to provide direct transfers of migrants from the Greek to the Serbian border.<sup>267</sup> Macedonia and Serbia issued 72-hours allowance to migrants to transit the country if not seeking asylum there.<sup>268</sup> Conflicts arose between countries in the region because of accusations related to intentionally organised transportation of migrants to the next border, as it happened between Serbia and Croatia and Croatia and Slovenia. In the first case, Croatia closed seven border crossings for Serbian commercial transport and caused serious problems to Serbian exporters. In response, Serbia blocked the import of Croatian products as well as summoned Croatian ambassador in Belgrade, while Croatia retaliated with the prohibition of entrance for all Serbia vehicles. Tensions only calmed down after the EC intervention.<sup>269</sup> In the second case, the 'ping-pong' with migrants from one side of the border to another was accompanied by a dispute over the Slovene construction of wired fence on the green border at the beginning of November. Croatia claimed that part of the fence was on the Croatian territory, sending Slovenia five protest notes in a period less than one month.<sup>270</sup> New razor-wire fences also emerged on the Croatian-Hungarian border and a longer fence on Macedonian-Greek border.<sup>271</sup> However, the fences turned out to be more or less

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<sup>266</sup>Macedonia accused Greece for stimulating the crisis by deporting migrants directly to the Macedonian border in an organised manner. "Macedonian Army Blocks Migrant Routes from Greece," *Macedonian International News Agency*, August 20, 2015, <https://goo.gl/v2vJGZ> (accessed 06.04.2016).

<sup>267</sup>"Migrantima dozvoljeno da iz Đevdelije odu za Srbiju," *Beta*.

<sup>268</sup>"Vlada Srbije ne usmerava izbeglice u Hrvatsku," *Danas*, September 16, 2015, <https://goo.gl/sELVS4> (accessed 06.04.2016); European Parliamentary Research Service, *The Western Balkans*.

<sup>269</sup>"Tensions between Croatia and Serbia rise over refugees," *Al Jazeera*, September 25, 2015, <https://goo.gl/rBCfvk> (accessed 10.04.2016).

<sup>270</sup>"Hrvaška že petič zahteva odstranitev žičnate ograje ob meji," *RTV Slovenija*, December 11, 2015, <https://goo.gl/wN2xHq> (accessed 10.04.2016).

<sup>271</sup>"Hungary says fence finished," *Macedoniaonline*, October 16, 2015, <https://goo.gl/t6exx9> (accessed 10.04.2016); "Europe builds another wall: Macedonia erects second barrier of razor wire to

unsuccessful since the migrants always found new ways of passing towards the North. The countries in the region eventually recognised that they cannot rely on a European solution and realised that they could only manage the flow in close cooperation with each other. At the November meeting in Slovenia, representatives of countries on the route, except Croatia, agreed to keep informing each other properly, while working on the flow reduction by allowing passage of ‘refugees’ only, namely Syrians, Iraqis, and Afghanis, who are fleeing from war regions. Others were designated as ‘economic migrants’ with no right of refuge and therefore also passage towards the EU.<sup>272</sup> The act was criticised by the IOM, UNHCR, and UNICEF for profiling people by nationality being “increasingly untenable from every point of view – humanitarian, legal, and also safety related.”<sup>273</sup> The act *a priori* denied the access to the asylum to certain nationalities without the possibility of an individual assessment and risk a ‘domino effect’ as well as further disputes at borders. Balkan states supported European talks with Turkey on the issue of stemming the flow, as the latter would also lower their burden and tensions in the region.<sup>274</sup>

### 3.4. Addressing the migration ‘crisis’

As briefly discussed above, the migration flow through the Balkans has further strained countries in an already sensitive region. Countries with poorly developed welfare systems, limited institutional capacity and struggling economies were burdened with additional care to provide for transiting migrants. Having many old conflicts dating back to the breakup of Yugoslavia, the managing of the flow by

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stem the human tide from Greece,” *DailyMail*, February 8, 2016, <https://goo.gl/IVoTj2> (accessed 10.04.2016).

<sup>272</sup>“Države na balkanski migracijski poti za upočasnitev toka migracij,” *RTV Slovenija*, November 17, 2016, <https://goo.gl/s5lqrS> (accessed 10.04.2016).

<sup>273</sup>IOM, IOM, UNHCR, UNICEF *Joint Statement on New Border Restrictions in the Balkans*, [Geneva], November 2015. <https://goo.gl/rpN0my> (accessed 14.04.2016).

<sup>274</sup>“Države na balkanski migracijski poti za upočasnitev toka migracij” *RTV Slovenija*.

limited resources and uncertain developments risked becoming yet another destabilisation factor in the region. German Chancellor expressed worries that uncoordinated policies addressing the flow and closures of the borders in the region may lead to renewed military conflicts in the region.<sup>275</sup> In the same vein, Slovene PM Cerar warned that if the crisis is not adequately controlled “it is possible that a small conflict would initiate a wider reaction because of the very difficult recent history (of the region), which is why it is very important that we solve this crisis together as no country can solve this problem by itself.”<sup>276</sup> Potential escalation of the migration ‘crisis’ into a security crisis, joined by the geographical proximity and Balkan states’ involvement into the migration flow, demanded cooperative relations between the EU and the Western Balkan countries. The following sections firstly discuss how the EU approach the increased migration flow, what consequently influenced also developments on the Western Balkan route, and secondly, the policies developed to address the Western Balkan route framed on the EU level.

### **3.4.1. Re-Defining the ‘fortress’: Relocations, resettlement, return, and readmission with the help of external contractors**

In the campaign for the EC President position in April 2014, Juncker announced his five-point plan on migration.<sup>277</sup> It became one of the ten EC priorities, augmented as a “humanitarian imperative” in regard to the events in the Mediterranean.<sup>278</sup> A

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<sup>275</sup>“Refugee influx could spark ‘military conflict’ in Balkans, Angela Merkel warns,” *The Independent*, November 3, 2015, <https://goo.gl/88ACc6> (accessed 22.04.2016).

<sup>276</sup>“Deja Vu in the Balkans,” *Macedonia Online*, November 6, 2015, <https://goo.gl/XO4NuO> (accessed 22.04.2016).

<sup>277</sup>It put forward (a) full CEAS implementation without delay for ending ‘asylum tourism’, (b) advocated practical assistance provided by the European Asylum Support Office to member states under “particular pressure”, (c) enhancing cooperation with third countries, particularly North African countries, in order to address the root causes of migration, (d) creation of sound legal migration policies,<sup>277</sup> and (e) better securitization of the European borders. European People’s party, *My Five Point-Plan on Immigration*, [Brussels], April 2014, <https://goo.gl/InmQy4> (accessed 25.04.2016).

<sup>278</sup>2014 became a record year in illegal crossings from Mediterranean to Italy, with 165,000 people crossing only till October 2014 what is a great increase in comparison to 60,000 for all of

solution was proposed in the enhanced “spirit of solidarity.”<sup>279</sup> Initially, the cooperation with third countries – European support in improving political and economic progress, “democracy and pluralism, the rule of law, religious freedoms and support the building up of stable economies” – was considered as the best investments the EU can make to cope with the challenge of immigration.<sup>280</sup> However, the wording changed into a concrete need of the EU to assist third countries “in dealing with refugees and asylum requests in emergency situations, where appropriate on the ground.” The solidarity is only mentioned in the context of the Northern and Southern member states’ equal obligation to contribute resources for Frontex operations. Any express of solidarity with refugees is absent. First EU proposals in regard to the migration ‘crisis’ only focused on the situation in the Mediterranean. The migration situation in the Balkans only gained the EU attention in the second half of 2015, when the number of illegal crossings there rapidly increased. The following sections provide an overview of measures proposed and taken by the EU to address migration crisis and later concentrate on the measures directed to the Balkans.

On the basis of the Joint Foreign and Home Affairs Council action plan,<sup>281</sup> conclusions of the special meeting of the European Council,<sup>282</sup> the EP Resolution on the latest Tragedies in the Mediterranean and the EU Migration and Asylum

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2013. 2,200 lost their lives till June 2014, compared to 800 deaths till June 2013. “Mediterranean crossings more deadly a year after Lampedusa tragedy,” *UNHCR*, <http://www.unhcr.org/542d12de9.html> (accessed 26.04.2016).

<sup>279</sup>EC, *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*, Opening Statement in the European Parliament Plenary Session by Jean-Claude Juncker, Strasbourg, October 22, 2014, <https://goo.gl/k9x67S> (accessed 26.04.2016).

<sup>280</sup>European People’s party, *My Five Point-Plan on Immigration*.

<sup>281</sup>EC, *Joint Foreign and Home Affairs Council: Ten point action plan on migration*, press release, April 20, 2015, <https://goo.gl/nNKkrW> (accessed 26.04.2016).

<sup>282</sup>European Council, *Special meeting of the European Council*, Statement 204/15, April, 23, 2015, <https://goo.gl/qjOziu> (accessed 26.04.2016).

Policies<sup>283</sup>, the EC issued the European Agenda on Migration (EAM)<sup>284</sup> in May 2015. It included an “immediate imperative” to “protect those in need.” It suggested two types of measures, immediate actions to address ongoing deaths of people crossing the Mediterranean<sup>285</sup> and four pillars of measures that would prevent or at least mitigate migration crisis in a long term.<sup>286</sup> The aim of saving lives at sea clearly reflects European moral duty to show solidarity with refugees. To this end, the budget for maritime operation Triton was tripled<sup>287</sup> although some member states previously opposed such measures out of the fear that it might trigger additional pull effect.<sup>288</sup> European Council embraced the EAM, while clearly

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<sup>283</sup>European Parliament, *Resolution of xx April 2015 on the latest Tragedies in the Mediterranean and EU Migration and Asylum Policies* (2015/2660(RSP)), April 29, 2015, <https://goo.gl/C6aeQV> (accessed 26.04.2016).

<sup>284</sup>EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration*, COM(2015) 240 final, May 15, 2015, <https://goo.gl/KJiXn2> (accessed 28.04.2016).

<sup>285</sup>Immediate action dictated enforced rescue operations on the Mediterranean, fight against criminal smuggling networks, relocation and resettlement schemes, tools to help front line member states, and partnerships with third countries to enhance their asylum capacities, strengthen border management and promote stability.

<sup>286</sup>Realizing that the EU possesses a structural limitation of tools at disposal to deal with the crisis, the Agenda firstly suggested long term reducing incentives for irregular migration by addressing root causes, intensified fight against smuggler and people traffickers, and more effective return policies backed also with assistance to the third countries to meet necessary obligations; secondly it advocated enhanced border management by amending Frontex legal basis and enforcing operations, launching of new Triton based operations in the Mediterranean, and strengthening the capacity of third countries’ border management; thirdly it emphasizes European duty to protect with coherent enforcement of CEAS, enforced safe country of origin concept, and commitment of member states to Dublin system’s shared responsibility which could be achieved by greater allocation of resources to speed up transfers and prevent delays as well as correct registration procedures that might be supported by ‘hot-spots’; fourthly new policy of legal migration is strongly advocated, preferring mobility promotion of high skilled labour.

<sup>287</sup>European Council, *Special meeting*.

<sup>288</sup>However, Triton Rules of Engagement do not necessarily provide such a scenario in all occasions, allowing also arrests of migrants or escort of vessels away from the European shores. If a vessel is intercepted in the Italian or Maltese territorial waters and the suspension is confirmed that the vessel carries persons who intend to circumvent checks at border controls or are engaged in smuggling of migrants, the units can either seize the vessel and apprehend person on board or “order the vessel to alter its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until it is confirmed that the vessel is keeping to that given course.” If the vessel is intercepted on high seas additional possibility

focusing on three dimensions; relocation and resettlement mechanism; return, readmission, and reintegration of migrants in third countries; and cooperation with countries of origin and transit.<sup>289</sup> Preferred measures indicate the limited capacity of the EU to handle the crisis by itself and foremost the tendency to transfer the most of the responsibility on neighbourhood countries with legal arrangements denouncing refugees for illegal economic migrants while exposing security aspects of the crisis.

In the EAM proposed emergency relocation mechanism (ERM) of 40,000 asylum seekers from frontier member states, Italy and Greece, was confirmed by consensus at the JHA Council meeting.<sup>290</sup> Additional 120,000 relocations were proposed under the umbrella of provisional relocation mechanism (PRM) in the second EAM package<sup>291</sup>, accepted by the QMV in the JHA Council.<sup>292</sup> Common EU relocation capacity was hence increased to 160,000. ERM distribution of asylum seekers is based on a member states' voluntary commitments. On the other side, PRM quotas are mandatory and based on quantitative factors,<sup>293</sup> but nevertheless offer some

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is given that it or persons on board are conducted to Italy. *Frontex*. Joint Operation EPN Triton – Annex of the Operational Plan. 2014/SBS/09. [Warsaw], 2014, 12–3. <https://goo.gl/RPXMld> (accessed 28.04.2016).

<sup>289</sup>European Council, *European Council meeting Conclusions EUCO 22/15*, June 25 and 26, 2015, <http://data.consilium.europa.eu/doc/document/ST-22-2015-INIT/en/pdf> (accessed 28.04.2016).

<sup>290</sup>24,000 asylum seekers from Italy and 16,000 asylum seekers that have arrived into the respective states and applied for the asylum there between August 15 and September 9, 2015 are to be relocated. Council of the European Union, *Resolution of the Representatives of the Governments of the Member States meeting within the Council on relocating from Greece and Italy 40 000 persons in clear need of international protection*, 11131/15 ASIM 63, July 22 2015, <https://goo.gl/WTRMXz> (accessed 30.04.2016).

<sup>291</sup>EC, *Refugee Crisis: European Commission takes decisive action*, press release, September 9 2015, <https://goo.gl/iJN6oc> (accessed 14.12.2015).

<sup>292</sup>15,600 asylum from Italy and 50,400 asylum seekers from Greece will be relocated, with additional 54,000 places first dedicated to Hungary, but now reserved to be proportionally shared for relocations from Italy or Greece, or any other member state, especially on the frontline, that might become on the edge of the capacities. Council of the European Union, *Council decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, 12098/15 ASIM 87, September 22, 2015, <https://goo.gl/m6lkyY> (accessed 14.12.2015).

<sup>293</sup>The distribution key is based on the size of population (40 %), total GDP (40 %), average number of asylum applications per one million inhabitants over the period 2010–14 (10 %), and unemployment rate (10 %). EC, *Annexes accompanying the Proposal for a Council decision*

flexibility.<sup>294</sup> PRM was accepted by QMV despite the opposition of Hungary, Slovakia, Romania, and the Czech Republic, while Finland abstained. Hungary was initially also planned as a beneficiary country for allocation of 54,000 asylum applicants, but it refused the programme based on the argument that it does not want to become a detention centre for applicants and bear the major part of the registration process. It even filed the lawsuit at the European Court of Justice against quotas in December 2015 and announced a referendum on the question of quotas. The lawsuit was also filed by Slovakia.<sup>295</sup> As of April 2017, almost a year and a half after the mechanism was adopted, only 14.7 % of all planned relocations have been implemented and 25.6 % of relocations formally pledged (see Table 2). Only four member states provided and relocate more than half of the planned asylum seekers (green cells) and six member states relocated less than 10 % of the planned asylum seekers (red cells). (S)low implementation clearly contributes to the failure of the mechanism aimed at lowering the burden of frontier member states and expressing solidarity with member states under the greatest pressure. Member states are reluctant to participate due to potential pull effect, security concerns, and lack of resources. Besides poor implementation and lack of political will, relocations fail to provide any relief for non-member states under pressure, for example, Serbia or Macedonia. Although the initial formula for relocations was to be utilised as a permanent EU relocation mechanism, the disagreements among member states already in regard to the ERM led the EC to include new factors into the permanent

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*establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary*, COM (2015) 451 final, September 9, 2015, <https://goo.gl/IMyZPX> (accessed 14.12.2015).

<sup>294</sup>Up to 30 % of allocations could be temporarily suspended in cases of justified reasons that would affect human rights standards of allocated asylum seekers for max. 3 months and the possibility of extraordinary extension up to 12 months. So far, Austrian and Swedish relocation suspensions were approved by the EC. The EC proposal that a member state might substitute the cooperation in PRM with the contribution of 0.02 % of GDP into the EU budget was not approved. Council of the European Union, *Council decision establishing provisional measures*; EC, *Communication from the Commission to the European Parliament, the European Council and the Council – First report on relocation and resettlement*, COM (2016) 165 final, March 16, 2016, <http://www.refworld.org/pdfid/56e987d24.pdf> (accessed 14.05.2016).

<sup>295</sup>“Hungary sues EU at European Court of Justice over migrant quotas,” *Deutsche Welle*, December 3, 2015, <https://goo.gl/1N4oDg> (accessed 30.04.2016).



formula, which has not been approved yet. However, the PRM and on it most likely based permanent relocation formula, do not address the root causes of the disproportionate European distribution of responsibility, namely the Dublin system, but rather try to mitigate the symptoms.

**Table 2:** Distribution of relocated and resettled asylum seekers among EU member states.

Country	RELOCATIONS <sup>296</sup>									RESETTLEMENTS		
	ITALY		GREECE		Total	Formally pledged places		Relocations done		Resettle-ments <sup>297</sup>	Resettlements done <sup>298</sup>	
	ERM	PRM	ERM	PRM		No	%	No	%		The rest	TR-EU
AT	0	462	0	1,491	1,953	0	0	0	0	444	1,501	0
BE	819	579	546	1,869	3,813	630	16.5	492	12.9	490	495	102
BG	270	201	180	651	1,302	450	34.6	29	2.2	216	0	0
HR	240	134	160	434	968	46	0.1	19	2	315	0	0
CY	104	35	69	112	320	140	34.8	65	20.3	69	0	0
CZ	660	376	440	1,215	2,691	50	1.9	12	0.4	525	52	0
DK**	/	/	/	/	/					345	481	0
EE	78	47	52	152	329	264	80.2	100	30.4	326	0	11
FI	475	304	317	982	2,078	1,820	87.6	1,341	64.5	293	293	162
FR	2701	3,064	4,501	9,898	20,164	5,940	29.5	3,157	15.7	2,375	860	456
DE	6,300	4,027	4,200	13,009	27,536	7,250	26.3	3,511	12.8	3,086	0	1,213
EL	<i>beneficiary member state</i>									323	0	0
HU	0	306	0	988	1,294					307	0	0
IE**	360	/	240	/	600	596	99.3	382	63.7	272	519	0
IT	<i>beneficiary member state</i>									1,989	556	117
LV	120	66	80	215	481	438	90.4	270	56.1	220	0	25
LT	135	98	90	318	641	600	93.6	237	37	207	0	10

<sup>296</sup>EC, *Member States' Support to Emergency Relocation Mechanism*, fact sheet, April 6, 2017, <https://goo.gl/68HzII> (accessed 15.04.2017).

<sup>297</sup>EC, *Commission Recommendation on a European resettlement scheme – Annex I, C* (2015) 3560 final, June 8, 2015, <https://goo.gl/sxeSN4> (accessed 13.08.2016).

<sup>298</sup>EC, *Relocation and Resettlement - State of Play*, fact sheet, February 8, 2017, <https://goo.gl/iiFF9Z> (accessed 15.04.2017).

**Table 2 (continued):**

Country	RELOCATIONS									RESETTLEMENTS		
	ITALY		GREECE		Total	Formally pledged places		Relocations done		Resettle-ments	Resettlements done	
	ERM	PRM	ERM	PRM		No	%	No	%		The rest	TR-EU
LU	192	56	128	181	557	270	48.8	277	49.7	147	0	98
MT	36	17	24	54	131	104	79.4	112	85.5	121	0	0
NL	1,228	922	819	2,978	5,947	1,575	26.5	1,637	27.5	732	443	557
PO	660	1,201	440	3,881	6,182	100	1.6	0	0	962	0	0
PT	785	388	524	1,254	2,951	1,618	54.5	1,225	41.5	704	0	12
RO	1,023	585	682	1,890	4,180	1,942	46.5	568	13.6	657	0	0
SK	60	190	40	612	902	40	4.4	16	1.8	319	0	0
SI	138	80	92	257	567	180	31.7	165	29.1	207	0	0
ES	780	1,896	520	6,127	9,323	900	9.7	886	91.7	1,549	232	57
SE	821	567	548	1,830	3,766	350	9.3	39	10.4	491	222	278
UK <sup>**</sup>	<i>Opted out</i>									2,309	0	0
<b>All</b>	<b>17,985</b>	<b>15,601</b>	<b>14,692</b>	<b>50,398</b>	<b>98,676</b>	<b>25,303</b>	<b>25.6</b>	<b>14,540</b>	<b>14.7</b>	<b>20,000</b>	<b>5,654</b>	<b>3,098</b>
											<b>28.3 %</b>	

\* ERM includes 32,677 relocations, the rest up to 40,000 are not decided yet.

\*\* Countries that have the right to ‘opt-out’ in issues related to Title V of TFEU.

Allocations from non-member states are to be conducted under the resettlement programme. The programme provides 20,000 places in EU member states for “persons in clear need of international protection” from the North Africa, Middle East, and the African Horn, where the Regional Development and Protection Programmes are implemented<sup>299</sup> (for numbers and implementation see last three columns of Table 2). With 28.3 % of implementation rate, the resettlement seems to be preferred option for member states to take in asylum seekers. The reasons are simple. The resettlement relieves member states from asylum assessment

<sup>299</sup>Council of the European Union, *Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20,000 persons in clear need of international protection*, 11130/15 ASIM 62 RELEX 633, July 22, 2015, <http://data.consilium.europa.eu/doc/document/ST-11130-2015-INIT/en/pdf> (accessed 03.05.2016).

administration and other related burdens since resettlement conditions require resettlement of refugees and not asylum seekers. Furthermore, resettlement was politically enhanced by the bilateral agreement between the EU and Turkey (for more see the third category of measures).

As the second measure, the European Council advocated enhanced return and readmission policies, supported by integration that would prevent secondary movements. The latter includes effective implementation of the existing readmission agreements, acceleration of ongoing negotiations for readmission agreements and conclusions of new ones, the amended Frontex Regulation, and an updated *safe country of origin* concept by the creation of a common EU list. Although the EC considers the systematic and rapid return of irregular migrants as “an indispensable part of successful migration management and a powerful deterrent to irregular migration,”<sup>300</sup> return systems face many challenges. Nonexisting travel documents, lack of detention capacities, and long and ineffective procedures might have all contributed to successful escape and obstruct readmissions.<sup>301</sup> The EC insistence on the third countries’ “obligations to readmit their nationals” made the “return and readmission one of the top priorities in EU relations with third countries of origin and/or transit.”<sup>302</sup> Low readmission rates were addressed by proposed European passport for returns<sup>303</sup> and integrated return management system, which brings together national and other return networks. In addition, 2016 Frontex ‘return’ budget was significantly increased from € 10 in 2015 to € 65 million, not including

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<sup>300</sup>EC, *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, COM(2016) 85 final, February 2, 2016, <https://goo.gl/SzSMIJ> (accessed 07.05.2016).

<sup>301</sup>The EU average readmission rate in 2014 was 40 %, reaching as low as 16 % for certain African countries (ibid.).

<sup>302</sup>Ibid.

<sup>303</sup>EC, *Proposal for a Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals*, COM(2015) 668 final of 15 December 2015, COM(2015) 668 final, December 15, 2015, <https://goo.gl/wLp7ZI> (accessed 07.05.2016).

national return operations.<sup>304</sup> To carry out more effective operations, the EC proposed to transform Frontex into the European Border and Coast Guard (EBCG).<sup>305</sup> The new agency would have more authority and would benefit from mandatory contributions from member states based on the principle of shared responsibility. The proposal, positively accepted by the European Council, and now in normal legislative process, names hotspots management and return operations, besides border and coast guarding as key priorities of the new agency. Its role in hotspots identification processes might be controversial since the agency staff do not have adequate knowledge on human rights protection and the agency lacks appropriate complaint mechanism by individuals in case of violations. The EBCG shall improve the European return capacity and coordinate operations with member states by establishing Return Office that would carry out identification and return processes. Furthermore, EBCG would have a direct role in return interventions and especially for that created European Return Intervention Teams, composed of escorts, monitors and return specialists, while in urgent situations Rapid European Return Intervention Teams could be deployed either upon the request of a member state or on the EBCG's initiative. Another important novelty is the possibility that the EBCG could implement joint operations with third countries, either on the EU territory or third country's territory, what would enable cooperation, especially with the Western Balkan countries.<sup>306</sup> The securitization of the migration wave and the importance the EU has paid to returns is moreover seen in the fact, that for the first time in history it was also the North Atlantic Treaty Organization (NATO), which assisted with three warships in the Mediterranean in migrants' interceptions by

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<sup>304</sup>In 2015, Frontex carried out 66 return flights carrying 3,565 illegal migrants. EC, *State of Play of Implementation of the Priority Actions ...*

<sup>305</sup>EC, *Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC*, COM(2015) 671 final, December 15, 2015. <https://goo.gl/Oeiyp> (accessed 07.05.2016).

<sup>306</sup>Ibid.

sending them back to Turkey.<sup>307</sup> The EC advocated enhanced implementation of the existing readmission agreements, acceleration of the ongoing negotiations, especially with Algeria and Morocco, and new negotiation mandates to be given to the EC.<sup>308</sup> The negotiations should follow the ‘more for more’ principle,<sup>309</sup> while taking advantage of the comprehensive and tailor-made packages of incentives (carrots) and leverages (sticks), including the operation of trade preferences which have been set up by the European Council.<sup>310</sup> Enhanced readmission system clearly shows that the EU intends to pressure countries of origin and transit countries to set up more effective border controls and in this manner also enhance the European security. Furthermore, strengthened *safe country of origin* and *safe country of transit* provisions indicate that the EU is ready to compensate returns and safety of refugees for its security.

In September 2014, the EC repeated<sup>311</sup> the proposal for the establishment of the EU common list of safe countries of origins,<sup>312</sup> composed of Albania, BiH, Macedonia,

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<sup>307</sup>“Nato launches naval patrols to return migrants to Turkey,” *The Guardian*, February 11, 2016, <https://goo.gl/ez5LBR> (accessed 11.05.2016).

<sup>308</sup>EC, *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions ...*

<sup>309</sup>The approach is based on conditionality – for increased cooperation in migration matters the country gets more concessions in all policy areas by the EU, while on the other side reduced cooperation affects cooperation in general. EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: the Global Approach to Migration and Mobility*, COM (2011) 743 final, November 18, 2011, <https://goo.gl/qRtTVk> (accessed 11.05.2016).

<sup>310</sup>EC, *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions ...*

<sup>311</sup>First proposal was made already in 2005. Due to the lack of the agreement the EP challenged the list at the CJEU, which annulled it for lack of procedural conformity. European Parliamentary Research Service, *Safe countries of origin - Proposed common EU list*, briefing, October 2015, 7, <https://goo.gl/OrMw1Y> (accessed 15.05.2016).

<sup>312</sup>Although the EC proposal is based on the European Asylum Support Office report on applications from the Western Balkans and the July JHA Council conclusion urging all member states to consider listing Western Balkans states on the safe countries of origin lists, the EC had added Turkey on its own initiative. Ibid.

Kosovo, Montenegro, Serbia, and Turkey.<sup>313</sup> In justification, the EC noted that those countries are parties to major international human rights treaties and have appropriate anti-discrimination legislation, respect the *non-refoulement* of their own nationals, have low human rights violation rates, low successful asylum application rates across the EU (see Table 4), and have been already included in the safe country of origin lists of some member states (see Table 3).<sup>314</sup> However, national safe countries of origin lists, existing in 12 member states before the migration ‘crisis’, are heterogeneous and vary from one member state to another. Three countries, Germany, Hungary, and Slovenia, all of them either a transit or destination countries, formed lists of safe countries of origin during the increased migration flow. All of them added the Western Balkan countries, with Slovenia also adding Turkey. Hungary designated the countries at the same time also as safe third countries in the same line as Belgium and Luxemburg did already before and expressed the intention to transfer the responsibility for the refugees coming to Europe through the Western Balkan route to countries in the region.

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<sup>313</sup>EC, *Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU*, COM(2015) 452 final, September 9, 2015, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52015PC0452> (accessed 15.12.2015).

<sup>314</sup>The idea of Western Balkan countries eligibility for safe countries of origin first emerged at the August 2015 Western Balkan Summit in Vienna, which was organised as a part of Berlin Process under the auspices of Germany and Austria. Western Balkan Summit, *Final Declaration by the Chair of the Vienna Western Balkans Summit*, August 27, 2015, <https://goo.gl/SF1HW3> (accessed 21.12.2015).

**Table 3:** Western Balkan states on the EU member states' *safe countries of origin* and *safe third country* national lists.<sup>315</sup>

	Austria	Belgium	Bulgaria	Czech R.	Denmark	France	Germany	Hungary	Ireland	Latvia	Luxembourg	Malta	Slovakia	Slovenia	UK
Albania	Safe country of origin	Safe country of origin	Safe country of origin	Safe country of origin	Safe country of origin	Safe country of origin	Added in 2015/16	Safe third country			Safe third country			Added in 2015/16	Safe country of origin
BiH	Safe country of origin	Safe country of origin	Safe third country	Safe country of origin	Safe country of origin	Safe country of origin	Added in 2015/16	Safe third country			Safe third country			Added in 2015/16	Safe country of origin
Macedonia	Safe country of origin	Safe country of origin	Safe third country	Safe country of origin	Safe country of origin	Safe country of origin	Added in 2015/16	Safe third country			Safe third country			Added in 2015/16	Safe country of origin
Kosovo	Safe country of origin	Safe country of origin	Safe country of origin	Safe country of origin	Safe country of origin	Safe country of origin	Added in 2015/16	Safe third country			Safe third country			Added in 2015/16	Safe country of origin
Montenegro	Safe country of origin	Safe country of origin	Safe third country	Safe country of origin	Safe country of origin	Safe country of origin	Added in 2015/16	Safe third country			Safe third country		Safe country of origin	Added in 2015/16	Safe country of origin
Serbia	Safe country of origin	Safe country of origin	Safe third country	Safe country of origin	Safe country of origin	Safe country of origin	Added in 2015/16	Safe third country			Safe third country			Added in 2015/16	Safe country of origin
Turkey			Safe country of origin											Added in 2015/16	

Safe country of origin     
 Safe third country     
 Added in 2015/16

Adoption of a European-wide list would enable harmonisation of the asylum proceedings of nationals from concerned countries. Furthermore, those applications would be assessed through fast-track or accelerated procedure, based on the assumption that the applications are not eligible. This would relieve the EU of annually 17 % of lodged applications that come from the Western Balkans.<sup>316</sup> However, the proposal was met by the opposition from human rights organisations. According to the European Council on Refugees and Exiles, the proposal violates international asylum law by discriminating asylum seekers by nationality. It contributes to stereotyping certain nationalities and removes the necessities for a thorough examination of each applicant's situation, likely leading to wrong and

<sup>315</sup>“Mapping asylum procedures, reception conditions and detention in Europe,” *AIDA*, <http://www.asylumineurope.org/> (accessed 08.05.2016); Government of the Republic of Slovenia, *Government adopts the ordinance defining a list of safe countries of origin*, press release, February 12, 2016, <https://goo.gl/cJ59Xg> (accessed 08.05.2016).

<sup>316</sup>European Parliamentary Research Service, *Safe countries of origin ...*

predetermined decisions.<sup>317</sup> It is dangerous to propose such an initiative in the year when applications from the region are on increase. Moreover, the success rate of applications from 3 countries from the proposed list, Albania, Kosovo, and Turkey, were over 5 % only in 2014, only a year before (see Table 4). By the application of the list, applicants would be most likely denied the access to international protection, while the burden to prove the otherwise would fall on applicants.<sup>318</sup>

**Table 4:** First instance asylum decision and positive decision rates in EU from the Western Balkan states in 2011–15 period.<sup>319</sup>

	2011		2012		2013		2014		2015		2016	
	D	R	D	R	D	R	D	R	D	R	D	R
AL	2,010	12.4	4,590	11.9	7,320	8.4	13,360	8.0	41,420	2.6	42,880	3.2
BA	1,940	9.8	5,060	4.6	5,385	5.6	7,210	4.6	6,610	3.3	6,955	3.8
MK	4,490	1.3	8,450	0.6	7,495	0.9	8,185	0.9	8,565	1.1	13,480	0.6
XK	10,335	6.0	7,980	6.4	11,245	3.9	13,145	6.3	37,615	2.3	23,290	5.2
ME	345	4.4	1,205	1.2	800	3.8	1,355	3.0	2,425	1.7	3,140	1.4
RS	11,280	2.8	18,890	1.9	15,820	2.4	22,070	1.8	21,860	1.6	18,890	2.1
TR	5,575	14.2	4,810	18.8	5,085	18.6	4,630	21.6	3,275	24.4	3,435	21.3
ALL	35,975	7.3	50,985	6.5	53,150	6.2	69,955	6.6	121,770	5.3	112,070	5.4

D – Number of first instance decisions

R – Recognition rate in %

<sup>317</sup>AIDA, “Safe countries of origin”: A safe concept?, AIDA Legal Briefing No. 3. [Brussels], 2015, 10, <https://goo.gl/dPhXdH> (accessed 15.03.2016).

<sup>318</sup>European Council on Refugees and Exiles, *ECRE Comments on the Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin and amending the recast Asylum Procedures Directive (COM(2015) 452)*, [Brussels], October 2015, 3, <https://goo.gl/wYAlhT> (accessed 15.03.2016).

<sup>319</sup>“First instance decision on applications by citizenship ...”, *Eurostat*.



As a third measure, the European Council proposed enhanced cooperation with countries of origin and transit on stemming flows of irregular migrants by fighting the root causes for migration and smuggling networks. Among mentioned priority partner countries are African states, Turkey, relevant countries from the Middle East, and the Western Balkan countries. In regard to the first group of states, the Action Plan was adopted at the November 2015 Valletta Migration summit.<sup>320</sup> It concentrated on five priority domains, namely (a) address of root causes for irregular migration, (b) promotion of legal migration channels, (c) reinforcement of refugee protection and strengthening of first asylum, transit and destination countries' asylum capacities, (d) prevention of and fight against irregular migration, migrant smuggling and trafficking in human beings, and (e) facilitation of returns, readmissions, and sustainable reintegration of irregular migrant. € 1.8 billion worth Emergency Trust Fund for stability and address of root causes of irregular migration was created to implement the above-stated priorities.<sup>321</sup> As the cooperation with African countries seemed more or less smooth since such kind of cooperation between the EU and African countries existed already before and has now only been enhanced by greater financial support, the desired cooperation with Turkey turned out much more troublesome. Although migration management comprises a core of the EU-Turkish relations ever since Turkey turned into a transit and immigration country, the immediate pressure the EU was faced with shifted the power to the Turkish side. At the beginning of the negotiations, Turkey had already hosted more than 2 million Syrian refugees. The fact was often stressed by Ankara officials in order to boost Turkish humanitarian stand, responsibility and often also moral duty against the West, leave behind questionable conditions in which refugees are held. This made Turkish position in negotiations relatively stronger against the 'paranoid' and 'frightened' EU. Turkish role was especially important since the majority of

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<sup>320</sup>European Council, *Valletta Summit on Migration - Action Plan*, November 11–12, 2015, <https://goo.gl/c25Zsl> (accessed 16.03.2016).

<sup>321</sup>EC, *President Juncker launches the EU Emergency Trust Fund to tackle root causes of irregular migration in Africa*, press release, November 12, 2015, <https://goo.gl/6f9IET> (accessed 16.03.2016).

refugees hitting the Western Balkan route passed the country or even started their journey from there as a part of the secondary movement.

The first agreement on migration cooperation between the EU and Turkey in October 2015 established the Joint Action Plan.<sup>322</sup> It was aimed to improve the position of Syrian refugees in Turkey and strengthen cooperation in prevention of irregular migration. However, the agreement (Turkey) failed to bring the desired results with migration flow rather escalating than slowing down. By rapid escalation of migration pressure, the EU was ready to offer more in negotiations for the second agreement that would besides new and enhanced measures from the Turkish side demand also greater level of adherence. Re-opened negotiations enabled Turkey to put some burning issues back on the table. Accession process was re-energized by the opening of new Chapters. In exchange for ‘blocking’ the refugees’ way to Europe, Turkey was promised € 3 billion for the humanitarian assistance. Paradoxically, the same agreement enabled Turkey to ensure “the application of the established bilateral readmission provisions” and swift returning of migrants to their countries of origin.<sup>323</sup> In addition to becoming the main European ‘gatekeeper’, Turkey accepted to fully apply the EU-Turkey Readmission Agreement by June 2016.<sup>324</sup> However, although the Agreement was ratified by the Turkish Grand National Assembly and published in the Official Gazette after the President Erdoğan’s approval in May 2016, its implementation is constrained by the missing cabinet’s directive for an international treaty implementation and left for possible

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<sup>322</sup>EC, *EU-Turkey joint action plan*, fact sheet, October 15, 2015, <https://goo.gl/UF1vzb> (accessed 20.03.2016).

<sup>323</sup>European Council, *Meeting of heads of state or government with Turkey - EU-Turkey*, statement, November 11, 2015, <https://goo.gl/WKKpTC> (accessed 20.03.2016).

<sup>324</sup>The EU-Turkey Readmission Agreement was initially supposed to enter into force on October 1, 2014. From then on, Turkey should have readmitted its own nationals, stateless persons and persons of third countries with which Turkey has concluded readmission agreements. Readmission full implementation for its own citizens would start 3 years afterwards. Art. 24 of the *Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation*, OJ L 134/3, signed on December 12, 2013, not in force, <https://goo.gl/9ZUpYS> (accessed 22.03.2016).

further linkage policy.<sup>325</sup> Further, the proper determination of migrants who are not in need of international protection by Turkish authorities and could be therefore deterred stays open and highly controversial. International asylum law demands individual processing of asylum applicants who cannot be deterred even before they got the opportunity to submit the application. Allowing such situations, Turkey must be deemed as a safe country by the international and European standards. However, with the geographical limitation of the Refugee Convention<sup>326</sup> and high successful rates of Turkish asylum applicants in the EU (see Table 4), the designation of Turkey as a *safe third state* is highly disputed.<sup>327</sup> With the agreement, the European tendency to spread its ‘refugee buffer zone’ beyond North Africa and the Balkans started to bear first fruits.

Meanwhile, the European surge to decrease the border pressure continued by yet another dubious move in terms of the international asylum system. Concurrently with the enhanced EU-Turkish agreement in mid-November 2015, Slovenia, the first Schengen state on the way to central Europe, decided to refuse passage of ‘economic migrants’. The move came as a precaution in case Turkish negotiations and agreement would fail again. A triggering domino effect on the Balkans was reflected in Serbian and later Macedonian decision to only let through those who come from

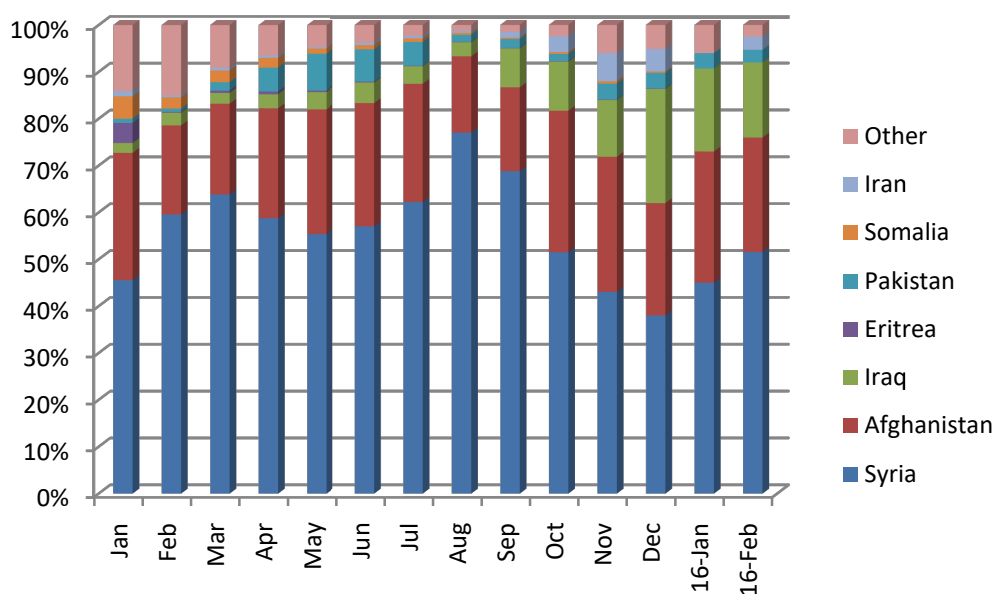
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<sup>325</sup>Mustafa Türkeş, “A Deal between EU and Turkey on Matters of the Refugee, Readmission and Visa Liberalisation,” *History of Global Arms Transfer* 1, no. 3 (2017): 35, <https://goo.gl/9IKdBI> (accessed 25.04.2017).

<sup>326</sup>Turkey applies Refugee Convention only to persons who have “become refugees as a result of events occurring in Europe” and therefore only accepts refugees from Europe. Syrian ‘refugees’ were firstly treated as ‘guests’ and granted ‘temporary protection’ status in October 2011, ensuring *non-refoulement* and imposing no limit on their duration of stay. *Protocol relating to the Status of Refugees – parties and reservations*, adopted on January 31, 1967, entered into force on October 4, 1967, <https://goo.gl/mnTd9l> (accessed 25.03.2016); Ahmet İçduygu, “Syrian Refugees in Turkey – Long Road Ahead,” DC: Migration Policy Institute, 2015, <https://goo.gl/3pdOJB> (accessed 27.03.2016).

<sup>327</sup>The importance of the limitation was challenged by the EC with a bold interpretation of the *safe country of origin*. According to the EC, the concept as defined in the Asylum Procedures Directive “requires that the possibility exists to receive protection in accordance with the Geneva Convention”, but does not require that the safe third country has ratified that Convention without geographical reservation. EC, *Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions ...*

war-torn countries, namely Syrians, Iraqis and Afghans.<sup>328</sup> However, the measure again did not bring the desired effect. The number of refugees that were allowed to pass did not fall drastically as more than 80 % of migrants passing Greece came from the above-mentioned states (see Figure 9).



**Figure 9:** Arrivals in Greece between January 2015 and February 2016 according to the nationality.<sup>329</sup>

Towards the end of 2015, it seemed that none of the two approaches, the cooperation with Turkey neither the selective border closure worked. Turkish capacities and commitment were insufficient to prevent irregular passages. Almost 8,400 km long coastline and more than 800 km long border with Syria is difficult to guard already in normal circumstances. The EU entered into third negotiation round and sought a

<sup>328</sup>“Number of Balkans states limit migrant passage,” *RTE News*, November 19, 2015, <http://www.rte.ie/news/2015/1119/743771-migrants/> (accessed 15.04.2016).

<sup>329</sup>UNHCR, *Europe refugees & migrants emergency response - nationality of arrivals to Greece, Italy and Spain*, briefing, [Geneva], January 2016, 4, <https://goo.gl/sBWhDU> (accessed 18.04.2016).

more committed agreement that would bring more benefits to the EU although at a higher price. In March 2016, the EU-Turkey statement was reached.<sup>330</sup> It foresaw returns of all migrants that arrive from Turkey to Greece on the grounds that they already had the needed protection there – or if not, they should seek it there, while the EU would in exchange take in (resettle) the same number of Syrian refugees directly from Turkey. The formula got known as 1 for 1 exchange. In return, the EU promised full visa liberalisation for Turkish citizens by June 2016 and yet another € 3 billion humanitarian assistance to Turkey.

The agreement takes a form of a statement and is therefore not legally binding. It was addressed with numerous critiques by the UN and various human rights organisations for lack of legal safeguards.<sup>331</sup> The provision that “all new irregular migrants crossing from Turkey into Greek islands ... will be returned to Turkey” risks direct expulsion. Despite the guarantee that all applications would be processed by the Greek authorities following the Asylum Procedures Directive, and only those who do not apply for asylum or whose applications are unfounded or inadmissible would be returned to Turkey, the inadmissibility causes in the Greek asylum law were tightened by the ‘emergency’ inclusion of a *safe third country* concept.<sup>332</sup> The law was changed without the introduction of a list of *safe third countries* or any

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<sup>330</sup>European Council, *EU-Turkey statement*, press release, March 18, 2016, <https://goo.gl/b3uQy> (accessed 20.04.2016). Implementation of return and resettlement provisions started on April 4, 2016.

<sup>331</sup>UNHCR distanced itself from the deal and expressed concerns that its implementation could tantamount to blanket returns of foreigners to third country. This could lead to a severe violation of international law and human rights. “UNHCR expresses concern over EU-Turkey plan,” *UNHCR*, <https://goo.gl/JSFWwY> (accessed 25.04.2016).

<sup>332</sup>According to the new law from April 2016, an application is inadmissible when (a) another member state has granted asylum or accepted responsibility under the Dublin Regulation; (b) the applicant comes from a *safe third country* or a *first country of asylum*; (c) the application is a subsequent application and without new “essential elements” presented; (d) a family member has submitted a separate application to the family application without justification for lodging a separate claim. AIDA. Country Report: Greece, [Brussels], December 2016, 54, <https://goo.gl/zpjMv0> (accessed 28.04.2016).

reference to Turkey and its application in practice is troublesome.<sup>333</sup> Firstly, the returns on the grounds of inadmissibility imply that Turkey is *a safe third country* with a working asylum system and no *refoulement* risks. Returns ignore Turkish geographical limitation of the Refugee Convention, announcements of Turkish officials that returned migrants, including Iraqis, Afghanis and Pakistanis, will be readmitted to their countries of origin,<sup>334</sup> already high burden of refugees in the country, as well as reports on operations that prevent Syrian refugees from entering Turkey.<sup>335</sup> Secondly, high pressure on Greek administration risks fast-track asylum procedures with inappropriate assessments of applications<sup>336</sup> and could impede effective opportunity to apply for asylum. Doubts are justified by reports on almost breaking Greek asylum system under pressure of a great number of applications at the expense of legality and morality.<sup>337</sup> Additionally, the conditions in which migrants are held on Greek islands while their applications are fast-tracked are questionable, with reports emerging on exhausted capacities and detention-like accommodation. In the most recent attempt, the Greek government proposed termination of the exemption of applicants in need of special help, pregnant women, and unaccompanied children, from accelerated assessment procedures, since they

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<sup>333</sup>Greece, firstly sought political cover by the EU acceptance of a common list of safe countries including Turkey, but was in line with some member states refusals rejected. "Greece, Turkey take legal short-cuts in race to return migrants," *Reuters*, March 31, 2016, <https://goo.gl/II3PR0> (accessed 28.04.2016).

<sup>334</sup>"Efkan Ala: Geri kabuller yarın başlıyor," *Hürriyet*, April 3, 2016, <https://goo.gl/EwFT0D> (accessed 28.04.2016).

<sup>335</sup>"Turkey 'illegally returning Syrian refugees' – Amnesty," *BBC*, April 1, 2016, <https://goo.gl/FXz9uN> (accessed 28.04.2016); "Turkish border guards 'shoot eight Syrian refugees dead' including women and children trying to reach safety," *The Independent*, April 22, 2016, <https://goo.gl/rnzunf> (accessed 28.04.2016).

<sup>336</sup>Already on the first day of returns, April 4, allegations appeared, that 13 out of 202 deported people, were deported 'by mistake' as the Greek authorities 'forgot' to process their asylum claims. Any investigation of the incident was refused. "Greece may have deported asylum seekers by mistake, says UN," *The Guardian*, April 5, 2016, <https://goo.gl/1KYTKd> (accessed 05.03.2016).

<sup>337</sup>"Greek asylum system reaches breaking point," *Irin news*, March 31, 2016, <https://goo.gl/Xp7hsm> (accessed 05.03.2016).

were so far assessed in-land.<sup>338</sup> The move would cause additional burden to the already exhausted inland capacities and risk the returns of people with special needs to Turkey by a fast-track procedure.

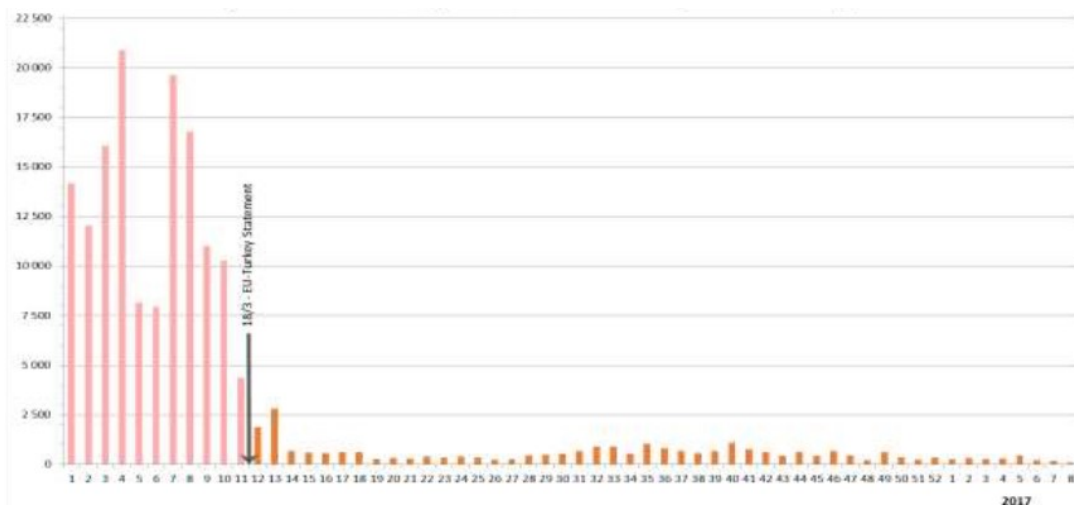
The resettled refugees from Turkey into the EU fall under the 20,000 agreed places under the resettlement programme (see Table 2). Additional 54,000 places firstly devoted for allocations from Hungary were made available.<sup>339</sup> Although the agreement with Turkey prioritises the resettlement of more vulnerable refugees, it may affect non-resettlement from other states with enormous numbers of refugees, such as Lebanon or Jordan, and thus unintentionally stimulate secondary movements from neglected areas. Furthermore, humanitarian acts such as resettlement for sure is, should not demand a payoff in the form of irregular migrants' returns as in the given case. With the deal, Turkey became the guardian of the European borders and took over the role once Libyan Qaddafi played in stopping the migrants from passing the Mediterranean in exchange for € 5 billion a year provided by Italy.<sup>340</sup>

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<sup>338</sup>“Urgent appeal from 13 NGOs not to approve amendments in Greek Parliament that will be harmful to asylum seekers,” *Human Rights Watch*, <https://goo.gl/j6IBDK> (accessed 05.03.2016).

<sup>339</sup>The statement makes clear that the agreed arrangement stops once the 72,000 (18,000+54,000) limit of resettled Syrian refugees as well as the correspondent number of irregular migrants transfers is reached or if the level of migration sinks. In such a case, the EU will proceed with voluntary humanitarian admission scheme. European Council, *EU-Turkey statement*.

<sup>340</sup>“Facing Migrant Crisis, E.U. Makes a Dubious Deal With Turkey,” *The New York Times*, March 10, 2016, <https://goo.gl/mSs9Gg> (accessed 10.03.2016).



**Figure 10:** Illegal sea border crossings into Greece from Turkey in 2016–17 by week.<sup>341</sup>

As shown in Figure 10, the EU-Turkey statement managed to release the EU from the pressure on its European borders. However, in relation to slow resettlement implementation, failure by both the EU and Turkey to keep promised concessions,<sup>342</sup> and unstable political environments in both parties, such guaranty is only temporary and comes at the high expense of lower asylum standards and human rights violations. The system might collapse at every moment as it is not legally binding and the EU has difficulties fulfilling its main concession, the full visa liberalisation. This would bring yet another migration catastrophe such as was triggered by the Libyan destabilisation. It is a paradox that the EU which has portrayed itself as a model for other asylum systems has now participated and even played a major role in the creation of a system based on loosening legal and moral grounds. The 1 for 1

<sup>341</sup>Taken from: EC, *Report from the Commission to the European Parliament, the European Council and the Council, Fifth Report on the Progress made in the implementation of the EU-Turkey Statement*, COM (2017) 204 final, March 3, 2017, 3, <https://goo.gl/ANu7d9> (accessed 12.04.2017).

<sup>342</sup>Although the EU promised remove visas with June 2016, the implementation was bound to 72 conditions, involving the change of Turkish terrorism bill. Since the latter is unacceptable for Turkey, the visa liberalization was delayed. On the other side, Turkey stopper ratification of the EU-Turkey Readmission Agreement that should as well enter into force with June 2016 and decided to keep it as further leverage in negotiations. Returns from Greece were thus implemented under the Greek-Turkish bilateral readmission agreement.



deal presents a novelty in the EU migration management and upgrades so far existing readmissions by tailor-made provisions and more comprehensive measures. In practice, it means a double win for both partying sides, while the losers are already weak migrants. However, despite controversies, the deal importantly managed to prevent escalation of disputes in the Balkans. As the route was closed, the EU could primarily focus on strengthening its borders. However, the Balkan countries got flooded by migrants who stayed in the region.<sup>343</sup> The following section analyses EU-cooperation with Balkan countries in order to address the Western Balkan migration route.

### **3.4.2. The EU's 'Balkan (non)solution'**

In regard to the Balkan migration route, the EU had to address two issues, increasing numbers of migrants coming from the region as well as the greater migration flow transiting through the Balkans. As indicated in the section above, the EU has approached migrants coming from the Western Balkans by designating the region for the one of safe origin what enabled smoother deportations. On the other side, the Western Balkan transit route was terminated by the Turkey-EU statement in March 2016. Both approaches aimed at lowering the number of asylum seekers in the EU by beforehand eliminating irregular migrants assumed to come to Europe as job seekers abusing the asylum system. Although the measures successfully lowered the burden of the European asylum system, their legality and humanitarian aspect are disputed. However, since those were the unilateral acts of the EU, this section asks how did the EU cooperate with the Balkan countries, as third and transit countries that are the closest to the EU in geographical terms as well as in terms of accession.

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<sup>343</sup>56,814 migrants and refugees were stranded in Greece, Macedonia, Serbia, Hungary, Croatia, Bulgaria and Slovenia as of March 31, 2016. IOM, *Mixed Migration Flows in the Mediterranean and Beyond - Compilation of available Data and Information, Quarter 1*, [Geneva], 2016, 1, [http://doe.iom.int/docs/Q1%202016%20Flows%20Overview\\_final.pdf](http://doe.iom.int/docs/Q1%202016%20Flows%20Overview_final.pdf) (accessed 30.05.2016).

The EU approached the Western Balkan route relatively late, being preoccupied with the migration flow across the Mediterranean. The sea-route had existed for a long time, and southern EU member states have relatively more power within the EU in comparison to non-member Western Balkans countries. The flaccidity of the approach corresponded to the internal European divide. Germany accompanied by Austria contributed the most to the ‘cooperation’<sup>344</sup> with Balkan states, the first one being the main destination country and the second one the main transit country besides Slovenia and Hungary within the EU.<sup>345</sup> On the other side, other countries did not express much interest in the Western Balkan ‘solution process’, except Slovenia and Croatia, which were actually part of the route. Hungary, advocated diametrically opposite solution in comparison to Germany, by closing up the borders and hence causing even more problems for the Western Balkans.

The initial EU approach to the increased migration flow on the Balkan route consisted of continuity of the already existing financial, technical, and humanitarian assistance under the IPA. Assistance was increased to a certain extent in cases of transit countries Serbia and Macedonia, thus adopting the false belief that the latter might be enough of support to assure the countries from the region to deal with the ‘crisis’ by themselves. The EU provided € 240,000 from IPA II for additional water and sanitation needs of migrants, while additional € 8.2 million have been dedicated to expansion of the existing accommodation capacities (€ 3.2 million), twinning project on asylum system reform (€ 1 million), and further development of surveillance system (€ 3 million). For Macedonia, the EC indicated € 12 million for the improvement of infrastructure, equipment, and information technology support to ensure proper functioning of the asylum and migration policies, strengthen the

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<sup>344</sup>Cooperation is used in apostrophes since the EU has not treated the states from the region as equal partners with equal rights in decision-making processes. The Balkan states were rather treated as an afterthought, when decisions were already taken at the EU level.

<sup>345</sup>Austrian position has changed in January 2016. It introduced the upper ceiling for refugees entering the country set at 37,500 for 2016. Austrian officials expressed the belief that the consequences of such a measure might pressure the EU to find a solution and Greece to properly protect its borders. “Stemming the Flow: Berlin Hunts for Back-Up Plan in Refugee Crisis,” *Spiegel*, January 22, 2016, <https://goo.gl/pRqwy9> (accessed 18.05.2016).

functioning of visa policy; combat trafficking in human beings and support to its victims, improve police stations' conditions and strengthen training and education capacities in the area of home affairs. Other countries from the region included in the IPA programme did not receive additional funding.<sup>346</sup> Besides the EC, some member states as well non-member states pledged donations based on bilateral relations. Germany provided € 400,000 for the construction of refugee camps in Serbia<sup>347</sup> and Norway \$ 7.6 million for refugee acceptance and humanitarian aid to Serbia and Macedonia.<sup>348</sup> Further financial and technical assistance was provided in the form of the EU Civil Protection Mechanism activated in September 2015. It assisted Hungary and Serbia in responding the urgent needs caused by an unprecedented inflow of migrants and refugees, and in October 2015 to assist Slovenia in providing material support and equipment in coping with a large number of arrivals.<sup>349</sup> Greece activated the EU Civil Protection Mechanism relatively late, in December 2015, requesting material support to cope with the influx of asylum seekers.<sup>350</sup> In addition to extra resources, the EU member states on the route benefited from the EU emergency sources – Croatia was granted € 16.43 million<sup>351</sup>

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<sup>346</sup>EC, *Funding to main migration-related activities in the Western Balkans and Turkey*, fact sheet, October 6, 2015, <https://goo.gl/JKKGqM> (accessed 20.05.2016).

<sup>347</sup>“Ulrike Lunaček: Krah migracione politike EU,” *Danas*, September 17, 2015, <https://goo.gl/UQyuDz> (accessed 19.12.2015).

<sup>348</sup>“European Refugee Crisis: Norway Pledges \$ 7.6 Million To Serbia And Macedonia Amid Border Crackdowns,” *International Business Times*, September 17, 2015, <https://goo.gl/D1GTxx> (accessed 20.05.2016).

<sup>349</sup>The EU Civil Protection Mechanism provides fast cooperation and pooling of resources from 33 European states (EU28, Iceland, Montenegro, Norway, Serbia, and Macedonia) in case of emergency situations. EC, *Leaders' Meeting Western Balkans Route – The EU Civil Protection Mechanism*, fact sheet, October 2015, <https://goo.gl/OBy6Jw> (accessed 19.12.2015).

<sup>350</sup>EC, *Refugee Crisis: Greece activates EU Civil protection mechanism, agrees Frontex operation at border with former Yugoslav Republic of Macedonia and triggers RABIT mechanism*, fact sheet, December 3, 2015, [http://europa.eu/rapid/press-release\\_IP-15-6249\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6249_en.htm) (accessed 22.05.2016).

<sup>351</sup>€ 3.99 million came from Internal Security Fund and € 12.43 from AMIF. EC, *Financial support for managing migration: European Commission awards € 16.43 million in emergency funding to Croatia*, press release, November 6, 2015, <https://goo.gl/035A4x> (accessed 22.05.2016).

and Slovenia € 10.17 million<sup>352</sup> in November 2015 for improved border management and asylum seekers acceptance conditions. The highest financial support was granted to Greece, which received € 181 million between the beginning of 2015 and April 2016.<sup>353</sup> The technical and financial assistance of the EU to the countries of the region signalled that they are not completely alone in solving the emergency situation. However, there was no coordinated approach that would actually give the answer what to do with asylum seekers and help them passing the way in more humane manner. On the contrary, although the assistance aimed at the improvement of the reception conditions on one side, it also aimed at the improvement of border security and surveillance, which aimed to repel additional inflow towards Europe.

With the aim of developing a more coordinated approach to the region, the EU convened two high-level meetings, the High-Level Conference on the Eastern Mediterranean/Western Balkans Route on October 8 and the Mini Balkan Summit – Meeting on the Western Balkans Migration Route on October 25, 2015. In an attempt to increase solidarity with those bearing the major burden of the migration influx and provision its orderly management, the conclusions of the High-Level Conference gave an impression that the EU sought the answer to the ‘crisis’ outside the EU. Participating foreign and home affairs ministers of the EU, Western Balkan countries and Jordan, Lebanon, and Turkey, agreed on enhanced support to Jordan, Lebanon, and Turkey and humanitarian assistance to Western Balkan transit countries. Additional sources were dedicated to improve reception and accommodation capacities, assure swift border management, proper registration processes, and functional returns. Following accepted measures concerned cooperation in fighting organised crime and trafficking in human beings, the address

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<sup>352</sup>€ 4.918 million came from Internal Security Fund and € 12.43 from AMIF. EC, *Financial support for managing migration: European Commission awards € 16.43 million in emergency funding to Slovenia*, press release, November 6, 2015, <https://goo.gl/U4OJyg> (accessed 22.05.2016).

<sup>353</sup>EC, *EU provides € 83 million to improve conditions for refugees in Greece*, press release, April 19, 2016, <https://goo.gl/b0ZcLW> (accessed 22.05.2016).

of root causes for migration and engagement with countries of origin.<sup>354</sup> Far more concrete measures were adopted at the Mini Balkan Summit, convened upon the initiative of German and Austrian Chancellor. The fact that the summit was convened by the EC President Juncker and not by the EU President together with the participating states – Austria, Germany, Bulgaria, Croatia, Greece, Hungary, Romania, Slovenia, Albania, Macedonia, Serbia – indicated disagreements within the EU in regard to the importance of the issue as well as the proposed solutions.<sup>355</sup> The 17-points plan that was agreed on the meeting<sup>356</sup> concentrated on providing shelter for the asylum seekers on the way by assuring 50,000 places in Greece and 50,000 in other states on the way, order reconstruction by slowing down the flow and enhancing border control on Greek-Macedonian border and Macedonian-Serbian border. It further appointed contact points in each country on the route to assure a proper exchange of information and enable cooperation between countries. In this regard, the most important provision aimed at discouraging secondary movements, discouraged organised movements of migrants from one state to the border of another state without a beforehand acquired consent of the second state. The plan attempted to manage broken relations between the courtiers in the region by providing a forum and rules for constant interaction and proper engagement, gaining the EU the position of a policeman.<sup>357</sup> However, the February 2016 report

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<sup>354</sup>Council of the European Union, *High-Level Conference on the Eastern Mediterranean/Western Balkans route*, declaration 12876/15, October 9, 2015, <https://goo.gl/kj56nd> (accessed 19.12.2015).

<sup>355</sup>EU President Tusk advocated stricter approach by tightening up security measures at the EU external borders. “EU migrant crisis: Donald Tusk tells Merkel to get tough and help secure EU's external borders,” *International Business Times*, November 9, 2015, <https://goo.gl/qcMkFz> (accessed 22.05.2016).

<sup>356</sup>EC, *Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action*, press release, October 25, 2015, <https://goo.gl/qdMYF3> (accessed 19.12.2015).

<sup>357</sup>The EU had been intervening before on numerous cases of conflicts that emerged as a consequence of migrants ‘ping-pong’ from one state to another, as for example between Croatia and Serbia, the conflict that ended up almost with an economic embargo and only ceased after the increased pressure of the EU.

on the implementation of the EAM<sup>358</sup> stated that the unilateral decisions had been still taken regularly and causing a domino-effect on the countries upstream. It called for the restoration of “orderly management of borders on the Eastern Mediterranean/Western Balkans route as the most pressing priority for the European Union today.” The report further urges states on the route to speed up the provision of 50,000 additional reception places, since only half of them had been provided or under development until that time. As a positive development, Frontex deployment on the Greek-Macedonian border is praised due to its contribution in the registration process and regret expressed that it cannot be deployed inside Macedonia.<sup>359</sup>

With the promotion of mutual, Western Balkan-EU, management of the flow and proper registration procedures that would be completed in cooperation with European agencies,<sup>360</sup> the EU attempted to access migration flow before it hit its borders and divide refugees from economic migrants who were to be returned under readmissions back to their countries of origins. As it became clear that for that aim established ‘hot-spots’ – processing centres for asylum seekers in Greece and Italy failed to stop the flow by selecting between the ‘good’ and ‘bad’ migrants, the EC announced that it is examining the option of opening new hot-spots on the Western Balkan route also in non-member states, such as in Macedonia and Croatia,<sup>361</sup> although it was rejecting such an option before. Serbia and Macedonia categorically rejected such option because they did not want to become yet another ‘refugee buffer zone’ on the European border. Further problems caused noncooperation of the overloaded Greece. At the beginning of February 2016, it received the EC ultimatum of 6 weeks to remedy “deficiencies” in its border controls, or it would face an

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<sup>358</sup>EC, *Implementing the European Agenda on Migration: Commission reports on progress in Greece, Italy and the Western Balkans, press release*, February 10, 2016, <https://goo.gl/oZhfFz> (accessed 15.05.2015).

<sup>359</sup>The proposed change of Frontex status would enable deployment in a third country.

<sup>360</sup>EC, *Meeting on the Western Balkans Migration Route ...*

<sup>361</sup>“EU eyes migrant processing centres in non-member states,” *Financial Times*, November 9, 2015, <https://goo.gl/iVeqHt> (accessed 22.05.2016).

unprecedented suspension from the Schengen zone.<sup>362</sup> The challenges forced the EU to shift the ‘front-line’ from the Greek islands to the Greek-Macedonian border, strengthened by Frontex forces.

The 17-point action plan aimed at improving the acceptance conditions in the Balkans and mitigation of tight relations between states in the region failed to recognise that 50,000 new capacities exceed region’s resources and will. It did not provide any solution for relocations of asylum seekers from the region, thus potentially limiting their access to protection. The non-existence of concrete solution regarding the latter is the consequence of the lack of concrete action on the European side, which even failed to allocate refugees from its border member states, not to mention any attempt of such an approach in the Balkans. The EU found an infamous solution to the Balkan Western migration route in a ‘trade’ deal with Turkey and closing of the route. A domino effect was triggered by Austria as soon as the agreement with Turkey was in its final stage and migrants were prevented from entering the ‘humanitarian corridor.’<sup>363</sup>

### **3.5. Conclusion**

Although the EU, and especially its southern member states, have been for a long time challenged by the migration influx from poor and conflict regions, the 2015 flow was unprecedented in its enormously huge figures as well as the incoming routes. Increased use of the Western Balkan route meant that besides the front-line Greece, Hungary, Austria, and Germany became target countries instead of southern Italy and Spain. Conflicts in the Middle East and desperate circumstances in first countries of asylum ‘pushed’ refugees further towards Europe. Apart from that,

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<sup>362</sup>The measure was unlikely to realize since it would have further consequences also on a suspension of common currency in Greece. “Greece handed three-month ultimatum to control migrant influx,” *The Telegraph*, February 12, 2016, <https://goo.gl/CcdPdY> (accessed 22.05.2016).

<sup>363</sup>“EU leaders to declare Balkan migrant route closed,” *EUObserver*, March 8, 2016, <https://euobserver.com/migration/132569> (accessed 22.05.2016).

German ‘open door’ policy played a significant pull factor, attracting into the ‘promised land’ also many economic migrants seeking better opportunities. Among them, there was a huge share of irregular migrants from the Western Balkan countries. Although the EU designated migration as one of priority tasks already before 2015, the flow caught it unprepared. Since the European asylum system was primarily designed with the objective to protect the internal market, its failure to welcome refugees in a humanitarian way did not come as a surprise. Instead of assuring immediate temporary protection provided under the Temporary Protection Directive in cases of mass influx, frontier member states were left to *ad hoc* decisions and opt to deter immigrants, often by the use of force, in humiliating circumstances outside the ‘fortress Europe’.

The ‘crisis’ revealed that the European arrangements on ‘burden’ sharing and responsibility-shifting do not work. According to the Dublin system, the main burden fell on border member states – Greece in the case of the Western Balkan migration route. With its capacities overburdened and totally exhausted, the country broke under pressure and the flow escaped upwards through the Balkans. Although relocation and resettlement programmes aimed at providing protection to those in needs were developed, their implementation is very slow and troublesome, since they are obstructed by Visegrad group. Besides, the programmes provide protection for a limited number of refugees, not taking into regard prospects of their most like increase in the future. Being aware of large numbers of economic migrants which are seen as the abusers of the European asylum system, the EU stepped up the conclusion of readmission agreements and returns, the latter including also the cooperation of third countries. Advocated fast-tracked procedures risk mistakes and stereotyping of particular nations what eventually leads to discrimination which is prohibited by the international asylum law. Ironically, the EU transferred the same policy to the countries of the Western Balkan route. It expected that they might do the ‘dirty job’ instead of the EU for sake of better and more humane provision of ‘real’ asylum seekers that might follow once the countries are released of the additional burden of economic migrants. As the latter turned out to be a difficult task



for under-resourced Balkans, which at the same time did not want to become the 'closed sack' of refugees waiting for the entrance of Europe, the EU found a solution outside the EU and outside the region. In the EU-Turkish 'trade' agreement, parties agreed to exchange irregular migrants coming from Turkey to Greece for Syrian refugees from Turkey. In contrast to divisions among member states on reception of refugees, the EU united in building the wall of the 'European fortress' even higher. Although the deal released the burden from the region in which old conflicts have already started to re-emerge, the legally and morally disputable 'solution' seemed more like the last possibility, than a real plan. Although bilateral agreements on migrants' 'deterrence' existed before, the EU-Turkish deal represents a novelty on the EU level and upgrades provisions of existing readmission agreement. Its conclusion shows that refugees' rights could be traded for 'higher' interests and signals further deterioration of the European and most likely also international asylum system, with more and more vocal discussions on the extraterritorial procession of asylum applications.

## CHAPTER 4

### THE BALKAN STATES' RESPONSES TO MIGRATION WAVE: FORMATION AND APPLICATION OF MIGRATION POLICIES

#### 4.1. Introduction

Balkan's geographic positioning in the European neighbourhood made it prone to transit migration, and it was only a question of time when the region would become pressured by increased number of migrants once the European external border came to the Balkans. In the 2015 migration wave, Balkans, once the main source of refugees in Europe, became an important transit zone for unprecedented numbers of refugees and economic migrants both from the region and beyond.

Although the refugees in the flow might have gained compassion from the region with a past refugee experience, the region's integration in the European migration management associates any transit migration with irregular movements and human trafficking. As seen in Chapter I, labelling a state as a transit state equals a political act that brings certain consequences. Transit states obtain the objective of a 'buffer zone' and enter a new strategic environment.<sup>364</sup> By additional access to financing, technical aid and in exchange for other political gains they become a part of the European migration control management. The circumstances provided a set of conditions as well as new opportunities. The following sections look into the transit states' responses to the migration wave. Focus is put on modalities the states endeavoured to respond the pressure and opportunities created for possible political gains in relation to the EU.

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<sup>364</sup>Franck Düvell, "Transit, Migration and Politics Trends and Constructions on the Fringes of Europe," *Summary Paper written for the EU Network on International Migration, Integration and Social Cohesion (IMISCOE) and COMPAS*, 2008, 4, <https://goo.gl/NAw8Mn> (accessed 25.04.2017).

## **4.2. The Balkan's maze: The countries to pass**

The Balkans' state fragmentation, hilly landscape and poor transport infrastructure presented main challenges for the passing migrants. Comprised of altogether 12 poorly integrated states with many neighbouring disputes, the Balkans with its borders represented a complicated maze for migrants to solve before its gate on both sides closed.

### **4.2.1. The main route**

On its way, migrants opted for the shortest and assumingly the fastest way from the southern Greek islands' shores to the movement-free Schengen area. The following subchapters explore domestic situations in transit countries on the main migration route and their response to the migration wave. The order follows migrants' progress, from Greece, through Macedonia and Serbia to Hungary and later on to Croatia and Slovenia. The route shows that the transit migration is not only limited to countries outside the EU.

#### **4.2.1.1. Greece: The unsuccessful migration gambit**

Due to its geopolitical position at the most south-eastern EU external border, Greece became a gateway and the main entering point for the majority of refugees heading towards Europe via the Balkan migration route. According to the Hellenic Police, only in 2015 almost one million migrants irregularly entered Greece, more than half of them on Lesbos Island.<sup>365</sup> As the Greek-Turkish border was sealed by a fence alongside the Evros River already in October 2011,<sup>366</sup> the migration route diverted

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<sup>365</sup>Hellenic Police, *Interceptions of illegal entries in 2015*, [Athens], 2016, <http://goo.gl/dHarjA> (accessed 03.08.2016).

<sup>366</sup>The EC refused to finance the fence arguing that "it would not effectively discourage immigrants or smugglers who would simply seek alternative routes" into the EU. FiDh - Migreurop – eMhrn, *Frontex between Greece and Turkey: at the Border of Denial*, [Paris and Copenhagen], 2014, <https://goo.gl/XrDRF9> (accessed 03.08.2016).

from land towards the sea. Having lengthy and agitated coastline with many islands, Greece could only conduct limited control of its sea borders and is thus a perfect entry spot. As an EU member state and a part of Schengen, Greece is far more attractive than other Balkan states, since this gives refugees hope to be further transferred to other member states according to the Dublin system. In addition, the major pull factor that attracted swallowing a number of migrants was the Greek shift from the security-based migration management in line with European policies towards ‘strike a like’ migration policy of the ruling left Syriza Party.<sup>367</sup> The following section firstly outlines pre-Syriza Greek migration policy and proceeds with its shift and reasons behind it. The rest analyses the interrelations between EU influences and Greek position in the address of the 2015 migration flow.

The massive income of irregular migrants arriving in Greece accompanied with poor economic conditions in the country created “a sort of *de facto status quo*, eroding the Dublin state of affairs.”<sup>368</sup> Poor asylum standards and conditions close to a humanitarian disaster, detentions constituting “inhumane and degrading treatment” as a breach of the ECHR led the ECtHR to terminate asylum seekers’ transfer to Greece under the Dublin system in 2011.<sup>369</sup> Although the new Asylum Act (Law 3907/2011) supposed to end systematic detentions of all irregular migrants newly created “reception centres” and “pre-removal centres” turned out to only be another name for detentions. Period of maximum detention was increased from 6 to 18 months, and the Greek State Legal Council authorised the possibility to further extend the period for individuals who refuse to cooperate with the authorities in their

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<sup>367</sup>Antonios A. Nestoras, “The Gatekeeper’s Gambit: SYRIZA, Left Populism and the European Migration Crisis,” *Institute of European Democrats - Working Paper*, (2015): 1–35, <https://goo.gl/0y4QLv> (accessed 02.08.2016).

<sup>368</sup>Maria Gregou, “Drawing the geographic Boundaries of Expulsion and Readmission in Greece: The Dynamics of an Elusive Process,” *European Journal of Migration and Laws*16, no. 4 (2014): 506, <https://goo.gl/5X8TRa> (accessed 10.02.2016).

<sup>369</sup>Caitlin Katsiaficas, “Greek Migration Policy and the Response to Irregular Migrants and Asylum Seekers,” *EU Migration Policy Working Paper*, no. 15 (2014): 9, <https://goo.gl/UWY5kt> (accessed 02.08.2016).

removal procedures.<sup>370</sup> Due to procedural difficulties of returning processes and rare implantation of removals, migrants stayed detained for longer periods without any legal basis, turning Greek “pre-removal centres” into ‘prisons’ and Greece into the European ‘warehouse’ of unwanted migrants. The EU support for the security based approach towards migrants in Greece is well reflected in its funding structure –the EU contributions from the Solidarity and Management of Migration Flows Programme for 2007–2013 that consists of various funds were the highest in the area of External Border Fund and Return Fund. For example, in 2013 Greece received € 42.5 million from the External Border Fund, € 35.3 million from the Return Fund, € 3.2 million from the European Refugee Fund, and € 4 million from the European Integration Fund.<sup>371</sup> Hence, the most of the European solidarity refers to solidarity with Greece tackling the arriving migrant by strengthening the surveillance on the border. Ironically, even parts of the funds dedicated to the asylum system were spent for reception centres which were a cover for prolonged detentions.

The ‘ideal’ cooperation between Greece and EU came to an end with the conjunction of events that happened or escalated in 2015. The economic recession and general frustration of people led to the formation of a populist government with the ruling Coalition of the Radical left, also known as Syriza, in January 2015. The Government found itself under pressure, opposing to the third bailout package that had to be negotiated with the creditors and the EU. Rising disappointment over the EU coincided with the sudden increase of irregular migrants into Greece.<sup>372</sup> Being

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<sup>370</sup>The latter was in breach of Greek legislation as well as the European *acquis*. Presidential Decree 116/2012 in 2012 lowered the period to 15 months for asylum seekers that filed the application before the detention and maximum 18 months for seeker that submitted application while being detained. FiDh - Migreurop – eMhrn, *Frontex between Greece and Turkey*, 66–70.

<sup>371</sup>*Ibid.*, 72.

<sup>372</sup>The number of illegal border crossing increased from 72,632 in 2014 to 792,370 in 2015. Angelos Evangelinidis, “The Greek State’s Response to the Refugee Crisis and Solidarity Movement,” *Contemporary Southeastern Europe* 3, no. 1 (2016): 32, <https://goo.gl/vRNpS5> (accessed 02.08.2016).

well aware that refugees only seek transit to Europe and are not there to stay,<sup>373</sup> the Greek Government used populist attitude towards the migration issue as leverage in bail-out negotiations with the EU and a tool to promote its ideological orientation and humanitarian stance. Its stance was directed against domestic and Western elites which the Government hold morally responsible for the humanitarian disaster. In line with Syriza's opposition to European neo-liberal capitalism which had brought the country to the near bankruptcy, the party strongly European military interventions in the Middle East as well as European support for the Syrian opposition. Once the conflict evolved and triggered massed inflow of refugees, Greece openly accepted the influx and omitted any differentiation in approaches towards refugees or economic migrants. For them, the influx was a result of "neoliberal, capitalist globalisation" and a kind of a "class-struggle" which demands immediate support and reflects in Syriza's radically reformed migration policy.<sup>374</sup>

In its campaign, Syriza advocated expedited asylum application process, decreased detention terms and closure of many detention centres, end of migrants' push backs at the borders, removal of the EU restrictions on migrants' travel,<sup>375</sup> including the removal of the fence built alongside the Greek-Turkish land border, and strengthened human rights protection.<sup>376</sup> Although the formation of the coalition with the pro-Kremlin far right-wing Independent Greeks Party demanded many compromises and prevented programme's full implementation, such as the removal of the fence on the border with Turkey, Syriza managed to close down all detention

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<sup>373</sup>Out of 911,471 irregular migrants only 13,197 or 1.5 % applied for international protection in Greece. Ministry of Interior of the Hellenic Republic, *Statistical Data of the Greek Asylum Service*, [Athens], 2016, <https://goo.gl/HWtdCZ> (accessed 02.08.2016).

<sup>374</sup>Nestoras, 14–5.

<sup>375</sup>In April 2015, Minister of State Flampouraris suggested that the only solution to the 'crisis' would be the issuing of Greek passports to all the migrants and thus allowing them regular en route travelling to Europe. *Ibid.*, 20.

<sup>376</sup>Caitlin Katsiaficas, "A New Day For Greek Migration Policy? The New Government And Prospects For Reform," *Bridging Europe*, Commentary, No. 33., March 3, 2015, 2, <https://goo.gl/EHbj9p> (accessed 24.03.2016).

centres. However, as the country lacked the resources to build the announced “centres of hospitality” and other appropriate infrastructure to accommodate refugees, they ended up living on the streets of Athens and other Greek cities in conditions worse than in detention camps and near to the humanitarian catastrophe.<sup>377</sup> The sudden increase of incoming migrants in 2015 and Greek migration policy ‘on strike’ against the EU-led migrants to move fast onwards north. Greece, if not facilitating the process, turned a blind eye on it. It abolished Eurodac registrations and as a warning received a Letter of Formal Notice from the EC before the infringement procedure for violations of Dublin procedures.<sup>378</sup>

Being under pressure, Greece kept reminding the EU for the lack of the structural approach towards migration issue as well as the lack of support for the border member states that were affected the most. In May 2015, Greece accepted the EU proposal for the relocation of 66,400 refugees from Greece to other member states and pledged to provide additional 50,000 places for asylum seekers. Since the relocations were bound to member states’ will and efficient ‘hotspots’ management, supposed to be jointly proceeded by the European Asylum Support Office (EASO), Frontex, Europol and Greek authorities, implementation was troublesome due to Greek firm opposition to Frontex operation on its territory.<sup>379</sup> The October 2015 Western Balkan Summit focused on the immediate need for Frontex support for Greek authorities in registration processes, implying that Greece did not register all migrants passing the country, thus preventing the returns of those who are not eligible for the international protection.<sup>380</sup> In line with the Summit conclusions,

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<sup>377</sup>Only one hospitality centre with the capacity for 700 guests was built in Elaiona and the construction of two more was announce in order to all together accommodate 2,500 refugees. Nestoras, 16.

<sup>378</sup>EC, *Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings*, press release, December 10, 2015, <https://goo.gl/ppdZuK> (accessed 10.08.2016).

<sup>379</sup>Nestoras, 26–8.

<sup>380</sup>Leaders’ Meeting on refugee flows along the Western Balkans Route, *Leaders’ Statement*, [Brussels], 2015, <https://goo.gl/RGYItt> (accessed 08.08.2016).

Frontex offered to set up an operational unit to support registration of migrants that have not been registered yet and conduct border surveillance. Besides, it requested the observation role of third countries, especially Macedonian units, as it was agreed at the Summit. However, the Greek side insisted on its opposition, arguing that the proposal in “being too broad and falling outside Frontex competences.”<sup>381</sup> EU, and especially Germany and France, responded with openly discussing the possibilities of Greek suspension from Schengen area if it does not participate in stopping the migration flow.<sup>382</sup> Used as a tool to pressure Greece to accept Frontex intervention, the issue was discussed at the December 2015 Council meeting. It brought a concession – instead of joint ‘hot spots’ operations, Greece activated the EU Civil Protection Mechanism to benefit from material support. Additionally, Greece requested the Rapid Border Intervention Team’s (RABIT) deployment in the Aegean and agreed to launch a Frontex operation on its border with Macedonia, where the agency would help conducting registration processes.<sup>383</sup> By the Frontex intervention, ‘disruptive’ Greek asylum system was restored back to its previous function of migrants’ deterrence. Sadly, neither the arrangements under the Syriza nor the following takeover by international institutions, manage to assist asylum seekers in a proper way. The involvement of Frontex and Europol clearly show the security aspect preoccupation, while the only involved organisation from the asylum matters was the EU controlled EASO, while the UNHCR was absent.

The short-sighted U-turn of the Greek stand occurred once it was clear that the country was backed into the corner in its bailout negotiations by euro-zone exclusion threats. On the other side, the gambit backfired in enormous numbers of migrants and daily new arrivals. To avert the EU criticism over its defective asylum system and accusations of its lack of cooperation, Greece started zealously reminding that

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<sup>381</sup>Nestoras, 28.

<sup>382</sup>“Greece told it could be kicked out of Schengen,” *EuroActiv*, December 3, 2015, <https://goo.gl/1UWI7g>. (accessed 08.08.2016).

<sup>383</sup>Council of the European Union, *Outcome of the Justice and Home Affairs Council Meeting*, 14937/15, December 3-4, 2015, <https://goo.gl/a3UQNx> (accessed 09.08.2016).



the EU should eventually seek the solution of the ‘migration crisis’ in agreement with Turkey as a transit country.<sup>384</sup> However, once the EC proposed joint Greek-Turkish maritime border patrolling in October 2015, Greece strongly opposed the idea because such an operation would not have any effect.<sup>385</sup> Its hidden fear was that Turkish activities in the Aegean might affect the existing territorial disputes in the region. The EU was hence forced to handle the issue in direct cooperation with Turkey, cutting off Greek capricious migration handling.

After the backup plan of the Greek-Macedonian border was enforced despite Greek opposition, the EC promised Greece the assistance in accommodation of migrants, reception and registration procedures as well as returns. Athens responded in a fury, expressing that they have not been informed and consulted upon the plan, while at the same time rejecting it in a sense that they would not permit Greece turning into a “cemetery of souls.”<sup>386</sup> Any kind of accusations that Greece does not want to control its borders was refuted as the EU peddling “lies”.<sup>387</sup> Slovak PM Fico openly stated that Greece is “sacrificed”, while German Chancellor also changed the tune, addressing the migrants that they do not have the right to choose the final country of asylum and requesting them to stay in Greece.<sup>388</sup> Greece remained stuck with 11–13,000 migrants in degrading humanitarian conditions at Idomeni border with Macedonia,<sup>389</sup> while many others were dispersed around the country and still

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<sup>384</sup>Nestoras, 23.

<sup>385</sup>“Europe Asks Greece to Collaborate With Turkey to Patrol Sea Borders,” *Greek Reporter*, October 15, 2015, <https://goo.gl/vglFzG> (accessed 10.08.2016).

<sup>386</sup>“Juncker drops Greece, bets on Macedonia,” *Politico*, January 26, 2016, <https://goo.gl/xcX5st> (accessed 10.08.2016).

<sup>387</sup>“Greece faces being sealed off from Europe to stop migrant flow in move that creates ‘cemetery of souls’,” *The Telegraph*, January 25, 2016, <https://goo.gl/sgGWRS> (accessed 10.08.2016).

<sup>388</sup>“The new Iron Curtain holding back the hordes: The 19-mile barbed wire fence built on Macedonia’s border to stop a human tide of migrants as Greece is told it faces being ‘sacrificed’ to save the EU,” *Daily Mail*, March 2, 2016, <https://goo.gl/EmYa7U> (accessed 08.08.2016).

<sup>389</sup>Amnesty International, *Trapped in Greece*, [London], 2016, <https://goo.gl/UyFQpB> (accessed 09.08.2016).

arriving. Greek authorities took every opportunity to raise its voice regarding Macedonian police treatment of migrants at the border, with the use of pepper spray and plastic bullets not unwarranted though, blaming the EU for the latter and thus again putting itself on higher moral grounds.<sup>390</sup> Greece desperate position after the closure of the route reflected its inconsistent position. Once the EU-Turkey deal was concluded, PM Tsipras lauded the deal as something Greece had aspired for.<sup>391</sup>

To implement the deal, Greece tightened asylum seekers' admissibility criteria and arduously introduced the concept of the safe third state into its national asylum system. New asylum law created parallel systems of international protection. The inland system was compatible with the Refugee Convention and applicable for asylum seekers who arrived on March 20, 2016. The parallel system was valid on islands and other border areas for migrants arriving after the conclusion of the EU-Turkey deal. Their applications are being fast-tracked, and those found inadmissible returned to Turkey. Since the number of asylum applicants rose from 13,250 in 2015 to unprecedented 51,110 in 2016,<sup>392</sup> the EASO and national asylum office struggle to process all the applications efficiently. Applications are often assessed according to nationality, rather than vulnerability and date of arrival since it is easier to accept asylum seekers from Syria. On the other side, application based on family reunifications could take up to a year, since it is difficult to track applicants' relatives across Europe. The emergency plan prepared in May 2016 assured 100,000 new accommodations, but its implementation is slow, and many migrants found themselves in dire conditions outside on Greek streets.<sup>393</sup> Applicants are being held in poor conditions and limited freedom of movements on Greek islands. In protest

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<sup>390</sup>“Refugee crisis: Greek PM accuses Macedonia of ‘shaming’ Europe,” *The Telegraph*, April 11, 2016, <http://goo.gl/q6XtqW> (accessed 08.08.2016).

<sup>391</sup>“Tsipras lauds EU-Turkey deal, which requires immediate action in Greece,” *Ekathimerini*, March 18, 2016, <https://goo.gl/0jG96I> (accessed 08.08.2016).

<sup>392</sup>“Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>393</sup>ECRE, *With Greece – Recommendations for Refugee Protection*, [Brussels], 2016, 8, <https://goo.gl/L9z3YJ> (accessed 02.08.2016).

against *refoulement* and inhumane conditions, the UNHCR representatives stopped transferring asylum seekers from islands to the inland and urged Europe not to send migrants into detention camps.<sup>394</sup> However, despite the significant asylum set-back, Greece was under great pressure of the EC to normalise Dublin transfers. The intention to restart transfers was initially announced in September 2015<sup>395</sup> and followed by two successive recommendations in February<sup>396</sup> and June 2016<sup>397</sup>, till it eventually became into effect in March 2017.<sup>398</sup> While the EC push for Greece to normalise its asylum system and take back ‘Dublin asylum seekers’, it failed to keep its promise when it comes to announced relocations. As of April 2017, only 11,339 (18 % of the announced 63,302)<sup>399</sup> asylum seekers were allocated due to the reluctance of many member states and the EC lack of enforcement mechanism.

In retrospective, the U-turn seems to be largely symbolic and inconsistent, since the Government failed to implement the announced changes and failed to reach desired objectives in the larger-scale play. In contrast to the Syriza announced ‘de-strictization’ of asylum policies rather the opposite happened. Upon the EU pressure, Greece tightened its asylum legislation and became a test-ground for the

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<sup>394</sup>“Desperate man sets himself on fire at Idomeni refugee camp as UN accuses Europe of putting migrants in detention centres,” *Dailymail*, March 22, 2016, <https://goo.gl/t7u3AF> (accessed 08.08.2016).

<sup>395</sup>EC, *Communication to the European Parliament, the European Council and the Council Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*, COM (2015) 490 final/2, September 29, 2015, <https://goo.gl/abe61m> (accessed 08.08.2016).

<sup>396</sup>EC, *Commission Recommendation of 10.2.2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation No. 604/2013*, C (2016) 871 final, February 10, 2016, <https://goo.gl/NqqcG> (accessed 08.08.2016).

<sup>397</sup>EC, *Commission Recommendation of 15.6.2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C (2016) 3805 final, June 15, 2016, <https://goo.gl/ABZJUE> (accessed 08.08.2016).

<sup>398</sup>EC, *Questions & Answers: Recommendation on the conditions for resuming Dublin transfers of asylum seekers to Greece*, fact sheet, December 8, 2016, <https://goo.gl/WLDV7y> (accessed 08.08.2016).

<sup>399</sup>EC, *Member States’ Support to Emergency Relocation Mechanism*.

European new parallel international protection system. Since the EU-Turkey deal is implemented based on the Greek-Turkish readmission deal, the EU cunningly washed its hands off by transferring the responsibility to unwilling but forced Greece. By eventual revival of Dublin transfers to Greece, the EC sacrificed new Generation of Dublinized asylum seekers that will only wander around in limbo for gradual relaxation of tight border controls on the Balkans.

#### **4.2.1.2. Macedonia: ‘Crisis’ upon crisis transforms the problem**

Macedonia’s strategic position north of Greece with which it is connected through the lowlands of the Vardar region in contrast to the Pindus Mountains on the border with Albania and Rhodope Mountains on its border with Bulgaria <sup>400</sup> made the country a natural way out from Greece. The majority of migrants crossed the border in small border town Gevgelija that lacked the appropriate infrastructure to accept up to 10,000 arriving migrants on a daily basis in October 2015.<sup>401</sup> Macedonia used to be only a transit country with the tiny amount of claimed asylum applications.<sup>402</sup> In the verge of the increased flow, the country with two million population and a delicate ethnic and religious balance expressed constant fear of being sacked by incoming migrants. During the highest wave, it did the best to assist their way further. At the same time, the ruling Government of PM Gruevski used the ‘crisis’ to divert the attention from the troublesome position in which the Government had found itself after the wiretapping incident<sup>403</sup> and buy time and support in its talks

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<sup>400</sup>Additionally, the Albanian border is much further from the Greek coast line where the majority of migrants firstly arrive to Greece, while on the other side Bulgarian border is being much more secured in comparison to the Macedonian one.

<sup>401</sup>U.S. Helsinki Commission, *Europe’s Refugee Crisis: How Should the US, EU, and OSCE Respond?*, hearing, October 20, 2015, <https://goo.gl/KjvHhf> (accessed 13.08.2016).

<sup>402</sup>Between June 19 and December 1, 2015 only 83 people applied for asylum in Macedonia. UN Resident Coordinator’s Office, *Refugee and migrant numbers and trends in FYR Macedonia, Serbia and Croatia*, December 19, 2015, <https://goo.gl/6ay8IO> (accessed 13.08.2016).

<sup>403</sup>The Macedonian main opposition party, SDSM, published eaves dropping tapes between February and May 2015, revealing corruption, election fraud and dysfunctions of state. The incident escalated into protest and counter-protest movement and Kumanovo shootings in May 2015. “Macedonia Profile – Timeline, *CNN*, June 5, 2016, <https://goo.gl/a8me2s> (accessed 14.08.2016).

with the EU. The following sections firstly overview the initial migrants' reception and legislative changes that had been approved to accelerate migrants' move upward the Balkan migration route. Later it proceeds on to the Macedonian view of the cooperation in the region and the influence of the EU on its policies.

There is no clear statistics when the number of irregular migrants coming to Macedonia started to increase since illegal border crossing equalised a criminalised act punished by detention and expulsion according to the Law on Foreigners (Art. 153).<sup>404</sup> Such conditions contributed to the extremely dangerous way the migrants had to undertake while passing the most remote areas of the country to avoid encountering police controls. Immigrants who illegally entered the country were initially forbidden to use public transport, so as did the state authorities fine also its people for giving migrants a lift or offering a shelter. Even reports emerged of migrants found dead nearby the railway tracks and supposedly hit by the train,<sup>405</sup> while some reports indicated the work of criminal gangs with the Government throwing a blind eye on such incidents.<sup>406</sup> Already at the beginning of summer 2015, all detention capacities were exhausted.<sup>407</sup> Police had difficulties in border-controlling and keeping the migrants out. They accused Greek police of lacking the will for cooperation in the securitization of the common border which cannot be

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<sup>404</sup>UNHCR, *The former Yugoslav Republic of Macedonia As a Country of Asylum*, [Geneva], August 2015, 9, <http://www.refworld.org/docid/55c9c70e4.html> (accessed 13.08.2016)

<sup>405</sup>“Macedonia: Thousands trapped and at risk of violence as border sealed,” *Amnesty International*, accessed June 15, 2016. <https://goo.gl/gakNL3> (accessed 14.08.2016).

<sup>406</sup>Mirjana Najcevska, “Why do migrants get killed so much on the railway tracks in Macedonia?”, accessed June 15, 2016. <https://goo.gl/xqCWm9> (accessed 13.08.2016).

<sup>407</sup>Detentions increased yearly from 460 in 2012, 584 in 2013, 896 in 2014 to 1,003 only in the first six months of 2015. Minister of Interior of the Republic of Macedonia, *Address on the draft law amending the Law on Asylum and International Protection*, June 18, 2015, <https://goo.gl/JULwSI> (accessed 13.08.2016).

controlled independently.<sup>408</sup> Claims were also made that Greece assisted migrants in organised transport to the border.<sup>409</sup>

The Government tried to lessen the pressure of illegal crossings by legalising them and assisting the migrants in accelerated transit through the country. In June 2015, the amendments to the Asylum and Temporary Protection Law were adopted through the express legislation procedure. The changes introduced the possibility of the legal entrance to the county for maximum 72 hours for migrants that show their intention to seek asylum in Macedonia. In this case, the border authorities issued a travel permit valid for 72 hours and aimed for an asylum seeker to reach the closest police authority in the country to seek the asylum.<sup>410</sup> Although the number of border-registered intentions to claim the asylum in the country reached 18,750 only between June 20 and the end of July 2015,<sup>411</sup> only 83 claims for asylum were submitted until December 2015.<sup>412</sup> Most of the migrants used the 72 hours travel permission only to pass Macedonia as soon as possible. Besides the possibility to legally access the public transport means, the new provision also significantly reduced the number of migrants' accidents and attacks of criminal gangs.

The state assisted migrants in passing the country against charges<sup>413</sup> by providing additional trains on the line between southern border town Gevgelija near Greece and northern town Tabanovce near Serbia. When its train capacities were exhausted at the end of August, Macedonia even asked neighbouring countries to send their

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<sup>408</sup>“Amended Asylum Law Entices Thousands of Immigrants to Cross Macedonia,” *Independent*, June 18, 2015, accessed June 16, 2016, <https://goo.gl/jm6APa> (accessed 15.08.2016).

<sup>409</sup>“Macedonia declares Emergency on Southern Border as Greece continues to send Refugees Across,” *Macedonia Online*, August 20, 2015, <http://macedoniaonline.eu/content/view/27949/2/> accessed 13.08.2016).

<sup>410</sup>UNHCR, *The former Yugoslav Republic of Macedonia ...*, 4.

<sup>411</sup>*Ibid.*, 5.

<sup>412</sup>UN Resident Coordinator's Office, *Refugee and migrant numbers and trends ...*

<sup>413</sup>*Ibid.*

trains.<sup>414</sup> Declared state of emergency on August 20, 2015, in the southern and northern part of the country, enabled deployment of army forces in the respective regions. Initially, based on the idea that it will improve security among citizens and enabled a more comprehensive approach towards people who declared their interest in applying for asylum in Macedonia,<sup>415</sup> the army was used to close the Greek border for all migrants' crossings already on the first day of deployment.<sup>416</sup> The closure could be understood as a protest against EU decision to initially assist Macedonia with only € 90,000, while Greece, which according to Macedonia did not do anything to steer up or prevent the flow but rather supported it received € 45 million.<sup>417</sup> However, upon the talks with the UNHCR and thousands of migrants breaking the police lines despite the use of pepper spray, truncheons, and riot shields, Macedonia gave up the intentions of returning migrants to Greece, and all the refugees were overnight transported to the Serbian border.<sup>418</sup> The organised transport was restored, with no individual passing of the country permitted anymore and with the passages and numbers of migrants passing coordinated with Serbia.<sup>419</sup> As an example of a good common response to the extreme situation and establishment of trustworthy relations, Serbia and Macedonia established joint border zone near Tebanovce on the Macedonian side of the border and thus assured smooth coordination on the issue.<sup>420</sup> However, the passage of migrants through

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<sup>414</sup>“Makedonija nema dovoljno vagona za prevoz sirijskih izbeglica,” *Beta*, August 19, 2015, <https://goo.gl/sa76Mf> (accessed 14.08.2016).

<sup>415</sup>“Macedonia declares Emergency on Southern Border ...”, *Macedonia Online*.

<sup>416</sup>“Macedonian Army Blocks Migrant Routes from Greece,” *Macedonia Online*, August 20, 2015, <http://macedoniaonline.eu/content/view/27952/2/> (accessed 14.08.2016).

<sup>417</sup>EC, *Funding to main migration-related activities in the Western Balkans and Turkey*, fact sheet, October 6, 2016, <https://goo.gl/9zKB25> (accessed 15.08.2016).

<sup>418</sup>“Overnight all refugees moved to Serbian border,” *Macedonia Online*, August 23, 2015, <http://macedoniaonline.eu/content/view/27962/2/> (accessed 15.08.2016).

<sup>419</sup>“Macedonia migrants: Thousands break through at Greek border,” *BBC*, August 22, 2015, <http://www.bbc.com/news/world-europe-34026114> (accessed 15.08.2016).

<sup>420</sup>“Macedonia and Serbia to jointly manage their Border,” *Macedonia Online*, August 25, 2015, <http://macedoniaonline.eu/content/view/27975/2/> (accessed 15.08.2016).

Macedonia was regulated by *ad hoc* decisions, mostly depending on signals Macedonia received from the countries in the northern part of the Western Balkan migration route, thus preventing to become a ‘bottle neck’ state of the route. Once the decision to steer up the flow was taken at the meeting of the Balkan states interior ministers in Slovenia in November 2015, Macedonia in line with other northern Balkan countries announced the controversial provision that it would only allow the passage of people coming from war-torn countries; Syria, Iraq and Afghanistan. The measure, assisted by the Macedonian army construction of a fence on the border,<sup>421</sup> provoked violence and tensions among the preferred group of ‘refugees’ and discriminated group of ‘economic migrants’, the latter one launching a protest by blocking the railway connections between Greece and Macedonia with their mouths symbolically sewn.<sup>422</sup> By the end of February 2016, Afghans were again in line with the measures of other Balkan states put on the list of economic migrants, whose passage of the border was restricted.<sup>423</sup>

Implementing measures that kept the unwanted ‘economic migrants’ a step further from their final destination in the Western Europe, Macedonia kept exposing that it is conducting the European ‘dirty job’ without any help from the southern neighbour and the EU member state. There were repeated calls that Macedonia needs more EU assistance, in material or financial form, but for most a comprehensive migration plan on the regional level. In response to criticism over Macedonian army treatment of migrants at the border, President Ivanov exposed that Macedonia is “only defending Europe from itself” since the ‘crisis’ initially emanates from the European Greece.<sup>424</sup> On many occasions, he expressed Macedonian readiness to accept the

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<sup>421</sup>“Stranded migrants battle police on Greece-Macedonia border,” *BBC*, November 28, 2015, <http://www.bbc.com/news/world-europe-3495412> (accessed 15.08.2016).

<sup>422</sup>“Migranti so si v znak protesta zašili usta: “Ali nas rešite ali pa ustrelite,” *RTV Slovenija*, November 23, 2015, <https://goo.gl/Pd2jwI> (accessed 15.08.2016).

<sup>423</sup>“Greece: Macedonia has closed its borders to Afghan migrants,” *The Washington Post*, 21 February 2016, <https://goo.gl/38V4iR> (accessed 17.08.2016).

<sup>424</sup>“Macedonia is defending Europe from itself,” *The Telegraph*, March 6, 2016, <https://goo.gl/mmbptH> (accessed 17.08.2016).



assistance of Frontex forces on its border with Greece,<sup>425</sup> thus openly indicating Macedonian will to cooperate with the EU institutions in controlling its borders in contrast to the resistant Greece. When the agreement on the closure of the Western Balkan Migration route was agreed on the European level in March 2016, Macedonia was so the chosen one to protect the European ‘bastion’. The choice was expectable since it was the second country of the route after ‘unmanageable’ Greece, as well as keen on showing its interest and support to the EU.

In a deep political crisis, Macedonian Government used the migration ‘crisis’ to distract attention from its fatal mistakes and growing authoritarian tendencies that were revealed in the eaves tapping incident. The need for regional cooperation and the fact that the EU was perceived as the one who had to be helped and solved, served Macedonia to balance its relations with the EU beyond the general one-way warnings on the compliance with democratic principles and the rule of law. EU Commissioner for European Neighbourhood Policy and Enlargement Negotiations Hahn’s clearly noted during his meditation among ruling parties that “despite all the talk about elections, we should not forget that there is a very serious migration crisis in Europe ... the crisis is also about the European, Euro-Atlantic perspective, where I believe a strong, decisive government, which can take decisions, is important.”<sup>426</sup> The ruling party might have well understood the message that the EU is ready to support it to assure good cooperation in other matters. The Government was given another boost by the indecisive and mild support for the conditions that have to be restored to hold democratic elections, since their announced date was already postponed twice, from April 2016 to June 2016, while the elections were at the end held in December 2016. Due to tense election results and high concession demanded

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<sup>425</sup>“FYROM fears a wave of refugees, the stability of the country is at risk,” *BalkanEU*, November 4, 2015, <https://goo.gl/Qyf881> (accessed 17.08.2016).

<sup>426</sup>Balkans in Europe Policy Advisory Group, “Ending the Crisis in Macedonia: Who Is in the Driver’s Seat?”, [Graz], 2016, <https://goo.gl/0OgTcU> (accessed 15.08.2016).

by the small Albanian Party to join the coalition, the country is still without a Government as of April 2017 and Gruevski has already called for new elections.<sup>427</sup>

The Government took advantage of the migration crisis to present the country as strong enough to alone ‘protect’ the Christian Europe. Additionally, the argument was used to reject internal opposition pressures as well as external calls from the EU, US and OSCE to restore democratic conditions. The EU’s role in solving the current political turmoil in the country presents a test of the EU accession process. It will reveal whether the EU would opt to support undemocratic political option that had proven its commitment to cooperate with the EU in migration matters or will it support previous opposition candidate Zaev. In his campaign, he stated the need to reconsider Macedonian migration policy to answer the announced European return to Greece and assured that his democratic governance would open the door to the EU membership.<sup>428</sup> However, the EU cannot offer full membership due to the Greek blockade and has found itself subjected to the will of Macedonian ruling party, which can at any moment threaten by the reopening of the Balkan route.

Macedonian migration management and its modalities during the recent wave represent a great example of European transposition of migration and asylum arrangements into the transit zone. Accordingly, the illegal border crossings were penalised already before the migration pressure increased. Due to the initial lack of further incentives, the Government legalised illegal entries to accelerate the flow and lower the pressure. By agreeing to stop the flow on its borders, Macedonia sought to re-energise its ties with the EUs, while the corrupt and undemocratic governing elite aspired for the European backing. In conclusion, the transit border was again highly securitized and control enforced by external powers.

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<sup>427</sup>“VMRO-DPMNE Leader Gruevski Reiterates Call for Snap Elections,” *Independent*, March 16, 2017, <https://goo.gl/qDnSW3> (accessed 17.08.2016).

<sup>428</sup>“Europe can’t afford to be blackmailed by Macedonia,” *Politico*, 21 March, 2016, <https://goo.gl/XTa49m> (accessed 17.08.2016).

#### 4.2.1.3. Serbia: More European than Europe

In addition to a central Balkan position, the greatest south-north stretch and relative lowland in comparison to the neighbouring BiH, well-connected Serbian transport system provided migrants with a direct ‘high-way’ to EU member states, Hungary and Croatia. Serbia’s territory surrounded by Macedonia on the south and EU members on the north and east while also bordering Schengen zone Hungary, combined with country’s relatively open-door policy towards migrants, contributed to the creation of the main migrant route through the Western Balkans passing through Serbia. Despite the high increase of submitted asylum applications in 2015, the most of the applicants continued their way towards EU, accompanied by increased numbers of Serbian immigrants.

The transit migration through Serbia has increased since the country shares large parts of its external borders with the EU<sup>429</sup> while the number of migrants expressing the intention to apply for asylum reaches its peak in 2015. It increased from 16,588 in 2014 to altogether 578,065 in the year after, 180,000 arriving only in October.<sup>430</sup> There is no relevant data on unregistered migrants who managed to trespass border controls what could render the scope of transit migration even greater. However, the proportion of eventually submitted applications was much lower. Only 583 asylum seekers officially claimed international protection in the country. They were accommodated in one of the two permanent and three temporary asylum centres; which were built in 2008 to address the increased pressure, while two new temporary reception centres were built in mid-2015 in the southern (Preševo) and northern (Kanjiža) part of the country.<sup>431</sup> Among all processed applications in 2015, only 30 were given refugee or subsidiary protection status. In 2016, the number of

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<sup>429</sup>Vesna Lukić, “Understanding Transit Asylum Migration: Evidence from Serbia,” *International Migration* 54, no. 4 (2016): 32, <https://goo.gl/BKgKs8> (accessed 18.08.2016).

<sup>430</sup>“Population Statistics,” *UNHCR*.

<sup>431</sup>Lukić, 33–4.

applications diminished by 98 % to 12,821. Although the nation record high 42 protections were granted,<sup>432</sup> the acceptance rate was not higher than 0.3 %. Low acceptance rates are the consequence of lengthy procedures during which migrants decide to continue their routes towards Europe, relatively understaffed office which is processing applications as well as still insufficiently developed asylum system with infrastructural and financial shortages.<sup>433</sup> A 72-hours passing certificate allowed refugees to enter the country and claim asylum. Ineffective asylum system enabled them to rest after a long journey much longer than 72 hours after the submitted claim and before continuing the way to the EU. Meanwhile, they planned their further trip, collected information and resources and waited for an appropriate moment to cross the EU border. The non-ratification of the Dublin III Regulation, which assigns responsibility for asylum procedure to one of the signatories, leaves Serbia out of the game and enables later repetition of the asylum claim in one of the EU member states. It is not mandatory for Serbia to report data on asylum applicants into the Eurodac system, nor the Eurosur surveillance system.<sup>434</sup>

The exemption from the Dublin system together with the well-known fact that Serbia was only used as a transit way enabled Serbian authorities to adopt ‘open door’ policy towards migrants. PM Vučić took the opportunity and exposed Serbian policy as more humane and in line with international law than policies of new EU member states that imposed border barriers. When thousands of migrants were stuck in Belgrade after Hungarian border closure, PM Vučić expressed criticism over the EU as opposed to Serbian higher moral standards; “Serbia has not put up fences or barbed wire. It would be easy for us [to do so], while you in the EU were silent when the fence was being erected [...] Serbia will receive a certain number of

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<sup>432</sup>Belgrade Centre for Human Rights, “Right to Asylum in the Republic of Serbia 2016,” [Belgrade], 2017, 22, <https://goo.gl/d3l254> (accessed 19.08.2016).

<sup>433</sup>Lukić, 32–4.

<sup>434</sup>Marta Stojić, “Serbian migration policy concerning irregular migration and asylum in the context of the EU integration system,” *Issues in Ethnology and Anthropology* 9, no. 4 (2014): 1086, <https://goo.gl/50JRID> (accessed 20.08.2016).

migrants. This makes us more European than some member states.”<sup>435</sup> Categorically refusing construction of a fence on its border, he was “surprised” and “shocked” when Hungary announced its move and compared it to another “Auschwitz experience.”<sup>436</sup> The authorities promoted Serbian will to behave in the “European way”, to contribute to the common solution and take over its share of responsibility. He emphasised that Serbia does not run away from the responsibility rather waits for the passive EU to frame a broader approach to address the migration wave and assign responsibilities to particular states.<sup>437</sup> Serbian authorities stressed that Serbia is the only country on the route acting in compliance with the ‘European values’ and doing even more than obliged to – Serbia was the first country on the Balkan route registering all migrants entering at the borders,<sup>438</sup> the act Greece as a member of Schengen zone and the first EU member states failed to do. However, being excluded from the Dublin system, the registration was made merely for purposes of national security and better overview of the situation, rather than defining the state responsible for processing of asylum applications, what made any return of asylum seekers from the EU back to Serbia less possible, though not totally unlikely considering the Hungarian adoption of the *safe third country* principle. Politicians gave the impression that Serbia formed an impeccable response to the situation, communicating it as being the matter of country’s good will, rather than international obligations.<sup>439</sup> Regarding the latter, Serbia deprived *prima facie* refugees that have entered the country with the intention to apply for asylum, but failed to do so within 72 hours, from rights they are entitled as refugees “coming from countries where their lives are in danger.” A certificate issued to them after

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<sup>435</sup>Aleksandar Pavlović, “A Passage to Europe: Serbia and the Refugee Crisis,” *Contemporary Southeastern Europe* 3, no. 1 (2016): 59, <https://goo.gl/1D7Otl> (accessed 20.08.2016).

<sup>436</sup>“Za vzhodnoevropsko železno zaveso,” *Delo*, June 20, 2015, <https://goo.gl/RvbFj8> (accessed 19.08.2016).

<sup>437</sup>“Beograd: Samo želimo da se ponašamo evropski,” *Danas*.

<sup>438</sup>“Vlada Srbije: Vraćaju nam lažne azilante, a ne izbeglice,” *Danas*, September 21, 2015, <https://goo.gl/Ac23zS> (accessed 19.08.2016).

<sup>439</sup>Belgrade Centre for Human Rights, *Right to Asylum ...*, 21.

September 2015 clearly states that they do not have rights guaranteed to asylum seekers under the Asylum Act.<sup>440</sup> Further, the certificate was issued against the possibility of the Asylum Act Art. 36 that stipulates circumvention of individual procedures in cases of mass influxes and when *prima facie* refugees with an expired legal deadline to apply for a refugee status are located within Serbian territory.<sup>441</sup> In those cases, temporary international protection could be granted upon the Government decree.

Serbia indeed did not build fences, though it has not done much more to help and assist migrants as well as it did not form any comprehensive solution to the existing wave. Authorities did not deem the refugee ‘crisis’ as a significant reason to seek a long-term solution and establish a working and efficient asylum system. The Reaction Plan in Case of an Increased Influx of Migrants adopted by the government in September 2015<sup>442</sup> only discusses measures to be taken in case if more than 3,000 migrants express intention to apply for asylum in Serbia<sup>443</sup> and focused mostly on temporary accommodation and registration processes. New reception centres were built on an *ad hoc* basis only as a necessary measure to provide migrants with temporary accommodation and basic humanitarian aid during their short stay in the country. As long as it was possible for migrants to cross the border with Hungary illegally, Serbia did not form any organised assistance to migrants, though a large number of private companies started running lines between Preševo and Belgrade at irregular costs. Once the Hungarian border was sealed and Serbia faced a risk of migrants getting stuck inside the country, the authorities organised transport directly

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<sup>440</sup>Ibid., 24.

<sup>441</sup>*Zakon o Azilu*, Sl. glasnik RS, br. 109/2007, December 12, 2007, <https://goo.gl/e1p5z7> (accessed 20.08.2016).

<sup>442</sup>Vlada Republike Srbije, *Plan reagovanja u slučaju povećanog priliva migranata*. [Belgrade], September 2015. <https://goo.gl/TrqT3b> (accessed 21.08.2016).

<sup>443</sup>Taking into the account 37,467 migrants that expressed such intention only in August 2015, there should either be a mistake in the Government’s or the latter is far away from the reality. “Population Statistics,” *UNHCR*.

from Preševo to Šid, a town on its border with Croatia,<sup>444</sup> triggering a major breakdown in bilateral relations.

Serbian behaviour was thus not ‘European’ neither to asylum seekers neither nor the fellow states challenged by the migration influx. Vice PM and Minister of Foreign Affairs Dačić made it clear that Serbia will redirect the flow of migrants to Croatia and Bulgaria once the Hungarian border is closed.<sup>445</sup> Since first small groups of migrants did not trespass the plan of daily accommodating up to 1,000, smooth arrivals fit the initial narrative of Croatian politicians on the state’s readiness, organisation and humanism of the country. However, the tensions appeared when the number of arriving migrants increased in mid-September. The accusations from the Croatian side and denial by Serbs led to an exchange of heated discourse, closure of the border and even to eventual Croatian blockage on Serbia opening Chapter 23 and 24 of the EU accession process.<sup>446</sup> It was only after Merkel’s sobering statement that the crisis in the Balkans might unfold into a war that politicians on the both sides returned to less aggressive rhetoric.

EU, and especially Germany, was thus definitely a factor in the framing of Serbian (non-)response to asylum influx, though the country found itself in the middle of the EU division. Serbia took advantage of the clash, by doing almost nothing on one side and ironically pointing at the EU for its inactiveness on the other side. By issuing 72-hours ‘transit permits’ and follow-up certificates to *prima facie* refugees stating their illegibility to benefit from asylum rights, Serbia relieved itself from the responsibility to deter potential irregular migration within the wave, the obligation it overtook after the visa-liberalization in 2009. It rather stimulated migrants’ fast

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<sup>444</sup>Unlike some other neighbouring countries that have also organised transport from one border to another for free, Serbia charged migrants € 15 for the way. Belgrade Centre for Human Rights, *Right to Asylum ...*, 24.

<sup>445</sup>“Beograd: Samo želimo da se ponašamo evropski,” *Danas*.

<sup>446</sup>Though Croatia promised not to use veto in accession processes as a political tool for their interest when Slovenia blocked their accession in 2008. Pavlović, 61.

progress further, where they would become another country's problem. Not willing to confront with Germany as a major player in the EU, Serbia kept its doors open and eventually earned German green light for the opening of the first two accession Chapters in December 2015, two years after the negotiations were officially launched.<sup>447</sup> Apart from this, Serbian willingness to accept its nationals who submitted 'false' asylum applications in the EU and become treated as a *safe country of origin* was one of the main conditions for the opening of the first Chapters exposed in talks between PM Vučić and Chancellor Merkel.<sup>448</sup>

The influence of the migration management in the region proved to be the main factor a U-turn once the Balkan migration route was closed in March 2016. Although the northern exits were completely sealed, 2–300 migrants still entered the country on a monthly basis in summer 2016, resulting in around 8,000 migrants stuck in Serbia at the end of the year. To combat illegal migration and human trafficking, Serbia established Joint Police-Army Forces. According to the UNHCR, their action is ineffective and mainly contributes to informal push-backs. More than 18,000 migrants were 'prevented from illegal entrance' only in December 2016. Since those migrants did not have the opportunity to claim asylum on Serbian territory, neither did Serbia launch individual assessments of their claims, the practice violated Serbian commitments under the ECHR and relevant national asylum legislation, prohibiting any collective expulsions and risking *non-refoulement*.<sup>449</sup> The procedure was not smoother even for those who managed to get through the border and submit the asylum claim. Based on 2009 Governmental decree, listing both Macedonia and Bulgaria as safe third countries, Serbia has automatically and sometimes selectively applied the principle. 95 % of all asylum applications submitted in 2016 were dismissed based on safe third country principle,

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<sup>447</sup>“Srbija otvara prva pregovaračka poglavlja,” *Al Jazeera*, December 14, 2015, <https://goo.gl/Lezwyi> (accessed 21.08.2016).

<sup>448</sup>“Drugarski razgovor o migrantskoj krizi,” *Danas*, October 24, 2015, <https://goo.gl/gcBDrH> (accessed 21.08.2016).

<sup>449</sup>Belgrade Centre for Human Rights, “Right to Asylum ...,” 28.



despite the UNHCR warnings that both above-mentioned countries cannot be considered as safe.<sup>450</sup> A special Response plan in case of increased migration influx<sup>451</sup> that came after a year of cumbersome and *ad hoc* dealings indicates that the state did not take the lesson. The plan fails to provide a structural approach to process arrivals nor does it commit the country to the valid legal framework what would be expected from an EU candidate states. It rather focuses on accommodation capacities and humanitarian aid, leaving the questions of 72-hours passing permit and problematic automatic application of the *safe third country* concept aside.

The poor financial and organisational capacities and lack of other needed resources induced Serbia to adopt ‘open policy’ without hospitality. The country made the best of the given situation by showing off its ‘(non-)European values’ without any costs or harm. Despite its general inactiveness Serbia became an important player on the question of resolving the crisis and was included in almost all EU debates on the issue. This was the consequence of its given geographical position and not acquired political significance as some Serbian politicians had argued. However, frequent violations of asylum applicants, when it comes to the right to apply for the asylum and enter the country, together with low numbers of granted protections, confirms that Vučić’s claims on Serbia becoming ‘more European’ hold water only because Europe itself do not behave ‘European’ anymore.

#### **4.2.1.4. Hungary: The (sole) firm defender of ‘Christian’ Europe**

Hungary was in contrast to other countries from the south-eastern Europe under increased migration pressure even before the 2015 inflow. Already in 2013, Hungary became world’s 10<sup>th</sup> largest recipient of asylum seekers, a third of them coming from Serbia and Kosovo while the rest of the increase was caused by the

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<sup>450</sup>Ibid, 60.

<sup>451</sup>“Plan reagovanja u slučaju povećanog broja migranata za period od oktobra 2016. do marta 2017. godine,” *Podrška izbeglicama u Srbiji*, <https://goo.gl/EzohxZ> (accessed 23.08.2016).

crumbling Greek asylum system the applicants started to avoid.<sup>452</sup> Therefore the new arrivals did not come as a surprise to the Hungarian Government but rather the opposite. Among all Balkan countries, the Hungarian response was the most organised and structured. However, although protracted high numbers of applicants and country's position at the end of the Balkan migration route rendered Hungary enough time to prepare sufficient capacities to welcome the migrants, the Government decided to apply the most restrictive migration policy within the EU, breaching international humanitarian law and European asylum standards. For the Government, it was a double win situation. Firstly and most importantly, it used the response to stop its falling ratings and rescue itself from the political turmoil. Secondly, it praised itself for setting a model for the 'zero refugees' policy, which in the context of the European handling of the flow equals no problems.

Due to high rates of asylum seekers in the period before the 2015 inflow, its starting date in Hungary cannot be simply depicted. Numbers of asylum applicants started to go up already at the end of 2014 and reached the peak of more than 47,000 applications submitted in August 2015.<sup>453</sup> Although all migrants were given free tickets to camps all around the country, they preferred to continue their way directly to Western Europe over overcrowded reception camps with poor conditions. Several clashes and inhumane treatment of migrants were reported as Hungarian authorities tries to bar migrants from boarding international trains and buses. Eventually, the use of public transport for migrants was banned.<sup>454</sup> As the country was running out of the asylum 'camps', the Government's anti-migration rhetoric was getting more vocal and actions more concrete. Already in June 2015, the Parliament approved

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<sup>452</sup>In 2013, Hungarian asylum system was faced by 9-fold increase, while number of applicants in Greece started to decline. UNHCR, *Asylum Trends 2013*, [Geneva], March 2014, 13, <https://goo.gl/9fR5yZ> (accessed 15.03.2017).

<sup>453</sup>"Asylum and first time asylum applicants by citizenship ...", *Eurostat*.

<sup>454</sup>Annastiina Kallius, Daniel Manterescu and Prem Kumar Rajaram, "Immobilizing mobility: Border ethnography, illiberal democracy, and the politics of the "refugee crisis" in Hungary," *Journal of the American Ethnological Society* 43, no.1 (2016): 26, <https://goo.gl/Na8ISg> (accessed 02.03.2017).

construction of 175 km long and 4 m high fence on the border with Serbia, which construction was completed on September 15<sup>455</sup> At the same time, the Government declared an emergency situation in border regions and in March 2016 extended it to the whole country. As of April 2017, it is still valid after several 6-months extensions.<sup>456</sup> Since the fence only contributed to the redirection of the migration flow through Croatian-Hungarian border, the fence was eventually extended to cover the later. The basis for the fence on the Hungarian-Romanian border is also built so the fence could be quickly erected if needed.<sup>457</sup> Through the amendments to Police Act and Act on National Defence, the powers of the police in cases of emergency situations caused by mass immigration were extended, and the army was authorised to assist police in border procedures as well as to use pyrotechnical equipment, rubber bullets and tear gas if needed.<sup>458</sup> Instead of providing help to migrants and considering borders as the main obstacle, Hungary took enhancement of borders as the main objective and migrants the obstacle.

Besides physical barriers, 13 different bills were approved by the Parliament with migration criminalization being the main common denominator and “removal of all illegal border crossings” the main aim.<sup>459</sup> Amendments to the Criminal Code made the entrance to the country through the fence a criminal offence punishable by up to 5 years of imprisonment, which can be substituted by expulsion.<sup>460</sup> Such provision

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<sup>455</sup>“Migrant crisis: Hungary declares emergency at Serbia border,” *BBC*, September 15, 2015, <http://www.bbc.com/news/world-europe-34252812> (accessed 12.12.2015).

<sup>456</sup>Ministry of Interior of Hungary, *Prolongation of state of crisis is justified*, press release, March 1, 2017, <https://goo.gl/n4gLEf> (accessed 16.03.2017).

<sup>457</sup>“Hungary Prepares To Build Anti-Migrant Fence Along Border With Romania,” *Hungary Today*, April 6, 2016, <https://goo.gl/73PTYv> (accessed 16.03.2017).

<sup>458</sup>Ministry of Interior of Hungary, *Penal enforcement prepared for receiving migrants convicted of illegal border-crossing*, press release, August 31, 2015, <https://goo.gl/cr80OL> (accessed 16.03.2017).

<sup>459</sup>*Ibid.*

<sup>460</sup>The provision had wide effect; between September 15, 2015 and end of June 2016, only in Szeged county 2,843 cases were opened against people ‘illegally crossing’ or damaging the fence. 2,792 people were found guilty, the majority expelled and banned re-entry, while only 3 were jailed

clearly breaches the Refugee Convention Art. 31 that the contracting state shall not impose penalties on illegal entries. Further amendments to the Asylum Law prohibited the entrance to the country to asylum seekers that had submitted their asylum applications in “transit zones” at the land external Schengen borders and prescribed special “border procedure” to be applied.<sup>461</sup> Soon following amendments of the Act on the State Border established the legal background for creation of such “transit zones” that shall offer temporary accommodation to asylums seekers and the possibility to conduct necessary procedures. Since the amendments do not define specific criteria, the discretion was left to the Government, which established two transit zones, at the Serbian and Croatian border. In practice, border authorities limited the number of daily migrants’ acceptance to transit zones to 100 and downgraded the number to mere 20 in March 2016. This forced thousands of migrants that were on the Hungarian gates in October to wait outside without basic humanitarian supplies and seek alternative ways to enter the EU through Croatia and Slovenia. Until the end of March 2016, no applications were submitted in transit zones near Croatian border, while only 1,705 submissions were made in transit zones near the Serbian border. “Border procedures” violate several Hungarian international obligations. They also violate Dublin provisions as Hungary takes over the decision on admissibility without examination of state responsible for the asylum claim based on possible family connections. Standard notice on inadmissibility accompanied by an expulsion order and a one or two-year ban to enter the EU that is issued to applicants only in few hours after the application submission signals careless and non-individual assessments. Although applicants are allowed to complain about the decision, its review could only be based on the facts as they

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and 40 given suspended prison sentences. AI, *Hungary: Crackdown on the rights of refugees and migrants continues unabated amidst European Commission inaction*, press release, July 6, 2016, <https://goo.gl/0CcY16> (accessed 05.05.2017).

<sup>461</sup>Creation of ‘transit zones’ introduced two different asylum procedures “border procedure” for those applying in transit zone, except those “in need of special treatment” that were transferred to “in-land procedure” otherwise reserved for asylum applicants submitting application within the country. Since the latter was made almost impossible by various barriers from entering the country, most procedures were led as “border procedures.” UNHCR, *Hungary As a Country of Asylum - Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016*, [Geneva], May 2016, 8–12, <https://goo.gl/Lyf34U> (accessed 05.03.2017).

stood at the first assessment, what significantly deter from the principle of judicial remedy enshrined in the Asylum Procedures Directive and European Convention on Human Rights. Further, criticism was raised that introduction of ‘transit zones’ indirectly imposes movement restriction for asylum applicants, since they are not allowed to leave the area until their admissibility is proven. However, Hungarian authorities argued that applicants are not held in detention since they are free to leave to where they came from, although their claim is being automatically withdrawn if a person leaves the transit zone. Nevertheless, they are at the same time not able to enter Hungary.<sup>462</sup> In spite of the ECHR ruling that found the “confinement” in Hungarian ‘transit zones’ violating the right to liberty, right to effective legal remedy as well as the obligation to provide guarantees from exposure to a real risk of being subjected to inhuman or degrading treatment,<sup>463</sup> Hungary further tightened its ‘legislation border blockade’ in July 2016 and March 2017. Firstly, new amendments to the Asylum Act, National Border Act and the Act on the entry and stay of the third country nationals introduced “in-depth border defence” that enabled apprehension of irregular migrants within 8 km of the border and foreseen their ‘escort’ back to ‘transit zones’.<sup>464</sup> However, due to many loop-holes in the system, ‘in-land asylum procedures’ were automatically abolished in March 2017 by the extension of apprehensions to the whole state’s territory. 324 shipping containers were installed in transit zones, which now host also people with special needs, including unaccompanied minors older than 14 years. Besides, the right to appeal to a decision on asylum was completely abolished.<sup>465</sup> Several violent “push-backs” of migrants apprehended within the country were reported, all aimed at consistent implementation of the above-described confinement of migrants in the

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<sup>462</sup>Ibid.

<sup>463</sup>ECtHR, *Case of Ilias and Ahmed v. Hungary* (no. 47287/15), March 14, 2017, <https://goo.gl/njx5n4> (accessed 21.03.2017).

<sup>464</sup>Hungarian Government, *Border protection significantly strengthened*, press release, July 5, 2016, <https://goo.gl/f12yxZ> (accessed 21.03.2017).

<sup>465</sup>Ministry of Interior of Hungary, *Border protection agencies fully prepared for entry into force of reinforced legal border closure*, press release, March 27, 2017, <https://goo.gl/ycLvE1> (accessed 28.03.2017).

transit zone and their return to Serbia. Human rights organisations, journalists and medics report of inhumane treatment by police and other border authorities. Migrants, who are unwilling to return, are beaten with sticks and batons, kicked and attacked by dogs. In some cases, migrants were stripped of clothes and made laid on the ground for several hours before violently escorted to ‘transit zones.’<sup>466</sup>

‘Transit zones’ in the border area only have the capacity for 100 people, while the rest should wait to be accepted while still on the Serbian ground. By not letting them in, Hungary forces them to overstay 72-hours permit to pass Serbia and risks their *refoulement* back through the chain of Balkan countries. However, Hungary ‘legalised returns’ of asylum seekers to Serbia already in June 2015 by amending the Asylum Act to give the Government the power to issue lists of safe third countries. The list was adopted by the Government Decree a month later.<sup>467</sup> The short time in which the countries were designated as safe countries implies the lack of thorough examination that is requested by the Asylum Procedures Directive and moreover, ignores all UNHCR calls to refrain from returning asylum seekers to Serbia and other states on the Balkan migration route.<sup>468</sup> In 2015, Hungary expelled 2,553 and deported 734 people. Adding 49,479 suspended asylum applications or 82 % out of all together 59,999 decisions made,<sup>469</sup> we come to a much higher number. It is interesting however that despite the overall international criticism the Hungarian

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<sup>466</sup>AI, *Fenced out*, [London], October 2015, <https://goo.gl/Sklau2>;Hungarian Helsinki Committee, *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States*, [Budapest], January 2017, <https://goo.gl/ARfgTm> (accessed 10.03.2017).

<sup>467</sup>Beside Serbia, the list consists of all EU member states, EU Candidate States, except Turkey, EEA States, BiH, Kosovo, Switzerland, Australia, New Zealand, Canada, and the US federal states without capital punishment. Hungarian Government, *Government has identified list of safe countries*, press release, July 22, 2015, <https://goo.gl/qlmIO5> (accessed 05.03.2017).

<sup>468</sup>Based on Hungarian ignorance of the first call to refrain sending asylum seekers back to Serbia in August 2012, UNHCR even called upon other states not to return asylum seekers back to Hungary in October 2012. Despite Hungary complied with the call in December of the same year, it resumed its practice in 2015. Further, Hungary continues to implement transfers to Greece and Bulgaria. UNHCR, *Hungary As a Country of Asylum ...*, 13.

<sup>469</sup>Immigration and Asylum Office, *OIN Annual Statistics 2016*, [Budapest], January 2017, <https://goo.gl/JFbA17> (accessed 21.03.2017).

treatment of asylum applicants has gained, the EU states continued to implement Dublin transfers back to Hungary, mainly thanks to the consistent Hungarian implementation of Dublin registrations of people apprehended after their irregular border crossings.<sup>470</sup> In 2015, out of 39,299 received requests to take back or take charge, 1,338 were implemented.<sup>471</sup> Still in 2016, Hungary received in total 26,698 incoming Dublin requests, the most from Germany. 513 transfers were implemented, including 285 from Germany, 66 from Switzerland and 44 from Austria.<sup>472</sup> So far only 3 EU member states (Belgium, Austria, and Luxembourg) together with Switzerland and Norway restricted their transfers to Hungary, based on the Hungarian *non-refoulement* principle violation, safe third country principle impeding effective access to asylum procedure and recent changes done in the asylum legislation.<sup>473</sup> While the first tightening of the asylum legislation in 2015 received wide international and especially European opposition, the voices have silenced down once the migration flow does not make headlines anymore, but the ‘business’ goes on as usual. Single states, such as Luxembourg and Germany were the most vocal in their opposition. Luxembourgian Foreign Minister called for Hungarian expulsion from the EU for threatening refugees “worse than animals.”<sup>474</sup> In the same line, Austrian Chancellor compared Hungarian practices with Nazi deportations,<sup>475</sup> while Germany clearly showed its opposition to the ‘open door policy’ without entering into the rhetorical war with the Hungarian authorities. EC

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<sup>470</sup>In 2015, Hungary increased its Eurodac registrations for 668 % compared to 2014 and processed 12,60 % of all registrations (3rd after German 33,22 % and Greek 13,17 % share). EULISA, *Annual report on the 2015 activities of the central system of Eurodac, including its technical functioning and security pursuant to Article 40(1) of Regulation (EU) No 603/2013*, [Talinn], 2016, 12, <https://goo.gl/0UnohH> (accessed 05.03.2017).

<sup>471</sup>ECRE, *Case Law Fact Sheet: Prevention of Dublin Transfers to Hungary*, [Brussels], January 2016, 3, <https://goo.gl/fH32BR> (accessed 12.03.2017).

<sup>472</sup>“Dublin: Hungary,” *Aida*, <https://goo.gl/5ZdJm> (accessed 15.03.2017).

<sup>473</sup>ECRE, *Case Law Fact Sheet ...*, 6.

<sup>474</sup>“Expel Hungary from EU for hostility to refugees, says Luxembourg,” *The Guardian*, September 13, 2016, <https://goo.gl/wepUiN> (accessed 15.03.2017).

<sup>475</sup>“Austria’s Faymann likens Orban’s refugee policies to Nazi deportations,” *Reuters*, September 12, 2015, <https://goo.gl/nn4IhA> (accessed 15.03.2017).

as well adopted a mild approach, stressing the importance of acting together, offering solidarity and warning that walls could only be a temporary solution.<sup>476</sup>

Hungary was indeed included in the EC relocation plan, but the Government firmly opposed it despite the country being clearly overwhelmed by the inflow. Rather, the Government adopted xenophobic and radical discourse by portraying the migrants as a main danger to the Hungarian, and moreover, European security and identity. The stance made any intake and resettlement of asylum seekers impossible, resulting in the ruling party seeking all ways to object EC resettlement plan, while the only right way seemed to be a complete closure of the border. Increased migrants' inflow was an opportunity for the governing central right Fidesz to adopt a populist approach and divert attention from other burning social and economic issues safe, itself from the falling voting rates, and represent itself as a major European guardian internationally. The strategy did partly work. From the peak of around 50 % support in 2010, approval ratings fell to record low 24 % in March 2015.<sup>477</sup> The fall was caused by various corruption affairs and proposed initiatives that would harm especially the youth.<sup>478</sup> Since many votes were taken over by the far-right Jobbik party, the only logical way for Fidesz to gain its votes back was to press on national emotions and embrace some Jobbik's initiatives, and swelling migrants number were as sent from God for this aim. For Hungary, being relatively homogenous and traditionally conservative country, with people lacking the migration and migrant experience, such as Serbs, the adoption of far-right policies represented a victory for

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<sup>476</sup>EC, *Remarks by Commissioner Avramopoulos during his visit to Hungary*, press release, September 15, 2015, <https://goo.gl/BaOGev> (accessed 15.03.2017).

<sup>477</sup>“Approval rating of Hungary ruling Fidesz party shrinks further,” *Portfolio*, April 9, 2015, <https://goo.gl/xJxp5H> (accessed 17.03.2017).

<sup>478</sup>The opposition movement was catalyzed by the leading commercial RTL Klub TV not bowing down after being slapped with a high advertising tax designed to illustrate the benefits of political obedience. Rather, it hit back by releasing suspicious government officials' enrichments that coincided with bankruptcies of some big state-connected companies. The final mistakes were the proposed legislative initiatives to introduce internet tax and enforcement of Sunday's mess visits. Friedrich-Ebert-Stiftung and Policy Solutions, *Hungarian Politics in 2015*, [Budapest], January 2016, 9–11, <https://goo.gl/hALwbC> (accessed 17.03.2017).



PM Orban. In migrants, he found an enemy against which the country had to be united and defended. They were portrayed as “economic,” “subsistence” or “illegal” migrants who came to Hungary to take over Hungarian jobs. The issue of high costs required for arrival processing was raised many times, notwithstanding the fact that Hungary, not being a destination country, did not have much additional cost until it decided to set up border-blockage. Further, terrorist attacks across Europe, from Paris and Brussels to Nice,<sup>479</sup> served the Government to support its claim that the migrants’ inflow would affect public security and increase criminality rates. The radical stance was legitimised by national consultation run in spring 2015. About € 3.2 million were spent for a biased national survey with a misleading question on terrorism and migration policy the country should adopt.<sup>480</sup> In addition, the campaign aimed to attract unconventional voters and provide a ground for xenophobic policies. Anyone who failed to comply with his pro-national discourse was accused of national betrayal. However, the abduction of far-right policies came with the price. October 2016 referendum on resettlement quotas was despite the 98 % rejection rate invalid due to the turnout lower than 50 %, and the vote was transferred to the Parliament.<sup>481</sup> There, the proposal failed again due to Jobbik’s insistence that the bill should be bound to the cancellation of the law enabling the

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<sup>479</sup>Beside a series of smaller attacks, November 2015 Paris attack killed 137 people and March 2016 Brussels bombings killed 35 people. Some of the perpetrators of both attacks were tracked entering EU through the Balkan migration route.

<sup>480</sup>Examples of questions: “There are some who think that mismanagement of the immigration question by Brussels may have something to do with increased terrorism. Do you agree with this view?”, “Did you know that economic migrants cross the Hungarian border illegally, and that recently the number of immigrants in Hungary has increased twentyfold?”, “There are some who think that economic migrants jeopardise the jobs and livelihoods of Hungarians. Do you agree?,” “There are some who believe that Brussels’ policy on immigration and terrorism has failed, and that we therefore need a new approach to these questions. Do you agree?,” “Would you support the Hungarian Government in the introduction of more stringent immigration regulations, in contrast to Brussels’ lenient policy?,” etc. Hungarian Government, *National consultation on immigration to begin*, press release, April 24, 2015, <https://goo.gl/meVIRL> (accessed 20.03.2017).

<sup>481</sup>“Hungary referendum: 98 per cent of voters say ‘no’ to EU migrant quotas,” *The Guardian*, October 3, 2016, <https://goo.gl/j93UIC> (accessed 21.03.2017).

purchase of Hungarian nationality for € 300 thousand. Hungarian Government saw the last resort in taking the case to the ECJ which verdict is expected in 2017.<sup>482</sup>

Since the issue of migration proved to be useful for the governing garniture to cover internal disputes and affairs, it will not easily let it go off headlines, making it a top priority for already the third year. In the most recent attempt, the Government has launched another nationwide consultation on Brussels policies that endanger state's independence by averting Hungary to "protect borders and prevent the resettlement of migrants".<sup>483</sup> What is more striking on the other side is the European inaction and slow, if any, implementation of the resettlement programme. Moreover, PM Orban reaps the success of his firstly isolated stand, except the support of Visegrad countries, by some European states that were previously supporting German 'open door' policy adopting more and more restrictive measures. Those are especially the countries that were as well hit by the Balkan migration wave, Austria, Slovenia, and Croatia, but were not able to stand firm against the populist pressures.

#### **4.2.1.5. Croatia: A pragmatic state on the European external border**

Croatian geopolitical position alongside its poor asylum system contributed to country's exclusion from transit route already before 2015. Being the youngest EU member state<sup>484</sup> but not included in Schengen, Croatia borders highly secured Schengen border on the north with Slovenia and Hungary and has the longest EU external border with BiH that is being more and more secured due to the future prospect to move Schengen southwards. By choosing the route through Hungary, migrants avoided the risk of being caught in Croatia. This would force them to apply

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<sup>482</sup>"Migrant crisis: Hungary MPs reject Orban anti-refugee bill," *BBC*, November 8, 2016, <http://www.bbc.com/news/world-europe-37903194> (accessed 20.03.2017).

<sup>483</sup>Hungarian Government, *National consultation to be launched*, press release, March 27, 2017, <https://goo.gl/5Fy5Xl> (accessed 01.04.2017).

<sup>484</sup>Croatia joined EU on June 1, 2013.

for asylum there to avoid deportation,<sup>485</sup> without having the possibility to gain access to free movement within Schengen area. Certainly, the fact that Croatia has the most restrictive asylum system in the EU did not make the country more attractive but rather the opposite.<sup>486</sup> Those are the main reason why the number of asylum seekers in Croatia did not increase with its accession to the EU in 2013 as it was the case in Eastern Europe countries accessions. The number of 1,075 asylum submissions from 2013, dropped to 450 in 2014 and reached only 210 throughout the whole 2015.<sup>487</sup> Assured of a low number of migrants and country's unattractive geopolitical and economic situation, 2,225 asylum applications in 2016<sup>488</sup> and the migration flow of 658,000 migrants passing the country between September 2015 and March 2016<sup>489</sup> caught Croatia unprepared despite Hungarian signals of eventual closure of its Serbian border already in June 2015.<sup>490</sup>

The Government addressed the 'sudden' migration pressure triggered by the closure of the Hungarian-Serbian with a high degree of improvisation and practicality. Ironically, PM Milanović referred to separate actions ranging from Plan A to C without their disclosure beforehand. According to the initial Plan A, Zagreb implemented regular registration procedure in the existing centres for asylum

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<sup>485</sup>As of the end of 2013, Croatia signed 25 readmission agreements with 27 states. Parliament of the Republic of Croatia, *Migracijska politika Republike Hrvatske za razdoblje 2013–2015. Godine*, February 22, 2013, <https://goo.gl/dZdO72> (accessed 08.04.2017).

<sup>486</sup>Only 25 people were granted asylum or subsidiary protection status both in 2013 and 2014 (10 % success rate). However, many asylum procedures are simply not completed as migrants flee further to Europe after their submission of application. "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)," *Eurostat*, <http://goo.gl/BC5Utb> (accessed 30.08.2016); MarkoValenta, Drago Zuparc-Iljic and TeaVidovic, "The Reluctant Asylum-Seeker: Migrants at the Southeastern Frontiers of the European Migration System," *Refugee Survey Quarterly* 34, no. 3 (2015): 102, <https://goo.gl/b0sbg0> (accessed 02.08.2016).

<sup>487</sup>"Asylum and first time asylum applicants by citizenship ...", *Eurostat*."

<sup>488</sup>*Ibid.*

<sup>489</sup>ECRE, *Balkan route reversed: The return of asylum seekers to Croatia under the Dublin system*, [Brussels], 2016, 8, <https://goo.gl/KRAzdR> (accessed 08.04.2017).

<sup>490</sup>"Hungary closes border with Serbia and starts building fence to bar migrants," *The Guardian*, June 17, 2015, <https://goo.gl/B18ZNR> (accessed 10.12.2016).

seekers in Zagreb, Sisak and Beli Manastir. However, only a day after, it became clear that the country is running short of capacities. Minister of the Internal Affairs who was only on that day appointed to the head of the Government's "Headquarters for Coordination of Activities Related to the Arrival of Migrants in the Republic of Croatia" signalled possible shutting down of the Croatian-Serbian border.<sup>491</sup> On September 20, only 4 days after the first migrants appeared on the Croatian border, Zagreb sealed all border crossings with Serbia. Several days and calls from Brussels were needed to normalise the situation. Once the dispute was solved, Croatia proceeded to the Plan B by continued directing migrants towards the Hungarian green border causing many border incidents.<sup>492</sup> Plan C was initiated on October 16 when Hungary completely sealed the border by the construction of border fence which prevented green border crossings. Consequently, Croatia re-directed migrants from Hungarian to the Slovenian border. Internal Minister denied that there was any agreement on transfer made with Slovenian since the action is implemented solely according to the Croatian plan.<sup>493</sup> Croatia expected the same level of 'rationality' in dealing with migrants also from the neighbouring Slovenians. PM Milanović commented furious Slovene reaction of welcoming the first migrants by pepper-spraying that the "Slovenes are under stress right now, but eventually, they will figure out."<sup>494</sup> What he meant was exactly the Croatian calculation that the asylum seekers instead of the asylum only seek to pass the country and it is on the state to help them to do so in the shortest and most secure way possible by organising transit and controlling the movements. Croatia was thus the first state on the Balkan route to provide migrants with the organised transport through the country.

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<sup>491</sup>Jasna Čapo, "The Security-scape and the (In)Visibility of Refugees: Managing Refugee Flow through Croatia," *Migracijske i etničke teme* 31, no.3 (2015): 393, <https://goo.gl/PsHBuz> (accessed 03.08.2016).

<sup>492</sup>"Hrvatska prevozi izbeglice ka Mađarskoj," *Beta*, September 18, 2015, <https://goo.gl/vUeI0Z> (accessed 10.12.2015).

<sup>493</sup>"Ostojić: Izbeglice ćemo prevoziti prema Sloveniji," *Beta*, October 16, 2015, <https://goo.gl/npvbZW> (accessed 10.12.2015).

<sup>494</sup>"Milanović: Slovenci so zdaj malo pod stresom, a bodo došli," *RTV Slovenija*, October 20, 2015, <https://goo.gl/geyoTm> (accessed 10.12.2015).

In accordance with the ‘let it pass’ strategy, new reception centres were built in Opatovac and Slavonski Brod to accommodate asylum seekers on their way through the country and provide them with the basic humanitarian assistance. Despite its official commitment, Croatia failed to assure 5,000 additional reception places that would contribute to 50,000 new reception places alongside the Balkan route. Though the new centres were officially named as reception centres, they had merely the role of transit centres. Migrants were entering the illegally through the green border and not through official border crossings. “Illegal border crossings” were reported by the authorities in the first few days of the increased migration pressure, however during the onset of the migrants’ arrivals, only the ‘entries’ and ‘departures’ were noted,<sup>495</sup> what indicated the Government attempt to downgrade the security aspect of the crisis and calm the tensions that resurrected in public. In the beginning, all migrants were registered, but with the swelling numbers of migrants, the registration performance decreased, although the Government claimed to be doing the best according to its capacities. However, after September 20 Croatia refused to enter the collected data into the Eurodac system. Zagreb expressed its readiness to submit the data as soon as Greece, being the first EU country which migrants had entered, would also do so.<sup>496</sup> Although the EC infringement procedure urged Croatia to adhere duly to the Eurodac Regulation, the country continued with the practice. Only 0.05 % of 2015 Eurodac registrations come from Croatia, which at the same time ‘managed’ to broke the European record in the increase of the rejected registrations due to insufficient data.<sup>497</sup>

In January 2016, Croatia rejected the Tripartite Memorandum between Austria, Slovenia and Croatia that was proposed by Austria. The Memorandum would enable

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<sup>495</sup>Čapo, 394–406.

<sup>496</sup>Ranko Ostojić, “A European Perspective of the Migration Crisis: Croatian Experiences,” Friedrich Ebert Stiftung (June 2016): 3, <https://goo.gl/qQF6mu> (accessed 08.04.2017).

<sup>497</sup>3.3 % of Croatian rejected Eurodac registrations in 2014 increased to 21.9 % in 2015. Eu-LISA, *Annual report on the 2015 activities ...*, 19.

Austria and Slovenia to second their officers to Croatian border to assist Croatian police in profiling 3 categories of migrants who would be banned to enter the country, namely those with a false identity, without travel documents or with forged documents. According to the Croatian Parliamentary Committee on Internal Policy and National Security President, the proposal contained unsystematic approach in treating migrants and was, therefore, violating the EU Convention for the Protection of Human Rights and Fundamental Freedoms. Accompanied by the fear that the closure of the Croatian border would only divert the route through BiH which was not capable of countering such pressure, Zagreb eventually rejected the Memorandum.<sup>498</sup> However, the latter argument was not likely to hold water, since the migrants would in the case of diversion through BiH again encounter the Croatian border. Furthermore, should Croatia cared so much for the adherence to the EU Convention, it would not have answered the Slovene November 2015 request to readmit non-war refugees by the decision not to accept migrants from countries other than Syria, Iraq, and Afghanistan anymore.<sup>499</sup> Rather, the refusal was aimed to prevent genuine asylum seekers from entering the country under the supervision of foreign authorities. Since the EU failed to provide assurance what would happen with asylum seekers that would be let in and was in relation to poor relocations' implementations also incapable of doing so, Croatia was afraid that asylum seekers might eventually end up stuck in the youngest EU member state. In addition, the refusal attempted to signal Croatian rejection of foreign officials on its soil and to give a clear sign that Croatia could control its borders alone. However, this is only a twist – the effective border control being one of the main expressions of country's sovereignty, Croatia failed to fully implement it as soon as it allowed the migrants to 'freely' pass the country.

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<sup>498</sup>Ostojić, 3.

<sup>499</sup>“Balkanski put zatvoren za ekonomske migrante,” *Večernji List*, November 20, 2015, <https://goo.gl/Pkz7oM> (accessed 10.12.2015).

Croatian response to the migration inflow should be understood in terms of tense political situation before the regular elections in November 2015, while its outcome explains the changed and more restricted attitude. The main aim of the Social Democrats governing in 2015 was internationally not to conflict with the European core, namely Germany and other countries that supported the open-door policy and humanitarian approach. Internally, the Government counted to assure the votes of the liberal electorate, while it was assuring its citizens that the country can control the pressure without becoming the European ‘pocket’ filled with migrants. With the increasing number of migrants and non-existing European solution, the second concern became an opportunity for the opposition, and especially the President Grabar Kitarović from the Croatian National Party to voice their dissatisfaction with the applied security measures. President Grabar Kitarović outspokenly supported the settlement of army on the borders and had entered into some furious arguments with the PM Milanović.<sup>500</sup> Evoking nationalist concerns and especially warning of PM Milanović failure to secure the borders and find a joint solution with the neighbouring country, the opposition managed to ‘steal’ votes from the governing party, though it was not enough for the sole rule of the Croatian National Party. A coalition of the National Party and Most, led by non-partisan PM Orešković governed until the early elections in September 2016. National Party and Most stayed in coalition afterwards, though it was now led by the National Party leader Plenković. During the political turmoil and rebalanced political power among the parties, the security approach prevailed over the humanitarian care for the asylum seekers that was adopted by the prior Government. In March 2016, PM Orešković’s Government proposed amendments to the Law of Defence that enabled army deployment on the borders in case of emergency situations that endanger state’s security. Since the existing legislation already allowed army assistance to police in cases of police capacities’ shortage, Milanović’s opposition argued that the amendments, mirroring the action adopted earlier also by Slovenia, were going to

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<sup>500</sup>“Slanje vojske na granicu je suluda ideja,” *Beta*, September 19, 2015, <https://goo.gl/bZLqRc> (accessed 10.12.2015).

contribute to the further securitization of the migration flow.<sup>501</sup> The proposal was endorsed by the large majority in the Parliament, but the army was never deployed, since the route was closed in March 2016.

Despite the route's closure and Croatian support for the European resettlement quotas, Croatia continued with the adoption of measures that further secured its borders and reduced the rights of migrants and asylum seekers. Being faced with increasing numbers of Dublin returnees, 943 incoming Dublin transfers and 24 implemented in 2015 raised to 3,793 in first 11 months of 2016,<sup>502</sup> the country considered enhanced border controls as the only "sustainable" measure to avoid further Dublin returnees and aimed to give a clear sign that new migrants are not welcomed. As a part of percussion measures against further illegal border crossings a wired fence was erected on the part of its border with Serbia in June 2016.<sup>503</sup> Furthermore, the new nationalist Government aligned its stricter border policy with the Visegrad Group, Slovenia, Austria, and Bulgaria.<sup>504</sup> Media reported alleged push-backs of migrants with no opportunity to express their asylum application on the border with Serbia, what the Government denied. With the most recent amendment proposal to the Law on Foreigners criminalising any help to 'lucky' irregular migrants who still manage to cross highly secured border Croatia attempts to make migrants' passage through the country more dangerous. Besides securitization, Croatia continued to fight irregular migration by enhanced readmissions as a top priority. Between the beginning of 2015 until October 2016, Croatia requested 228 migrants' returns to Serbia. Allegedly many were based on accelerated procedure run solely by the border authorities, without clearly presenting

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<sup>501</sup>“Prihvaćene izmjene zakona: Sabor je Vladi omogućio slanje vojske na granicu,” *Net.hr*, March 18, 2016, <https://goo.gl/Wkig7h> (accessed 11.04.2017).

<sup>502</sup>ECRE, *Balkan route reversed ...*, 27.

<sup>503</sup>Ružica Jakfšević and Siniša Tatalović, “Securitization (and de-securitization) of the European Refugee Crisis: Croatia in the Regional Context,” *Teorija in Praksa* 63, no.6 (2016): 1256, <https://goo.gl/47GCy5> (accessed 02.04.2017).

<sup>504</sup>Croatian Ministry of Internal Affairs, *Ministar Orepić na Ministarskoj konferenciji zemalja V4 i V4+*, press Release, November 21, 2016, <https://goo.gl/YP7ri> (accessed 02.04.2017).



them with the possibility to apply for asylum in Croatia as stipulated in the Asylum Procedures Directive and without assuring that Serbia presents a *safe country* for them. On the other side, the country is requested to take back 4,000 Dublin returnees.<sup>505</sup> This only contributes to further border securitization and accelerated readmissions and slows down already tottering relocations. Out of the promised 968 relocations, only 19 (2 %) were done as of the beginning of April 2017.<sup>506</sup>

Taking into regards Croatian restrictive asylum system in the past, enforcement of readmission practices and border securitization do not come as a surprise. While the first one were done with a tacit acceptance of the EU, the second one was rather the EU requirement should Croatia one day take over the responsibility for the external Schengen border. Croatia successfully prevented accumulation of refugees on its territory, by setting up the ‘standards’ for the humanitarian corridor that was established alongside the Balkan migration route and rejecting any refugees processing on its borders. Internally, the wave was a great opportunity for the National party to seize back on power.

#### **4.2.1.6. Slovenia: Quick follower**

In July 2015, Slovenian Government adopted Contingency plan that predicted three different phases of institutional cooperation depending on the number of asylum seekers’ applications.<sup>507</sup> Despite the fact, that Slovenia represents a transit country with only 277 asylum applications submitted throughout 2015<sup>508</sup> and 422,724 migrants passing the country on their way to Western Europe only in autumn and

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<sup>505</sup>ECRE, *Balkan route reversed ...*, 10.

<sup>506</sup>EC, *Member States’ Support to Emergency Relocation Mechanism*.

<sup>507</sup>Government of the Republic of Slovenia, *Kontingentni načrt Republike Slovenije za zagotovitev nastanitve in oskrbe v primeru povečanja števila prosilcev za mednarodno zaščito*, July 16, 2015. <https://goo.gl/4LekA9> (accessed 15.06.2016).

<sup>508</sup>In 2016 the number of applications increased to 1,310. “Asylum and first time asylum applicants by citizenship ...” *Eurostat*.

winter 2015,<sup>509</sup> the plan primarily focused on accommodation and supply capacities for those who would apply for international protection. Regarding others, it advocated early identification of different categories of the arriving migrants and their treatment by the existing national and EU rules. It implicitly foresaw that irregular migrants who would not apply for international protection would be restricted to movement and returned to their countries of origin or the country they entered Slovenia from in accordance with bilateral readmission agreements. Based on the same rationalisation the Government refused any possibility of ‘transit corridor’ creation, such as had already existed between Croatia and Hungary.<sup>510</sup> By the plan, police tried to return more than 200 people who did not apply for international protection in Slovenia to Croatia when the first larger migrant group appeared on the Slovene-Croatian border in September 2015. Against the plan was the Croatian refusal to readmit the migrants. As a result, Slovenia tried to furiously close down all ways that might have led into the country. It cancelled train connections between Zagreb and Ljubljana, while police kept refusing the entry of migrants who arrived at the border by foot. As migrants were left in no man’s land between the borders in miserable conditions, in rainy weather and without proper shelter, food, sanitation and medical help, spontaneous protests developed and police occasionally responded with teargas. After two days of tensions and increased green border crossings, Slovenia opened its border and started the registration procedures. The border opening *de facto* initialized the creation of a ‘transit corridor’ further to Austria.<sup>511</sup>

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<sup>509</sup>The data comprises the period between October 17, 2015 and January 25, 2016. “Pomoč beguncem – statistika,” *Government of the Republic of Slovenia*, <https://goo.gl/09VvKQ> (accessed 15.06.2016).

<sup>510</sup>Government of the Republic of Slovenia, *Z začasno ponovno uvedbo nadzora na meji z Madžarsko želimo poskrbeti za nadzor nad migracijskimi tokovi*, press release, September 16, 2016, <https://goo.gl/nXFd2d> (accessed 15.06.2016).

<sup>511</sup>Maja Ladić and Katarina Vučko, “Slovenia’s Response to Increased Arrivals of Refugees,” in *Razor-wired: reflections on migration movements through Slovenia in 2015*, ed. Neža Kogovšek Šalamon and Veronika Bajt (Ljubljana: Peace Institute, 2016), 17.

All migrants that entered Slovenia went through registration procedure, starting with security- and documentation check, while personal details, photos and fingerprints were taken from each person, and only details of those applying for international protection in Slovenia were transferred to the central Eurodac system as demanded by Eurodac Regulation.<sup>512</sup> Ongoing increasing numbers of arriving migrants, with Austrian limit to accept up to 6,000 migrants daily and accusations of Croatia for directing some of the migrants to the green border<sup>513</sup> crossings outside the established ‘corridor’ Slovenia announced the erection of razor-wired fence alongside its border with Croatia on November 10, 2015,<sup>514</sup> although the Government ruled out such possibility at the beginning of the flow, expressing the view that “the Europe of walls cannot be in interest of no one.”<sup>515</sup> The imposition of new and more comprehensive measures, including the fence, for which the government used a term “technical obstacles”, was backed by limited accommodation capacities, inadequate protection of the EU external borders as agreed at the Balkan mini-summit and measures also being in the interest of neighbouring Austria and wider Europe. PM Cerar argued it was a necessary, but a temporary measure, which would at the same time protect “citizens and the functioning of the state” as well as “refugees from the possible humanitarian catastrophe.”<sup>516</sup>

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<sup>512</sup>Nina Gregori, Director-General of Internal Administrative Affairs, Migration and Naturalization Directorate, interview by author, July 14, 2016.

<sup>513</sup>Government of the Republic of Slovenia, *Hrvaška z nenapovedanimi napotitvami ogroža življenja ljudi*, press release, October 22, 2015, <https://goo.gl/W8o7Us> (accessed 15.06.2016).

<sup>514</sup>Government of the Republic of Slovenia, *Postavitev tehničnih usmerjevalnih ovir na schengenski meji nujen in začasen ukrep*, press release, November 11, 2015, <https://goo.gl/PlnnXf> (accessed 15.06.2016).

<sup>515</sup>Government of the Republic of Slovenia, *Premier dr. Cerar in srbski premier Vučić: Evropa zidov ne more biti v nikogaršnjem interesu*, press release, August 13, 2015, <https://goo.gl/Pjcpso> (accessed 15.06.2016).

<sup>516</sup>Government of the Republic of Slovenia, *Postavitev tehničnih usmerjevalnih ovir ...*; Government of the Republic of Slovenia, *Vlada obravnavala celovite ukrepe za obvladovanje migracijskega toka*, press release, October 29, 2015, <https://goo.gl/orh8Cy> (accessed 15.06.2016).

Being the smallest country on the Western Balkan migration route both regarding the seizing and population, and at the same time the first Schengen country, Slovenia felt overwhelmed by the pressure of large numbers of migrants trying to pass its territory. Expressing a great burden, it called upon the internationally coordinated measures that would stop economic migrants outside the EU, while it at the same time initially advocated humanitarian approach to asylum seekers, solidarity among European states and address of migration challenge in countries of origin.<sup>517</sup> According to President Pahor, the European solution that would strengthen EU is of Slovene highest interest, while all Slovene measures should support Slovene further inclusion into EU inner core.<sup>518</sup> Backed by the Slovene multiple identity approach that justifies and gives Slovenia special powers in solving the issues between the EU and the Western Balkans, Slovenia adopted a vocal position and criticised the lack of common EU approach. PM Cerar even warned that the unaddressed ‘crisis’ might eventually cause even the break-up of the EU.<sup>519</sup>

When it became obvious that the conclusions of the October 2015 Balkan Mini-summit and their poor implementation would not stop the influx, PM Cerar addressed European leaders and leaders alongside the Western Balkan migration route<sup>520</sup> in January 2016 letter proposing shutdown of the route at the Macedonian-Greek border. The proposal was presented as Solomon’s solution that would diminish the need for migrants’ returns from European countries and of reestablished EU internal borders. In addition, it would decrease tensions that were emerging between countries alongside the route due to returns and the possible

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<sup>517</sup>Miro Cerar, interview by Christiane Amanpour, *Amanpour CNN*, October 26, 2015, <https://goo.gl/tHksWz> (accessed 10.06.2016).

<sup>518</sup>President of the Republic of Slovenia, *Predsednik Republike Slovenije Borut Pahor - Tretje Leto Mandata*, [Ljubljana], 2015, <https://goo.gl/r13Nee> (accessed 18.06.2016).

<sup>519</sup>“Cerar na vrhu o begunski krizi svaril pred razpadom EU,” *Delo*, October 25, 2015, <https://goo.gl/ZMRmOe> (accessed 13.12.2015).

<sup>520</sup>The letter was sent to prime ministers of Germany, Austria, Croatia, Serbia, Macedonia, and Greece. Miro Cerar, *Prime Minister Letter to European Leader*, [Ljubljana], January 2015, <https://goo.gl/euu1YQ> (accessed 18.06.2016).

domino effect. The letter advocated reinforced support to Greece by Frontex operations, relocation schemes, financial assets, suspension of returns under Dublin provisions, and assistance with fast returns of migrants that are not entitled to international protection. The letter suggested that all measures should be taken to secure the Greek-Turkish border, including the coastal guard that should be composed of member states' forces, while the stricter control at the Greek-Macedonian border, also supported by police forces from the EU member states, should prevent all illegal crossings further north.<sup>521</sup> At the working EU-Balkan Summit in February 2016 the proposal was presented as complementary to the European solution seeking the agreement between Turkey and Greece and necessary since it can be implemented immediately, while the Greek-Turkish cooperation seemed to be far ahead.<sup>522</sup> The proposal gained the support of all involved, including the EC, Dutch Presidency, and the Visegrad group, which seemed to be resistant when it came to other initiatives regarding the solutions to migration influx.<sup>523</sup>

Slovenian lobbying for the Balkan route closure was based on its fears to become stuck by migrants and excluded from the European internal core by the imposition of more and more restrictive policies and fences in northern Austria. Concurrently with the rising fear, the Government launched many legislative attempts to restrict access to its territory. Already in October 2015, the amendments to the Defence Act enabled army deployment to the border in two phases. The first phase was activated upon the Government order enabling army activities in logistics only a few days after the amendment.<sup>524</sup> The second phase followed in February 2016 by assured the necessary two-thirds parliamentary approval in case of special security conditions. It

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<sup>521</sup>Ibid.

<sup>522</sup>Government of the Republic of Slovenia, *Premier dr. Cerar: Slovenska pobuda o omejevanju iregularnih migracij na makedonsko-grški meji komplementarna evropskemu reševanju krize*, press release, February 26, 2016, <https://goo.gl/73H1Rk> (accessed 18.06.2016).

<sup>523</sup>“Pobuda predsednika vlade dr. Mira Cerarja za obladovanje migracijskega toka,” *The Government of the Republic of Slovenia*, <https://goo.gl/6jd6Xk> (accessed 18.06.2016).

<sup>524</sup>Ministry of Defence of the Republic of Slovenia, *Državni zbor sprejel Zakon o dopolnitvi Zakona o obrambi*, press release, October 21, 2015, <https://goo.gl/IEeQtw> (accessed 18.06.2016).

widened the scope of army powers to work alongside police in the “wider border territory”, issuing warnings, directing people, temporarily detain people and cooperate in crowds management.<sup>525</sup> All opposition parties except the United Left seconded the proposal,<sup>526</sup> while the right wing Slovene Democratic Party expressed the criticism that such a measure came far too late, as the Parliament failed to endorse their proposal from January 2016 to establish special National Guard.<sup>527</sup> The Amendment was found controversial by the liberal part of Slovene civil society for not clearly defining the extended powers of the army, not providing its responsibility to the Assembly and omitting any appeal mechanism. However, the petition claim submitted to the Parliament by different student organisations was rejected, while the Constitutional Court upon Human Rights Ombudsman initiative ruled that the extended army powers do not breach the Constitution, refuting claims that the extended powers are not clearly set.<sup>528</sup>

Besides Defence Act, Slovene ruling Modern Centre Party also succeeded in the approval of new International Protection Act (IP Act) in March 2016. Based on the argumentation that IP Act would bring Slovene national asylum law in line with European legislation and complete the creation of CEAS,<sup>529</sup> the new Act successfully re-introduced the notions of *safe third country* and *European safe third country*. Due to their vague definitions, they were previously annulled by the

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<sup>525</sup>Ministry of Defence of the Republic of Slovenia, *Slovenska vojska z enakimi nalogami podpira reševanje migrantske situacije*, press release, February 26, 2015, <https://goo.gl/iX9UNd> (accessed 18.06.2016).

<sup>526</sup>“Vojska za tri mesece dobila policijska pooblastila,” *RTV Slovenija*, February 22, 2016, <https://goo.gl/7KuStk> (accessed 20.06.2016).

<sup>527</sup>Upon Slovene Democratic Party proposal National Guard would consist of around 25,000 “patriotic” volunteers and would be crucial in times of “drastically deteriorated security worldwide.” “SDS bi 25.000 domoljubov združil v nacionalni gardi,” *RTV Slovenija*, January 19, 2016, <https://goo.gl/aqDodc> (accessed 20.06.2016).

<sup>528</sup>“Ustavno sodišče: Vojska s policijskimi pooblastili je v skladu z ustavo,” *SiolNET*, June 6, 2016, <https://goo.gl/D7q5dO> (accessed 20.06.2016).

<sup>529</sup>“Sprejet nov zakon o mednarodni zaščiti, obstrukcija SDS-a in NSi-ja,” *RTV Slovenija*, March 4, 2016, <https://goo.gl/K1zWol> (accessed 22.06.2016).

Constitutional Court.<sup>530</sup> The new Act omits the responsibility for the contextual processing of the application of the *safe state* and defines it as a state in which the asylum seeker had an actual possibility to seek asylum but did not do so without a founded reason. In the case of the *safe European state* the actual possibility of seeking asylum is not needed, rather it is defined by asylum seeker's attempt of realised illegal entering from that state to Slovenia. The list of safe third states, safe European states and safe states of origin is to be created by the Government, considering the other criteria set in the IP Act and mainly transposed from the Procedural Directive.<sup>531</sup> The Government only announced the list of safe countries of origin.<sup>532</sup> Much of discussion on the new IP Act revolved around the criteria for asylum request inadmissibility. Based on the initiative of the opposition Slovene Democratic Party and New Slovenia Party, the Government included cases in which it is evident that asylum seekers came from other EU member states under reasons for inadmissibility and also proposed the non-suspension effect of appeals against negative decisions.<sup>533</sup> Both proposals were excluded from the final Act, causing the obstruction of voting by one part of the opposition, while the United Left voted against due to claimed deteriorating rights of asylum seekers. If accepted, these

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<sup>530</sup>In 2013, the Constitutional Court decided that vague definition of the safe third (European) state as a state where the asylum seeker had been before arriving in Slovenia does not establish a clear link between the asylum seeker and the mentioned state. Accordingly, it poses a risk of arbitrary decisions and possible denials of returns by third states and hence violates the principle of clarity and definiteness enshrined in Art. 2 of the Constitution defining that Slovenia is governed by the rule of law. *Odločba o ugotovitvi, da 61. člen Zakona o mednarodni zaščiti ni v neskladju z Ustavo, o razveljavitvi 60. člena in prvega odstavka 62. člena Zakona o mednarodni zaščiti in o ugotovitvi, da je prvi odstavek 63. člena Zakona o mednarodni zaščiti v neskladju z Ustavo*, Official Gazette of the Republic of Slovenia 114/2013, December 31, 2013, <https://goo.gl/nG2N7E> (accessed 22.06.2016).

<sup>531</sup>*Zakon o mednarodni zaščiti*, Official Gazette of the Republic of Slovenia 22/2016, March 25, 2016, <http://www.uradni-list.si/1/objava.jsp?sop=2016-01-0830> (accessed 20.06.2016).

<sup>532</sup>On the list there are Albania, Algiria, Bangladesh, BiH, Montenegro, Egypt, Macedonia, Morocco, Serbia, Tunisia, and Turkey. *Odlok o določitvi seznama varnih izvornih držav*, Official Gazette of the Republic of Slovenia 13/2016, February 19, 2016, <https://goo.gl/PaaFof> (accessed 24.06.2016).

<sup>533</sup>Procedural Directive leaves the suspension powers of appeals against negative decisions open to be regulated with national laws. Slovene Constitutional Court warned that previous non-inclusion of suspension effect in mentioned cases breached Slovene rule of law principle. *Odločba o ugotovitvi ...*

amendments would practically prevent anyone from requesting asylum in Slovenia, since almost all migrants to Slovenia come through one of the EU member states. This would be a clear breach of the Asylum Procedures Directive and the Dublin Regulation. If the latter was an unsuccessful attempt, far greater and successful restriction package came in January 2017. The amendments to the Aliens Act now give the Parliament the authority to close the borders to all foreigners who do not fulfil conditions to enter the country legally. In a case when the migrant expresses an intention to apply for international protection, the Act predicts the identification process done by police. The application is refused as inadmissible “no matter the provisions of the International Act” if there are no systematic shortcomings of the asylum system and procedures in the EU member state from which the asylum seeker has come from.<sup>534</sup> Any possible appeals are decided by the Ministry of Interior and not the judiciary. The measure could be adopted by the ordinary majority in cases when increased migration pressure endangers public order and state’s internal security. Moreover, any ‘illegal’ migrant that are apprehended within the country will be accompanied to the border from where he would be directed to the country from which he came. Should such a measure be adopted in the case of a renewed migration wave, potential asylum seekers would not be eligible to enter the country and submit their asylum application what would put Slovenia in clear contravention of international responsibilities. Its implementation would breach *non-refoulement* obligation and obligation to individually assess asylum applications, the prohibition of torture and humiliating treatment and the prohibition of collective expulsions. Council of Europe expressed deep concerns over the change,<sup>535</sup> while the EC stayed silent.

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<sup>534</sup>The only exception to the rule is allowed when asylum applicant's health condition do not allow his return and when it is evident from the appearance, behaviour and other circumstances that the asylum seeker is a minor. *Zakon o tujcih*, Official Gazette of the Republic of Slovenia 16/2017, April 7, 2017, <https://goo.gl/1GoUOI> (accessed 24.04.2017).

<sup>535</sup>Council of Europe, *Slovenia: Commissioner concerned about adoption of amendments to Aliens Act that violate human rights*, statement, January 27, 2017, <https://goo.gl/nE43s6> (accessed 24.04.2017).



Slovene migration policy during the 2015 migration wave reflected state's initial confusion how to react to the arriving masses. The Government found itself between German 'open door' policy and the opposing Dublin provisions. Slovenian initial plan to go by the book and be a model and responsible EU member was soon broke down by uncontrolled masses on its borders. With the border-opening, it followed the Greek example and violated Schengen Acts, most probably with tacit German and Austrian acceptance. Its failure to protect European borders was quickly addressed by calls to close the Balkan route and accelerate the fast return of irregular migrants. By rapid securitization of its asylum system and its borders, Slovenia took precautions in order not to be sacked by asylum seekers and possibly excluded from the EU inner core if Austria and Germany decide to close their borders.

#### **4.2.2. Possible Balkan Route Fragmentations**

The enhancement of border controls on the 'conventional' Western Balkan route risked diversion of the flow through other countries in the region and fragmentation of the route. This would mean a longer and more dangerous way towards destination countries. Countries in the region carefully followed the situation in the 'humanitarian' corridor and enhanced not only their asylum but also the border controlling capacities. Following subchapters firstly look at EU member states Bulgaria and Romania that found themselves on the edges of the route. It then proceeds on countries that were geographically distanced from the route and politically-wise from the EU, Albania, Kosovo, Montenegro and BiH.

##### **4.2.2.1. Bulgaria: The First Aspiring Schengen Members**

The 2015 migration 'crisis' did not convulse Bulgaria in the extent it affected other Balkan countries on the route. The increased masses of irregular migrants first reached Bulgaria in 2013, and the system had so far formed certain policy line and related measures. Among them, especially the entrance-prevention and containment measures that gained loud criticism of NGOs and human rights activists were the

priority. Besides brutal containment measures of Bulgarian border authorities, the country was also less attractive for migrants than neighbouring Macedonia, since they risked being returned to Bulgaria under Dublin provisions, for the country unlike Macedonia being both the EU member state and positioned on its external border. For those that managed to ‘illegally’ enter the country and were consequently apprehended, the ‘welcoming’ conditions were among the worst in Europe, both regarding the material supply and physical conditions as well as the general perception that migrants are a threat. Not complying with the CEAS provisions, Bulgaria adopted rather defensive policy and express of national strength, aspiring that the latter might help its process of joining the Schengen zone. The following sections overview the initial increase of ‘illegal’ migrants and asylum seekers in 2013 and practices Bulgaria developed afterwards to address the issue. Further, the EU factor in the creation of those policies is taken into consideration.

The steady average of nearly 1,000 asylum applications submitted in years between 2002 and 2012 started to increase significantly in 2013 with the 7,144 lodged asylum applications. In 2014, the number was almost doubled to 11,081 and tripled in 2015 to 20,391.<sup>536</sup> Nevertheless, Bulgaria remained transit country, since the majority of the applicants in the first 9 months of 2015 submitted their applications only after being apprehended by police, 44 % of them while exiting the country.<sup>537</sup> Although 20,391 apprehended migrants out of total 31,281 in 2015 lodged asylum application, the decision on 14,567 cases was never issued since the proceeding was terminated because migrants left further to the Western Europe.<sup>538</sup>

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<sup>536</sup>European Economic and Social Committee, *EESC fact-finding missions on the situation of refugees, as seen by civil society organisations*, [Sophia], January 2016, <https://goo.gl/GRLpHc> (accessed 15.08.2016).

<sup>537</sup>ECRE, Country Report: Bulgaria, [Brussels], October 2015, <https://goo.gl/66VEjT> (accessed 15.08.2016).

<sup>538</sup>Centre for Legal Aid – Voice in Bulgaria, *Who gets detained? Increasing the transparency and accountability of Bulgaria’s detention practices of asylum seekers and migrants*, [Sofia], January 2016, <https://goo.gl/1u5Eyf> (accessed 15.08.2016).

The circumstances led the Bulgarian Council of Ministers to adopt the Plan for the Management of the Crisis Situation Occurring as a Result of the Heightened Migration Pressure on the Territory of the Republic of Bulgaria in November 2013.

Due to its measures

(1) reducing the number of illegal immigrants entering and residing illegally in Bulgarian territory, (2) containing the risks of terrorism and radical extremism, pandemics and epidemics, ethnic, religious, and political conflict, and criminality associated with illegal immigrants which is often referred to as “the containment plan”, (3) maintaining order, security and humane conditions at reception centers; reducing the number of persons seeking protection in the territory of Bulgaria, (4) fast and efficient integration of refugees and beneficiaries of humanitarian status, (5) ensuring additional external resources. and (6) efficient communication with society

the plan was often referred to as the “Containment Plan.”<sup>539</sup> As an effective realisation, the plan indicated a threefold decrease of “illegally” entrees in the country from 3,000 to less than 1,000 per month, reinforcement of administrative capacity of the State Agency for Refugees and a twofold increase of expulsions of persons “illegally” residing in the country. All plan-related activities were supposed to make Bulgaria a place that is “not too attractive for ‘illegal’ immigrants”,<sup>540</sup> while the access to the asylum was limited by the prevention of the access to the Bulgarian territory.<sup>541</sup> As a part of measures, 30 km long razor-wire fence was built alongside Turkish, new detention centres were constructed, and border controls were reinforced. 1,500 strong-unit border policemen were deployed in the area at a distance of some 300 m from each other and reinforced by additional 170 Frontex

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<sup>539</sup>Human Rights Watch, “*Containment plan*” - *Bulgaria’s Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, [New York], April 2014, 22–3, <https://goo.gl/8q8hpR> (accessed 15.08.2016).

<sup>540</sup>Boryana Aleksandrova, “Security in Times of Migration: Towards a Glocal Definition and Practice of Security. The Case of the Syrian Refugees in Bulgaria,” *Balkan Social Science Review* 4, no. 2 (2014), 240, <https://goo.gl/evaHX9> (accessed 11.08.2016).

<sup>541</sup>Bordermonitoring.eu, *Trapped in Europe’s Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria*, [München], 2014, 6, <https://goo.gl/cbLt8D> (accessed 12.08.2016).

experts as a part of Poseidon land operations.<sup>542</sup> The border securitization also continued in 2015. In addition to completed fence alongside whole Bulgarian-Turkish border,<sup>543</sup> Bulgarian Assembly enhanced technical and logistical powers the army possessed in its tasks related to operations in migration influx. The unanimously amended Defence and Armed Forces Act made army eligible to guard on equal terms with the border police. The Army would be deployed under the initiative of the Council of Ministers, while its tasks would be determined by the Defence Ministry. The deployment would not be permanent but activated only in extraordinary situations that would also allow soldiers to use weapons.<sup>544</sup> In September 2015, first troops were sent to the Turkish border,<sup>545</sup> while additional troops on Greek border were deployed in March 2016 to stop possible influx after the closure of the Balkan migration route.<sup>546</sup>

The authorities resorted to non-discriminatory pushback techniques that had successfully reduced the number of irregular migrants entering the country,<sup>547</sup> although raising huge concerns among international organisations and activists for not granting every person the access to the territory and possibility to register its asylum application. Additionally, the EC launched an infringement procedure

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<sup>542</sup>Human Rights Watch, *Containment plan ...*, 23.

<sup>543</sup>Council of Ministers of the Republic of Bulgaria, *Deputy Prime Minister Bachvarova: We protect EU Borders professionally and responsibly, as a stable European Partner*, press release, April 14, 2015, <https://goo.gl/4WueMA> (accessed 14.08.2016).

<sup>544</sup>“Bulgarian Army to Help Guard Border Against Migrants,” *Balkan Insight*, February 19, 2015, <http://goo.gl/20OR8Y> (accessed 14.08.2016).

<sup>545</sup>“Bulgaria sends troops to guard border with Turkey,” *Reuters*, September 17, 2015, <https://goo.gl/Qdw8KU> (accessed 15.12.2015).

<sup>546</sup>“Refugees Surrounded from All Sides: Bulgaria Sends Military to Border with Greece,” *Independent*, March 5, 2015, <http://goo.gl/Rk637q> (accessed 15.08.2016).

<sup>547</sup>Ministry of Interior expressed lauds that the influx was “practically ceased” by the end of January 2014, successfully providing “100 % protection” of the most sensitive part of the border with Turkey and thus preventing the entrance of approximately 150,000 migrants, making no difference between economic migrants and refugees. Human Rights Watch, *Containment plan ...*, 25.

against possible returns of Syrian refugees in April 2014.<sup>548</sup> Since Bulgarian national law enables the registration of asylum applications of undocumented migrants only on its border, the latter is almost non-existent as Turkey forbids exits of undocumented migrants from its territory which could be the only way for undocumented migrants to reach Bulgarian border authorities lawfully.<sup>549</sup> Thus the only way left is the almost impossible ‘illegal’ crossing of the securitized green border with great possibility to be pushed back. However, inland apprehended migrants are automatically detained and issued return orders if they do not claim asylum. The number of detained migrants increased significantly from 2012 from initial 2,047 to 9,833 in 2013, 11,017 in 2014 and 19,136 only in the first 9 months of 2015, in November 2015 being more than 60 % of detained Afghans, followed by Syrians and Iraqis.<sup>550</sup> In 2007 repealed Art. 58, Paragraph 2 of the Asylum and Refugee Act, stating that the asylum procedure is initiated with the submission of the application, enabled Bulgarian authorities arbitrary and delayed registrations of asylum seekers what paved the way to prolonged detentions and extraditions of non-registered asylum seekers.<sup>551</sup> On the other side, the legislative amendment to the Asylum and Refugee Act, made as a part of Reception Conditions Directive transposition in December 2015, for the first time introduced conditions of migrant’s detentions for the purposes of status determination procedure in Bulgarian national law and deadlines for asylum application registration within 6 days after the application is submitted.<sup>552</sup> The change could be a positive step in enhancing the protection of asylum seekers and reducing the risk of *refoulement* as an effect of

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<sup>548</sup>“European Commission launches infringement procedures against Bulgaria and Italy for possible refoulement of Syrian refugees,” *ECRE*, <http://goo.gl/nKAZOv> (accessed 12.08.2016).

<sup>549</sup>Human Rights Watch, *Containment plan ...*, 23.

<sup>550</sup>Centre for Legal Aid – Voice in Bulgaria, *Who gets detained?...*

<sup>551</sup>Legal Clinic for Refugees and Immigrants, *Arbitrariness regarding Access to the Asylum Procedure in Bulgaria - Information Note*, [Sofia], January 2012, <https://goo.gl/twxehI> (accessed 13.08.2016).

<sup>552</sup>“Recasting Detention of Asylum Seekers in Bulgaria: The Good and Bad about EU Asylum Law,” *RefLAW*, <http://goo.gl/WUXH5k> (accessed 15.08.2016).

positive EU influence, although the real implementation in practice is yet to be seen. The new legislative provisions that envisages the establishment of “closed centres” for detention of asylum seekers during the procedure and either open or closed “transit” and “registration centres”, where the asylum seekers could be accommodated during registration, status determination and determination of the responsible state under the Dublin mechanism, indicates the possibility that all centres might end up operating under closed conditions.<sup>553</sup> ECRE argues that new provisions, with an additional allowance for the detention of unaccompanied minors, only enable legal detention by upgrading the status of detained people from ‘illegal’ migrants to asylum applicants, keeping systematic imposition of detention rather as a rule and not an exception.<sup>554</sup> In light of the lack of capacities and only having two operating detention centres, Bulgaria opened four additional and temporarily arranged emergency reception centres in old school buildings and militarily barracks where it was impossible to provide sufficient basic sanitary and living standards.<sup>555</sup> Although poor reception condition combined with inhumane treatment of people to be returned led UNHCR to propose a temporary suspension of Dublin transfers to Bulgaria in January 2014,<sup>556</sup> the suspension only took place till the Government reassured it had improved conditions in March 2014. UNHCR confirmed partial improvement but again expressed concern over the accommodation and sanitary conditions in two of the centres and measures that were aimed to restrict access to the territory along the Turkish border.<sup>557</sup> New detention centres were built and old

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<sup>553</sup>Ibid.

<sup>554</sup>ECRE, *Research Note: Reception conditions, detention and procedural safeguards for asylum seekers and content of international protection status in Bulgaria*, [Brussels], January 2016, <http://goo.gl/3Acw5B> (accessed 14.08.2016).

<sup>555</sup>Nevena Nancheva, “The Common European Asylum System and the failure to protect: Bulgaria’s Syrian refugee crisis,” *Southeast European and Black Sea Studies* 15, no. 4 (2015), 447, <https://goo.gl/FVcSmO> (accessed 11.08.2016).

<sup>556</sup>UNHCR, *Bulgaria as a Country of Asylum – UNHCR Observations on the Current Situation of Asylum in Bulgaria*, [Geneva], January 2014, 3, <http://goo.gl/xlSg3s> (accessed 11.08.2016).

<sup>557</sup>“Bulgaria: UNHCR says asylum conditions improved, warns against transfer of vulnerable people,” *UNHCR*, <http://goo.gl/qoPhu5> (accessed 19.08.2016).

ones reconstructed, the latter being argued as a part of meeting Schengen criteria provisions and financed by the EU.<sup>558</sup>

Additionally, the EU assisted Bulgaria in making diplomatic connections with countries where the majority of ‘illegal’ migrants came from in order to energise return procedures by facilitating identification, issuing of travel documents and the mere repatriation. Among those, there were Algeria, Afghanistan, Eritrea, Iran, Iraq, Morocco, Pakistan, Sudan, and Tunisia. The flights used for returns were coordinated with other member states and partly financed by Frontex.<sup>559</sup>

The policy of collective expulsion, prevention of the access to the asylum and systematic detentions is in line with Bulgarian stance on the migrants’ influx seen as a matter of national defence. Already National Strategy in the Area of Migration, Asylum, and Integration (2011–2020) adopted in 2011 referred to migration firstly as a necessary resource for the national and EU economy and demography and secondly as a threat to the state’s and EU’s unity and security, omitting any humanitarian implications.<sup>560</sup> Notwithstanding the general mistreating of asylum seekers and inadequate preparedness for such an influx, or maybe exactly therefore, the Government adopted rhetoric echoed that the authorities are “taking all necessary measures against any threat to the national security”,<sup>561</sup> while national media reported on the issue in a very limited and biased way.<sup>562</sup> Widespread was the populist tone that Bulgaria cannot afford hosting refugees due to its poor economic

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<sup>558</sup>Boryana Aleksandrova, “On a Pathway to a Global Society? The Role of States in Times of Global Migration – Implications for Bulgaria’s Handling of Syrian Refugees (2013-2014),” *Alternatives: Turkish Journal Of International Relations* 13, No. 4 (2014), 29, <https://goo.gl/Tj8vzm> (accessed 05.08.2016).

<sup>559</sup>Aleksandrova, “Security in Times of Migration ...”, 241–2.

<sup>560</sup>Ministry of Interior of the Republic of Bulgaria, *National Strategy on Migration, Asylum and Integration (2011-2020)*, [Sofia], June 2011, <https://goo.gl/fj4ZT9> (accessed 13.08.2016).

<sup>561</sup>Aleksandrova, “On a Pathway to a Global Society ...”, 33.

<sup>562</sup>“The European refugee crisis: Bulgaria’s wake-up call?,” *OpenDemocracy*, <https://goo.gl/UJgDto> (accessed 15.08.2016).

performance with no one questioning the estimated spending of more than € 5 million for the construction of the border fence.<sup>563</sup>

Besides providing national security, the extensive border control measures targeted especially against non-EU citizens were promoted by the authorities as a measure to stay in control of the future Schengen frontiers. Although the initial plan to enter the Schengen zone already in March 2011 was not realised, Bulgaria kept implementing Schengen rules with desire for an early inclusion while emphasising that although it controls EU external borders, it does not receive full financial and material support as it would in the case of being a Schengen country.<sup>564</sup> The National Strategy on Migration, Asylum and Integration puts great emphasis on securing the external EU border, expressing the need to enhance cooperation with Frontex. It names border as being “an integral part and a key element of an effective migration policy.” According to the strategy, Bulgaria “pursues a long-term, integrated and clearly formulated policy for the protection of the EU borders and fight against illegal migration, human trafficking and smuggling.”<sup>565</sup> In May 2015, deputy PM for European Policies Coordination and Institutional Affairs Kuneva expressed country readiness to meet Schengen criteria, adding that “it is unfair ... that the country’s security efforts are not appreciated” by the EU. So far, Bulgaria absorbed more than € 120 million, with most of the projects implemented by German support.<sup>566</sup> Interior Minister Bachvarova assured to its French counterpart that Bulgaria “protects EU borders professionally and responsibly, as a stable European partner.”<sup>567</sup>

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<sup>563</sup>Nancheva, “The Common European Asylum System,” 448.

<sup>564</sup>Aleksandrova, “On a Pathway to a Global Society ...”, 29.

<sup>565</sup>Ministry of Interior of the Republic of Bulgaria, *National Strategy ...*, 3, 33.

<sup>566</sup>Council of Ministers of the Republic of Bulgaria, *Deputy Prime Minister Meglena Kuneva: Bulgaria is 100-percent prepared for Accession to Schengen in Terms of Air and Sea Borders*, press release, May 12, 2015, <https://goo.gl/k2Mxut> (accessed 13.08.2016).

<sup>567</sup>Council of Ministers of the Republic of Bulgaria, *Deputy Prime Minister Bachvarova ...*



Bulgarian endorsement of the EU-Turkey cooperation was expectable since the state launched close border cooperation with Turkey already in 2013 influx. Turkey was made a “the key element” in the Plan for the Management of the Crisis Situation Occurring as a Result of the Heightened Migration Pressure on the Territory of the Republic of Bulgaria. Bulgaria further advocated Turkey’s designation as a *safe country*.<sup>568</sup> Accordingly, Bulgaria was the first EU member state to sign the Implementation Protocol that enabled returns of irregular migrants in May 2015.<sup>569</sup> Although it advocated EU solidarity and endorsed allocation program, by PM Borrisov boosting that Bulgaria can cope with up to 1200 relocated refugees,<sup>570</sup> the Government adopted more reluctant stance after the agreement was reached, putting itself into the position of a victim and affected states. Borrisov stated that the planned 572 relocated refugees represent an additional burden to Bulgaria, which is already under the migration pressure due to its position at the EU external border. Bulgaria opposes the quota as being disproportionate, not taking into the account country-specific characteristics, such as geographical position, proximity to the regions of origin, and disposable capacities.<sup>571</sup>

As an aspiring Schengen candidate, Bulgaria saw in the increased migration wave an opportunity to show off its readiness for and efficiency in the protection of the external European borders. It has well performed all the duties that Greece has so reluctantly opposed to. Internally, such policy symbolised strengthened state and was appreciated as a measure that would prevent additional costs caused by possible intake and care for asylum seekers. Whether such policy will bear fruits in relation to the Bulgarian long-term objective is yet to be seen, but it is clear that the

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<sup>568</sup>Human Rights Watch, “*Containment plan ...*”, 27.

<sup>569</sup>Ministry of Interior of the Republic of Bulgaria, *Bulgaria and Turkey has signed a protocol for the implementation of the EU-Turkey readmission*, press release, May 5, 2016. [https://press.mvr.bg/en/News/news160505\\_09.html](https://press.mvr.bg/en/News/news160505_09.html) (accessed 13.08.2016).

<sup>570</sup>“Bulgaria Can Cope with Refugee Quota of 1200,” *Sofia News Agency*, <http://goo.gl/iGY5aN> (accessed 13.08.2016).

<sup>571</sup>Council of Ministers of the Republic of Bulgaria, *Bulgaria to insist on Revision of Migrant Quotas*, press release, June 8, 2015, <https://goo.gl/GkYPTG> (accessed 15.08.2016).

measures pleased the EU. It did not bother to terminate Dublin transfers for a longer period despite severe accusations of human rights violations. Rather the opposite, it actively assists Bulgaria to transfer migrants as soon as possible back to their countries of origin. The Bulgarian case is a vivid example of the EU porous accession criteria. While the asylum system should be in compliance with the CEAS during the accession, its later deterioration does not affect the membership.

#### **4.2.2.2. Romania: The second aspiring Schengen member**

Romania shares Bulgarian exclusion both from the main Balkan migration route as well as from the Schengen zone, despite being an EU member since 2007. Being unattractive destination country with the second poorest economic performance after Bulgaria among the EU27 in 2015<sup>572</sup> and therefore a country of emigration<sup>573</sup> and the lowest share of non-national residents in the EU,<sup>574</sup> immigrants did not find it convincing to push through militarised Bulgarian border and dangerous inland to Romania.<sup>575</sup> Lower and not immediate increase of arriving irregular migrants gave the country more time to form its stance. Being the only EU Balkan country to reject the relocation quota, it got known as having a special “Romanian vision”<sup>576</sup>.

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<sup>572</sup>“GDP per capita, consumption per capita and price level indices,” *Eurostat*, <http://goo.gl/Ef901t> (accessed 22.08.2016).

<sup>573</sup>The emmigration significantly increased after the accession to EU with the OECD estimation that more than 3 million Romanians work abroad. National data on emmigration is limited. OECD, *International Migration Outlook 2012*, [Vienna], 2012, <http://goo.gl/P9coIB> (accessed 15.03.2017).

<sup>574</sup>As of January 2015, only 0.4 % of Romanian residents were non-nationals. “Migration and migrant population statistics,” *Eurostat*, <http://goo.gl/EsRH2x> (accessed 22.08.2016).

<sup>575</sup>Isolated cases of migrants coming by boats from Turkey through the Black Sea were detected by the Romanian sea patrols. FRONTEX, *Annual Risk Analysis 2015*, [Warsaw], April 2015, 24, <http://goo.gl/8xLn8f> (accessed 20.12.2015).

<sup>576</sup>Institute of European Demorcrats, *Romania’s Stance in the Issue of the Refugees Crisis. Preliminary Observations*, [Bucharest], March 2016, 16, <http://goo.gl/Xj2EpS> (accessed 15.08.2016).

With 36,400 registered asylum applications between 1991 and 2015,<sup>577</sup> the average of 1,500 applications per year was not increased in the last three year with 1,545 applications in 2014, 1,260 in 2015<sup>578</sup> and 418 applications in first five months of 2016.<sup>579</sup> Although the Western Balkan route marked the greatest peak in 2015, the asylum applications in Romania without any particular deterrence measure decreased. The negative trend might be attributed to well-established Balkan migration route which in autumn 2015 functioned as a quite decanted corridor. The low numbers of Ukrainian asylum applicants during the 2014 political crisis in the country<sup>580</sup> and non-existence increase of applications after the closure of the Balkan migration route in spring 2016<sup>581</sup> both prove general unattractiveness of Romania as an asylum country. However, low asylum applications numbers do not necessarily indicate that Romania was not pressured by greater transit migration influx. The corruption of border authorities combined with a lack of resources made it easy for migrants to use fake passports and widespread smuggler network.<sup>582</sup>

In September 2015 adopted National Immigration Strategy for the period 2015–2018<sup>583</sup> reflects Romanian distance to the migration ‘crisis’. The strategy pledges country’s efforts to develop admissible asylum system while paying special attention to citizens from countries that are the main sources of immigration and have the potential to affect national security. The general objectives of the strategy are

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<sup>577</sup>“UNHCR în România,” *UNHCR*, <http://goo.gl/xS4mFe> (accessed 22.08.2016).

<sup>578</sup>“Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>579</sup>“UNHCR în România.”

<sup>580</sup>Between 2013 and 2015 only 80 Ukrainians applied for asylum in Romania. “Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>581</sup>Although there was 100 asylum applications lodged in March 2016, the number decreased to 85 in April and 50 in May. *Ibid*.

<sup>582</sup>“Forged Identity “highway to EU,”” *Balkan Insight*, October 15, 2009, <https://goo.gl/gcdt8p> (accessed 24.08.2016).

<sup>583</sup>The Cabinet of Ministers of Romania, *National Immigration Strategy for the period 2015-2018, and the Action Plan for 2015, approved by the Government*, press release, September 16, 2015, <http://goo.gl/S3hFuX> (accessed 24.08.2016).

1. the promotion of legal migration for the benefit of all parties: the Romanian society, immigrants and their states of origin; 2. strengthening the legality of third-country nationals stay in Romania and the proper enforcement of removal and restrictive measures; 3. improving the national asylum system in order to improve legal standards and ensure compliance with national, European and international rules; 4. Romania's active participation in the efforts of the international community and the European Union Member States in finding durable solutions for persons in need of international protection, and the social integration of third-country nationals.<sup>584</sup>

The supporting Action Plan for 2015 adopted by the Council of Ministers at the same session outlined concrete tasks to be undertaken to meet the above objectives is unavailable to the public. Despite commitments to peruse asylum system in compliance with the EU standards, the EC launched two infringement procedures against the country in September 2015 for not meeting the minimum reception standards set in Reception Conditions Directive and provisions of common asylum provisions set in Asylum Procedures Directive.<sup>585</sup> PM Ponta provided more specific address of the migration 'crisis' in his October 2015 address to the Parliament.<sup>586</sup> As a short and medium term solutions, he advocated enhanced financial and logistic assistance to countries in the region that had already provided shelter to refugees, such as Turkey and Jordan, what he based on the argumentation that such policy is cheaper and easier than the construction of walls. Fight against terrorism and establishment of Syrian functioning state structures was noted as a long term goal.

Regarding the fourth objective to find durable solutions to migration flows in cooperation with wider international community and EU, Romania, in line with the position most vigorously promoted by President Iohannis, endeavoured human values and European solidarity plan that was reflected in proposed relocation

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<sup>584</sup>Ibid.

<sup>585</sup>EC, *More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work*, press release, September 23, 2015, [http://europa.eu/rapid/press-release\\_IP-15-5699\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5699_en.htm) (accessed 26.08.2016).

<sup>586</sup>Institute of European Demorcrats, *Romania's Stance ...*, 16.

scheme. However, it strongly opposed the chosen criteria for relocations, the main argument being the lack of Romanian ability to track, monitor and assist refugees.<sup>587</sup> President Iohannis advocated Romanian solidarity with other member states, though conditioned on own Romanian estimates how many refugees it can accommodate and assist. Herewith he emphasised the mere difference between hosting asylum seekers in terms of offering them shelter and food, what Romania has the capacity for, but it lacks knowledge, experiences and capacity to integrate them into the community what is a necessary subsequent step of accepting asylum seekers. According to his “voluntary solidarity” concept, Romania offered to take in 1,785 asylum seekers,<sup>588</sup> refuting a much higher number of 5,303 asylum seekers attributed to Romania according to the EU relocation scheme.<sup>589</sup> President Iohannis position influenced the policy adopted by the Interior Ministry and eventual Romanian vote against the EU relocation mechanism, being the only Balkan EU member state to reject the proposal. Romania was automatically positioned side by side with Hungary, the Czech Republic and Slovakia, countries that also rejected EC relocation proposal, although on different grounds as they all opposed any refugee acceptance on their territories. PM Ponta supported the stance but expressed regrets that country voted against the proposal instead of submitting a complaint at the ECJ on this topic like the other opposing countries. Although the complaint is still an option, Bulgaria chose to wait for court’s decisions in cases of other complaints.<sup>590</sup>

Although all Romanian parties supported rejection of compensatory quotas as such, they based their opposition on different grounds. It was only the centre-right

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<sup>587</sup>Antonio Momoc, “Political Angles in the Romanian online Media about the Refugee’ Crisis and Islam: Traian Băsescu Case,” *Europolity* 10, no. 1 (2016): 75, <https://goo.gl/6uPd8H> (accessed 11.08.2016).

<sup>588</sup>Institute of European Demorcrats, *Romania’s Stance ...*, 10.

<sup>589</sup>Romania is to accept 4,646 asylum seekers under the ERM umbrella and 657 asylum seekers under the resettlement programme. EC, *Refugee Crisis: European Commission takes decisive action ...*; Council of the European Union, *Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling ...*

<sup>590</sup>*Ibid.*, 12.

National Liberal Party that completely enhance President Iohannis stance, adding the importance of the selection criteria, the latter being even more important as the mere number of relocated people. Social Democratic Party saw relocations only as a tool of some EU member states to transfer their responsibility to others.<sup>591</sup> The most vocal and confrontational attitude was adopted by the former President and current leader of the Popular Movement party Băsescu, who took the opportunity and boosted his nationalist views. Mostly through online networks, he shared xenophobic comments and calling on Romanians to refuse “Islamic quotas” with the only “intelligent solution” being the closing of the EU borders and expulsion of migrants would be the only proper solution. He substantiated his opposition to quotas arguing that compulsory quota system breaches Romanian Constitution, namely its Art. 3 stating that “no foreign populations can be relocated or colonised on the territory of the Romanian state.”<sup>592</sup> However, the argument was refuted by the CJEU ruling that “a place-of-residence condition may be imposed on beneficiaries of subsidiary protection if they face greater integration difficulties than other non-EU citizens who are legally resident in the Member State that has granted such protection,” indicating that it is possible to impose residency.<sup>593</sup> Although not winning the argument, Băsescu’s firm populist stance, accompanied by xenophobic statements of United Romania Party, transformed hospitable position of Romanians towards Syrian refugees – from 65 % Romanians supporting Romania’s acceptance of relocated immigrants in August 2015 to 75.6 % of Romanians considering that Romania should not receive any refugees in December 2015.<sup>594</sup>

Despite discontent, Romania undertook necessary legislative changes that enable the relocation of refugees in December 2015 by the adoption of the Law no. 331/2015 as an amendment to the Law on Asylum. According to the amendment, Romanian

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<sup>591</sup>Ibid., 20–1.

<sup>592</sup>Momoc, 78–80.

<sup>593</sup>Institute of European Demorcrats, *Romania’s Stance ...*, 21.

<sup>594</sup>Momoc, 76.

asylum authorities from now on can take over refugees on the territory of third countries, whose status was recognised according to the Geneva Convention and asylum seekers and beneficiaries of subsidiary protection granted by EU member state. Out of security concerns, asylum applicants should be located in regional centres for procedures and accommodations for applicants, no matter the fact if they possess enough resources to provide for accommodation by themselves. Additionally, asylum seekers may be put in enclosed sections for the reasons of identity verification, the establishment of elements underlying the application for international protection and when there is a request of one of the institutions with responsibilities in national security, indicating that the applicant for international protection presents a danger to national security. Further, detention may be imposed in cases of insufficient restrictive measure in the procedure. Extended were also the inadmissibility criteria for an asylum application.<sup>595</sup> Despite its declared opposition to compulsory ERM, Romania relocated 568 people from Italy and Greece as of April 2017<sup>596</sup> but lacks behind the 4,180 planned relocations. The new law also introduced the concepts of *safe third country* and *European safe country*. Romania supports the creation of a European-wide list of safe third countries and has not adopted its own list yet.<sup>597</sup>

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<sup>595</sup>Application is inadmissible when the (a) applicant already enjoys the protection of another member state, (b) application is submitted to access new asylum procedure, (c) analysis show there is first country of asylum ready to readmit the person, (d) applicant entered Romania illegally from European safe country who is ready to readmit him, (e) there is a safe third country with which the applicant has a connection and it is ready to grant him protection and (f) analysis shows the existence of another member state responsible for examination of application under the Dublin system. Tache Bocaneala, "Improving the Regulatory Framework for the Legal Status of Applicants for International Protection in the Context of the implementation of Relocation Mechanisms," *EIRP Proceedings* 11, no.1 (2016): 64–6, <https://goo.gl/jA1qdP> (accessed 12.08.2016).

<sup>596</sup>EC, *Member States' Support to Emergency Relocation Mechanism*.

<sup>597</sup>Parliament of Romania - Committee on European Affairs, *Opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU*, COM (2015) 452, 4 c-19 / 612, October 8, 2015. <https://goo.gl/os1mi6> (accessed 28.08.2016).

As well as Bulgaria, Romania is in the waiting room to enter Schengen ever since its EU accession in 2007. Although President Iohannis advocated separate treatment of migration issue and country Schengen inclusion,<sup>598</sup> the latter is impossible as all of the Schengen rules revolve around migration regulations and the statement more or less provided a show for the public to put forward Romanian humanitarian care. Despite the exclusion from Schengen proved as an advantage in the migration ‘crisis’ for asylum seekers avoiding the country as well as the absence of possible Dublin transfers, the Government argue that if Romania is to take in more refugees, it should have the same rights as other member states.<sup>599</sup> However, in spite posturing, Romania indirectly tied its Schengen inclusion to migration with its opposition to compulsory ERM quotas. Having fulfilling technical criteria for years and its inclusion being rather a political question with positive last Cooperation and Verification Mechanism report, German Foreign Minister Steimeier, previously an opponent to Romanian inclusion to Schengen, voiced his support for Romanian Schengen membership in March 2015.<sup>600</sup>

Alongside Bulgaria, Romania was as well caught by the migration wave while still in the waiting lounge to be included into Schengen. Since the country found itself geographically outside the main route and largely unattractive to migrants, the authorities did not get to opportunity to express their European loyalty by enhanced borders and border push backs as it was the case of Bulgaria. They rather perused different tactic, by partially opposing the relocation quota and binding them to the countries’ full inclusion into Schengen.

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<sup>598</sup>Institute of European Demorcrats, *Romania’s Stance ...*, 22.

<sup>599</sup>“Romania States its Price For Taking in Refugees,” *Balkan Insight*, September 8, 2015, <https://goo.gl/c4BXGs> (accessed 28.08.2016).

<sup>600</sup>*Ibid.*



#### 4.2.2.3. Albania: ‘Safe’ beyond mountains and enhanced border

Albania’s geographical position and its high level of poverty made a state unattractive for transit. When predictions emerged that the established migration route might redirect after the closing of the Macedonian border combined with the escalating humanitarian crisis in Greece, the authorities step up preparations for ‘deterrence’ policies. They signalled that Albania does not have conditions to host asylum seekers. Contrary to fears, Albania hit the headlines beside Kosovo for their own citizens fleeing alongside refugees from the Middle East into Western Europe.

Some 1,400 migrants passed Albania in 2014, with the number reached 2,600 in 2015.<sup>601</sup> In comparison to regular Western Balkan route, the above numbers are minor. In addition to the hostile Pindos Mountains terrain on the 280 km long border with Greece and the fact that the route would be enlarged for two more border crossings, Albanian internal factors contributed to the relative unattractiveness of the country. Among them there is a difficult access to public transport means close to the borders, non-existent railways that would connect southern entry point with the north northern exit point, relative higher prices of public transport due to its non-integration, enhanced border controls measures in March 2016 and clear Government communication that Albania cannot become a transit country.<sup>602</sup>

Albanian politicians voiced out loud that the country does not intend to open its borders to immigrants<sup>603</sup> since a large influx would mean a serious problem for

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<sup>601</sup>“Is Albania the next stop for stranded refugees?” *Al Jazeera*, March 11, 2016, <http://goo.gl/rYRGIX> (accessed 28.08.2016).

<sup>602</sup>Cooperation and Development Institute, *Albania In The Western Balkans Route, August 2015–June 2016*, Berlin Process Series - Working Paper No. 1, [Tirana], 2016, 8–9. <http://goo.gl/iwajFR>, <http://goo.gl/iwajFR> (accessed 25.08.2016).

<sup>603</sup>“Albanian Interior Minister: Albania does not open its borders to refugees,” *Culus news*, March 17, 2016, <http://goo.gl/kCNSB8> (accessed 28.08.2016).

regarding country's lack of capacities.<sup>604</sup> They made it clear that any migrant that turns up in Albania would either have to ask for asylum or he will be returned according to the Albanian-Greek Readmission Agreement. The "voluntary repatriation orders" generally issued to apprehend irregular migrants were replaced by compulsory repatriations,<sup>605</sup> sending a strong signal to discourage potential new incoming migrants. Although Albanian PM Rama at the October 2015 Western Balkan Summit recognised the "necessity to coordinate" the crisis "on a regional and European level",<sup>606</sup> politicians kept emphasising nation's sovereign right to "control its borders, consider asylum applications and admit economic migrants."<sup>607</sup> Despite the initially expressed humanitarian stance that Albania felt obliged to show due to the humanitarian crisis it experienced in the 90s, Albanian Government announced increase in border control capacities and measures to prevent uncontrolled border crossings and penetration of terrorists.<sup>608</sup> PM Rama seconded them by making references to other countries' measures. According to him, Albania neither had "the conditions, nor the strength, nor the enthusiasm to save the world while others close their borders."<sup>609</sup>

Albanian Government outlined the concrete measures to be undertaken in October 2015 adopted Contingency Plan for Possible Mass Influx of Migrants and Asylum Seekers at the Albanian Border. As it mostly targeted institutional setup and formed procedures that would be implemented in case of a sudden influx of asylum seekers

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<sup>604</sup>"Albania Fears Becoming Part of 'Refugee Route'," *Balkan Insight*, March 3, 2016, <http://goo.gl/xgVrJe> (accessed 28.08.2016).

<sup>605</sup>"Asylum in Albania? No Thanks! Syrian Refugees Refuse Albania Offer," *Albanian Economy News*, May 5, 2016, <http://goo.gl/HPQyKa> (accessed 28.08.2016).

<sup>606</sup>"Albania may be affected by the refugee crisis during the winter," Independent Balkan News Agency, October 26, 2015, <https://goo.gl/4dxHrA> (accessed 22.12.2015).

<sup>607</sup>"An Albanian Perspective on Refugee Crisis – MP Ilir Meta Address of the Parliament," *Albanian Daily News*, April 2, 2016, <https://goo.gl/Zqsz8l> (accessed 30.08.2016).

<sup>608</sup>*Ibid.*

<sup>609</sup>"Is Albania the next stop for stranded refugees?," *Al Jazeera*.

which at the end did not occur, the plan was upgraded in March 2016 concentrating on mobility and speed of a response to a potential moderate influx of migrants.<sup>610</sup> In response to criticism over the lack of capacities having only one, but completely empty centre for irregular migrants in Karrec, while mentioning also the use of military barracks on the border with Greece as accommodation means, the plan indicated construction of two new centres for irregular migrants in Korce and Gjirokaster with capacity of 20,000 places.<sup>611</sup> Although Albanian responses and centres were not tested, the EC praised Albanian Government's timely address of the potential crisis.<sup>612</sup> In line with the changed prospects of sudden influx and other countries' more or less hostile acceptance of migrants, the upgraded March plan shifted its focus from reception and registration procedures to security aspects by exposing the importance of irregular migrants' interception, proper interviewing to distinguish asylum seekers from irregular migrants, database registration and fingerprint scanning.<sup>613</sup> Implementing the upgraded plan, 50 border policemen were deployed at the official checkpoints and alongside its green border with Greece.<sup>614</sup> Moreover, 450 Rapid Intervention Forces were temporarily deployed in the border areas, which were monitored by 25 live scanners 24 hours per day.<sup>615</sup>

Albania got extensive international support in securing its borders. International cooperation had two aims, namely to stop the onward migration towards Europe and also to lower the number of Albanians that were joining the migration wave, comprising the second biggest group after Syrians of asylum seekers in Germany in

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<sup>610</sup>Cooperation and Development Institute, *Albania In The Western Balkans Route ...*, 12.

<sup>611</sup>“Albania’s crucial role in the refugee crisis,” *Ekathimerini*, March 2, 2016, <http://goo.gl/TeVIN8> (accessed 30.08.2016).

<sup>612</sup>“EU commissioner praises Albania migrant plans,” *Ekathimerini*, March 18, 2016, <http://goo.gl/yHqISZ> (accessed 30.08.2016)..

<sup>613</sup>Cooperation and Development Institute, *Albania In The Western Balkans Route ...*, 12.

<sup>614</sup>“Syrian refugees towards Albania, border Police in full alert,” *Culus News*, March 8, 2016, <https://goo.gl/vAvh7s> (accessed 30.08.2016).

<sup>615</sup>Cooperation and Development Institute, *Albania In The Western Balkans Route ...*, 8–9.

2015.<sup>616</sup> Since the failure to seal Albanian border would most likely mean that the plan for closing the Western Balkan migration route had failed, Austrian Foreign Minister Kurtz made the wish clear during his visit in Tirana, expressing Austrian full support for Albanian start of EU accession negotiations.<sup>617</sup> Another country expressing public support that was also implemented in the form of sent equipment for border surveillance was Italy, which wanted to prevent flows to Italy through Adriatic and has therefore rather dealt with irregular migrants on Albanian borders rather on its own shores. Italy sent its police to help to monitor Albanian checkpoints and green border with Greece as well as the equipment to record the biometric data of arriving migrants and to electronically share gained data Frontex.<sup>618</sup> Extensive training to Albanian border police on issues of routes creation, selecting immigrants, profiling of potential terrorist fighters and criminal intelligence was provided by the OSCE experts.<sup>619</sup> Albania welcomed international support since deterrence of irregular migrants and its emigrants lowered the risk of their returns in line with readmission policy. On the other side, the low performance of readmissions and difficulties of implementation led EU countries, and particular the ones that are more likely to receive migrants that pass Albania, to assist in building a ‘fortress’ already at the Albanian borders.

On the international level, Albania claimed to coordinate its migration policies and measures with the EU and Frontex. PM advisor on Security claimed to daily exchange information on border crossings with the EU and Frontex representatives. The communication was a part of regional cooperation within the Network of

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<sup>616</sup>After 1658,655 Syrians, 53,805 Albanians applied for asylum in Germany in 2015, followed by 33,425 Kosovars, 31,380 Afghanis and 29,785 Iraqis. “Five main citizenships of (non-EU) asylum applicants, 2015,” *Eurostat*, <http://goo.gl/DOXYps> (accessed 01.09.2016).

<sup>617</sup>“Austria expects Balkan countries to close borders,” *B92*, February 11, 2016, <http://goo.gl/espTnQ> (accessed 01.09.2016).

<sup>618</sup>“Albania getting Italian help on border security against migrants” *Reuters*, March 15, 2016, <http://goo.gl/IQrHix> (accessed 01.09.2016).

<sup>619</sup>“OSCE helps Albanian Police to handle irregular migration,” *Culus News*, March 24, 2016, <https://goo.gl/mbbiYc> (accessed 01.09.2016).

Directors of Border Police of Western Balkan 6 countries (WB6), namely Albania, Macedonia, Kosovo, Montenegro, Serbia, and BiH. Bilateral cooperation was established with Macedonia and some extent Serbia over the exchange of data and transfer of experiences.<sup>620</sup> Together with the most southern countries of the Balkan Peninsula, Greece, Bulgaria and Macedonia, Albania participated in the Foreign Ministers' meeting and agreed to enhance dialogue and extend the perspectives for further cooperation and coordination, while focusing on the need to develop different approaches for asylum seekers and irregular migrants.<sup>621</sup>

In the verge of the possible enhanced transit migration in 2015, Albania built the invisible walls on its borders even higher by enhancing border controls and returning the apprehended irregular migrants back to Greece. The securitization measures were signalled out loud so that the message could reach potential transit migrants and supported by major EU member states.

#### **4.2.2.4. Kosovo: European source of economic migrants**

As ever since the independence, Kosovo was in 2015 more occupied with the exodus of its own citizens to the EU than with transit migration. Although around 165,000 asylum applications were submitted by Kosovars in EU between 2010 and 2015,<sup>622</sup> the exodus does not precede the number of the biggest Balkan refugee crisis in 1999. However, the sudden increase from 37,890 longed applications in 2014 to 72,465 applications in 2015<sup>623</sup> represents a great challenge for a tiny country of 1,8 million people as well as for the EU, since asylum seekers from Kosovo do not fit into the refugee criteria and are as economic migrants returned back home.

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<sup>620</sup>Cooperation and Development Institute, *Albania In The Western Balkans Route ...*, 14.

<sup>621</sup>“Bulgaria, Greece, Macedonia, Albania to Cooperate in Tackling Migrant Crisis,” *Novinite.com*, April 22, 2016, <http://bit.ly/2bl0WZD> (accessed 01.09.2016).

<sup>622</sup>Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>623</sup>*Ibid.*

Emigrants outnumbered by large 70 asylum seekers that sought international protection in Kosovo in 2015.<sup>624</sup> Consequently, all the EU-Kosovo communication revolved around measures to be taken to stem the flow. Some EU member states expressed the wish to tie the latter to possible finalisation of the visa liberalisation process since Kosovo is at the time the only Balkan country which citizens still need visas to enter the Schengen.

The number of Kosovar asylum seekers in EU is increasing ever since 2011 when it fell to 9,880 after two subsequent years of more than 14,000 applicants. Although the numbers still revolved around 10,000 in 2011 and 2012, a sharp increase was firstly detected in 2013, when the numbers were doubled in reference to the previous year to 20,225, while under steep increase occurred from 37,890 in 2014 to 72,465 in 2015.<sup>625</sup> Though, Kosovar Ministry of Interior reported much lower numbers, estimating that in 2015 around 38,000 citizens illegally migrated to the EU.<sup>626</sup> However, it should be reasonable to assume that even Eurostat numbers might be higher since many Kosovars applied for Serbian passport and thus travelled legally to Europe where they applied for asylum as Serbians.<sup>627</sup> Although the latter explains significant increase of asylum applicants of Serbian origin, being it around 30,000 both in 2014 and 2015,<sup>628</sup> such an argumentation might be adopted by Serbian authorities to oppose any dialogue between Brussels and Prishtina.

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<sup>624</sup>EC, *Report from the Commission to the European Parliament and the Council, Fourth report on progress by Kosovo ...*

<sup>625</sup>Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

<sup>626</sup>“EU Returns 7,500 Migrants to Kosovo This Year,” *Balkan Insight*, June 3, 2015, <https://goo.gl/fzMJCw> (accessed 05.09.2016).

<sup>627</sup>According to Serbian interior Minister, more than 60,000 applications from Serbian passports were made by Kosovo Albanians, although the time period is not specifies. “60,000 Albanians apply for Serbian passports,” *B92*, February 6, 2015, <http://goo.gl/B5o2AT> (accessed 05.09.2016).

<sup>628</sup>Asylum and first time asylum applicants by citizenship ...”, *Eurostat*.

Although the majority of push factors existed already before the significant increase of emigration, important factor new pull factor emerged in 2014 and 2015 and demanded significant efforts of the receiving countries to lower its impact. Additionally, migrants also benefited from unresolved Kosovo separation process from Serbia as well as a step that was taken to resolve it. Besides poor economic performance and political stalemate, less than a decade ago ended war and Kosovo's deprived position in the international community<sup>629</sup> all contributed to the emigration push. According to the World Bank, standardised poverty lines defined at \$ 5 per person per day around 80 % of people live under the poverty threshold, while the application of domestic poverty line at \$ 1,72 per person per day lowers the share of poor to 29.7 % based on data from 2011.<sup>630</sup> Poverty is generated by growing unemployment figures, rising from 30 % in 2013 to 35.3 % in 2014, while the youth unemployment reached 60 % high record.<sup>631</sup> Even people, who have jobs, easily sympathise with the idea of seeking better opportunities in the West, since their wages are incomparably low.<sup>632</sup> Besides disappointment over wages and working conditions expressed with strikes in many sectors, Governmental concessions to Serbian Party and announced demarcation agreement with Montenegro caused anti-government protests and violent clashes between opposing parties. Under such conditions, Kosovo was only a ticking social bomb about to explode if issues were not addressed in time.

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<sup>629</sup>As of September 2016, Kosovo was recognised by 111 states. Non-recognitions by 79 UN members enables Kosovo a only limited integration in international economy and finance system. "International recognitions of the Republic of Kosovo," *Ministry of Foreign Affairs of the Republic of Kosovo*, <http://www.mfa-ks.net/?page=2,224> (accessed 21.09.2016).

<sup>630</sup>World Bank, *The World Bank Group in Kosovo*, [Prishtina], April 2015. <http://goo.gl/31Ugpw> (accessed 03.09.2016).

<sup>631</sup>"About Kosovo," *United Nations Development Programme*, <http://goo.gl/DZfiwT> (accessed 03.09.2016).

<sup>632</sup>The average monthly salary between 2005 and 2016 was a bit below € 300. "Kosovo Average Monthly Wages," Trading Economics, accessed August 3, 2016, <http://goo.gl/mVQLYY> (accessed 03.09.2016).

The 2015 migration wave led Kosovars to rethink the emigration. Besides the existing major pull factor of family unification, as almost every third citizen has a family member abroad,<sup>633</sup> new ones emerged. Various smuggling routes and networks as well as overcrowded routes offered assortment within other asylum seekers as well as eased illegal crossings. Besides, it affected the major new pull factor – self-reinforcing cycle of long asylum procedures in the West during which asylum seekers were entitled to accommodation, meals, some pocket money, and even basics rights to health care.<sup>634</sup> Lots of migrants made a trip to Germany only to enjoy the benefits offered during the period of waiting for a final decision, which in most cases urged their return home, with only 2.3 % of processed applications on first instance level in EU in 2015 resulting in either a refugee status or subsidiary protection.<sup>635</sup> Germany addressed the issue by processing Kosovars' applications on a fast track basis in February 2015<sup>636</sup> what reduced the procedure's duration from 4 months to bare 2 weeks. Designation of Kosovo as a safe country of origin in October 2015 had additional procedure acceleration effect since all applications are automatically ill-founded if no concrete evidence of the threat of persecution is provided. The appeal period is curtailed and asylum seekers only allowed to live in the reception facility in order to be returned as soon as possible.<sup>637</sup> The number of the total issued first instance decisions for Kosovars thus rose from 2,320 in 2013 to

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<sup>633</sup>IOM analysis contributes emigration decisions to economic reasons (35 %), family reunification (46 %), political reasons (8 %), poor education (1 %) and other reasons (10 %). "Coordinated Response Needed to Address Irregular Migration Flows," *IOM*, <http://goo.gl/wjMMXE> (accessed 10.09.2016).

<sup>634</sup>PM Mustafa confirmed that his brother also fled to Germany in order to seek medical treatment for his undisclosed condition. He was denied from asylum and returned back to Kosovo. "Refugee crisis: Kosovo PM's brother was asylum seeker in Germany last year," *The Telegraph*, March 21, 2016. <http://goo.gl/jH2a75> (accessed 10.09.2016).

<sup>635</sup>The average of positive decisions was with 99.4 % denied applications in 2015 even lower in Germany. "First instance decisions on applications by citizenship ...", *Eurostat*.

<sup>636</sup>"Fighting mass migration with fast-track asylum procedures," *Deutsche Welle*, February 19, 2016, <http://goo.gl/vP55PY> (accessed 10.09.2016).

<sup>637</sup>"Safe countries of origin," *Federal Office for Migration and Refugee*, <http://goo.gl/zKzJav> (accessed 12.09.2016).



23,370 in 2014 and 37,615 in 2015.<sup>638</sup> Additionally, the number of issued EU-wide orders to leave increased from 8,855 in 2014 to 21,320 in 2015 and their successful implementation increased from 53.1 % to 88.5 %.<sup>639</sup>

Regarding relations with Serbia, Kosovars exploited two things to assist their escape in Europe – firstly, the above mentioned Serbian passports and secondly, EU-brokered Agreement on Free Movement between Serbia and Kosovo reached in September 2014. Unresolved issues enabled Serbian authorities to claim that the usage of Serbian passports indicates Kosovars’ approval of Serbia as their state. Serbia justified its passivity regarding the curbing of Kosovars flow, by its inability and no intent to stop them. Serbian PM Dačić accused the EU of initiating the emigration and called it to find the solution. Serbian Refugee Commissioner polemically commented that the existing pattern of migration from Kosovo signals that the wave might have been induced by Kosovo as a part of their gambit to demand visa free entrance to EU.<sup>640</sup> The number of Kosovars’ asylum applicants in EU started to increase in September 2014, from before monthly average in 2014 being 1,070 and reaching the peak with 23,620 submitted applications in February 2015.<sup>641</sup> Although the Brussels deal normalising relations between Kosovo and Serbia was signed already in April 2013, and its part on the freedom of movement was partially put into force in December 2013, its greatest extension came in February 2014, when Kosovars gained the allowance to pass all Serbian-Macedonian and Serbian-Bulgarian border crossings only carrying Kosovar IDs.<sup>642</sup>

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<sup>638</sup>“First instance decisions on applications by citizenship...,” *Eurostat*.

<sup>639</sup>“Third country nationals ordered to leave - annual data (rounded),” *Eurostat*. <https://goo.gl/8G3lGc> (accessed 15.09.2016); “Third country nationals returned following an order to leave - annual data (rounded),” *Eurostat*, <https://goo.gl/sw9zsC> (accessed 15.09.2016).

<sup>640</sup>“Kosovo-EU migration turns into political point scoring in Serbia”, *Deutsche Welle*, February 23, 2016, <http://tinyurl.com/jcsx2a4> (accessed 12.09.2016).

<sup>641</sup>Asylum and first time asylum applicants by citizenship ...,” *Eurostat*.

<sup>642</sup>“Freedom of movement deal covers Belgrade airport,” *B92*, September 18, 2014, <https://goo.gl/DD2be1> (accessed 12.09.2016).

The increase of asylum applicants coincided with the extended deal, though a direct correlation is not likely since the Serbian border does not directly lead to the EU.

In February 2015, the EC called upon Prishtina to take measures to stop the emigration. Consequently, the authorities launched a campaign that informed people they cannot be granted asylum on an economic basis, while the Parliament adopted a wide range programme worth € 40–50 million to accelerate economy and improve living conditions in the country by among others creating many new jobs.<sup>643</sup> Additionally, a commission was set up to estimate the possibility of writing off citizens' debts to state institutions.<sup>644</sup> The Interior Ministry reported it took measures to disable departures while stating its readiness to accept back people who had left.<sup>645</sup> The issue was also addressed internationally, both regarding the support of Kosovo in its stimulating policies as well as security-wise preventing the illegal migration *per se*. Germany granted Kosovo € 1 million to implement measures preventing departures, while IOM pledged almost € 3 million to Kosovo business entities to stimulate growth and employment rates.<sup>646</sup> Broader police cooperation was established between Serbian, Hungarian, Austrian, and German police units in February 2015. Intensified border control was agreed on the Serbian-Hungarian border, with the involvement of Serbian Gendarmerie. Around 20 German experts provided assistance in identification of forged documents and human smugglers.<sup>647</sup>

The EC proposed Kosovo's inclusion to the EU safe country of origin list in September 2015 to enable smooth returns of Kosovars based on unfolded

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<sup>643</sup>“Poverty spurs mass migration from Kosovo,” *EurActiv*, February 16, 2015, <https://goo.gl/smCCKB> (accessed 12.09.2016).

<sup>644</sup>“Kosovo ‘to wipe citizens’ debt’ in bid to stop exodus to EU,” *The Telegraph*, February 6, 2015, <http://goo.gl/Kj6cEm> (accessed 12.09.2016).

<sup>645</sup>“Poverty spurs mass migration from Kosovo,” *EurActiv*.

<sup>646</sup>“IOM Supports Private Sector to Target Irregular Migration Push Factors in Kosovo,” *IOM*, <http://goo.gl/lQfjFI> (accessed 12.09.2016).

<sup>647</sup>“Poverty spurs mass migration from Kosovo,” *EurActiv*.

applications. Germany, Hungary, and Slovakia also added Kosovo to their national lists, with the latter two including it also to the list of safe third countries. Although the Asylum Procedures criteria for *safe country of origin* are vaguer than the ones for *safe third countries*, both concepts nonetheless demand the country's respect of the *non-refoulement* principle and a functioning asylum system. However, Kosovo's low numbers of asylum applications<sup>648</sup> cannot prove the functionality of its asylum system built out of scratches due to the international community demands for other concessions rather than because of the existent need.

Not being an EU candidate state, the EU included demands for working asylum system into visa liberalisation process. In 2012 presented roadmap for Kosovo visa liberalisation dialogue,<sup>649</sup> the EU outlined readmission and reintegration requirement and 4 blocks of requirements related to document security, border and migration management, public order and security, and fundamental rights related to the freedom of movement. Interestingly, the EC report on the roadmap implementation in May 2015<sup>650</sup> approved the fulfilment of those requirements<sup>651</sup> exactly when some member states were in the greatest need to accelerate returns. Met requirements brought a tripple benefit – firstly, a possible inclusion of Kosovo to the list of safe countries of origin although the additional guidelines advocated that the list should

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<sup>648</sup>Since its independence in 2008 until the end of 2015, only 682 asylum applications were submitted to Kosovar authorities, which granted no refugee status and 6 subsidiary protections, with the majority of applicants continuing their way up north towards Europe before the application procedure was finalized. US Department of State, *Country Reports on Human Rights Practices for 2015 – Kosovo 2015 Human Rights Report*, [Washington], 2016, 17, <http://goo.gl/tsJIUx> (accessed 05.09.2019).

<sup>649</sup>EC, *Visa Liberalisation with Kosovo\* - Roadmap*, June 14, 2012, <http://goo.gl/eE9ot2> (accessed 05.09.2016).

<sup>650</sup>EC, Report from the Commission to the European Parliament and the Council, Fourth report on progress by Kosovo ..., 5.

<sup>651</sup>Kosovo had fulfilled all the asylum requirements, among others it aligned with the EU *acquis* and implemented asylum legislation, strengthened asylum institutional capacities, improved material reception conditions, provided extensive independence of asylum authorities, and shared asylum data with the EC. EC, *Visa Liberalisation with Kosovo\* - Roadmap ...*

consist only of candidate states that fulfilled the Copenhagen criteria,<sup>652</sup> secondly, a designation of Kosovars' applications as unfolded what would accelerate returns, and thirdly, the recognition of 'functioning' asylum system paves the way to future inclusion on the list of safe third countries what would open the way to returns of third country nationals. Although Kosovo's legislation provides international protection for those in need, the UNHCR warns of lack of identifying mechanism of persons in need and countries of origins of undocumented migrants.<sup>653</sup>

Kosovo's exclusion from the transit route did not mean the exclusion from the EU migration arrangements in the 'buffer-zone'. Instead of the expected visa-liberalisation by Kosovo, the EU answered to the increasing emigration by designation of Kosovo as a safe country of origin, with some countries including it on their lists of safe third countries too. 'Timely' met conditions for such move enabled accelerated returns of Kosovars back to their country.

#### **4.2.2.5. Montenegro: The first candidate state in row**

In line with its remote geographical position in the east of Balkans and due to its relatively hilly landscape, Montenegro was left out of the main migration route. Despite an increased number of submitted asylum applications in 2013, those numbers are not comparable with the pressure of the main route. As well as other Balkan states also Montenegro expressed fears over being sacked after the closure of Hungarian border and later Macedonian one and formed measures to be adopted during the influx which later did not realise. In the announcements of its policies, the country leaders always referred to their alignment with EU.

Since the establishment of the working asylum system with the adoption of Refugee Act in January 2007 till the end of 2015, Montenegro received 9,277 asylum

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<sup>652</sup>EC, *An EU 'Safe Countries of Origin' List*, <http://goo.gl/pcVC0F> (accessed 24.12.2015).

<sup>653</sup>Department of State, *Country Reports on Human Rights Practices ...*, 17.

applications. The number increased sharply from 35 asylum applications, between 2008 and 2010, to 235 in 2011, followed by 1,531 in 2012 and 3,554 in 2013; while the number of submitted applications in 2014 dropped to 2,311 and 1,611 in 2015.<sup>654</sup> Although absolute numbers might be low, such an increase means relative pressure on a country with a bit more than 620,000 of its nationals. Nevertheless, the country was mostly used as a transit, since the majority of applications' decisions were taken *in absentia* with asylum applicants already on their way further towards Europe.<sup>655</sup> Furthermore, the overall proportion of approved applications is relatively low, with 19 granted refugee statuses, out of which 15 to Syrian asylum seekers in 2015, and 4 subsidiary protections.<sup>656</sup> Montenegro experienced the peak of refugee pressure already in 2013, while the numbers were lower during the 2015 migration wave.

The 2013 flow was tamed down by a range of measures that were adopted by the Government in the frame of the EU accession negotiation. Following the opening of Chapter 24 on Justice, Freedom and Security in December 2013,<sup>657</sup> the Action Plan to fulfil its benchmark requirements was adopted in the following year.<sup>658</sup> Various strategies with more detailed biannual actions plans were introduced for migration management,<sup>659</sup> integrated border management,<sup>660</sup> and combat of trafficking in

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<sup>654</sup>“Population Statistics,” *UNHCR*.

<sup>655</sup>90 % of procedures following the asylum applications submitted in 2013 were ceased because applicants had left the country before the interview took place. “Onemogućena primena zakona,” *Azil u regionu*, October 9, 2014, <http://goo.gl/SLorHe> (accessed 25.09.2016).

<sup>656</sup>*Ibid.*; “Population Statistics,” *UNHCR*.

<sup>657</sup>Council of the European Union, *Third meeting of the Accession Conference with Montenegro at Ministerial level - key rule of law chapters opened among others*, press release, December 18, 2013. <https://goo.gl/v5z3bi> (accessed 25.09.2016).

<sup>658</sup>Vlada Crne Gore, *Akcioni Plan za poglavlje 24 – pravda, sloboda i brebjednost*, [Podgorica], June 2013. <https://goo.gl/z98qhb> (accessed 23.09.2016).

<sup>659</sup>Ministarstvo Unutrašnjih Poslova, *Strategija za integrisano upravljanje migracijama u crnoj gori za period 2011–2016. Godina*, [Podgorica], February 2011. <http://goo.gl/q3esMu> (accessed 23.09.2016).

<sup>660</sup>Ministarstvo Unutrašnjih Poslova, *Strategija integrisanog upravljanja granicom 2014-2018. Godina*, [Podgorica], March 2014. <http://goo.gl/Vw5MG9> (accessed 23.09.2016).

human beings.<sup>661</sup> By the Action Plan Montenegro should strengthen its border surveillance and control on its borders with Albania and Kosovo, from where the most irregular migrants come. Special attention should be given to green borders and detection of forged documents. The Strategy for Integrated Border Management further stresses the importance of cross-border criminal prevention, effective technical control of the land border and fight against corruption among border authorities and line out relevant measures that have to be adopted. In the realm of migration and asylum policies, the Action Plan outlines the necessity to comply with EU-Montenegro Readmission Agreement that was signed in September 2007, while further improvements are needed in the country's asylum system. Among the priorities, there is asylum law alignment with the *acquis*, fulfilment of technical conditions for the inclusion into Eurodac and Dublin system databases, enlarged administration capacities enabling faster asylum procedures, the construction of asylum seekers centre and construction of structured cooperation with the EU on asylum matters and effective disbursement from Refugee Fund. Integrated Migration Strategy in line with the EU initiatives forges regional cooperation in addressing effective migration management, which would bring benefits to states as well as migrants, while the latest action plan of Integrated Border Management Strategy puts forward the importance of cooperation with Frontex.<sup>662</sup>

Throughout the accession negotiations, Montenegrin Government enhanced border security measures and advanced its asylum and migration system, though it still suffers from limited capacities. By so far opened 22 accession Chapters and 2 closed, Montenegro is ahead of all candidate countries and has also received the invitation to join the NATO. In the prospect of a possible migration influx, Montenegro was keen to show its respect and adhere to the EU and other

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<sup>661</sup>Ministry of Interior of the Government of Montenegro, *Strategy for Combating Trafficking in Human Beings 2012–2018*, [Podgorica], September 2012. <http://goo.gl/KS8yUO> (accessed 25.09.2016).

<sup>662</sup>Ministarstvo unutrašnjih poslova, *Akcioni Plan za implementaciju Strategije za integrisano upravljanje migracijama u Crnoj Gori za 2015. i 2016. godinu*, [Podgorica], November 2014. <https://goo.gl/wvr2oO> (accessed 23.09.2016).

internationally formed migration policies. Deputy PM Markovic boosted with country readiness to accept refugees by the end of 2015, recalling Montenegrin past experiences with hosting refugees from the Yugoslav war, while assuring that the country would be a case of “migration crisis respect and follow” policies of EU member states.<sup>663</sup> To prepare for potential increased influx, the Government adopted an Action Plan in September 2015<sup>664</sup> by which it created an operational team that would be responsible for acceptance of asylum seekers. The plan assured the capacity to accept up to 2,000 migrants on a daily basis, while the team was ordered to provide additional capacities, especially at the border with Albania, and coordinate on the issue of migration with neighbouring countries. Ministry of Labour and Social Welfare assured that Montenegro would register migrants and supply them with the necessary humanitarian help, while the country does not have the capability to prevent their further move, but would rather assist migrants in transport to their desired destinations.<sup>665</sup> However, once the closure of the Macedonian border was discussed, the Government made a turn in its rhetoric. It stated it would be forced to follow other countries’ border control measures and close its border in case the flow from Albania increases.<sup>666</sup>

During the 2015 wave, Montenegro did not adopt hostile rhetoric towards migrants such as neighbouring Albania since it was aware that the flow would not come to its doors. Even if that were the case, Montenegro had already enhanced its border controls in line with the EU expectation following the peak transit migration in 2012. In its address of the possible route fragmentation, Montenegrin Government

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<sup>663</sup>“Montenegro is ready to receive migrants,” *CDM*, December 10, 2015, <https://goo.gl/oHIU0S> (accessed 20.09.2016).

<sup>664</sup>Operativni tim za sistem azila u Crnoj Gori, *Informacija o postupanju nadležnih organa i institucija u slučaju većeg priliva migranata i izbjeglica u Crnu Goru*, [Podgorica], September 2015. <https://goo.gl/LTxyGd> (accessed 23.09.2016).

<sup>665</sup>“Crna Gora počela pripreme za gradnju kampa na granici s Albanijom” *Direktno.hr*, October 2, 2015, <https://goo.gl/Oglaws> (accessed 20.09.2016).

<sup>666</sup>“Montenegro will have to close borders if neighbours do: PM,” *Reuters*, February 22, 2016, <https://goo.gl/6lq7dW> (accessed 20.09.2016).

concentrated only on accommodation capacities while its strict border surveillance would remain in force.

#### **4.2.2.6. BiH: Too poor for refugees**

Despite BiH's geographical position in the central Balkans, the country stayed out of migrants' interest zone as the route through Serbia offered direct entrance either to Schengen zone via Hungary or into the EU via Croatia. Passing BiH would only mean one more border crossings before getting closer to final destinations with additional need to cross natural barrier Drina River that flows alongside the great part of Bosnian border with Serbia. Although Bosnian authorities expected an increase with the closure of the Hungarian-Serbia border and took appropriate preparatory measures, firstly concentrating capacity building with the later shift of focus on security aspects and intensified border control, the influx did not materialise. BiH found itself on the other side of the migration 'crisis', with the escalation its own citizens' emigration on one side, and their accelerated readmissions from EU member states on the other side.

With only 45 asylum applications submitted to relevant Bosnian authorities in 2015, that resulted in none refugee status granted and 5 subsidiary protection, the trend of low interest into Bosnian international protection as well as low granted protection rates continued.<sup>667</sup> Although the refusals of entries at the borders increased by 22.4 % in relation to 2014, the 2,432 refusals were mainly issued to people from the region, Kosovars and Turks hitting the top of the list, while the number of illegal border crossings decreased by 5.3 % to 179.<sup>668</sup> 274 and 465 touristic visas were

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<sup>667</sup>With the average of 65 yearly submitted asylum applications during 2008 and 2015 the 2015 is below the average. Out of 520 asylum applications in the given period, only 9 resulted in refugee status, while 71 applicants received subsidiary protection. Ministry of Security of Bosnia and Herzegovina, *Bosnia And Herzegovina - Migration Profile for the year 2015*, [Sarajevo], April 2016. <http://goo.gl/6wYssl> (accessed 28.09.2016).

<sup>668</sup>*Ibid.*, 18–21.



issued to Syrians in 2014 and 2015 respectively,<sup>669</sup> causing criticisms of Croatian and Serbian authorities that Syrian asylum seekers are entering their territories after landing at Sarajevo airport and taking taxis to the border.<sup>670</sup>

Despite no realisation of increased influx, Bosnian authorities had beforehand analysed the situation and contemplated on possible measures in case of established Balkan route diversion, while the representative of the Ministry for Human Rights and Refugees warned of a possible influx of up to 30,000 migrants in autumn 2015.<sup>671</sup> In September 2015, the Parliamentary Commission on Human Rights prepared a report on the migration situation in the region and possible repercussions it may have for BiH.<sup>672</sup> The Commission concluded that the fence built on the Serbian border may divert the route to Croatia since its entrance still means the entrance to the EU. Regarding the longest EU external border that Croatia holds with BiH, the assumption was made of the possible route's diversion through BiH in its north-eastern part if also Croatian-Serbian border gets sealed or in eastern and south-eastern part if the route is diverted through Kosovo and Montenegro towards south Croatia. Although the report does not consider migration *per se* as a threat to the country, the risk section concentrates on security aspects for migrants, such as health issues, attacks by gangster groups, exposition to human traffickers and corruptive border officials, it expresses concerns over possible infiltration of terrorists into the masses and possible troublesome reception of migrants by its citizens. However, the first points of the accompanying Plan for Emergency Measures to ensure additional Capacity, Control and Management of Mass Influx of Migrants/Refugees into the EU, concentrate on security issues rather than the care

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<sup>669</sup>Ibid., 13.

<sup>670</sup>“Izbjeglice iz Sirije počele stizati u BiH izabrali neobičan način puta,” *Dnevnik.hr*, September 30, 2015, <http://goo.gl/xFiDfR> (accessed 22.12.2016).

<sup>671</sup>“U BiH će ući do 30.000 izbjeglica iz Sirije?!” *RTV BN*, September 19, 2015, <http://goo.gl/VaoL4l> (accessed 22.12.2016).

<sup>672</sup>Komisija za ljudska prava Parlamentarne skupštine Bosne i Hercegovine, *Informacija o procjenama i mogućnostima Bosne i Hercegovine po pitanju izbjegličke krize u regionu i Evropskoj uniji*, 0316-50-14-12-10, September 16, 2015. <http://goo.gl/mDeRsz> (accessed 28.09.2016).

for migrants – identification of forged documents, identification of possible terrorists among the flow and assurance of public peace and order that might be breached by the increasing criminal acts both by migrants as well as its nationals.

The report concludes that BiH does not possess adequate financial, material, technical and human resource means to face the influx appropriately. Although the accompanying Plan indicates that the flow would only be transitional, it proposes various measures to achieve four major objectives – strengthening of institutional cooperation on migration issue, assuring additional capacities for migrants reception and functioning readmission system to readmit and send third country nationals who had entered the EU through the Bosnian territory back to transit countries or their countries of origin, while also strengthening the fight against illegal migration to lower the pressure on readmission system. In case of a mass influx, asylum applicants would be readmitted to transit countries the Council of Ministers would determine special procedures.<sup>673</sup> The proposal in the parliamentary commission report to establish additional bus lines to assist the possible migration influx indicates that BiH would probably follow the approaches already adopted by countries on the main Balkan migration route by the creation of a fluid transition corridor.<sup>674</sup> Despite taken preparatory measures and enlarged accommodation capacities of four reception/asylum/readmission and immigration centres to 920 it remained highly likely that the lack of operational capacity and financial resources would prevent Bosnian efficient assistance to migration influx.

On the other side of the migration coin, poor living conditions alarming political and social situation let Bosnians seek better standard and more opportunities in the West by joining the migration wave. According to Eurostat 19, 635 people of Bosnian origin applied for asylum in EU, 7,070 were found illegally present in the EU, and

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<sup>673</sup>“Da li je BiH spremna za novi val izbjeglica?,” *Deutsche Welle*, August 22, 2015, <http://goo.gl/vXI1PU> (accessed 22.12.2016).

<sup>674</sup>Komisija za ljudska prava Parlamentarne skupštine Bosne i Hercegovine, *Informacija o procjenama i mogurlnostirna ...*, 19.

10,115 were refused entry at the EU borders in 2014 and 2015.<sup>675</sup> Higher emigration numbers were triggered by high unemployment rates, with Europe-wide record unemployment at around 60 % among youth,<sup>676</sup> low wages and poor social security system. As a side effect of migration pressure on certain Western countries, BiH was faced with increased numbers of repatriations of its nationals that sought asylum in Europe. Germany declared BiH as a *safe country of origin* in November 2014,<sup>677</sup> while also the EC proposed the inclusion of BiH on the EU-wide list of safe countries of origin in September 2015.<sup>678</sup> Based on the *safe country of origin* qualification, applications were unfolded and easily declined. EU-wide, the number of issued orders to leave to BiH citizens, has been steadily increasing, with numbers reaching over 5,000 in 2014 and 2015.<sup>679</sup>

Being a potential candidate country for the EU membership, BiH was demanded to conclude readmission agreements with the EU member states as a part of the SAA negotiations. Art. 81 of the SAA, signed in 2008 and in force since June 2015, obliges BiH to repatriate its nationals that are found illegally present in the EU territory.<sup>680</sup> The readmission matters are governed by the Agreement between BiH and the European Community on the readmission, which was signed in September 2007 and came into force in January 2008.<sup>681</sup> In accordance with the agreement, BiH

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<sup>675</sup>“Asylum and first time asylum applicants by citizenship ...,” *Eurostat*; “Third country nationals found to be illegally present - annual data (rounded),” *Eurostat*, <https://goo.gl/kO8Pqy> (accessed 01.10.2016); “Third country nationals refused entry at the external borders - annual data (rounded),” *Eurostat*, <https://goo.gl/sy4ZuY> (accessed 01.10.2016).

<sup>676</sup>“Bosnia and Herzegovina,” *World Bank*, <http://goo.gl/DyOaEw> (accessed 03.10.2016).

<sup>677</sup>“Safe countries of origin,” *Federal Office for Migration and Refugee*.

<sup>678</sup>EC, *An EU ‘Safe Countries of Origin’ List*.

<sup>679</sup>“Third country nationals ordered to leave ...”, *Eurostat*.

<sup>680</sup>*Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part*, Official Journal of the European Union L 164/2, June 30, 2015, <https://goo.gl/vEYNnU> (accessed 13.10.2016).

<sup>681</sup>*Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation*, Official Journal of the European Union L 334/65, December 19, 2007, <https://goo.gl/8CBXyo> (accessed 13.10.2016).

signed 13 readmission implementation protocols with the EU member states so far, while additional 9 bilateral readmission agreements were signed with the non-EU member states.<sup>682</sup> Although the absolute number of returnees might have been low but gradually increasing from 200 returned persons in 2009 to 397 in 2013 and total 1,272 in the given period, the lack of accommodation and institutional capacity poses a significant challenge for appropriate returns.<sup>683</sup> In addition, more than 7,000 people are still internally displaced since the end of the war, living in ‘temporary’ collective centres for almost 20 years.<sup>684</sup> Working readmission system was also one of the visa liberalisation preconditions that BiH gained in December 2010. As any abuse of the visa-free regime would put readmission system under additional pressure, BiH initiated widespread campaign to combat illegal migration. The latter is even more important due to the fears that the eventual Croatian inclusion into the Schengen zone might empower the pull factor for migrations from and through BiH territory.<sup>685</sup> Special Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013–2015 with an accompanying implementation plan was drafted,<sup>686</sup> while additional border control measures were outlined in the Strategy for Integrated Border Management in BiH in 2015–2018.<sup>687</sup>

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<sup>682</sup>BiH signed readmission implementation protocols with Estonia, Malta, Austria, Bulgaria, Hungary, the Czech Republic, Denmark, Romania, Germany, Belgium, the Netherlands, Luxembourg and Ireland, and bilateral readmission agreement with Moldova, Norway, Switzerland, Lichtenstein, Serbia, Montenegro, Macedonia, Turkey, and Albania. Ministry of Human Rights and Refugees, *Strategy for the Reception and Integration of the BiH Nationals who return under Readmission Agreements and Action plan for the period 2015–2018*, [Sarajevo], October 2015. 6. <https://goo.gl/Vt8IzE> (accessed 13.10.2016).

<sup>683</sup>*Ibid.*, 10.

<sup>684</sup>“7,000 Bosnians still homeless after 1990s War,” *Balkan Insight*, December 15, 2014, <http://goo.gl/WpGUbc> (accessed 13.10.2016).

<sup>685</sup>Ministry of Security of Bosnia and Herzegovina, *Strategy to Counter Trafficking in Human Beings in Bosnia And Herzegovina 2013-2015*, [Sarajevo], April 2013. <https://goo.gl/kp3kN6> (accessed 13.10.2016).

<sup>686</sup>Ministry of Security of Bosnia and Herzegovina, *Strategy to Counter Trafficking ...*

<sup>687</sup>Vijeće Ministara, *Strategija integrisanog upravljanja granicom u Bosni i Hercegovini za period 2015. – 2018. Godine*, [Sarajevo], 2015. <http://msb.gov.ba/PDF/strat070915.pdf> (accessed 13.10.2016).

As the other Balkan states that were not the part of the main migration route, BiH as well coped with the emigration of its nationals. In exchange for the gained visa liberalisation agreement, the authorities enhanced its combat against possible irregular transit and illegal smuggling. However, might have the flow eventually occurred, BiH Government would probably adopt ‘let it pass strategy’ since it lacks sufficient resources to deter it successfully. Since the adopted plan put more powers in the hands of the Council of Ministers, the response would likely be centralised and based on emergency provisions.

#### **4.2.3. Turkey: The capricious tradesman and gatekeeper**

Due to its geographical proximity, Turkey is the first country of asylum for Syrian refugees and the source of secondary movement for those who had decided to move on towards Europe via the Balkan route. Hosting almost 3 million Syrian refugees and almost 60 % of all internationally displaced Syrians as of April 2017,<sup>688</sup> Turkey represents an important European ‘buffer-zone’ in the region. Turkish migration management was well exhausted to benefit Turkish international interests, in a first phase to spread the influence in the region, and in the second to reproach its relations with the EU. Meanwhile, it developed a unique asylum system and used refugees to affect domestic demographical balance and economic stagnation. The following subsections firstly provide an overview of Turkish asylum system and proceed on benefits the Turkish Government awaited from its generous treatment of Syrian refugees.

At the beginning of Syrian crisis, Turkey adopted an “unconditional open-door” policy, welcoming people fleeing from the bloodshed as Turkish “guest” and “brothers”. Opposite from the past influxes and worldwide practices, there were no attempts to present the influx as a security threat or risk. Rather, the Justice and

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<sup>688</sup>“Syria Regional Refugee Response,” *UNHCR Inter-agency Information Sharing Portal*, <https://goo.gl/PRMiuI> (accessed 08.04.2017).

Development Party of PM Erdoğan exposed its moral duty to offer protection to fellow neighbours in need. Although Turkey keeps a geographic limitation to the Refugee Convention granting the protection only from refugees that come from Europe, it granted Syrian refugees temporary protection status in October 2011. The protection was based on the EU Temporary Protection Directive and provided asylum until refugees are resettled to third countries. In line with the new status, refugees obtained identity cards and certain social protection rights.<sup>689</sup> Refugees' status was further improved by the adoption of the new Law on Foreigners and international protection in 2013. Despite non-removal of the Refugee Convention limitation, the law established a comprehensive asylum system that provides protection to all asylum seekers regardless of their origin. It contains *non-refoulement* principle, assures timely assessment of asylum applications, access to translators and legal remedies, as well as to education, health services and working permits.<sup>690</sup> Although the reform was in line with the EU accession process and part of the *acquis* needed to be transposed into the national legislation, the shift in the asylum policy and Turkish 'open-door' policy was mainly triggered by other factors. In the past, Turkish authorities persistently refused such reforms, being aware that a functioning asylum system in Turkey would only lay grounds for EU responsibility-shift and transfer of asylum seekers back to the safe third country. The Turkish asylum shift thus came as a result of coinciding new and favourable international and domestic factors.

Internationally, Turkey's growing agency in the region and its accompanying assertive international policy gave Turkey more self-confidence in following its national interests. Firstly, friendlier asylum system aimed to prove Turkey's increasing role in the region, and secondly, it was a part of the Turkish-EU

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<sup>689</sup>Ela Gokalp Aras and Zeynep Sahin Mencutek, "The international migration and foreign policy nexus: the case of Syrian refugee crisis and Turkey," *Migration Letters* 12, no. 3 (2015): 201–2. <https://goo.gl/C14YPF> (accessed 03.04.2017).

<sup>690</sup>Alexander Bürgin and Derya Aşıkoğlu, "Turkey's New Asylum Law: a case of EU Influence," *Journal of Balkan and Near Eastern Studies* 17, no. 3 (2015): 122, <https://goo.gl/D45YG0> (accessed 03.04.2017).

readmission calculation. Aspiring to show its ability to deal with the Syrian crisis successfully, Turkey had no other option than to open the door and welcome Syrian refugees, by presenting itself as a role model for providing international protection to people in need. The argument was often exposed also against the EU which defended itself from accepting much smaller numbers of refugees. To stress out its responsibility and omit the influence of international actors on conditions in which refugees are held in Turkey, authorities declined any kind of international assistance and financial help. Eventually, Syrian refugees were used as a tool in the state's policy towards Syrian crisis. Putting in front the burden refugees posed on Turkish state and its limited integration capacities, PM Erdoğan vocally supported the establishment of a no-fly zone in northern Syria and creation of a "refugee city" within the Syrian territory.<sup>691</sup> Were there no Russian and US opposition, the implementation of his plan would extend Turkish leverage over the Syrian crisis and exertion of influence into Syria since it would be most likely Turkey the one who would enforce the implementation and assure order in the newly established 'city'. In addition, Turkey's increased engagement in the region and growing economy transformed the country from the country of emigration to the country of immigration and transit. The increasing numbers of asylum seekers demanded a comprehensive approach that would provide a certain degree of migrants' inclusion in Turkish society, and most importantly its labour market.<sup>692</sup> Some analysts even suggested that the 'open-door' policy aimed to change demographic balance in predominantly Kurdish areas in the South-East. Further assumptions that refugees might be used to create domestic supportive base were realized by the initiated naturalisation processes for Syrian refugees without criminal past, although the proposal was downgraded soon after strong domestic opposition was raised.<sup>693</sup>

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<sup>691</sup>"Erdoğan suggests building refugee city in northern Syria," *Yeni Şafak*, March 5, 2016, <https://goo.gl/Fu0XIN> (accessed 10.04.2017).

<sup>692</sup>Abduljabbar Abdulal, "Turkish Immigration Policies: Challenges and Responses," *The Journal of Faculty of Economics and Administrative Sciences* 21, no. 4 (2016): 1466. <https://goo.gl/YsdNog> (accessed 03.04.2017).

<sup>693</sup>International Crisis Group, *Turkey's Refugee Crisis: The Politics of Permanence*, [Brussels], November 2016, 9, <https://goo.gl/VmIUkD> (accessed 05.04.2017).

Another international drive for improved asylum system was a renewed prospect of the visa liberalisation for Turkish citizens in exchange for readmission agreement. This should be understood separately from the accession process since the EU failed to provide a credible prospect of eventual accession ever since 2006 suspension of 8 negotiation chapters as a respond to Turkish refusal to extend the Customs Union to the Republic of Cyprus.<sup>694</sup> The EC foster visa liberalisation dialogue since 2010 and in 2013 signed EU-Turkey Readmission Agreement promised accelerated visa-facilitation process.<sup>695</sup> Turkey put the agreement on the side by still awaiting implementation act since it might have expected to use it as an additional leverage in further negotiations.<sup>696</sup> On the other side, Turkey is well aware that a functioning asylum system in the country is one of the essential visa liberalisation conditions.

The Turkey's calculation proved correct once the EU, and especially Germany, found itself overburdened by migration pressure in autumn 2015. Its improved asylum system enabled, at least on the paper, the EU to consider Turkey as a solution to the 'crisis' by its designation as a safe third country. By the conclusion of the 1:1 EU-Turkish deal in March 2016, Turkey internationalised refugee issue for the second time, after its initial failure to be used in order to expand its regional influence. In contrast to the first attempt, this time the objectives were made clear from the very beginning and included into the multi-round game with several issue-linkages. In exchange for curbing the migration wave, ratified readmission agreement and exchange of up to 72,000 illegal migrants from Greece for Syrian refugees Turkey was promised opening of new negotiation chapters, € 3+3 billion financial assistance, and most importantly, the complete visa-liberalization upon fulfilment of the certain condition. Given the gained financial assistance, newly

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<sup>694</sup>Alexander Bürgin, "European Commission's agency meets Ankara's agenda: why Turkey is ready for a readmission agreement," *Journal of European Public Policy* 19, no.6 (2012): 8, <https://goo.gl/NYI1nd> (accessed 03.04.2017).

<sup>695</sup>Bürgin and Aşıkoğlu, 127.

<sup>696</sup>Türkeş, 35.



opened negotiation chapters 17 on economic and monetary affairs and chapter 33 on financial and budgetary provisions were opened respectively in December 2015 and June 2016 respectively, modernised and extended the Customs Union and numerous newly launched high-level talks,<sup>697</sup> Turkey is a winner despite generally delayed implementation of concessions it failed to assure visa-liberalisation. Moreover, even if no concessions were implemented, Turkey would still be the winner, since the mere conclusion of the agreement symbolises the defeat of European and German migration policy. The cost of non-agreement would thus be much higher for the EU in contrast to Turkey, where the *status quo* would simply go on.<sup>698</sup> In other words, there was nothing Turkey could lose if the agreement is not implemented while the *status quo* in Europe could only worsen. With the Turkish-EU 1:1 deal, Turkey successfully used migration for rapprochement of its relations with the EU and moreover turned general power asymmetry in accession negotiations on its side

Although the rapprochement of relations did not last long, bearing in mind worsening relations after the attempted July 2016 coup and the following purge that significantly worsened human rights protection in the country, the EU is ‘reluctant’ to cut relations due to the power of refugees in Erdoğan’s hands. However, at the end, it will not be the legitimate and legal shortage of the agreement that poses a risk of collective expulsions and *refoulement* that would cut the EU pragmatic dealing of the migration pressure at the expense of proper refugee protection, but rather yet another Turkish demand that the EU will not be able to fulfil. In contrast to the most Balkan states response to the migration wave, where the governing elites were utilizing the crisis in order to keep themselves in power (Macedonia, Serbia, Croatia, Hungary, and partially Greece) Turkish response was despite the political turmoil in

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<sup>697</sup>EC, *Turkey 2016 Report - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, COM (2016) 715 final, November 9, 2016, 96–7, <https://goo.gl/DRzIFu> (accessed 12.04.2017).

<sup>698</sup>Thomas Krumm, “The EU-Turkey refugee deal of autumn 2015 as two-level game,” *Turkish Journal of International Relations* 14, no. 4 (2015): 24, <https://goo.gl/rf9W4y> (accessed 12.04.2017).

the country and hung parliament during the EU-Turkey deal negotiations to a large extent dependent on international factors. Though to a different extent, both Turkey and the EU benefited from the concluded deal. On the other side, the main losers were asylum seekers. Although the Turkish asylum system was in principle improved, its sustainability and moreover due implementation are largely questionable, especially in times when it is evident that Turkey is becoming more and more insecure country even for its own citizens.

### **4.3. Conclusion**

The Balkan migration route's beginning and the end were the consequence of careful trade-off anticipations and miscalculations by major powers on both ends of the route. Germany triggered the wave by its open-invitation to refugees and indirectly by pushing Greece to the edge in the bailout negotiations influenced acceleration process. However, the German invitation was narrower than widely perceived, valid only for Syrian refugees and for a temporary period between October and August 2015. In this time, Germany ran out of accommodation and integration capacities on one side and did provide new resources for its economy on the other side. Once it became clear, that capacities and needs were filled and that the EU-shared burden for the rest would not be feasible in a short run, Germany started to seek a solution that would relieve the migration pressure from the EU and stop the reinforcement of the right-wing parties across the Europe. To this end, an unprecedented trade-off deal was concluded with Turkey. With the widely negotiated set of concessions, Turkey ended up as a winner by revising the typical power asymmetry of accession negotiations in its own benefit. In the attempts to solve the Balkan (migration) 'crisis', Germany by its inconsistent policies and unstructured approach that trespassed EU established migration policies created high levels of mistrust and confusion among the Balkan states. In other words, by solving one crisis, it created two new ones. An interstate 'crisis' emerged among the Balkan states which were over-pressured by transit migration, while additional crisis was caused on the individual level by numerous refugee rights violations perpetrated

both on the way and during the implementation of the deal scarifying the refugees in an ironical exchange for restored power of the liberal elites.

*De facto* terminated Dublin system worked as an additional driving factor for new arrivals, diminishing the perceived obstacles refugees had to overcome before coming to Europe. In this sense, the German invitation was not only inconsistent but also unethical *vis a vis* refugees who basically by foot passed the whole Balkans. Due to the lack of the EU membership incentive, candidate countries on the way did not consider to stop the flow by proper conduct of border controls and offer of asylum. Rather they conditioned containment of the flow by proper implementation of the Dublin system in the Greek case or indirectly expected support and backing from the EU in domestic power struggles, as it was the case in Macedonia and Serbia. As diligent EU member states, Croatia and Slovenia initially intended to 'protect' the Schengen zone and implement the Dublin system, but their first measures broke under the high migration pressure and lack of the EU support causing fear of becoming sacked by migrants. The inconsistency of the European policies and unprecedented nature of the flow influenced variations in the responses to the flow. In the first phase, states were acting under the 'shock' of the sudden pressure, while trying to get the best tradeoff from their acting. Based on numerous *ad hoc* cooperation examples, the countries in the region commonly chose to assure the fastest possible way to get migrants through the region and further to Europe by the creation of *de facto* (hopefully in Europe) 'humanitarian' corridor, which lacked legal grounding. The corridor was a middle option, between border security and humanitarian dilemma migration generally causes. However, after the initial surprise and eventual closure of the route, states authorities in the region had time to secure and tighten up their border controls for cases of renewed migration pressure that indicates also their mistrust both towards Turkish-EU deal as well as towards the EU capability to take in more refugees and develop more structural approach towards the region. Instead of making the refugees assistant an objective and enhanced borders an obstacle, both the EU and the Balkan states opt for the opposite.

Renewed securitization of the borders in the region did not come as a surprise, since the construction of higher European ‘fortress’ walls’ is one of the main objectives of the EU accession process, during which the accession country has to prove it is able to stop migration pressure in exchange for the privilege of the access to the European free movement of people. However, the theory failed to bear fruits initially since the requirement is paradoxical in the case of the Balkans and even more so in the case of Turkey. With no inclusion of the enlargement process into the Juncker White Paper on the future of Europe<sup>699</sup> the Balkans do not have any prospect to join the EU, thus preserving the EU interest to keep the region as a buffer zone. However, without having a say in the Brussels politics and without committed incentives it is naive to expect that relatively poor and politically unstable countries in the region will represent the main European bastion against possible renewed migration pressure. Thus the alternative EU-Turkey deal somehow proves the paradoxical accession process and expectations. What is more worrying is, that it brings the EU migration management to the next level, where the cooperation is not conditioned by improved asylum system and enhanced border controls, but rather it is a part of a larger trade-off where everything is more relevant than the protection of refugees.

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<sup>699</sup>EC, *White Paper on the Future of Europe*, March 1, 2017, <https://goo.gl/07Ubsd> (accessed 15.04.2017).

## CHAPTER 5

### CONCLUSION

The 2015 migration wave hit the EU amid tough recovering period after the protracted economic and financial crisis that shook the fundamentals of the European solidarity if the latter ever existed. Although the EC pushed for the adoption of a technical formula that would ideally provide an internal solution to absorb incoming masses, member states' different perceiving of refugees only further stretched the already existing East-West Union divide. After the initial German "spill-back" and confusion caused by the transit, an external solution was adopted. It aims at "spilling-over" the responsibility and most of the 'burden' to the wider region. The real crises of refugees and mythical European solidarity were not addressed at all.

Once the masses started to approach the EU from the South-Eastern and Western Balkan migration route in autumn 2015, the EU could not turn the blind eye on the increased migration pressure anymore. Balkan transit countries were much more vocal for the need of immediate solution than voiceless refugees and the dead Mediterranean Sea. Due to their geographical position, the Balkan countries were not only caught in between the main refugee-producing regions but were also caught within the malfunctioning EU asylum system or rather its consequential unequal 'burden' sharing. Lack of the EU member states' solidarity with Greece in coinciding bailout negotiations and enormously increased migration pressure was one of the main reasons for the asylum regime's collapse and spilled flow of refugees upwards through the Balkans to the Western Europe. Being over-burdened by the Dublin obligation to register all arriving asylum seekers and decide on their requests' admissibility under the Dublin system, Greece intentionally revoked its commitments. The collapse under the increased pressure was a clear sign that the measures to guarantee common but diversified responsibility among member states

do not work, starting from the indirect norm-sharing, to mere distribution of asylum seekers and concrete financial assistance. Until the CEAS is not fully harmonised, asylum seekers will continue to circumvent conventional ways by lodging asylum requests in countries that have higher acceptance rates, if the access to their territory will still be permitted, and thus prevent efficient refugee distribution among member states. On the other side, the asylum system's collapse was primarily caused by the lack of solidarity with Greece in terms of taken-in refugees from Greece and in terms of financial support for extensive administration work and capacities needed to accommodate and transfer refugees. At the same time, the existing Temporary Protection mechanism designed for cases of mass influxes proved to be inefficient due to the same lack of solidarity among member states.

To undo the knot and respond to the collapsed asylum system, the EC adopted separate relocation and resettlement mechanisms. Through this, it has addressed the collapsed asylum system by the attempt to restore the exact component that had caused its break-down – the solidarity. Based on previous unsuccessful experience, the opposition and problems that have emerged with the relocation and resettlement plan could have been expected, although the EC did not propose a permanent formula for the migration management but rather a one-time solution of a burning issue and relocation of a limited number of refugees. As such, notwithstanding the poor implementation of the mechanism, the proposed relocations and resettlements should not at all be named as a solution. The proposed scheme triggered different reactions of member states. Member states on the external southern borders of the EU were the most vocal supports since the schemes offered them the insurance that the newcomers would be transferred from their territory to other member states. Some smaller and medium sized and new member states, such as Slovenia and Croatia and the Baltics supported proposal in order to express solidarity with the affected member states to a certain extent and to more importantly prove their commitment to the European integration, which is significant in times of resurrecting debate on “double-speed” Europe and differentiated integration. However, despite the generic support none of those states was an active proponent

of the relocation. On the other side, the main clash occurred between the opponent Hungary accompanied by the Visegrad countries and to some extent also Romania and Germany which most zealously supported the relocations and resettlements.

Both approaches to a large extent diverge from the established CEAS and Dublin arrangement and present an incursion of domestic politics on the European vogue migration stance. In contrast to other opposing member states which refused the relocations and resettlements based on the unfairness of distribution criteria, Hungary opposed the acceptance of refugees *per se*, what enabled the mobilisation of far-right supports and rescued the Fidesz Government from the ratings' free fall. On the other side, Germany actively called on member states to respect the relocation and resettlement scheme. Although based on the humanitarian objective and international obligations, the main aim was to re-distribute the 'burden' that has as a primary destination state originally fallen on it and was caused by its unilateral termination of the Dublin system for Syrian refugees. The act was as well driven by domestic drivers since Germany took the opportunity of the migration pressure to satisfy its market's rising demand for the immigrant labour force. German seeming humanitarian care was thus used as a tool firstly in its domestic politics and secondly by its 'Europeanization' in order to redistribute the 'burden' once the number of asylum seekers largely exceeded German absorption capacities. Despite the humanitarian pretext, Germany was rather revoking the solidarity among EU member states than the solidarity with refugees. Both cases represent "spill-backs" from the obligations under the European asylum systems, despite their different orientation, and were enabled due to the EC weak power over the initial national states' (non-)implementation of the Dublin system that demanded as *ad hoc* 'solution' in a case of a sudden mass in-flow. As assumed in the introduction, the technocratic approach of the EC that intended to distribute the 'burden' fairly could be confirmed. However, the EC apparently lacks the institutional memory, since the rare past examples of relocations were relatively unsuccessful. Although the EC approach was initially not based on security considerations that mainly originated from member states, it cannot be at the same time claimed that the EC

focused on international protection of those in need since the offered help was limited in numbers. The EC thus accepted the limited common responsibility that was cumbersomely shared, while the EC concurrently sought to avoid such responsibility by proposed enhancement of mechanisms that allowed refugees' refusal based on the inadmissibility of their asylum applications.

As assumed by the neo-neofunctionalism, the internal political crisis caused by the "spill-backs" in avoidance to follow certain committed obligations will be solved by the announced increased authority of the EC in and extended scope of other European institutions in the asylum area, though the concrete and complete results are due to the slow Brussels' 'digestion' yet to be seen. Firstly, by the announcement of the common list of safe countries of origin and safe countries of transit adoption and increased authorities of primarily Schengen-borders securing agency Frontex in asylum area, the EC gave a 'green' light to member states to freely continue with border securitization. Once invisible and soft methods of *non-entré* policies such as special procedures and visa requirements were replaced by more or less visible, severe, violent, and direct physical deterrence methods accompanied by partially or completely sealed external borders. Besides refugees, it was the transit Balkan region that was the most affected by the increased border securitization. As a second result of an internal crisis "spill-over", the EU eventually took intergovernmental migration management agreements to the European level by adopting the long avoided premises of the British Vision paper through the conclusion of the EU-Turkish deal.

Caught in confusion between varying signals coming from the EC and different EU member states, the Balkan states failed to form a timely and uniform approach towards the passing migration wave. Despite being under pressure to assure proper border management and functioning asylum systems within their (aspired) accession to the EU, relatively poor countries in the region lacked resources and clear membership incentive in order to stop the flow. Despite an omnipresent fear of possible returns, a 'humanitarian' corridor without a humanitarian aspect was



established on the way. The latter was not a result of the region's unified stand, but rather the only possible practical solution after initial border disputes that once again trigger nationalist spirits in the region. Countries on the way partially internationalised the migration issue based on the desired support their governing elites were perusing from foreign actors and used the 'crisis' to cover burning domestic issues that might have undermined their rule. The fact that all Balkan states through which went the main vein of the Western Balkan route were in some sort of a political crisis should not be neglected. Greece was negotiating the sustainability of its external debt, Macedonian Government sought to cover up for its corruption affair, Serbian government was under the authoritarian rule accusations and Croatia in between the series of elections. On the other side, Bulgaria and Romania, that are already part of the EU, tried to take advantage of the migration talks in order to get the opportunity to integrate into the Schengen area.

Once the Western Balkan migration route was closed by the reinforced Frontex on the Macedonian-Greek border and EU-Turkish deal, the Balkan states changed their 'humanitarian corridor' rhetoric into greater securitization of their borders supported by the EU. The EU securitized "spill-over" was reflected in a domino effect in the Balkans. By reinforced border controls and tightened asylum legislation that in many cases severely breaches international asylum obligations, the Balkan role of a 'buffer-zone' is being slowly but definitely reinforced. Feared of possible termination of visa free movements of their nationals in the EU, the Balkan states enhanced their border surveillance mechanisms and adopted strategies to combat human trafficking and smuggling. The Balkan states' might not deter mass inflows completely, but they can prevent mass increases by assuring steady inflow of low numbers of migrants per month that can be easily processed in the EU and eventually returned according to readmission agreements or safe third country concept implementation. Although the EU desires to keep the Balkan 'buffer-zone' *status quo* as long as possible, the latter is not possible due to eventual Balkan states EU membership. In this respect, the EU second "spill-over" effect is aimed to widen the 'buffer-zone' to Turkey.

In contrast to the Balkan ‘buffer-zone’ creation in the Balkans within the EU enlargement perspective and accompanied Europeanization process, the EC opted for a more concrete and dangerous form of responsibility transfer, since it has realised the paradox of enlargement which Turkey understands more than well. While the option has rendered immediate results at least in the closure of the Western Balkan route, the arrangement is worse than the responsibility transfer under the enlargement since it does not take into regard the functioning level of the Turkish asylum system. Although the asylum applications are processed on the Greek islands and in accordance with the CEAS, the processings are prone to nationality based discriminations that end up in collective expulsions. Moreover, based on the steep decrease of refugees coming to Greek islands after the conclusion of the deal, it is only a question how many of them are actually deterred in Turkey as a part of a big ‘trade-off’ that has made not only the refugees (unwillingly) but also the EU (willingly) for a Turkish ‘hostage’ and deprived the EU any kind of a moral stand.

By the “spill-over” the EU might have temporarily solved the European imminent internal political crisis, though the later can resurrect again as soon as the reinforced Balkan ‘fortress’ again collapses after the break of the sensitive EU-Turkey deal if the European solidarity does not become sincere, both among the member states and towards the refugees. So far, the EU only solved the problem of migrants rather the problems for migrants. By the closure of the Western Balkan route more deaths were detected in the Mediterranean, while the Balkan route filled with more obstacles became only more dangerous, but not empty. The steady inflow shows that deals and barriers cannot stop refugees in need for protection. Not at least until nothing is done to cease the Syrian bloodshed.

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## APPENDICES

### A. 2015 ASYLUM APPLICATIONS IN EU BY COUNTRY OF ORIGIN

	Q4 2014			Q1 2015			Q2 2015			Q3 2015			Q4 2015			Change in % between Q3 2015 and Q4 2015	Last 12 months
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.		
Non-EU	62 345	58 300	62 780	61 450	66 150	61 340	59 085	68 090	90 940	116 200	141 250	165 395	167 010	154 045	104 350	426 025	1 255 540
Syria - (SY)	14 355	13 185	12 375	11 745	8 925	10 285	11 400	13 230	20 845	31 575	48 825	60 815	58 730	51 965	34 415	115 130	362 775
Afghanistan - (AF)	4 305	4 220	5 565	4 680	4 205	4 180	5 540	6 895	12 975	18 360	19 340	20 535	26 295	33 850	19 110	79 265	178 230
Iraq - (IQ)	2 340	2 340	1 840	2 315	2 455	3 155	3 570	4 615	6 330	8 080	11 920	25 495	24 695	17 755	11 185	53 585	121 535
Iran - (IR)	1 990	345	890	840	680	760	1 005	985	1 965	1 300	1 660	2 480	4 675	5 975	3 795	14 405	29 360
Albania - (AL)	1 395	1 595	1 910	2 165	2 335	3 160	5 470	5 620	6 855	8 980	9 345	8 270	6 230	4 340	2 830	13 450	65 935
Pakistan - (PK)	2 130	1 875	1 720	1 735	1 690	1 820	2 230	2 490	3 890	6 065	9 370	5 320	3 930	3 890	3 015	10 835	46 400
Stateless	1 360	1 325	1 270	875	530	405	545	645	1 265	1 410	1 610	2 640	3 690	3 510	1 620	8 815	18 840
Eritrea - (ER)	3 365	2 275	1 490	1 375	930	1 445	1 570	3 595	4 210	4 265	4 385	3 580	4 330	2 175	1 615	8 150	33 095
Nigeria - (NG)	2 355	1 565	1 710	1 470	1 455	1 365	1 465	2 180	2 990	3 675	3 610	4 075	3 330	2 760	1 890	8 025	29 915
Russia - (RU)	1 220	1 125	1 160	1 895	1 115	1 445	1 095	1 090	1 465	1 475	1 900	2 385	2 245	1 830	1 615	5 740	18 385
Bangladesh - (BD)	1 760	1 140	1 115	835	705	825	745	636	1 145	1 090	950	2 195	1 810	1 590	1 395	4 815	17 695
Ukraine - (UA)	2 170	1 320	1 440	1 345	1 800	1 480	2 025	1 665	2 085	1 770	1 470	1 925	1 715	1 695	1 345	4 755	20 830
Somalia - (SO)	1 305	1 395	1 070	1 895	1 85	1 310	1 365	2 085	2 030	2 105	1 915	2 035	1 895	1 550	1 040	4 455	19 575
Sudan - (SD)	720	530	515	370	365	450	425	650	915	1 770	1 470	1 270	1 235	835	1 185	3 225	10 910
Gambia - (GM)	1 345	1 305	1 180	1 855	1 040	1 425	600	515	1 025	1 140	1 200	1 295	1 330	850	600	2 805	12 205
Kosovo - (MK)	3 540	7 495	13 075	13 850	22 470	12 550	5 520	2 690	2 260	1 995	1 365	1 640	1 110	760	870	2 740	66 885
Serbia - (RS)	2 320	2 380	2 310	2 345	2 35	2 815	1 725	1 855	1 630	1 775	1 610	1 595	1 130	1 065	565	2 700	19 000
MK - (MK)	705	395	530	650	670	810	710	650	1 195	1 485	1 050	990	880	770	370	2 020	10 545
Irish - (IE)	1 310	595	940	600	620	790	820	620	600	795	615	870	640	745	435	2 620	8 315
Algeria - (DZ)	315	510	470	475	480	830	685	780	875	540	620	555	725	660	630	2 015	7 620
Morocco - (MA)	965	320	310	355	320	405	425	425	470	395	360	430	435	685	780	1 915	9 430
Senegal - (SN)	730	395	305	680	800	805	665	665	885	900	965	945	775	575	430	1 780	8 880
Georgia - (GE)	720	590	565	545	495	525	630	510	710	505	425	640	595	640	500	1 720	6 560
Ethiopia - (ET)	320	280	225	385	90	300	266	430	720	610	565	545	690	645	465	1 685	6 475
Lebanon - (LB)	175	115	115	130	25	115	130	90	140	110	110	240	400	735	455	1 655	2 840
China - (CN)	485	320	400	395	460	430	425	455	535	400	430	535	705	545	375	1 630	5 695
CD - (CD)	470	395	485	405	460	430	475	415	500	490	445	530	530	560	525	1 575	5 720
Guinea - (GN)	145	345	380	325	340	460	400	375	460	535	445	595	615	475	455	1 540	5 480
Ghana - (GH)	340	470	365	375	230	470	260	405	415	685	660	895	675	565	395	1 490	5 570
Ivory Coast - (CI)	375	375	290	285	350	430	430	415	520	595	540	670	555	440	380	1 375	5 575
Other (non-EU)	8 315	6 300	7 105	6 160	6 625	7 355	6 695	7 240	9 785	9 940	9 300	9 450	10 050	10 440	10 225	30 720	104 170

Countries selected here are those with the highest number of asylum applicants registered during Q4 2015.  
Kosovo - see methodological notes MK - the former Yugoslav republic of Macedonia, CD - Congo, the Democratic Republic of the

## B. 2015 ASYLUM APPLICATIONS IN EU BY HOST MEMBER STATES

	Q4 2014				Q1 2015				Q2 2015				Q3 2015				Q4 2015				Change in % between Q3 2015 and Q4 2015	Applicants per million population (1) Q4 2015	Last 12 months (1,250,640)
	Oct.	Nov.	Dec.	Ccl.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Q4 2015						
EU 28	62,845	58,097	62,780	61,450	66,150	61,843	28,045	60,880	80,140	110,200	141,250	162,305	107,090	154,865	104,200	420,625	1	151	840	1,250,640			
Belgium	1,540	1,145	1,405	1,210	1,070	1,160	1,110	1,615	2,315	3,120	5,160	6,360	5,525	5,550	4,810	15,865	8	288	1,410	38,980			
Bulgaria	1,400	1,345	1,480	1,055	1,025	1,110	1,420	1,325	1,605	1,850	1,435	2,060	3,530	2,395	1,660	7,485	42	79	1,055	20,160			
Czech Republic	100	70	110	95	90	110	95	85	85	75	85	100	115	115	110	335	29	20	30	1,235			
Denmark	1,840	1,105	755	630	425	450	545	870	1,075	1,020	1,810	2,680	3,625	5,020	2,665	11,305	155	205	1,995	20,825			
Germany	15,225	19,020	17,055	22,905	24,005	29,995	25,820	25,505	34,075	38,565	36,305	44,480	58,125	57,685	48,125	162,540	39	194	2,000	441,800			
Estonia	25	10	5	5	15	30	30	10	25	20	10	45	20	0	10	40	-46	-9	30	225			
Ireland	130	155	170	215	200	210	265	255	335	260	330	405	265	290	210	765	-25	69	165	3,270			
Greece	745	560	790	925	895	750	855	1,005	1,000	1,065	1,800	940	845	1,000	1,160	3,005	4	42	275	11,370			
Spain	720	630	800	835	850	1,220	1,330	1,055	1,290	1,145	1,130	1,405	1,470	1,740	1,225	4,435	24	127	95	14,600			
France	5,500	4,555	5,300	4,825	5,125	5,610	5,475	4,355	5,450	5,320	5,240	7,070	7,735	7,145	6,585	23,475	23	51	355	70,570			
Croatia	40	25	15	10	15	15	10	5	5	0	5	5	20	20	10	45	35	-43	10	140			
Italy	8,890	8,765	5,610	4,740	5,075	5,420	4,800	5,130	5,265	8,510	8,775	11,105	16,365	8,270	6,075	24,710	-13	16	405	83,245			
Cyprus	185	140	120	155	125	150	145	120	135	155	120	330	235	245	190	670	9	50	790	2,105			
Latvia	30	15	30	15	15	15	25	30	50	30	20	45	70	0	5	85	9	12	40	330			
Lithuania	30	65	65	15	25	5	25	25	10	35	30	20	35	20	25	80	-6	-49	30	275			
Luxembourg	125	110	85	85	95	85	70	85	95	90	165	365	375	425	430	1,230	57	288	2,185	2,360			
Hungary	5,250	8,825	13,790	11,655	11,405	4,720	6,485	9,800	16,385	30,870	46,320	30,425	490	190	175	895	-69	97	90	174,435			
Malta	125	75	115	85	160	120	95	160	115	140	115	170	230	190	130	545	28	74	1,270	1,695			
Netherlands	1,900	1,250	1,225	890	735	805	1,135	2,050	2,925	2,960	5,325	6,425	9,965	6,225	3,075	19,565	33	347	1,160	43,035			
Austria	2,075	3,510	4,850	3,075	3,060	2,770	3,715	8,190	7,405	6,665	9,600	10,516	12,015	11,665	7,136	30,806	12	162	3,590	95,606			
Poland	600	535	520	485	470	465	540	525	700	965	1,235	1,490	1,260	1,095	665	3,340	-10	102	90	10,255			
Portugal	40	60	40	40	80	60	80	80	90	70	75	70	70	65	50	180	-17	29	20	830			
Romania	185	60	95	100	75	160	205	85	85	85	110	75	90	85	65	240	-11	-34	10	1,225			
Slovenia	40	15	35	15	10	20	15	10	15	0	20	40	20	45	35	100	41	13	50	260			
Slovakia	25	30	35	15	10	25	5	20	5	5	5	5	5	15	60	180	959	100	35	270			
Finland	405	310	385	305	310	345	335	510	760	1,455	2,665	10,805	8,985	5,600	1,185	14,460	-4	1,211	2,640	32,150			
Sweden	7,545	5,515	6,310	4,340	4,515	3,560	3,405	4,850	6,040	7,510	11,270	23,730	38,535	36,075	13,175	67,885	167	354	9,015	156,110			
United Kingdom	3,255	2,615	2,905	2,740	2,200	2,365	1,920	2,625	3,025	4,260	3,600	4,010	5,040	3,360	3,295	11,695	1	40	180	38,370			
Iceland	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	135	-	-	-	-			
Iceland (rest)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-			
Norway	1,010	825	730	560	480	460	520	1,160	1,075	1,325	2,285	4,085	8,570	8,105	1,005	17,685	108	589	3,425	30,470			
Switzerland	2,215	1,545	1,375	1,450	1,300	1,315	1,270	2,070	1,665	3,765	3,385	4,410	4,835	5,555	4,160	14,950	25	91	1,615	38,060			

(1) Relative to population as of 1st of January, 2015.  
- : data are not available

### C. TURKISH SUMMARY / TÜRKÇE ÖZET

Orta Doğu'dan Avrupa Birliği(AB)'ne 2015 yılındaki göç dalgası, kırılan Batı Balkan bölgesi boyunca bir göç yolu açtı. Göçmenlerin kökeni olan Batı Balkan bölgesi, bu göç dalgası ile transit bir bölgeye dönüşmüştür. Sadece 2015 yılında Türkiye'den Yunanistan'a yaşanan yasadışı sınır geçişlerinin sayısı bir önceki yıla göre 10 kattan fazla artmış ve yıl sonunda neredeyse bir milyona ulaşmıştır. Sadece Yunanistan'a gelen göçler, modern Avrupa ve AB tarihinde benzeri görülmemiş bir göç akımını oluşturmuştur. Bu göç akımıyla birlikte AB üye devletleri, Birleşmiş Milletler kapsamında 1951 yılında kabul edilen Mülteci Statüsüne İlişkin Sözleşmede (daha sonra Mülteci Sözleşmesi olarak anılacaktır) yer alan uluslararası korumayı temin etmek için insani yardım sorumluluğu ile dinsel terörizm, yabancı düşmanlığı ve ırkçılık gibi artan güvenlik endişeleri arasında kalmaktadır. Bu eğilim, dünyanın dört bir yanındaki toplumların farklı kesimleri arasında liberal olmayan bir davranışı pekiştirmektedir.AB'nin en büyük ekonomik gücü olan Almanya, sınırlı sayıda kalifiye ve ucuz göçmen işgücünü kabul etmede bir fayda görürken, diğer üye ülkeler sığınma politikalarının seküritizasyonunun arttırılmasını tercih etti. Alınan fayda ve tehditlerdeki boşluk, oluşturulan göç krizine karşı gerçek bir AB iç krizi yarattı.Mevcut Avrupa sığınma sisteminin adaleti bir kez daha gündeme gelerek tartışmalara neden oldu ve kafa karıştırıcı mesajlar transit Balkan ülkelerine de yansıdı.

Bu tez, Avrupalı Ortak İltica Sistemi (AOİS) çerçevesinde AB'ye yaşanan göç akımını ve AB üyelik süreci etkisi altındaki Balkan ülkeleri çerçevesi içinde Balkanlar boyunca oluşan transit geçişi ortaya koymaktadır. Bölünmüş AB ve üye devletleri, bazılarını memnun edip diğerlerini kızdıran AOİS'den sonra ortaya çıkan siyasi krizin üstesinden nasıl geldiğini soruyor. Yeni politika alanlarına beklenen "yayılma etkisi" ile daha sonraki entegrasyonlarda çözümlerin arandığı yeni işlevci varsayımından sonra tez, AB düzeyinde sığınma politikasında kazanılan yeni güçleri ortaya çıkarmakta ve doğalarını analiz etmektedir.AB'nin yanıtının bir taraftaki Balkan transit ülkelerine ve diğer taraftaki mülteciler üzerindeki sonuçlarına özel

dikkat gösterilmektedir. Bu varsayım, AB'nin iç siyasi tutarsızlıkları ne olursa olsun, uluslararası sığınma yasasına dayalı insani yardım taahhüdünde bulunması gerektiğidir. Bu nedenle, uluslararası yükümlülüklerle birlikte insani bir zorunluluk olup olmadığı veya AB'nin güvenlik endişeleri için önlem almayı tercih ettiği ve yükü komşu ülkelere aktararak sorumluluktan kaçınma eğiliminde olup olmadığı AB'nin ana itici gücü aranıyor. Tüm transit Balkan devletleri AB üyeliği için aday olduklarından ve AB'ye kabul edilmelerini arzu ettiklerinden dolayı, göç ve bölgesel politik yönetim genişleme çerçevesinden görülür.

Tez, ayrı bölümlerde öncelikle ortak AOİS oluşturulması hedeflerini analiz eder ve 2015 yılında yaşanan göç akımına düzgün olarak cevap veremeyen hükümlerine genel bir bakış sunar. Öncelikle rejimin iç boyutunu, yük paylaşımının ve mülteci göçlerinin üye ülkeler arasında yerleşimlerinin düzenlenmesini dikkate alır. Devamında AB'nin göç ve sığınma rejimini komşu devletlere devretme eğilimi içinde olmasını özel olarak AB içi boyutunda anlatır. İkinci bölüm, üye devletlerin sığınma sistemi hükümlerinde ne derecede özgür olduklarını ve sistemin üye ülkeler arasındaki adil 'yük paylaşımını' nasıl sağladığını soruyor. Bununla beraber komşu ülkelere karşı ne gibi sorumlulukları yerine getirmesi gerektiğini sorguluyor. Üçüncü bölüm, 2015 göç dalgasının özelliklerine konsantre olup mültecilerin kökenlerine, amaçlarına ve Balkanlar boyunca izledikleri yollara odaklanıyor. Aynı bölüm, oluşan göç dalgası için sağlanan AB çözümünü araştırmayı amaçlıyor. Son bölüm, belirli Balkan ülkelerinin göç dalgasına karşı aldıkları pozisyonları ve göç akışını düzenleyen politikalar oluşturulurken dikkate alınan konuları araştırıyor. Sonuç olarak tez, 2015 göç dalgasında Balkanlar'ın konumunun ve çözümlerinin ne olduğunu soruyor. Dışortak "tehditler", Balkanlarda parçalanan bölgeyi bir araya getirip AB üyeliği ihtimaline karşı daha yakın hale getirip getirmediği sorgulanıyor.

Ortak Avrupa sığınma sistemi, üye devletleri diğer üye devletlere karşı uygulanan bağımsız göçlerden korumak amacıyla, halkın kendi iradesiyle oluşan akım ile eş zamanlı olarak oluşturulmuştur. Ortak göç politikası, Avrupa'nın gelecekteki



ekonomik çıkarlarının yanı sıra siyasi, ekonomik ve sosyal refahına da bağlıydı.1990 Dublin Kongresi, sığınma taleplerini incelemek amacıyla Schengen devletleri arasındaki sorumlulukların tahsis edilmesi için bir sistem oluştursa da, bu sistem ilgili devletlerin iltica sistemleri ile uyumlu hale getirilinceye kadar etkili olamadı. Zaten 1992 Maastricht Antlaşması, AB üyesi ülkeler arasında adalet ve iç meselelerde işbirliği sağlaması için zemin sağlamıştır. Bununla birlikte, sadece 1997 Amsterdam Antlaşması, Dublin sistemini AB yapısı çerçevesi içine getirdi ve nitelikli çoğunluk oylaması ve iltica konularındaki topluluk yasal araçları getirilmesi yoluyla topluluk güçlerini arttırdı. Amsterdam Antlaşması, Tampere Milestones (1999-2004), Hague programı (2005-09) ve Stockholm programı (2010-14) olarak tanımlanan üç ardışık çok yıllık programlar ile üye devletler arasındaki gelecekte olacak sığınma uyumluluğunun altını çizdi. Avrupa Komisyonu sığınma hakkı uyumluluğunu sağlamak için, 2001 yılında Geçici Koruma Yönergesi'ni, 2003 yılında Kabul Koşullarına Yönelik Direktif'ini, 2003 yılında Dublin II Tüzüğü'nü, 2004 yılında Sığınma Yeterlilik Direktifi'ni ve 2005 yılında Sığınma Prosedürleri Yönergesi'ni çıkardı.Direktifler, sığınmacıların kabul koşulları, usul şartnameleri ve sığınma hakkı için minimum standartlar sağlar. 2007 yılındaki Lizbon Anlaşması, sığınma konularında Avrupa Komisyonu'na daha fazla yetki verdi ve Avrupa Parlamentosu ve AB Adalet Divanı rolünü artırdı. Sığınma konuları, standart politika oluşturma prosedürüne göre dağıtıldı ve Avrupa Birliği Temel Haklar Şartı tüm üye ülkeler için bağlayıcı hale geldi. Ortak Avrupa sığınma sisteminin gelişmesi ile sığınma standartları daha da arttı ve karşılığında sığınma hakkı daha da zorlaştı. Sığınmacıların yeniden geliştirilmiş haklarıyla eş zamanlı olarak, AB üye ülkeleri sığınmacıların "yükünü" ya da sözde "sığınma değerlendirmeleri" sorumluluğunu dahili olarak dağıtmaya ve bununla birlikte üçüncü devletlere aktarmaya çalıştılar.

Avrupa düzeyinde, Amsterdam Antlaşması ilk olarak sorumluluk paylaşım konseptinin benimsenmesi için çağrı yaptı. Sığınmacıların eşit dağılımını garantilemek için sığınma yasalarının uyumlaştırılması (norm paylaşımı), sığınmacıların orantılı olarak tahsisi veya yeniden yerleşimi (kişi paylaşımı), gerçek mali katkı payları (ücretler) gibi doğru sorumluluk paylaşımının sağlanması için üç

farklı yöntem benimsenmiştir. Sığınma hakkı kabul oranlarının hala farklı olması sebebiyle iltica uyum seçeneğinin ana çözümü sağlamadığı iddia edilebilir. AB aynı zamanda yer değiştirmeler ve yeniden yerleşim alanlarında zayıf tecrübelerle sahiptir. Ki bu tecrübeler şimdiye kadar gönüllü bir temele dayanmaktaydı ve mültecilerin yeniden yerleştirildiği ülkelerdeki güven eksikliğinden dolayı ek yönetim yükleri yaratmaktaydı. Kitle akışları durumlarına uyumlu olan 2001 Geçici Koruma Yönergesi, nitelikli çoğunluk tarafından kabul edilen geri kabul planı ile göç akımını gidermek için Avrupa Konseyi'ne yetki verirken, nitelikli çoğunluk kabulü mümkün olmadığından bu tür bir çözüm asla uygulanmamıştır. Sığınmacıların dağıtımının AB temel taşı, üye devletlerin sığınma hakkı verme sorumluluğunu belirleyen Dublin Yönetmeliğidir. Dublin sistemine göre, bazı istisnalar dışında tüm sığınmacılar AB'ye giriş yaptıkları sınır üye ülkelere geri döndüler ki bu ülkeler başvuruyu değerlendirmekle yükümlüdürler. Sistemin sığınma alışverişini ve ek yönetim yükünü önlemeyi amaçlamasına rağmen, sınır üye ülkelere büyük bir sorumluluk devrederek yükün orantılı dağılımını sağlamakta başarısız olmuştur. Destek eksikliği ve yetersiz kapasiteler nedeniyle bu ülkelere bazıları sığınmacılara uygun kabul koşullarını sağlayamamaktadır. Bundan dolayı Birleşmiş Milletler Mülteciler Yüksek Komiserliği, 2008 yılında, sığınmacıları Yunanistan'a iade etmekten kaçınmaları için AB üye ülkelere çağrı yapmıştır. Ancak Macaristan, İtalya ve İspanya gibi diğer sınır üye ülkelerinin sığınma sistemlerinin aşırı baskı altında olduğu da bir gerçektir.

Dublin sistemi, sığınmacıların yükünü hafifletmek için, sığınmacının halihazırda korunmasının sağlandığı, sığınmacının koruma aramak için ülke makamlarıyla iletişime geçme imkanı bulduğu ve ülkeye kabul edilebilirliğini gösteren açık delillerin olduğu üçüncü bir güvenli ülkeye geri gönderme imkanını içeriyor. Konsey, güvenli üçüncü ülkelere oluşan bir Avrupa listesi oluşturma yetkisine sahiptir. Bir ülkenin güvenli bir üçüncü ülke olabilmesi için, coğrafi kısıtlamalar olmaksızın Mülteci Sözleşmesine bağlı kalması, Avrupa İnsan Haklarının ve Temel Özgürlüklerin Korunması Sözleşmesini imzalamış olması ve kanunla tanımlanmış sığınma prosedürüne sahip olması gerekmektedir. AB üye devletleri,

2005 yılında belirlenen İltica Usulü Yönergesi'nde, belirli kriterlere dayanarak kendi güvenli üçüncü ülkeler listelerini de oluşturabilirler. Tez, güvenli üçüncü ülke başvurusunun sığınmacılar üzerindeki dikey etkisini ve güvenli üçüncü ülkeler üzerindeki yatay etkiyi inceler. İlk durumda yüksek geri göndermeme riski vardır, çünkü detaylı iltica değerlendirmeleri olmaksızın yapılan hızlandırılmış prosedürlerden dolayı sığınmacıların AB'ye giden yolda güvenli üçüncü bir ülkeden geçmesi durumunun genellikle kabul edilemezdir. Güvenli üçüncü bir ülkeye dönmek istemeyen başvuru sahipleri zorla geri gönderilir ve eğer güvenli bir ülke sığınmacının başvurusunu değerlendirmek için sorumluluğu kabul etmezse, sığınma başvurusu yapan kişi kendisini geri göndermeme silsilesi içinde ilk geldiği yerde bulabilir. Yatay etkiler açısından güvenli üçüncü ülke konsepti, AB'nin kabul olmayan politikalarını güçlendirmekte ve yükü daha geniş bir bölgeye aktararak AB üyesi ülkelerin çıkarlarına hizmet etmektedir. Geddes'in çevreler kuramına göre, iç Avrupa Birliği çekirdeği dış çevrelerde domino etkisi yaratan kısıtlayıcı politikalar uyguladı. Transit ülkeler, 'kapalı bir çuval' olma korkusuyla, kısıtlayıcı politikalar getirmeye ve sığınmacıları kendileri dışında tutmaya çalışarak bütün Avrupa çapında "Avrupa Kalesi"nin yüksek bir duvarını kurmakta ve sığınmacıları Avrupa dışındaki üçüncü çevrede tutmaya çalışmaktadırlar. AB komşu ülkelerin ikinci çevresi 2004 genişlemesi ile iç çekirdeğe kısmen dahil edildi, aynı zamanda transit Balkan ülkelerine de genişletildi.

Güvenli üçüncü ülke konseptini, geri dönüşleri kabul etmeyi taahhüt etmemiş güvenli üçüncü ülkelere yönelik etkileri nedeniyle uygulamak zor olsa da, AB; bölgedeki AB üyelik süreci çerçevesindeki transit ülkelerle geri kabul anlaşmalarının eşzamanlı olarak sonuçlandırılmasıyla geri dönüşleri kolaylaştırdı. Sığınmacının AB üyesi devlet tarafından kabul edilemez olarak bulunması durumunda, AB bölgesine düzensizce giren bir göçmen olarak muamele görür ve AB'ye giriş yaptığı ülkeye geri gönderilebilir. Güvenli üçüncü ülke prosedür uygulamasının aksine, üçüncü ülkenin bu kez geri gönderme yükümlülüğü bulunmamaktadır; fakat bu tür göçmenleri diğer siyasi ve ekonomik faydalar karşılığında kabul etmeyi taahhüt etmiştir; bunlardan en önemlisi kendi vatandaşları

için vize serbestleştirme sürecidir. Geri kabul anlaşmaları iki taraflı olarak veya AB düzeyinde sonuçlanabilir. Şu ana kadar AB, 17 geri kabul anlaşması sonuçlandırırken, Avrupa Komisyonunun şu anda görüşmeler için 5 açık oturumu daha bulunmaktadır. AB üyeliği için aday ülke olan Makedonya, Sırbistan, Arnavutluk, Karadağ ve Türkiye yanı sıra olası aday statüsünde olan Bosna-Hersek (BH) ile geri kabul anlaşmaları imzalanmıştır. Kosova, bölgede AB ile geri kabul anlaşması olmayan ve aynı zamanda AB'de vizesiz girişi olmayan tek ülkedir. Eşzamanlı olarak (potansiyel) aday ülkelere müktesebatın devri, sığınma sistemlerinin geliştirilmesini gerektirir ve aynı zamanda güvenli üçüncü ülke konseptinin uygulanmasını kolaylaştırır. 'Tampon bölge' oluşturma teorisine göre, AB tarihinde iltica başvurularının harekete geçirilmesi için çok az fikir ortaya çıkmıştır. Her ne kadar üye ülkelere başvurularına rağmen, çoğu ülkenin uluslararası sığınma hakkı taahhütlerini ihlal ettikleri gerçeği yüzünden başarısız olmuşlardır.

2015 yılının yaz ve sonbaharında sığınmacıların artan nüfusu sırasında dış 'sıcak noktalar' süreci yeniden ortaya çıkmıştır. Suriye'de uzun süren iç savaş, büyük güçlerin katılımı, komşu ülkelerdeki kötüleşen koşullar, iyi hava koşulları ve Alman Başbakanının açık davetiyesi gibi itici ve çekici unsurların doğru kombinasyonu, AB'de benzeri görülmemiş sayıda sığınmacıya katkıda bulundu. Sığınma talebinde bulunanların sayısı 2015'te 624.935 iken 2016'da 1.322 milyona yükseldi. Çoğunluğu Suriye, Afganistan ve Irak'tan savaşla parçalanmış ülkelere gelse de, bu akım özellikle Arnavutlar ve Kosovalılardan oluşan Balkanlardan gelen ekonomik göçmenlerle karışmıştır. Akışın heterojenliği, AB için bir zorluk ifade ederken, Balkan ülkeleri akışın durmasından yararlanabilecekleri dengelilik arayışındadır.

Ekonomik göç, tüm Balkan ülkeleri ve Türkiye'nin de içinde bulunduğu güvenli menşe Avrupa ülkeleri listesinin oluşturulmasıyla ele alındı. Buna ek olarak, Almanya, Macaristan ve Slovenya, tüm Balkan ülkelerini de içeren güvenli menşe ülke listelerini yayınladı ve Slovenya bu listeye Türkiye'yi de eklerken, Macaristan Balkan ülkelerinin güvenli üçüncü ülkeler olarak belirledi. Avrupa Komisyonu 2015

yılı'nın Mayıs ayında, Mülteci akımını ele almak için Göçle İlgili Avrupa Gündemi'ni yayınladı ve burada Akdeniz'de yaşanan ölümler üzerine yoğunlaştı ve göçmenlerin üçüncü ülke ülkelerinde yeniden yerleşim ve yeniden yerleşim mekanizmaları, geri dönüşleri, geri kabulleri ve yeniden entegrasyonu önerildi. Bu öneride göç krizini uzun vadede önlemek veya en azından hafifletmek için menşe ve transit ülkeleri ile işbirliği yapılması tavsiye edildi. Önerilen tedbirler, AB'nin sınırlı kapasitesini ve krizi tek başına ele alarak öncelikle sorumlulukların çoğunu komşu ülkelere aktarma eğiliminde olacağını gösteriyor. Acil tehcir mekanizması, en fazla baskı altındaki sınır üye devletler olan Yunanistan ve İtalya'dan 160.000 sığınmacıyı yerleştirmeyi önerirken ek yerleşim programı mültecilerin doğrudan üçüncü ülkelere nakledilmesi için 20.000 yer sağladı. Mekanizmada sığınmacılardan ziyade diğer üye devletlerle olan dayanışma daha çok dile getirildi. Hatta Macaristan, Slovakya, Romanya ve Çek Cumhuriyeti yeniden yerleştirme programına karşı oldukları bile kısmen iddia edilebilir. Zaten önerilen 160.000 yeniden yerleştirme, Avrupa kapılarında bekleyen bir milyondan fazla sığınmacıya kıyasla hiçbir şey ifade etmese de, yalnızca %28 oranındaki insan mekanizmayı kabul ettikten sonra yeniden yerleşimlerin bir yıldan fazla sürdüğünü açıkladı. Geri dönüşleri ve yeniden kabul edilmeleri iyileştirmek için Avrupa Konseyi, mevcut geri kabul anlaşmalarının uygulanmasını, geri kabul anlaşmaları için devam eden olumsuzlukların ve sonuçların hızlandırılmasını ve ortak bir AB listesinin oluşturulmasıyla güncellenmiş bir 'güvenli menşe ülkesi' kavramının uygulanmasını ilan etti. Bununla birlikte Avrupa sınır ajansı Frontex, düzensiz girişleri önlemek ve geri ödemeleri uygulamak için daha fazla yetki kazanmış ve bütçesini artırmış oldu. Üçüncü ülkelerle önerilen geliştirilmiş işbirliği çerçevesinde, göç konusunda Türkiye'nin işbirliği ile ilgili müzakereler Batı Balkan göç yolunu en fazla etkileyen olay oldu.

Suriye, Irak ve Afganistandan gelen tüm sığınmacılar dışında kalan bütün mültecilere sınırın kapatılması sonuç vermediği için AB, Makedonya-Yunan sınırında rotayı tamamen kapatılmasına ve bunu Türk yardımıyla desteklemeye karar verdi. Rotayı (seçici olarak) kapatmak, birçok sığınmacıyı insanlık dışı koşullarda

bırakırken sığınma talebini engellemekte ve iltica şartlarını uyruğa göre ayırmasından dolayı sorunludur. Türk işbirliğinde daha fazla tartışma var. Üç tur müzakerede, Türkiye başlangıçta kendisini mültecilere ev sahipliği yapma koşullarını iyileştirmeye ve Avrupa'ya yönelik düzensiz göçü önlemesi karara bağlandı. Ayrıca, mali yardım karşılığında, müzakerelere yeniden enerji verilmesi ve vize serbesti konusunda görüşmelerdeyeni yol haritası belirlenmesi Türkiye, AB-Türkiye geri kabul anlaşmasını Haziran 2016'ya kadar tamamlama sözü verdi. Bununla birlikte, Türkiye böyle bir durumda olmadı. Vize özgürlüğü sağlanıncaya kadar Türkiye'den Yunanistan'a gelen yasadışı bir göçmen karşılığında, Türkiye'den bir Suriye mültecinin Avrupa'ya değişimi konulu yenilenen anlaşma ile birlikte Ab ye kabulünü öngörüyordu. AB, "tampon bölgeyi" genişletme eğiliminde iken Türkiye vatandaşlarının AB'ye vizesiz erişimini sağlamaya çalıştı. Kaybedenler açıkça, AB topraklarına girişi engellenen ve Yunan adalarında gözlem altında tutulduktan sonra toplu sürgüne maruz bırakılan mültecilerdi.

Balkan göç yolunun başlangıcı ve sonu, güzergahın her iki tarafında büyük güçlerin dikkatle takas ettikleri beklentilerin ve yanlış hesaplamalarının sonucuydu. Almanya, mültecilere açık davet yoluyla dalgayı tetikledi ve kurtarma görüşmelerinde Yunanistan'ı kenara iterek dolaylı olarak sürecin hızlanmasına sebep oldu. Bununla birlikte, Alman daveti sadece Suriyeli mülteciler için ve Ekim ile Ağustos 2015 arasında geçici bir süre için geçerliydi; fakat çoğunlukla olarak algılanandan daha dardı. Bu sırada Almanya'nın, bir taraftan konaklama ve entegrasyon kapasiteleri tükenirken diğer tarafta ekonomisi için yeni kaynaklar sağladı. İhtiyacın karşılandığı netleşince ve geri kalan kısım için AB tarafından paylaşılan yükün kısa vadede mümkün olmaması üzerine Almanya, göç baskısını AB'den rahatlatacak ve Avrupa'daki sağ kanat partiler güçlenmesini önleyecek bir çözüm arayışına başladı. Bu amaçla Türkiye ile benzeri görülmemiş bir ticaret anlaşması imzalandı. Geniş çapta uzlaşmacı imtiyaz seti ile Türkiye, üyelik müzakerelerinin kendi güçleriyle tipik güç asimetrisini gözden geçirerek kazanan oldu. Balkan (göç) krizini çözme girişimlerinde, Almanya tutarsız politikaları ve yapılandırılmamış AB yerleşmiş göç politikalarını ihlal eden yaklaşımıyla Balkan

lkeleri arasında yksek dzeyde gvensizlik ve karışıklık yarattı. Bařka bir deyiřle, bir krizi zerek, iki yeni kriz yarattı. Balkan devletleri arasında transit gle ařını baskıya uęrayan bir devletlerarası "kriz" ortaya ıktı. Ayrıca mlteciler bireysel olarak da insan hakları kaybına uęradılar.

Transit Balkan lkeleri, bařlangıta sınırlarını saęlamlařtırarak AB beklentilerine uygun transit baskıya tepki gsterdi. Makedonya ve Macaristan acil durum ilan etti ve Slovenya ile birlikte gmenleri karřılamak iin biber spreyi kullandı. Ancak, AB yelięinin teřviki AB i sorunları ve kapasitelerinin yetersizlięi nedeniyle aęırlıęını yitirdięinden Balkan devletleri, sınırları aan domino etkisiyle, sığınmacıların AB'ye doęru ilerleyebilmeleri iin bir koridor oluřturdu. Birok lke, gmenlerin kendi topraklarında 'kaybolmaması' ve geiř srecini hızlandırmak iin zaman ařımına uęramıř geiř izninin verilmesini saęlamak iin bir sınırdan dięerine ulařımı organize ettiler. Almanya, artık sığınmacıları kabul edemedięini aıka belirttikten sonra, Balkan lkeleri sınır kontrol kapasitelerini artırıarak ve farklı kabul edilemezlik politikaları uygulayarak yaklařımlarında U dnř yaptı.

Yeni gzorlařtırma turunda Balkan lkeleri, AB'nin istifade ettięi teřvikler karřısında Avrupa tampon blgesini geniřletti ve/veya g sorununu kendi i siyasi sorunlarını rtmek iin ara olarak kulandı. Macar Fidesz Hkmeti, yabancı dřmanlıęı politikasını tercih ederek ve Hıristiyan Avrupa'yı savunacak duvar inřaatı yaparak, seim desteęini geri kazanmak iin artan gmen akımını kullandı. Sloven ve Hırvat Hkmetleri, kısıtlayıcı Macar politikalarını izlerken, oęunlukla sığınmacılar tarafından iřten ıkarılarak dięer AB yesi lkeler tarafından kabul edilmeyeceęi endiřesiyle motive olmuřlar ve bylece AB yesi evrelerinde ekirdek yeden ayrılmıřlardı. Sırbistan, gmenlerin mmkn olan en kısa srede topraklarını gemesine izin vererek ve onlara herhangi bir yardım saęlamadan kendisini en "Avrupalı"lke olarak sundu. Kaynak ve kapasite eksiklięi sebebiyle bařka bir Őey saęlamıř olmasa da, Sırp Hkmeti "aık kapı" politikasının AB yesi lkeler arasında en sıcak yaklařımı sergileyen olarak Alman makamları tarafından takdir edilebileceęini umuyordu. Makedon Hkmeti ise dikkatini hkmeti sarsan

yolsuzluk olayından saptırmak için göç krizinden yararlandı. Makedonya'nın Avrupa sınırlarının kapatılması karşılığında yaptığı uzun seçim kampanyasında Avrupa'nın desteğine güveniyor. Ayrıca, kurtarma görüşmeleri için göç konusunun yönetmesiyle Avrupa'ya olan göç artışına büyük ölçüde katılan Yunanistan'dı. Sınırlarını açarak ve Dublin sisteminden vaz geçerek sistemin adaletsizliğine karşı isyan etti ve aynı zamanda borçların geri ödemeleri için müzakerelerde AB'ye taviz verilmeye çalıştı. Balkanlar'daki göç dalgası, ana göç yolunda olmayan diğer devletleri de etkiledi. AB üyesi ülkeler Bulgaristan ve Romanya göç dalgasında, sınır gözetim mekanizmalarını test etme ve Schengen alanına dahil edilmeleri için bunun etkinliğini gösterme fırsatı buldular. Diğer Balkan ülkeleri, Bosna-Hersek, Karadağ, Arnavutluk ve Kosova, göçmen çekmek için çok fakirdi. Bununla birlikte, AB üyelik olanaklarını artırmak için, bu devletler sığınma sistemlerinin ve sınır kontrollerinin iyileştirilmesine devam ettiler.

Bölgedeki sınırların güvenliğinin yenilenmesi sürpriz olmadı çünkü Avrupa'nınyüksek "kale duvarları"nın inşası, AB üyelik sürecinin önemli şartlarından biriydi ve bu sürecin sonunda üye ülkelerin vatandaşlarının Avrupa'daki serbest dolaşımına erişim ayrıcalığı karşısında göç baskısını durdurmaları gerekiyordu. Bununla birlikte, teori başlangıçta meyve vermeyi başaramadı, çünkü Balkanlar'da ve Türkiye'deparadoksal bir durum oluştu. Genişleme sürecinin Avrupa geleceğiyle ilgili Juncker'in Beyaz Sayfa planına dahil edilmemesi nedeniyle, Balkanlar'ın AB'ye katılma ihtimali bulunmuyor ve böylelikle bölgeyi bir tampon bölge olarak tutmak için AB'nin çıkarları korunuyor. Bununla birlikte, Brüksel siyasetinde ve kararlı teşvikler olmadan söz sahibi olmaksızın bölgedeki nispeten fakir ve politik açıdan istikrarsız ülkelerin muhtemel yenilenebilir göç baskısına karşı ana Avrupa kalesini temsil etmelerini beklemek naiflik olur. Nitekim alternatif AB-Türkiye anlaşması, paradoksal katılım sürecini ve beklentilerini bir şekilde kanıtıyor. Daha fazla endişe verici olan ise; AB göç yönetiminin iyileştirilmiş sığınma sistemi ve gelişmiş sınır kontrolleri ile koordine edilmesinden ziyade yapılan anlaşmaMültecilerin korunmasından çok her şeyin daha büyük bir takas unsurunun bir parçası olduğudur.



Avrupa Birliđi, "Avrupa'da kaçınılmaz olan iç siyasi krizi geçici olarak çözmüş olabilir", ancak kırılan AB-Türkiye anlaşması sona erdiğinde, güçlendirilmiş Balkan kalesi "yine çöktüğünde sorun yeniden patlak verebilir. Hem üye ülkelerde hem de mültecilere yönelik dayanışma samimi olmaz. Şu ana kadar AB göçmenlerin sorunlarından ziyade göçmen sorununu çözdü. Batı Balkan rotasının kapatılması Akdeniz'de daha fazla ölüme sebep oldu ve daha fazla engelle dolu Balkan rotası boşaltılmadı, ancak daha tehlikeli oldu. Devam eden akım yapılan anlaşma ve engellerin korumaya muhtaç mültecileri durduramayacağını gösteriyor. En azından Suriye'de dökülen kanı durdurmak için bir şey yapılmaya kadar. Tez, Dublin Sistemi'nin ilk ihlallerinden sonra politik olarak bölünmüş Avromanın, sorumluluk değişimi seçeneklerini güçlendirerek ve tampon bölgeyi pekiştirerek bu göç akımını ele aldığı sonucuna vardı. Tampon bölgedeki ülkeler, kendi çıkarlarını sürdürmek için göç ihracı yoluyla yeni stratejik konumlarından fırsat buldu.

## D. TEZ FOTOKOPİSİ İZİN FORMU

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