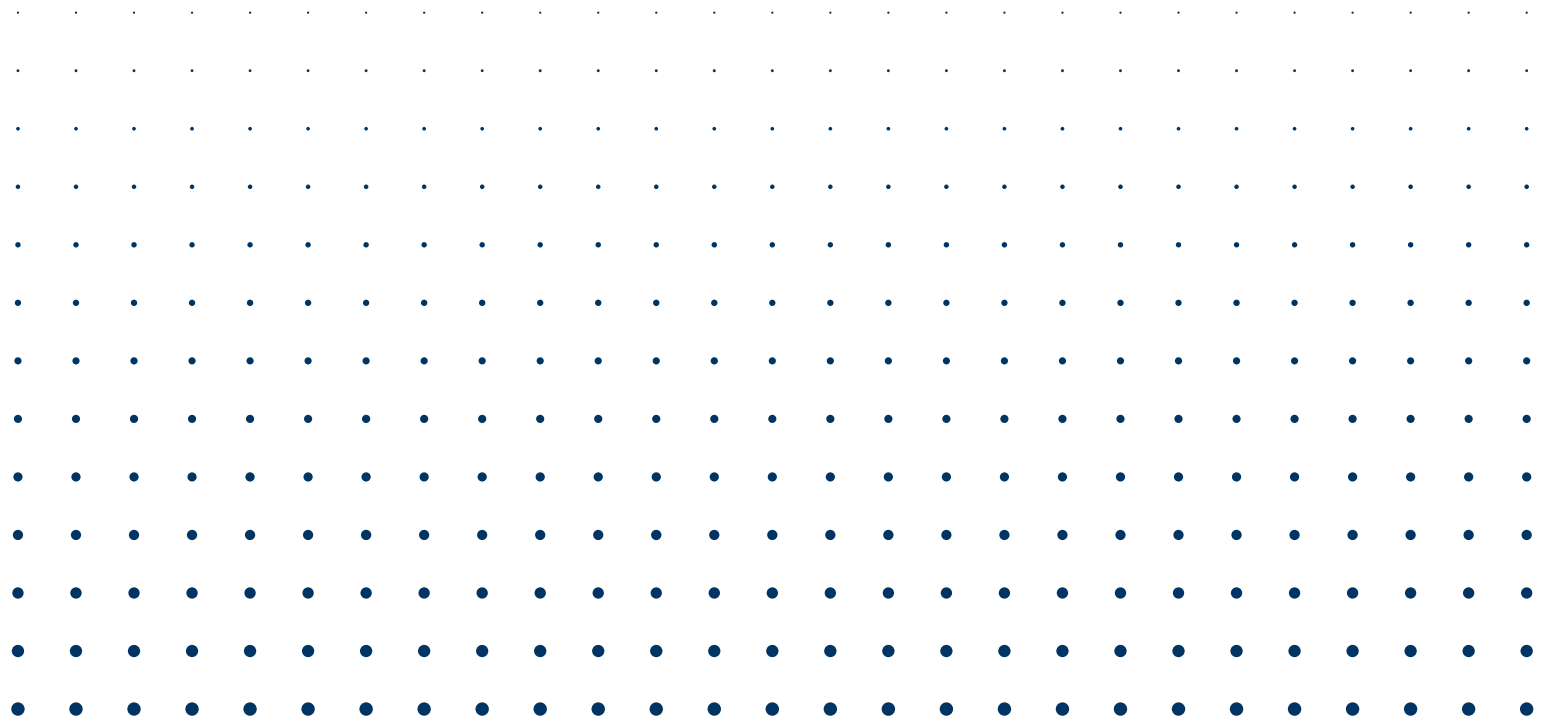


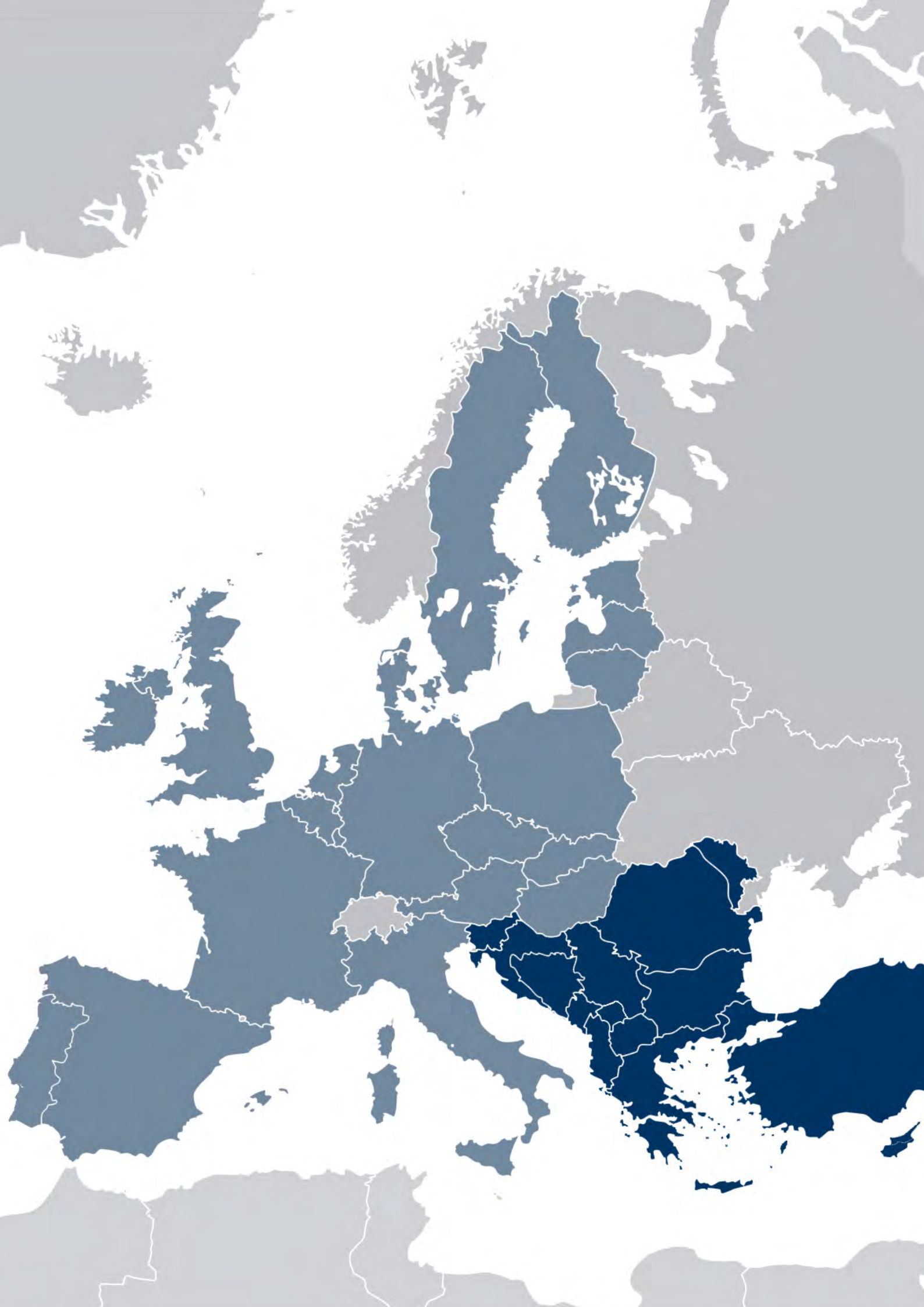


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# The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route

June 2017





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# Executive Summary

In March 2016, two measures ended what has been labeled the European refugee crisis – the closure of the so-called Balkan route and the agreement on the EU-Turkey statement. The EU's shift in policy put an end to the Eastern Mediterranean migration route into the EU, but it did not result in a complete closure of the Balkan route.

The effect of the two measures on the Balkan route has been threefold: First, the number of refugees and migrants moving along the route has dropped dramatically, but tens of thousands still succeed to transit; second, the route has been redirected, with the southern entry point shifting from the Greek islands to Bulgaria's land border with Turkey; and third, the form of transit has shifted back to the use of smugglers. The three EU member states located at the southern entry (Bulgaria) and northern exit (Hungary, Croatia) of the Balkan route have reacted to the inability to completely close the route with intensified efforts of systematic push-backs of refugees and migrants. Bulgaria has done so with limited success, the other two have been more successful. The attempts to physically close the Balkan route, especially in the case of Hungary, have included changes to asylum legislation that, taken together with the physical push-backs, amount to the systematic violation of human rights and the systematic violation of domestic, EU and international laws and conventions and constitutes a departure from core EU values. The two Western Balkan states on the route that aspire to EU membership, Serbia and Macedonia, have been caught in the middle. Neighboring EU member states' efforts to close the route have created a bottleneck, particularly in Serbia, where around 10,000 refugees and migrants remain stuck. Both countries'

governments have been compelled to adopt the asylum policies of their EU neighbors consisting of a combination of the misuse of the safe third country concept and of physical push-backs.

The EU's institutions and the member states not located on the Balkan route have chosen to largely ignore the performance of their fellow member states and that of the two states that seek membership in the Union. This ignorance in practice amounts to a tacit agreement. It reflects the new, temporary arrangement on the EU's asylum policy that has emerged among member states since the end of the refugee crisis. In the absence of any prospects to agree on a joint policy regarding the reception of asylum seekers within the EU, member states have shifted to a joint policy representing the lowest common denominator. This policy focuses on security measures, on keeping as many asylum seekers away from EU territory as possible and on attempts to outsource dealing with refugees and migrants to external partners, in keeping with the intent of the EU-Turkey deal. The policy has managed to temporarily paper over the inner-EU divide that had emerged during the refugee crisis, but only because of the substantially lower number of asylum seekers arriving in the EU, and despite its undermining the rule of law in the EU and its core democratic values.

While the impact of the EU member states' asylum policies may not be so evident in the EU, the negative political and societal impact on the two Western Balkan countries not (yet) members of the Union is easier to identify – and even more worrying given the continuing political instability in the region. First, the (mis)use of domestic asylum systems to deny international protection to asylum

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seekers combined with the direct involvement of police and border police in illegal push-backs has damaging effects on the rule of law and democracy. Second, the experience with neighboring EU member states' policies and with the EU's disunity in the refugee crisis discourages pro-European segments of the political elite as well as of civil society, while it encourages Eurosceptic elements among the political elite. Third, in parallel with the post-March 2016 evolution of the Balkan route, autocratic tendencies have been increasing in both Serbia and Macedonia, either encouraged or tolerated by EU member states eager to "keep the Balkan route closed".



# 1 Introduction

In March 2016, two measures ended what has been labelled the European refugee crisis that began during the summer of 2015. Those two measures were the closure of the so-called Balkan route<sup>1</sup> and the agreement on the EU-Turkey statement.<sup>2</sup> The EU's shift in policy ended the arrival of extraordinary numbers of refugees and migrants<sup>3</sup> at the south-eastern periphery of the EU – around 1,5 million in 2015 – and their onward movement to western and northern member states. Nevertheless, it did not result in a complete closure of the Balkan route.

This report analyzes developments in the countries along the Balkan route since March 2016 with respect to two aspects: 1) the changes to the flow of refugees and migrants on, and transit through, the Balkan route and 2) the changes in asylum policies of the countries along the route. The report specifically examines the relationship between the policies of EU member states located at the southern entry and northern exit of the route and those of Serbia and Macedonia – the two Western Balkan<sup>4</sup> states geographically located in between which aspire to EU membership. The report also explores the domestic political and societal impact of Ser-

bia's and Macedonia's asylum policies over which the EU holds sway. This is relevant, as democratic transformation processes in both countries are at an early stage on the path to EU membership and the EU's integration policy is meant to positively influence these processes.

Section one of the report presents the background to the 2015–16 European refugee crisis and the EU-Turkey deal, with a focus on how EU crisis management affected the actions of the countries along the Balkan route.<sup>5</sup> Section two provides a brief overview of the implementation of the deal and the overall shift of the EU's asylum policy towards securitization and border closure after April 2016. Section three examines developments and policies in the EU member states located at the entry and exit of the Balkan route (Bulgaria, Hungary, Croatia, Slovenia). In addition, it analyzes the impact on domestic politics and society in the two EU prospective members (Serbia, Macedonia). Section four envisages possible scenarios for the future of the EU-Turkey deal and its impact on developments along the Balkan route. The final section draws general conclusions and provides recommendations.

## Background to a Crisis

The European refugee crisis of 2015/16 marked the first crisis that affected the whole of the Western Balkans region, or at least a large part of

1 The Balkan route went from Turkey via Greece (and to a lesser part via Bulgaria) through Macedonia and Serbia via Hungary, and from autumn 2015 via Croatia and Slovenia, to Austria.

2 European Council, *EU-Turkey statement, 18 March 2016*, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

3 "Refugees and migrants" refers to the entirety of the population that entered the EU – those fleeing civil wars, those seeking asylum due to individual or group-based persecution, and those migrating for other reasons, including economic ones.

4 Though no commonly agreed definition exists, the term Western Balkans most often refers to the Yugoslav successor states minus Slovenia and sometimes also minus Croatia, plus Albania. In this report, for practical reasons, Croatia is included within the scope of the term.

5 For a detailed account, see: Bodo Weber, *Time for a Plan B: The European Refugee Crisis, the Balkan Route and the EU-Turkey Deal*, DPC Policy Paper, September 2016, available at: [http://www.democratizationpolicy.org/pdf/DPC\\_Policy\\_Paper\\_Europ\\_refugee\\_crisis\\_EU\\_Turkey\\_deal.pdf](http://www.democratizationpolicy.org/pdf/DPC_Policy_Paper_Europ_refugee_crisis_EU_Turkey_deal.pdf).

Table 1: Asylum seekers before, during and after the refugee crisis

Country	2014		2015		2016	
	Asylum seekers	Positive decisions*	Asylum seekers	Positive decisions	Asylum seekers	Positive decisions
Macedonia	1,289	13	435,907	3	89,152	6
Serbia	16,490	11	577,995	30	12,821	42
Croatia	450	25	140	40	2,150	100
Slovenia	385	45	260	50	1,265	170

Sources: UNHCR, MYLA, government sources

it,<sup>6</sup> since the 1990s Balkan wars. It was primarily a humanitarian crisis, presenting an exceptional test to public institutions in terms of securing transportation, shelter, and humanitarian aid for hundreds of thousands of refugees and migrants, not to mention the challenge for asylum systems that were used to dealing with only a few hundred cases per year. Yet it was also a security issue – a loss of control over state borders and the need to ensure public order amidst the irregular movement of huge numbers of refugees and migrants across the region. The refugee crisis brought the Western Balkans back into the focus of the European Union’s political attention and marked a turning point in the relationship between the Union and the countries of the region. With the potentially transformative power of its enlargement policy, the EU had for years presented the single most promising path to lasting peace through democratization, reconstruction, and economic recovery. In the wake of the EU’s internal crisis and enlargement fatigue, that transformative power had indeed been weakened, but nevertheless remained alive. Yet during the refugee crisis the countries along the Balkan route, located between EU member states, fell victim to the breakdown of the Union’s external border and its failure to agree on joint crisis policy and action. For the first time since the EU opened a membership prospect for the countries of the Western Balkans in Thessaloniki in 2003, the Union openly exported instability instead of stability to the region.

6 The crisis primarily affected Macedonia, Serbia and Croatia. Albania, Kosovo, Montenegro and Bosnia and Herzegovina were also affected, albeit marginally. Nevertheless, all the countries were included in the EU’s crisis management activities directed towards the region. This report, however, concentrates on those countries most affected.

The origins of this crisis, marked by the arrival of an unprecedented high number of refugees and migrants, can be traced back to the Union’s failure to turn its supposedly joint asylum system into a functioning Common European Asylum System (CEAS). This was first and foremost due to the lack of will of most member states to reform the Dublin system, which allocated the prime responsibility for processing asylum claims to the members located at the periphery of the Union.<sup>7</sup> A fragile, semi-formal distribution system for asylum-seekers had evolved that created disincentives to harmonize national asylum systems and promoted the breach of European and international legal obligations by member state governments – a system that was not set up to handle a larger influx of asylum-seekers. Starting in 2013, the numbers of refugees and migrants began to increase significantly, to which the EU responded with securitization measures<sup>8</sup> at its external borders, rather than with internal reforms: an ineffective response which merely shifted migratory routes. The parallel disengagement of the EU and the United States from the Syrian War and a lack of sufficient humanitarian support to the millions of Syrian refugees in Turkey, Lebanon, and Jordan finally provoked a dramatic increase in the numbers of refugees crossing the Aegean Sea from Turkey to the Greek islands in the summer of 2015. The crisis hit the EU at one

7 *Time for a Plan B.*

8 Securitization measures included the construction of fences on Greece’s and Bulgaria’s land borders with Turkey. Border police missions in the Mediterranean (Mare Nostrum, Triton) shifted their focus from saving the lives of refugees and migrants to fighting irregular migration and border protection in the Mediterranean, and ultimately led to the first EU naval mission, EUNAVFOR. See: Amnesty International, *Fears and fences. Europe’s approach to keeping refugees at bay*, November 2015, available at: [http://www.amnesty.eu/content/assets/Doc2015/2015\\_Documents/Report\\_-\\_Fear\\_and\\_Fences-EMBARGO.pdf](http://www.amnesty.eu/content/assets/Doc2015/2015_Documents/Report_-_Fear_and_Fences-EMBARGO.pdf).

of its weakest points<sup>9</sup> and led to the breakdown of its external border, the collapse of Dublin and the partial suspension of Schengen. From Greece, refugees and migrants headed towards countries that appealed to them – Austria, Germany and the northern EU member states – while countries in their path became transit countries. The refugees and migrants took the Balkan route, where they were joined by migrants from within the region who had little prospect of being given international protection,<sup>10</sup> and re-entered the EU in Hungary. When Hungary closed its borders in September/October after completing its border fence, thereby *de facto* unilaterally excluding itself from the EU's common asylum system and joint crisis management, the migrant route was redirected to Croatia and Slovenia.

The EU's immediate crisis management,<sup>11</sup> led by Germany and a coalition of member states willing to take in the refugees and migrants, throughout the autumn of 2015 was aimed at preventing an escalation of Hungary's xenophobic policy and the cascade effect upon the weak states and the rule of law downstream in the Western Balkans. It focused on enabling smooth transit along the Balkan route, curbing initial mass violence by the police in Macedonia and Serbia against refugees and migrants, solving a brief trade war between Serbia and Croatia, and lending the necessary resources to authorities to manage the refugee flow. As a result, management of the transit and cooperation along the Balkan route gradually improved. Local governments and publics in the affected Western Balkan states – particularly in those where during the 1990s citizens had themselves experienced war and taken refuge in other countries – took a pro-refugee stance. The numbers of refugees and migrants taking the route continued to rise, peaking at more than 200,000 in October 2015. As the crisis response of the Western Balkan countries became more "Europeanized," that of the EU became increasingly "Balkanized" over the winter, ending in total disintegration. The Visegrad group countries<sup>12</sup>

9 Greece's geography makes it almost impossible to effectively control this part of the EU's external (sea) border. At the same time, Greece's state institutions were ill-equipped to handle large numbers of refugees and migrants due to the strain over several years that the Euro crisis had placed on them.

10 During the crisis, citizens of Albania, Kosovo and Serbia were among the top ten nationals among asylum seekers in the EU. While those groups included also members of Roma communities still suffering from group discrimination in the Western Balkans, most came for other reasons that did not qualify them for international protection.

11 *Time for a Plan B*.

12 The Visegrad group, also known as the V4, comprises Hungary, Poland, Slovakia and the Czech Republic.

resistance to a scheme to relocate 160,000 refugees and migrants – roughly a tenth of the overall number in 2015 – which was adopted by a legally binding majority of member states in September turned the four states into an opposition block that resisted burden-sharing and adopted anti-Muslim and anti-immigration rhetoric.<sup>13</sup> An increasing number of EU governments deserted the coalition of those willing to welcome refugees, giving in to domestic populist pressures. The collapse of the coalition in early 2016 left Berlin alone to manage the crisis. The Austrian U-turn played an especially important role. By announcing a legally questionable decision to introduce an annual cap on asylum-seekers<sup>14</sup> and daily caps for the transit of refugees and migrants, Vienna took the countries of the Balkan route hostage. Out of fears of ending up with hundreds of thousands of refugees and migrants stuck in the region, the Western Balkan countries were pushed towards gradually closing the route – in breach of national, European, and international law.<sup>15</sup> As the winter drew to a close, a parallel race unfolded between Vienna, which sought the complete closure of the Balkan route, and Berlin, which pursued an agreement with Turkey which would end the mass migration across the Aegean.

On March 18, 2016, the EU, led by Germany, agreed to a refugee deal with Turkey.<sup>16</sup> Ankara would take back all refugees and migrants making their way to Greece in the future, based on the EU designating Turkey as a safe third country for asylum seekers – even though a majority of international human and asylum rights organizations rejected this designation.<sup>17</sup> For each Syrian returned from the Greek islands, the EU would resettle another one from Turkey to the Union. In addition, once the number of refugees and migrants passing through the Aegean had been lowered substantially, EU member states

13 For a breakdown of national quota under the scheme see: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf).

14 Gutachten Völker-, unions- und verfassungs-rechtliche Rahmenbedingungen für den beim Asylgipfel am 20. Jänner 2016 in Aussicht genommenen Richtwert für Flüchtlinge, Innsbruck-Wien March 26, 2016, available at: <http://www.bundeskanzleramt.at/DocView.axd?CobId=62571>.

15 *Time for a Plan B*, p. 14.

16 European Council, *EU-Turkey statement, 18 March 2016*.

17 See for example: Amnesty International, "EU-Turkey Summit: EU and Turkish leaders deal a death blow to the right to seek asylum," March 8, 2016, available at: <https://www.amnesty.org/en/latest/news/2016/03/eu-turkey-summit-reaction/>; "U.N. rights groups say EU-Turkey migrant deal may be irregular," Reuters, March 9, 2016, available at: <http://www.reuters.com/article/us-europe-migrants-idUSKCN0WA1D4>; Petra Bendel, "EU-Flüchtlingspolitik in der Krise. Blockaden, Entscheidungen, Lösungen," Friedrich-Ebert-Stiftung 2017, pp.11–15, available at: <http://library.fes.de/pdf-files/wiso/13251.pdf>.



## Introduction

would voluntarily resettle a larger number of the 3 million Syrian refugees from Turkey. In addition to 3 billion Euros in aid for the refugees in Turkey, the EU would speed up the visa liberalization and EU accession process with Turkey, arguably ignoring (and thereby abetting) the authoritarian transformation under way there. In parallel with the agreement, Macedonia illegally closed the Balkan route at its border with Greece,<sup>18</sup> supported by border police from various EU member states.

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18 Following the March 7–8 meeting between the EU and Turkey at which a joint agreement was discussed, the Macedonian government copied the policies of Slovenia, Croatia and Serbia and announced the closure of its southern border for all refugees and migrants not in possession of a Schengen visa. After agreement was reached on an EU-Turkey statement a week later, Macedonian military and police blocked attempts by thousands of refugees and migrants from the makeshift camp at Idomeni on the Greek side of the border to cross into Macedonia and without giving them the opportunity to seek asylum. See: "MUP: Makedonija potpuno zatvorila granicu za migrante," RFE, March 9, 2016, available at: <http://www.slobodnaevropa.org/a/27600171.html>; European Center for Constitutional and Human Rights, "Push-backs at the Greek-Macedonian border violating human rights," September 2016, available at: [https://www.ecchr.eu/en/international-crimes-and-accountability/migration/idomeni.html?file=tl\\_files/Dokumente/UniverselleJustiz/CaseReport\\_Idomeni\\_ECtHR\\_20160915.pdf](https://www.ecchr.eu/en/international-crimes-and-accountability/migration/idomeni.html?file=tl_files/Dokumente/UniverselleJustiz/CaseReport_Idomeni_ECtHR_20160915.pdf).

## 2 The Securitization of European Asylum Policy

Implementation of the EU-Turkey statement has brought relief to a European Union deeply divided over the refugee crisis. Even though the deal is in general not functioning as intended, it has nevertheless fulfilled its prime purpose: to substantially curb the number of arrivals in Greece and prevent their onward movement. Since April 6, 2016, arrivals on the islands are down from the previous several thousand to an average of around 80 a day; roughly 20,000 arrived by the end of 2016. During the winter of 2016/17, daily numbers dropped further to around 40. The EU as a whole saw a dramatic drop in Mediterranean arrivals to 360,000, with half of them taking the Central Mediterranean route, mostly via Libya and to a lesser extent via other parts of Northern Africa, which grew in significance after the EU-Turkey deal.<sup>19</sup> Germany had received 890,000 asylum-seekers in 2015 and just 280,000 in 2016, with most of those arriving *before* the deal took effect.<sup>20</sup>

19 The relationship between the changes in migration patterns along the more dangerous Central Mediterranean route and the Eastern Mediterranean route both during and after the European refugee crisis and the degree to which the two are linked, is a highly complicated one. The majority of refugees and migrants that have taken the Central Mediterranean route since the start of 2017 are nationals from parts of Africa that had made up only a tiny share of those crossing the Aegean Sea during the refugee crisis. At the same time, the share of refugees from the Middle East, particularly Syria, passing through Libya is smaller today than before summer 2015 – partly due to restrictions on Syrians residing in Turkey imposed in the context of the EU-Turkey deal to leave the country. Conversely, migrants from Northern Africa made up a significant share of those taking the Eastern Mediterranean route during the crisis. Because of the EU-Turkey deal, they are now forced to again take the more dangerous Central Mediterranean route.

20 <http://data.unhcr.org/mediterranean/regional.php>; "280.000 Asylsuchende im Jahr 2016," <http://www.bmi.bund.de/Shared-Docs/Pressemitteilungen/DE/2017/01/asylantraege-2016.html>.

Most other elements of the deal continue to be dysfunctional. Only a small portion of those making it to the Greek islands have been returned to Turkey (899 through the beginning of March 2017, out of whom 159 were Syrians).<sup>21</sup> The reason for this is that most refugees and migrants have applied for asylum and the Greek Asylum Service, even with support from the EU, is struggling to cope with the applications. More importantly, second-instance Appeals Committees have mostly decided in favor of applicants and rejected the notion of Turkey being a safe third country for those seeking international protection. As a consequence, those returned are largely people who had not applied for asylum or had withdrawn their applications.<sup>22</sup> However, there are documented complaints that at least in two instances Syrians and non-Syrians had been returned that either had been given no chance to apply for asylum or had been returned despite their applications. In addition, those returned faced *de facto* detention in closed refugee camps, a move legally questionable in the case of Syrians. Non-Syrians have faced extraordinarily long detention and been pressured to sign up for voluntary return to their home countries as an alternative.<sup>23</sup> A smaller num-

21 *Fifth Report on the Progress made in the implementation of the EU-Turkey Statement*, European Commission, Brussels February 2, 2017, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302\\_fifth\\_report\\_on\\_the\\_progress\\_made\\_in\\_the\\_implementation\\_of\\_the\\_eu-turkey\\_statement\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_fifth_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en.pdf).

22 Ebd.

23 *The implementation of the hotspots in Italy and Greece*, Dutch Refugee Council, December 2016, p. 48–49, available at: <http://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016.pdf>; Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, Council of Europe, August 10, 2016, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680699e93](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680699e93).

ber of Syrians and the majority of non-Syrians, 529 until the beginning of March 2017, returned to their countries of origin.<sup>24</sup> Since the failed military coup in Turkey in July, the UNHCR has faced difficulties accessing the camps, and legal assistance by domestic lawyers and human rights organizations has become difficult.<sup>25</sup> Meanwhile, the European Commission insists that implementation is proceeding “strictly in accordance with EU and international law” while none of the troubling information and legal concerns found their way into its reports.<sup>26</sup>

Greece continues to carry the main burden of the EU’s crisis policy. The decisions of the asylum Appeals Committees marked a sign of progress towards their institutional independence, which had been a long-standing demand by the EU. But now, in changed circumstances, the European Commission put pressure on the Greek government to roll back the independence of the Appeals Committees. The government in June 2016 pushed an amendment through parliament under constitutionally questionable circumstances that changed the Appeals’ Committees composition.<sup>27</sup>

The dysfunctional deal has led to a lasting humanitarian crisis on the islands. At the end of 2016, 16,000 refugees and migrants were stuck there in government-run camps, half of them not living in concrete buildings, but in tents.<sup>28</sup> These inhumane conditions became unbearable in January 2017 when an unusual cold front hit Southeastern Europe and covered the islands with snow. Several violent clashes between groups of migrants had occurred in the camps in 2016, and in December a riot and fire broke out that, according to refugee activists and human rights organizations, had been provoked by right-wing Greek extremists.<sup>29</sup> On top of all this, the Greek authorities, struggling to deal

with 60,000 asylum-seekers, were rewarded for their partial success in improving the national asylum system with an announcement from the European Commission that the EU would resume Dublin returns of asylum-seekers to Greece in March.<sup>30</sup>

Meanwhile, tensions between Turkey and the EU have risen. The Union opened a new chapter in its accession negotiations with Turkey in June 2016, but subsequently suspended the talks informally, in reaction to mass purges that followed the failed military coup. Two deadlines regarding visa liberalization in June and October 2016 were missed as Turkey had not met all benchmarks, most importantly the revision of its anti-terror legislation, which the failed coup has made ever less likely.<sup>31</sup> The EU has made no move to fulfill one of the core promises given in the EU-Turkey statement – the voluntary resettlement of a large number of Syrian refugees from Turkey, at least 150–250,000, once the number of arrivals to Greece has dropped substantially. This condition was fulfilled by May 2016 at the latest.<sup>32</sup> While President Erdogan and government members have regularly threatened to cancel the deal in an attempt to influence EU policy towards Turkey, the Turkish government so far has refrained from raising the voluntary resettlement issue.<sup>33</sup>

Despite the time the EU bought with its fragile deal with Turkey, member states have failed to bridge their deep divides and agree on a common asylum policy, particularly regarding the issue of burden-sharing. The failure of the September 2015 two-years relocation scheme underscores the refusal of a many member states to participate in fair burden-sharing. By the end of April 2017, only 16,300 asylum-seekers had been relocated from Greece and Italy, roughly 17 percent of the relocations foreseen from the two frontline countries.<sup>34</sup> A May 2016 Commission pro-

24 *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement.*

25 “Turkey denies protection to returning Syrians,” *EUobserver*, September 28, 2016, available at: <https://euobserver.com/migration/135279>; interviews with representatives of various international human rights organizations.

26 *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement.*

27 Nikolaos Gavalaki/Nicole Katsioulis, *Gestrandet in Griechenland. Wie die Implementierung der EU-Flüchtlingspolitik scheitert*, Friedrich-Ebert-Stiftung, November 2016, available at: <http://library.fes.de/pdf-files/id/12894.pdf>; interview with Greek asylum expert, 2016.

28 Summary statement of refugee flows at Eastern Aegean islands, available at: [http://mindigital.gr/images/prosfygiko/SUMMARY\\_STATEMENT\\_OF\\_REFUGEE\\_FLOWS\\_TO\\_EASTERN\\_AEGEAN\\_ISLANDS\\_20-01-2017.pdf](http://mindigital.gr/images/prosfygiko/SUMMARY_STATEMENT_OF_REFUGEE_FLOWS_TO_EASTERN_AEGEAN_ISLANDS_20-01-2017.pdf).

29 “Greece is no place for refuge,” *Politico Europe*, December 14, 2016, available at: <http://www.politico.eu/article/greece-is-no-place-for-refuge-migration-crisis-europe-refugees/>; “Asylum conditions on Greek islands ‘untenable,’” *EUobserver*, January 9, 2017, available at: <https://euobserver.com/migration/136479>.

30 Commission recommendation addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, European Commission, December 8, 2016, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation\\_on\\_the\\_resumption\\_of\\_transfers\\_to\\_greece\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation_on_the_resumption_of_transfers_to_greece_en.pdf); at the time this report was completed (beginning of May 2017), returns opposed by the Greek government had not resumed.

31 *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement.*

32 According to a Turkish government official, the German government originally set an informal benchmark of a low three-digit number of daily arrivals at the Greek islands in order for the resettlement scheme to kick in. Interview with Turkish official, 2016.

33 For example: “Turkish-Greek tension might endanger EU migrant deal,” *Hürriyet Daily News*, January 28, 2017, available at: <http://www.hurriyetdailynews.com/turkish-greek-tension-might-endanger-eu-migrant-deal.aspx?pageID=449&nID=109069&NewsCatID=429>.

34 *Eleventh report on relocation and resettlement*, European

Table 2: Number of migrants stranded after the EU-Turkey deal / Balkan route closure

Country	No. of stranded on March 10, 2016	No. of stranded end of 2016 (Dec '16)
Bulgaria	865	5,534
Macedonia (FYROM)	1,199	130
Serbia	1,706	6,232
Croatia	231	613
Slovenia	408	295

Source: IOM

posal to reform the Dublin system did not bridge the internal divide.<sup>35</sup> It foresaw cementing the current system, which puts a disproportionate burden on the member states on the external borders of the EU, but also included an automatic crisis relocation scheme. While the latter contains an opt-out possibility meant as a concession to the Visegrad countries, the Commission makes the exemption conditional on the payment of 250,000 euros per asylum seeker which is unacceptable for the Central and Eastern European member states and others.

A joint counter-proposal by the Visegrad countries during the Slovak EU presidency incorporated the Commission's opt-out idea, but proposed that member states replace relocation by participating in other EU activities such as protection of external borders and return operations. The concept, labelled "effective solidarity," reflects the V4's refusal to take in any asylum-seekers – regardless of their claims.<sup>36</sup> The Austrian government continues to side with its Eastern neighbors' illiberal asylum policies. While in 2016 the number of asylum-seekers remained slightly below the annual cap and hence avoided legal and constitutional challenges, members of the government have made radical proposals to offshore asylum applications to Africa or the Middle East and to introduce annual EU-wide caps for asylum-seekers not in line with EU and international law.<sup>37</sup> With

Malta currently presiding over the EU, the member states that continue to carry the burden of new arrivals continue to reject any proposal that would offer an opt-out for individual member states.<sup>38</sup>

In the absence of any basic agreement on the common management of asylum regarding joint responsibility for the reception of refugees and migrants that reach the EU, member states have changed their policy to one that constitutes the lowest common denominator. This limited joint EU policy has shifted its focus back to finding ways to reduce the number of asylum seekers in the EU by fighting irregular migration, a policy promoted under the label of "protection of EU's external borders." With Germany also moving away from its previous policy, there appears to be an emerging consensus on the offshoring idea, despite the poor human rights record of all potential countries of embarkment (including Libya and Egypt).<sup>39</sup>

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 Commission, April 12, 2017, available at: [http://europa.eu/rapid/press-release\\_IP-17-908\\_en.htm](http://europa.eu/rapid/press-release_IP-17-908_en.htm).

35 *The Reform of the Dublin III Regulation*, Study for the European Parliament, June 2016, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL\\_STU\(2016\)571360\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL_STU(2016)571360_EN.pdf).

36 Effective Solidarity: a way forward on Dublin revision, Slovak government non-paper, November 2016, available at: <http://www.statewatch.org/news/2016/nov/eu-council-slovak-pres-non-paper-dublin-effective-solidarity-11-16.pdf>.

37 "42.073 Asylanträge 2016 in Österreich: Obergrenze zu 96 Prozent erfüllt," *Der Standard*, January 15, 2017, available at: <http://derstandard.at/2000050764451/42-073-Asylantraege-im-Jahr-2016-Obergrenze-zu-96-Prozent>; "Austria proposes to offshore EU asylum," *EUobserver*, January 6, 2017, available at: <https://euobserver.com/migration/136462>.

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 38 "No opts-out on migration, says Malta," *EUobserver*, January 16, 2017, available at: <https://euobserver.com/eu-presidency/136546>.

39 "Malta calls for new ways to send back more migrants," *Politico Europe*, January 27, 2017, available at: <http://www.politico.eu/article/malta-calls-for-new-ways-to-send-back-more-migrants-european-commission-north-africa/>.

## 3 The Balkan Route post-April 6

The EU-Turkey deal and the official closure of the Balkan route have succeeded in their aim to end the daily movement of extraordinarily high numbers of refugees and migrants across the Aegean Sea and the Balkans on their way to the EU. But the Balkan route is not physically closed. People continue to move from Greece via Macedonia and from Turkey via Bulgaria to Serbia. While irregular migration has clearly diminished since April 6, 2016, it is still substantial. What has changed is the way refugees and migrants transit along the Balkan route, shifting back to more traditional ways of irregular movement based on the use of smuggling networks – as had been the case prior to the European refugee crisis. This makes any figures, official and unofficial, unreliable. German Chancellor Merkel insisted in September 2016 that 50,000 refugees and migrants had reached her country via the Balkan route since the arrangement with Ankara had taken effect.<sup>40</sup> Thus, at a minimum, tens of thousands per year seem to continue to move across the Western Balkans and along the wider Balkan route. But regardless of exact figures, the EU is now fully focused on preventing irregular migration, leaving the Western Balkan countries to carry the major burden. At the same time, the role that the EU has assigned to them has changed in a way that has an impact both on policy and security in the region, and alters the relationship with those countries which seek EU membership.

40 "Migrationsgipfel in Wien. Kein 'EU-Blabla', aber auch keine Lösung," *Neue Zürcher Zeitung*, September 24, 2016, available at: <https://www.nzz.ch/international/europa/migrationsgipfel-in-wien-kein-eu-blabla-aber-auch-keine-loesung-ld.118594>.

### 3.1 EU Member States Push Back

#### At the Southern Entry

With the official closure of the Aegean route and of the Greek-Macedonia border, irregular entry into the Balkans seems to have shifted to **Bulgaria**. Numbers, however inconclusive, point to a general rise in irregular entry and transit. In 2016, Bulgaria registered 19,400 applications for international protection, slightly fewer than in 2015. In mid-December, the interior ministry said that they had apprehended more than 18,000 foreign nationals in 2016 who had entered Bulgarian territory without authorization; there was a sharp rise following the failed military coup in Turkey, with 150–200 daily arrests at the border. The number of asylum-seekers residing in official camps saw a clear rise in 2016, too, with the number standing at 5,000 at the beginning of 2017. The largest camp, Harmanli, registered an exponential rise of residents, from 150 to 1,500, during just a few weeks in the summer of 2016 after Serbia tightened its border (see below). In the last six weeks of 2016, 2,200 asylum-seekers had left official camps – a clear indicator that most of them managed to continue their trip towards Western Europe.<sup>41</sup>

41 Bulgarian State Agency for Refugees data, available at: <http://www.eref.government.bg/?cat=21>; *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member State*, Hungarian Helsinki Committee, 2017, p. 5, available at: [http://www.helsinki.hu/wp-content/uploads/pushed\\_back.pdf](http://www.helsinki.hu/wp-content/uploads/pushed_back.pdf); "More than 2000 have left Bulgaria's refugee camps in the past month and a half," December 21, 2016, available at: <http://www.balkaneu.com/2000-left-bulgarias-refugee-camps-month-report/>.





Map: The Balkan Route in 2017

Transit through Bulgaria continues despite a *de facto* government policy of preventing refugees and migrants from entering Bulgaria and seeking international protection by unlawful means that dates back from three years ago, when the country faced substantial migrant numbers for the first time. This policy seems to have intensified with the redirection of the entry onto the Balkan route from Greece to Bulgaria. Half of Bulgaria's 230-kilometer border with Turkey is currently fenced, with construction work underway for the remainder, including a hardly accessible forested mountain area that currently is the main point of irregular entry. While the fence officially serves to redirect refugees and migrants to an official border crossing, government officials openly admit that Turkish border police prevent anyone from exiting Turkey at the crossing, based on an unofficial agreement with Ankara, leaving no other option than to try to cross the border irregularly. Bulgarian police respond to these irregular entries with an illegal but systematic policy of often violent push-backs, that is, summary deportations back across the border. Apprehended refugees and migrants are regularly robbed of their belongings, especially money and smartphones. Attacks by police dogs and beatings with batons are also part of what police officials have admitted to form "standard police procedure".<sup>42</sup> Likewise, the prac-

42 "Over the Line. Bulgaria Welcomes Refugees With Attack Dogs and Beatings," *The Intercept*, November 3, 2016; interview with international human rights organization official, November 2016.

tice of arbitrary detention of apprehended asylum-seekers under inhumane conditions has continued in 2016.<sup>43</sup> In 2016, just as in previous years, such treatment has produced at least one death.<sup>44</sup> Despite this overall repressive policy, successes in curbing the redirection of the Balkan route to Bulgaria remain limited. One contributing factor is the so-called "police channel": corruption among a substantial minority of border police who cooperate with human smugglers at the Turkish-Bulgarian border.<sup>45</sup>

Bulgaria has always been a transit country for asylum seekers as opposed to a reception country largely because of its asylum system which didn't change during the refugee crisis or since then. Ironically, the relatively generous practice of granting international protection to those that manage to lodge asylum claims continues, although the lack of any integration programs for refugees and migrants prompt most to continue on their journey.<sup>46</sup> Another

43 *Detention Mapping Report Bulgaria*, Bulgarian Helsinki Committee, October 2016, available at: [http://www.bghelsinki.org/media/uploads/documents/reports/special/2016-10\\_Detention\\_mapping\\_report\\_2016\\_EN.pdf](http://www.bghelsinki.org/media/uploads/documents/reports/special/2016-10_Detention_mapping_report_2016_EN.pdf).

44 "Man dies after push-back from Bulgaria," *Bordermonitoring Bulgaria*, July 30, 2016, available at: <http://bulgaria.bordermonitoring.eu/2016/07/30/breaking-news-man-dies-after-push-back-from-bulgaria/>.

45 "Over the Line. Bulgaria Welcomes Refugees With Attack Dogs and Beatings."

46 *Humiliated, ill-treated and without protection. Refugees and asylum seekers in Bulgaria*, *Pro Asyl*, December 2015, p. 34–38, available at: <https://www.proasyl.de/material/humiliated-ill-treated-and-without-protection-refugees-and-asylum-seekers-in-bulgaria-2/>.

er contributing factor to Bulgaria's transit status is that paramilitary groups of refugee hunters linked to extreme right-wing political parties have added to the travails of refugees and migrants in the country. These parties have organized anti-migrant demonstrations and contributed to the rise of anti-immigration rhetoric and hate speech since 2016. The government took legal action against some of these groups only under international pressure.<sup>47</sup> These right-wing groups have also decisively contributed to the rise of tensions in camps for asylum-seekers, especially at the Harmanli camp, which escalated into violent riots. At Harmanli, where the number of residents rose to 3,000 by the end of 2016, the first riot among different groups of nationalities broke out in September. In November, a protest escalated into what was the most serious riot so far, resulting in a massive, violent police intervention and the detention of 400 asylum-seekers. The protest was prompted by a decision by the State Agency for Refugees to impose a quarantine on the camp because of the alleged spread of an epidemic, even though Bulgaria's Chief Health Inspector categorically denied the rumor as unfounded. Domestic human rights groups accused far-right groups of spreading the rumor. Nevertheless, the government decided to turn several camps into closed ones, thus risking violation of international and EU law that sets very strict conditions for detaining asylum seekers.<sup>48</sup>

The rights of asylum-seekers were further undermined when the Bulgarian government, fearful that the crisis might pick up again, gave in to Turkish pressure following the abortive coup there. For example, a Turkish businessman who had applied for asylum in 2016 was deported to Turkey in August, even though two Bulgarian courts had previously rejected Ankara's extradition request of the alleged Gülenist. The businessman's application for international protection had been rejected two weeks after the failed coup and he was then swiftly driven to the Bulgarian-

47 "Patrolling with Impunity in Eastern Europe," *Balkan Insight*, January 25, 2017, available at: <http://www.balkaninsight.com/en/article/patrolling-with-impunity-in-eastern-europe-01-24-2017#sthash.K7rtUuk5.dpuf>.

48 "Battle in Refugee Camp Leaves Bulgarian Town Nervous," *Balkan Insight*, September 2, 2016, available at: <http://www.balkaninsight.com/en/article/battle-in-refugee-camp-leaves-bulgarian-town-nervous-09-02-2016>; "Bulgaria Arrests Hundreds of Refugees After Camp Riot," *Balkan Insight*, November 25, 2016, available at: <http://www.balkaninsight.com/en/article/hundreds-of-refugees-arrested-after-riot-in-bulgaria-11-25-2016>; "Riot in Bulgarian Refugee Camp Caused by Political and Media Manipulation," *Bulgarian Helsinki Committee*, December 5, 2016, available at: <http://www.bghelsinki.org/en/news/press/single/riot-bulgarian-refugee-camp-caused-political-and-media-manipulation/>.

Turkish border and handed over to the Turkish authorities.<sup>49</sup>

### At the Northern Exit

While the repressive policy at the southern entry to the Balkan route has yielded limited results, member states at the northern exit at the same time introduced or intensified repressive policies to block refugees and migrants from re-entering the EU.

In **Hungary**, Prime Minister Victor Orban, already the EU's leader in anti-migration rhetoric and policy, further tightened the country's repressive approach against refugees and migrants. In September 2015, Hungary had already effectively abstained from the EU's asylum policy. Its closure of the border with Serbia and Croatia (by means of a fence) and a set of legislative amendments presented a multifaceted violation of the country's national, European, and international legal obligations.<sup>50</sup> Budapest restricted application for international protection to two so-called transit zones at the Hungarian-Serbian border, which consist of several containers built into the fence and declared an extraterritorial area, though clearly located within Hungary's borders. The number of applications received per day was originally capped at 100 per zone. For those who managed to apply, there was little prospect for success, given that neighboring transit countries, including Serbia, were designated safe third countries. A mock judicial process was introduced whose sole purpose was to confirm entry through a safe third country – since almost all were officially deemed "safe," this was a given. For the rest, the irregular crossing of the border was made a criminal offense, sanctioned with up to eight years in prison. However, even this package of restrictive measures failed to seal the border with Serbia. Thousands entered Hungary every month following the official closure of the Balkan route. Nor did the gradual reduction of daily caps in the transit zones from 100 per zone down to 10 over the year help, partly because Serbia refused to re-admit rejected asylum-seekers, except its own citizens (and those of Kosovo), a tiny share of the overall number.<sup>51</sup>

49 "Push-Backs: Bulgarian-Turkish cooperation leads to more violation of human rights," *Bordermonitoring Bulgaria*, August 15, 2016, available at: <http://bulgaria.bordermonitoring.eu/2016/08/15/push-backs-bulgarian-turkish-cooperation-will-lead-to-more-violation-of-human-rights/#more-3142>.

50 *Time for a Plan B*, pp. 23–24.

51 Interview with representative of international human rights organization, October 2016.

In response, Budapest in July 2016 passed another set of amendments to the Asylum Act and the Act on State Border, adding further violations of Hungary's international legal obligations.<sup>52</sup> The amendments allowed those apprehended up to 8km from the frontier to be placed outside the border fence, effectively legalizing push-backs banned by international and EU law. To implement the new policy, 6,000 additional policemen were dispatched to the border area, and 3,000 private citizens began a 6-month police training in order to form an extra auxiliary border police. Since July, Hungarian police have pushed back to Serbia thousands of irregular migrants per month, and there are reliable reports of serious, widespread violence during such operations. Refugees and migrants are attacked with dogs, batons, and fists when caught and pushed back through tiny openings in the razor wire fence, causing additional injuries.<sup>53</sup> The new regime, however, failed to seal the border completely. The number of those who, often after repeated attempts, made their way into Hungary has been substantially reduced, while the number of those stuck in Serbia has substantially risen.<sup>54</sup> The Hungarian government reacted in February 2017 by submitting another package of amendments to five acts to parliament containing two core provisions that violate international and EU law: The first extended the 8km border zone within which apprehended refugees and migrants suffer extra-judicial push-back to the whole territory of the country. The second introduced *de facto* indefinite detention of all asylum seekers in the two transit zones. The latter move, which mirrors the one Budapest had previously introduced in 2010, but was forced to revoke under EU pressure, provoked several EU member states (Germany among them) to halt Dublin returns to Hungary.<sup>55</sup> This latest move has further reduced the number of refugees and migrants that still manage, with

52 "Latest amendments 'legalise' extrajudicial push-back of asylum-seekers, in violation of EU and international law," "Access denied," Hungarian Helsinki Committee (HHC), July 5 & July 14, 2016, available at: <http://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>; <http://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-brutality-14-July-2016.pdf>.

53 *Hungary: Migrants Abused at the Border*, Human Rights Watch, July 13, 2016, available at: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>.

54 Interviews with representative from international (October) and Serbian (November) human rights organizations, 2016.

55 "Hungary: Government's New Asylum Bill on Collective Push-backs and Automatic Detention," Hungarian Helsinki Committee, February 15, 2017, available at: <http://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>; "EU stands aside as Hungary detains migrants," *EUObserver*, March 28, 2017, available at: <https://euobserver.com/migration/137413>.

the help now of highly paid smugglers, to enter and cross Hungary, and has enhanced the bottleneck created in Serbia.

**Croatia** should be considered part of the Balkan transit route even though it is a member of the EU. This owes not only to its geography, but also to its underdeveloped asylum system that offers only limited preconditions for a significant number of asylum-seekers to stay in the country. During the refugee crisis, Croatia, for the most part, played a constructive role in managing the transit of huge numbers of refugees and migrants. In October 2015, the government opened the largest reception center in the region with a capacity to hold 5,000 in Slavonski Brod, near the border with Serbia – a border that is fairly easy to control because most of it runs along the Danube. Unlike the Western Balkan countries further south, Croatian police dealt correctly with refugees and migrants and citizens in the region of Slavonia demonstrated their solidarity with the foreigners.

The situation, however, has changed since the official closure of the Balkan route, especially regarding the performance of state authorities. While most refugees and migrants who arrived in Serbia since March 2016 sought to transit to Hungary, there has been a constant trickle of people trying to re-enter the EU at the Serbia-Croatia border, especially once Hungary tightened its border in July 2016. The Croatian government seems to have joined the EU's policy shift towards restricting migration and "controlling the EU external border"<sup>56</sup> by systematically pushing back refugees and migrants who manage to enter irregularly, while denying them the chance to claim asylum. According to UNHCR, around 150 refugees and migrants per month said they had been illegally pushed back to Serbia. Reports also suggest the use of violence during push-backs and the theft of money and smartphones, similar to what is happening on the Serbian-Hungarian border. Documented incidents include accounts of irregular migrants being beaten with batons, having dogs released on them and being stripped of their shoes and clothes before being forced back over the border. The Croatian interior ministry has denied all allegations, although there is no information that any serious investigation has been undertaken of the cases reported by UNHCR and other organizations. A 2015 partial cancellation of a memorandum of understanding that enabled border monitoring by the UNHCR remains

56 "Flüchtlinge: Neue kroatische Regierung will Migration begrenzen," *Der Standard*, October 23, 2016, available at: <http://derstandard.at/2000046370660/Fluechtlinge-Neue-kroatische-Regierung-will-Migration-begrenzen>.

in place.<sup>57</sup> In addition, since the beginning of 2017 there has been a sudden increase of cases in which Croatia's Ministry of Interior rejected well-founded applications for international protection due to arbitrary interpretation of the so-called "security obstacle". The indiscriminate referral to security assessments of the Security and Intelligence Agency (SIA) without the possibility for the foreigner or his/her attorney to have access to the reasoning behind the decision, violates Croatian law and is contrary to several Constitutional Court decisions.<sup>58</sup> Another indicator of Zagreb's policy shift is that the government has made no effort to enhance the capacities of reception centers. Despite a sharp rise in asylum applications from 200 in 2015 to 2,000 in 2016, Croatia maintains only two centers with an overall capacity of 700 (the Slavonski Brod center for short-term reception was closed in the spring of 2016). This means that the country reached its limits in 2016, ever more so as it faced a rising number of Dublin return requests from other EU member state in 2016 of people that transited through Croatia during the refugee crisis.<sup>59</sup>

In **Slovenia**, the government undertook measures early on during the refugee crisis – after Hungary closed its borders and the flow was redirected to Croatia and Slovenia – with the aim to ensure that refugees and migrants would transit across the territory of the small state, and not remain in the country. The ruling coalition had been critical of Merkel's political approach during the refugee crisis, though without being very vocal about it at the time.<sup>60</sup> Yet already in late 2015 the government had shifted towards a more restrictive policy, taking a leading role in gradually closing the Balkan route.

An amendment to the new International Protection Act proposed in early 2016 would declare all asylum applications automatically inadmissible if the applicant had entered Slovenia through another EU country. This would in practice make *any* asylum application inadmissible as Slovenia is only surrounded by member states, and was in clear violation with EU legislation, notably the Dublin regulation. The amendment was ultimately scrapped following resistance from opposition parties and civil society.<sup>61</sup>

Due to Hungary's and Croatia's restrictive asylum policies, Slovenia was largely shielded from refugees and migrants after March 2016. By the end of the year, the country had sheltered only 315 asylum seekers. Nevertheless, Slovenian Interior Minister Vesna Györkös Žnidar, in reference to Austria's restrictive asylum policy, at the end of 2016 stated that "we need to be aware that Slovenia is the first country facing a closed door and we are adjusting our measures accordingly."<sup>62</sup> Consequently, in January 2017, the government proposed an amendment to the country's Alien Act which parliament adopted, despite the presence again of protests. It gave the government the power to declare a threat to "public order and security" and suspend the right to asylum for six months by denying asylum-seekers entry and automatically expelling those who entered irregularly.<sup>63</sup>

## 3.2 Western Balkans Non-member States Caught in the Middle

### Push-back Ping Pong

The shift towards more repressive approaches to migration by the EU member states at the northern and southern ends of the Balkan route created a bottleneck in the two non-member states at the

57 "Croatia: Asylum Seekers Forced Back to Serbia," *Human Rights Watch*, January 20, 2017, available at: <https://www.hrw.org/news/2017/01/20/croatia-asylum-seekers-forced-back-serbia>; "Refugee and migrant children injured in illegal border push-backs across Balkans", Save the Children, January 24, 2017, available at: <https://www.savethechildren.net/article/refugee-and-migrant-children-injured-illegal-border-push-backs-across-balkans>; "Reagiranje MUP-a RH na objavu Human Rights Watch-a," January 20, 2017, available at: <https://www.mup.hr/novosti/359/reagiranje-mup-a-rh-na-objavu-human-rights-watch-a>.

58 *Report on arbitrary and unlawful practices by the Ministry of Interior and the Security and Intelligence Agency of the Republic of Croatia related to (non)approval of international protection or status of foreigners in Croatia*, Are You Syrious & Center for Peace Studies, Zagreb April 26, 2017, available at: [http://cms.hr/system/article\\_document/doc403/CPS\\_and\\_AYS\\_-\\_Report\\_on\\_arbitrary\\_and\\_unlawful\\_practices\\_by\\_the\\_Ministry\\_of\\_Interior\\_and\\_the\\_Security\\_and\\_Intelligence\\_Agency\\_\\_related\\_to\\_non\\_approval\\_of\\_international\\_protection\\_or\\_status\\_of\\_foreigners\\_in\\_Croatia.pdf](http://cms.hr/system/article_document/doc403/CPS_and_AYS_-_Report_on_arbitrary_and_unlawful_practices_by_the_Ministry_of_Interior_and_the_Security_and_Intelligence_Agency__related_to_non_approval_of_international_protection_or_status_of_foreigners_in_Croatia.pdf)

59 *Balkan route reversed. The return of asylum seekers to Croatia under the Dublin system*, ECRE, December 2016, available at: [http://www.asylumineurope.org/sites/default/files/resources/balkan\\_route\\_reversed.pdf](http://www.asylumineurope.org/sites/default/files/resources/balkan_route_reversed.pdf).

60 Interviews with Slovenian diplomats, 2015.

61 *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member State*, p. 20.

62 "Number of refugees and migrants accommodated in Slovenia (on 3 January 2017)," Ministry of Interior of Slovenia, available at: <http://www.policija.si/eng/index.php/component/content/article/13-news/1729-a-new-webpage-on-police-activities-re-current-migration-flows-set-up-available-informations>; "Number of asylum applications up five-fold in 2016," *The Slovenia Times*, December 29, 2016, available at: <http://www.sloveniatimes.com/number-of-asylum-applications-up-five-fold-in-2016>.

63 "Slovenia: Proposals to strip refugees and asylum-seekers of their rights must be rejected," *Amnesty International*, January 5, 2017, available at: <https://www.amnesty.org/en/latest/news/2017/01/slovenia-proposals-to-strip-refugees-and-asylum-seekers-of-their-rights-must-be-rejected/>; "Slovenian parliament legalises migrant push-backs," *EurActiv*, January 27, 2017, available at: <http://www.euractiv.com/section/justice-home-affairs/news/slovenian-parliament-toughens-law-to-prevent-migrant-influx/>.



center of the Balkan route – Macedonia and Serbia – increasing the pressure on them to also shift their asylum policies.

In March 2016, the key role in closing the Balkan route fell to **Macedonia**. The shift from a policy of enabling the swift transit of hundreds of thousands of refugees and migrants to one of closing borders and denying access to international protection was purely political, without any legal underpinning.<sup>64</sup> In April, the ruling coalition initiated some legislative amendments to lend the new policy at least a semblance of legality. A 72-hour-deadline for refugees to register at reception centers after having expressed intent to seek protection (the 2015 provision that *de facto* legalized the transit) was dropped. An amendment to the Law on Asylum and Temporary Protection extended the list of safe third countries, among others to all EU member states, notably Macedonia's neighbors Greece and Bulgaria. The law left unclear the criteria by which countries were deemed "safe" for asylum seekers, leaving the burden of proof on the applicant. In addition, in October 2016 the Macedonian government extended the state of emergency, in force since 2015, which allows military police patrols along the border, until July 2017.<sup>65</sup>

Yet despite the policy shift and a drop in the numbers, Macedonia has remained an entry point to the Balkan route, leading to attempts to completely seal the border, in violation of the law. Refugees and migrants caught by the police after irregular entry have been refused their right to claim asylum, as have most of those in the two transit centers on the Greek and Serbian border that are still open. As for those few that have been allowed into the asylum procedure, most applications had been turned down due to the rigid application of the safe third country provision. This has been supported by the Asylum Department's practice to not publish any explanations for negative first-instance decisions, and the appellate level's more or less automatic confirmation of first-instance decisions.

64 *Push-backs at the Greek-Macedonian border violating human rights*, ECCHR, September 2016, available at: [https://www.proasyl.de/wp-content/uploads/2016/09/CaseReport\\_Idomeni\\_ECtHR\\_20160914.pdf](https://www.proasyl.de/wp-content/uploads/2016/09/CaseReport_Idomeni_ECtHR_20160914.pdf).

65 "Reality of women on the move: Protection risks, concerns and challenges in response to the needs of women in transit," *Legis*, December 2, 2016, available at: <http://legis.mk/news/2150/reality-of-women-on-the-move-protection-risks-concerns-and-challenges-in-response-to-the-needs-of-women-in-transit>; Zharko Hadzi-Zafirov, "The Safe Third Country Concept And Amendments To The Law On Asylum And Temporary Protection Of The Year 11/04/2016," in: *Legal Opinions*, Skopje July 2016, available at: <http://myla.org.mk/wp-content/uploads/2016/09/Legal-opinions-July-2016.pdf>; <https://newsthatmoves.org/en/state-of-emergency-extended-in-fyrom/>.

Asylum procedures are even more of a mockery as readmission agreements with its neighbors do not function in practice. Consequently, the main instrument for implementing the policy of closing the Balkan route is not the official asylum system, but the illegal, systematic practice of push-back to Greece of all refugees and migrants apprehended after irregular entry, and of push-forward to Serbia of those stopped in the northern border area.<sup>66</sup> Due to the shift back to irregular transit through Macedonia, a practice that was well established before the 2015 refugee crisis, refugees and migrants are once again exposed to acts of violence by smugglers. Kidnapping as an extreme tool to extract even larger sums of money from the population in transit have also resumed.<sup>67</sup>

The numbers confirm this policy. While the closure of the Balkan route had left 1,200 refugees and migrants stranded in Macedonia in March 2016, there were only 130 residing in the two official camps at the end of the year.<sup>68</sup> An alleged 18,000 had been pushed back in 2016, most to Greece. Non-systematic monitoring by domestic human rights organizations suggests hundreds of push-backs per week, sometimes even per day. There are no reliable numbers for those who have managed to enter Macedonia, let alone for those who made it through the country.<sup>69</sup>

**Serbia** became the main bottleneck for refugees and migrants on the Balkan route in 2016. Refugees and migrants entering Serbia from Macedonia and Bulgaria, and to a lesser extent from Albania and Montenegro, got stuck as transit to Croatia and Hungary became very difficult. The closure of the Balkan route left 1,700 refugees and migrants stranded in Serbia in March 2016. By the end of the year their official number had risen to 7,400, while civil society representatives spoke of as many as 10,000. Of those, 6,000 were cared for in 17 government facilities. Several hundred others resided in two unsanitary make-shift camps near the two transit zones on the border with Hungary, where they wait an average 3–6 months to be let in. The rest have been sleeping rough in Belgrade, in abandoned warehouses in the city center near the

66 Interviews with representatives of Macedonian human rights organizations and asylum experts, November 2016.

67 *Irregular migration in Macedonia*, *Legis*, March 2017, available at: <http://www.legis.mk/news/2282/irregular-migration-in-macedonia>.

68 *Mixed Migration Flows in the Mediterranean and Beyond 1 Dec 2016–11 Jan 2017*, International Organization for Migration (IOM), available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/2016\\_Flows\\_to\\_Europe\\_Overview.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/2016_Flows_to_Europe_Overview.pdf).

69 Interviews with representatives of Macedonian human rights organizations, November 2016.



main train and bus station or on the outskirts of town, from where they try to move on. Following extreme cold weather in January 2017, the authorities opened an additional center near Belgrade and hundreds of refugees and migrants moved in, leaving around 1,000 sleeping rough in the capital and around one hundred at the Hungarian border.<sup>70</sup>

The authorities' performance in dealing with a rising number of refugees and migrants has been inconsistent and arbitrary. The mass police violence at the beginning of the refugee crisis abated, but police regularly prevented people from making asylum claims, and in some of the official camps there is no access to asylum procedures. At the same time, asylum procedures have returned to the use of the safe third country provision applied prior to the refugee crisis in order to keep the number of those granted international protection low – just 42 in 2016. A number of refugees and migrants have been fined for illegal entry and banned from future entry, but were then let go by police. In Belgrade, the authorities have undertaken inconclusive and ineffective attempts to push refugees and migrants out of the city and into official camps. The only effect was that refugees and migrants, including minors, were pushed out of public parks and the main train and bus station to sleep rough in abandoned warehouses.<sup>71</sup> Aid organizations were restricted in their activities. In November 2016, the Ministry of Social Affairs in an open letter ordered them to stop distributing food and clothing in an attempt to get the refugees to move to official camps.<sup>72</sup> Mid-May 2017 Serbian authorities in their latest move again changed their policy and destroyed the abandoned Belgrade warehouses. Most of the refugees and migrants that slept rough there agreed to move to official camps, while 300 to 400 that rejected the offer were left on the streets of Belgrade without any shelter.<sup>73</sup>

70 UNHCR Regional Bureau Europe Weekly Reports, available at: <http://data.unhcr.org/>; interviews with representatives from human rights organizations and with refugee activists, Belgrade 2016.

71 Interviews with representatives from human rights organizations and with refugee activists, Belgrade 2016; "Bordered lives – unbound violence. On the situation of migrants in Serbia in autumn 2016," *Moving Europe*, November 2016, available at: <http://moving-europe.org/bordered-lives-unbound-violence/>; "Recent repression on people on the move in Serbia," September 2016, available at: <http://bordermonitoring.eu/serbien/2016/09/recent-repression-on-people-on-the-move-in-serbia/>; "Croatia: Asylum Seekers Forced Back to Serbia."

72 *Open letter to international humanitarian and non-governmental organizations*, Ministry of Labour, Employment, Veteran and Social Affairs, November 4, 2016.

73 "Barake srušene, deo izbeglica tumara Beogradom," *Radio Slobodna Evropa*, May 15, 2017, available at: <https://www.slobodnaevropa.org/a/srusene-barake-migranti-ubogradu/28489344.html>.

The Serbian government abandoned its more liberal asylum and migration policy, applied during the crisis, in the summer of 2016. On July 16, following Hungary's tightening of its border ten days earlier, the Serbian leadership dispatched army and police forces to jointly patrol the borders with Bulgaria and Macedonia. The aim of the measure "in defense of national and state interests" was, according to Prime Minister Aleksandar Vučić, to protect the country from the "illegal entry of migrants." According to Vučić, "Serbia must not become a parking lot for Afghans and Pakistanis that no one else in Europe wants." For the first time since the beginning of the refugee crisis he spoke of the "migrants starting to create problems in Serbia" – a marked shift in official rhetoric.<sup>74</sup> The move legitimized a policy of systematic, illegal push-backs of refugees and migrants that has been applied since then. Human rights organizations speak of 100 to 140 push-backs per day to Bulgaria. The number of pushbacks to Macedonia is unclear. Official sources insisted they had "prevented" 18,500 irregular entries in the second half of 2016.<sup>75</sup> At the Serbian-Macedonian border, refugees and migrants are caught up between a push-back by Serbian border police and a push-forward on the Macedonian side that has been described as "playing ping pong."<sup>76</sup>

Public perceptions in Serbia of the migration crisis seem to have changed since March 2016. During the refugee crisis, citizens generally had been very open to refugees and migrants, although this attitude was based on the expectation that most of them would move on. With the end of the massive flow, the migrant problem had mostly disappeared from media reporting and public discourse.<sup>77</sup> Yet some media re-introduced anti-migrant rhetoric. In addition, neighbors of the parks in the city centers of Belgrade started daily protests in the summer of 2016 against the "dangerous" migrants, and in towns with larger camps near the Croatian and Hungarian borders online petitions against the migrants were launched.<sup>78</sup> One such petition

74 "Zajedničke snage vojske i policije na granicama Srbije," July 16, 2016, available at: <http://www.srbija.gov.rs/vesti/vest.php?id=269448>.

75 Interviews with representatives from international and Serbian human rights organizations, 2016; "Krivokapić: Smanjen broj ilegalnih ulazaka migranata," *Blic*, January 17, 2017, available at: <http://www.blic.rs/vesti/drustvo/krivokapic-smanjen-broj-ilegalnih-ulazaka-migranata/tgs9nh1>.

76 Interview with representative of Macedonian human rights organization, November 2016.

77 Non-public polling data; interviews with Serbian pollsters and refugee activists, Belgrade November 2016.

78 *Governing the Balkan route: Macedonia, Serbia and the European border regime*, Rosa Luxemburg Stiftung, Belgrade December 2016, available at: [https://www.rosalux.de/fileadmin/rls\\_uploads/pdfs/engl/Governing\\_the\\_Balkan\\_Route.pdf](https://www.rosalux.de/fileadmin/rls_uploads/pdfs/engl/Governing_the_Balkan_Route.pdf).

in the town of Šid near the Croatian border was based on unconfirmed information about a violent attack committed by a refugee and led to the authorities transferring large numbers of refugees and migrants from a refugee center near the town's railway station to other centers in the town and to other parts of Serbia.<sup>79</sup>

### The EU's Transformative Power Reversed?

During the European refugee crisis, the Western Balkan countries that are seeking to join the EU for the first time experienced a Union deeply divided to the extent that it was incapable of any joint policy, and a Union whose members were prepared to openly flout its legal basis and democratic values. That experience left a deep impression on countries including Serbia and Macedonia, undermining the transformative power of the EU's enlargement policy – a process that continued after March 2016.

Serbia and Macedonia began to seal their borders through illegal means; the EU has largely ignored these developments, while some members encouraged the practice. Thus, for example, the European Commission's 2016 annual reports for the two countries almost completely avoid the issue of illegal push-backs. Both country reports correctly analyzed the shortcomings of domestic asylum systems and asylum legislation. However, the Serbia report made no mention of illegal push-backs at all, while the Macedonia report simply mentions that "there have been reported cases of *refoulement* at the borders targeting an unidentified number of migrants." There was no reference to the illegal closing of the Balkan route at the Macedonian-Greek border.<sup>80</sup> A Commission official explained that "the EU is turning a blind eye to what's happening in Macedonia and Serbia as it does not move against similar practices in its own member states."<sup>81</sup>

In fact, regarding violations of EU law in asylum policy, the Commission had initiated infringement procedures against Hungary in 2015 and Bulgaria in 2016. But as no further information is available on the proceedings, it remains unclear whether those

measures will have any impact on the two countries' asylum legislation and human rights violations. The Commission has neither acted on the Austrian cap nor on push-back reports from Croatia. In the case of the recent amendment to Slovenia's Alien Act, it was the Council of Europe, not the EU, that criticized it.<sup>82</sup> Moreover, border police units from the EU are directly engaged in supporting the "efficient control of borders" in the countries along the Balkan route. The EU launched its new European Border and Coast Guard (EBCG) in October 2016 by sending 130 policemen to the Bulgarian-Turkish border. Though the presence of EU border police seems to have had some impact on containing human rights violations and corruption by their Bulgarian counterparts, such effects remain limited. Given the systematic nature of the push-backs, there is no reason to believe that EBCG officials have not taken notice, but they neither have the competence to investigate such violations nor can they publish their findings.<sup>83</sup> On the contrary, Bulgaria continues to figure as the EU's model pupil of effective control of the EU external border and is on track for joining Schengen. In addition, police officers from several EU member states have been deployed to Macedonia and Serbia to support domestic law agencies in securing borders. While there is no material proof that they have been *participating* in illegal push-backs, they must at least be *aware* of the systematic, illegal practice of their domestic counterparts. It is no coincidence that these police officers come from Visegrad countries (Hungary, Slovakia, Czech Republic) and from Austria.<sup>84</sup>

The refugee crisis has also for the first time led to an open fragmentation of the EU's enlargement policy in the Western Balkans, with several member states strengthening bilateral ties with the governments in Belgrade and Skopje since 2016 in order to push their repressive asylum policy. The Visegrad group in 2016 invited the Western Balkan countries to several of its meetings dealing with the migration issue, as did the Austrian government. Hungarian Prime Minister Orbán twice visited Serbia in the

82 "Slovenian parliament legalizes migrant push-backs."

83 European Border and Coast Guard Agency launches today, October 6, 2016, available at: <http://frontex.europa.eu/news/european-border-and-coast-guard-agency-launches-today-CHIYAp>; interview with representative from an international human rights organization, November 2016.

84 Ninth police contingent sets off for Macedonian-Greek border, January 9, 2017, available at: <http://www.kormany.hu/en/ministry-of-interior/news/ninth-police-contingent-sets-off-for-macedonian-greek-border>; "Seit Juli 18.500 Flüchtlinge an Einreise nach Serbien gehindert," *Der Standard*, January 18, 2017, available at: <http://derstandard.at/2000050946882/Seit-Juli-18-500-Fluechtlinge-an-Einreise-nach-Serbien-gehindert>, interviews with representatives from Serbian and Macedonian human rights organizations, 2016.

79 "Serbia Moves Refugees from Sid Following Campaign," *Balkan Insight*, April 28, 2017, available at: <http://www.balkaninsight.com/en/article/serbia-closing-one-refugee-center-for-security-reason-04-26-2017>.

80 *2016 Serbia Report; 2016 Macedonia Report*, European Commission, November 9, 2016, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf); [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf)

81 Interview with EU official, December 2016.

second half of 2016, the second time with his entire cabinet, and Austria's foreign minister, Sebastian Kurz, also intensively toured the region last year.<sup>85</sup> Both have repeatedly demonstrated their readiness to trade the EU's promotion of democracy and the rule of law in the region for winning governments over for their asylum policy. Kurz drew particular criticism in November 2016 when he made a surprise appearance at an election rally in Skopje supporting former Macedonian Prime Minister Nikola Gruevski's VMRO party. Gruevski's authoritarianism had led the country from its EU integration path and created a deep political crisis in 2015. The escalation led to intense diplomatic activities by the EU and the US. At the rally, Kurz praised Macedonia for being "on a good path towards the European Union," adding that "Macedonia is a very important partner for Austria and we are particularly grateful for the support we received from Macedonia in 2015 and 2016. The refugee crisis was a major challenge for Austria. Without your government, we wouldn't have been able to close the Balkan Route."<sup>86</sup>

As a consequence, pro-European forces among both political elites and civil society in Serbia and Macedonia have lost trust in the EU and its transformative power, while others have drawn their conclusions as well. Political leaders in the two countries have started to publicly speak about the crisis of the European Union, and government officials have begun to mock their counterparts from EU member states regarding the weakness and internal division at public fora.<sup>87</sup> The Union's credibility as a promoter of democracy and the rule of law suffered particularly among civil society in the region. A representative of a human rights organization from Serbia reported an anecdote from a visit by a foreigner to the organization's offices in Belgrade where the guest was informed about the situation of migrants in the country and the comparatively much worse treatment they experience in neighboring Bulgaria. According to the representative, the guest ended up wondering "why Bulgaria is in the EU and Serbia isn't."<sup>88</sup> As one of the les-

sons learned, the candidate countries' governments have tried to exploit their role in the EU's refugee and migration policy to push their case for integration. The Macedonian government, for example, in the spring of 2016 intensively lobbied Union officials and member states for an opening date for membership negotiations, citing the country's constructive role in stopping refugees and migrants on their path towards the EU.<sup>89</sup> While these examples indicate the negative impact the EU's management of the refugee crisis has had on political elites and civil society representatives in the two countries, assessments on whether and how it affected the views of the public at large lack sufficient empirical evidence. In Serbia, public support for the country's EU integration temporarily peaked at the height of the refugee crisis in September 2015. Then, Belgrade was the focus of Brussels and high-level EU officials frequently visited the Serbian capital, leaving citizens with the impression that their country is an EU priority. Since March 2016, the fate of refugees and migrants in Serbia for the most part has disappeared from the mainstream media.<sup>90</sup> In Macedonia, the refugee crisis was primarily kept out of the mostly government-controlled media and citizens had little contact with refugees and migrants since the transit route bypassed the larger towns.<sup>91</sup>

85 "Vučić: Bićemo humani, ali ilegalne migrante nećemo prihvatiti," *Tanjug*, September 5, 2016, available at: <http://www.tanjug.rs/mobile/full-view.aspx?izb=268524>.

86 "Austrian FM Defends Decision to Back Macedonia Ruling Party," *Balkan Insight*, November 28, 2016, available at: <http://www.balkaninsight.com/en/article/critics-slam-kurz-support-for-macedonia-s-ruling-party-11-28-2016>.

87 "7.000 MIGRANATA ZAROBLJENO U SRBIJI Vučić: Oni ne znaju šta će sa sobom, a ni mi s njima," *Blic*, September 22, 2016, available at: <http://www.blic.rs/vesti/politika/7000-migranata-zarobljeno-u-srbiji-vucic-oni-ne-znaju-sta-ce-sa-sobom-a-ni-mi-s-njima/953qkhg>; author's personal observations.

88 Conversation with a representative from a Serbian human rights organization, Belgrade November 2016.

89 "Macedonia seeks date for EU membership talks," *Politico Europe*, March 17, 2016, available at: <http://www.politico.eu/article/macedonias-eu-membership-nightmare-refugees-migrants-border-nato/>.

90 Interview with Serbian pollster, Belgrade November 2016.

91 Interview with Macedonian civil society representative, October 2016.

## 4 Possible Future Scenarios

Given that there is no agreement on a long-term, comprehensive common EU asylum and migration policy in sight, beyond the current lowest common denominator agreement among EU member states, future developments along the Balkan route depend to a large extent on the fate of the EU-Turkey deal. Should Turkey cancel the arrangement with Brussels, as Ankara has regularly threatened to do since the failed July 2016 coup, it is likely that hundreds – but not thousands – of refugees and migrants would attempt to cross the Aegean Sea to the Greek islands. Given the already unbearable conditions on the islands and the Greek government's unfortunate experience with the lack of solidarity demonstrated by the majority of EU member states, domestic authorities would most likely reopen passage to the Greek mainland. It is questionable whether the mechanisms and structures to violently push back refugees and migrants currently in place along the whole of the Balkan route would hold when faced with much larger numbers on both the southern entry and northern exits. At the same time, given the shift in asylum policy in countries along the Balkan route and within the EU over the last year, the likelihood of a policy evolution towards free passage for refugees and migrants and a welcome reception by Germany and other member states seems less likely today than in 2015. Instead, the most likely scenario would be the emergence of human rights violations on a much broader scale than currently exists, with unforeseeable consequences for the stability in the already unstable Western Balkans region. Such a development could also possibly include a redirection of the route through countries no less unstable than Serbia or Macedonia (Kosovo, Bosnia and Herzegovina, Montenegro).

Yet such a worst-case scenario is unlikely. Ankara likely will not cancel the deal with the EU, but continue to threaten cancellation, thus continuing to use the agreement as a bargaining chip vis-à-vis Brussels. Under this scenario, the current situation on the Balkan route and the asylum policy practiced by all states along the route will be maintained. So too will its negative impact on democracy and the rule of law, and its subsequent negative impact on the stability of the Western Balkan countries whose further socio-political development depends to a substantial amount on the EU and the Union's enlargement policy.

## 5 Conclusions and Recommendations

The European refugee crisis and the emergence of the Balkan route resulted primarily from the European Union's lack of a common asylum and migration policy. In a wider sense, the crisis reflected a disregard for the Union's legal foundations in asylum and migration and for the EU's core democratic values on the part of a number of member states. Both factors were also decisive in the way the EU put an end to the crisis in March 2016: the official closure of the Balkan route and the EU-Turkey deal. The role of the Western Balkan non-EU member countries on the Balkan route is one of complete dependence on the Union's policy. This was the case during the refugee crisis and has remained so since April 2016.

The main effect of the two March measures – the “closure” of the Balkan route and the EU-Turkey deal – on the Balkan route has been threefold: The number of refugees and migrants moving along the route have dropped dramatically, but the Balkan route never really closed; instead, it has been redirected, with the southern entry point shifting from the Greek islands to Bulgaria's land border with Turkey; at the same time, the form of transit has shifted back to the use of smugglers. The three EU member states located at the southern entry (Bulgaria) and northern exit (Hungary, Croatia) of the Balkan route have reacted to the inability to completely close the route with intensified efforts of systematic, often violent push-backs of refugees and migrants. Bulgaria has done so with limited success, the other two have been more successful. The attempts at closing the Balkan route, especially in the case of Hungary, clearly demonstrate that the political aim to completely close off the EU's southeastern borders and the Balkan route could only succeed at the expense of human rights and

the rule of law; It will require the systematic violation of human rights and the systematic violation of domestic, EU and international laws and conventions and the departure from core EU values.

The double effect of the partial sealing of the southern exit of the Balkan route and of the more complete sealing of the northern exit created a bottleneck in the Western Balkan countries aiming for membership. Caught in between are Macedonia, and especially Serbia, where the majority of refugees and migrants remain stuck. Both countries after March 2016 adopted – were basically compelled by circumstances to adopt – the asylum policies of their EU neighbor(s) consisting of a combination of the use of the safe third country concept as a tool to deny international protection and of systematic (often violent) push-backs. The former concept is at the heart of the EU agreement with Turkey. Hungary serves as a “role model” for the combination of both elements. Of the two Western Balkan countries, Serbia in particular has ended up with the “worst of both worlds”; it has been pushed towards illegal, antidemocratic practices *and* has been saddled with the heaviest burden. The misery of refugees and migrants on the Balkan route are thus nowhere more visible than in Serbia. The EU's institutions as well as the member states not on the Balkan route have chosen to keep quiet and ignore the performance of their fellow member states located on the route; they have remained equally silent regarding the asylum policies of the two Western Balkan states that seek membership in the Union.

How, and to what degree, violations of human rights, laws, and European and international conventions committed by the EU member states located along the Balkan route negatively impact the



rule of law and core democratic values of the EU as a whole – while relevant in terms of the Union’s credibility – is beyond the scope of this report. Similarly, the questionable legality of the foundations of the EU-Turkey statement as well as key aspects of its implementation and impact are not considered here. What is assessed is the impact of asylum policies of those EU countries on the politics and societies of the Western Balkan states not yet EU members. Though difficult to measure, the findings in this report indicate a negative effect of the EU’s (EU member states’) performance on the two countries where neither democracy nor the rule of law are firmly and sustainably established, and where unresolved status disputes pose potential security risks. First, the (mis)use of domestic asylum systems to deny international protection to asylum seekers, the direct involvement of police and border police in illegal push-backs and the indirect involvement of executives and the justice sector – by not preventing or prosecuting such illegal acts – does have damaging effects on the rule of law and democracy. Second, the experience with neighboring EU member states’ policies and with the EU’s disunity in the refugee crisis discourages pro-European segments of the political elites as well as of civil society, while at the same time it encourages Eurosceptic elements among the political elite in their belief that they can play the EU to circumvent democratic reforms conditioned in the integration process. And third, in parallel to the post-March 2016 evolution of the Balkan route, autocratic tendencies have been increasing in both Serbia and Macedonia. While a direct link is hard to prove, it does not appear to be a mere coincidence. Support for those tendencies from within the EU, either openly or indirectly, has been coming from member states involved in the policy of closure of the Balkan route.

## Recommendations

To end the multiple violations of laws and conventions committed by a number of EU member states and stop the negative impact of their asylum policies in the Western Balkan countries not yet EU members, the EU must undertake a number of measures.

With respect to Macedonia and Serbia, the EU must:

- openly identify and address both the legally questionable and the unequivocally illegal asylum policy practices in Macedonia and Serbia, including in future country reports;

- insist that Macedonia and Serbia end the practice of illegal push-backs (and push-forwards) and that they fully investigate any alleged cases of push-back;
- pressure governments in Macedonia and Serbia to provide access to asylum procedures to all who enter the country; and
- pressure governments in Macedonia and Serbia to ensure that the application of the safe third country provisions in their respective asylum legislation guarantees the individual assessment of each asylum-seeker’s case and that an independent appeals process is in place.

With respect to member states located along the Balkan route, the EU must:

- speak up against human rights violations such as violent push-backs and the violation of EU and international law in recent changes to member states’ asylum legislation;
- make consistent use of infringement procedures to bring national asylum law back in line with EU and international law;
- pressure Croatia to fully re-instate the pre-2015 border monitoring MoU with the UN-HCR; and
- authorize the new European Border and Coast Guard (EBCG) to report human rights violations by national border police and to assist national police in curbing such unlawful practices.

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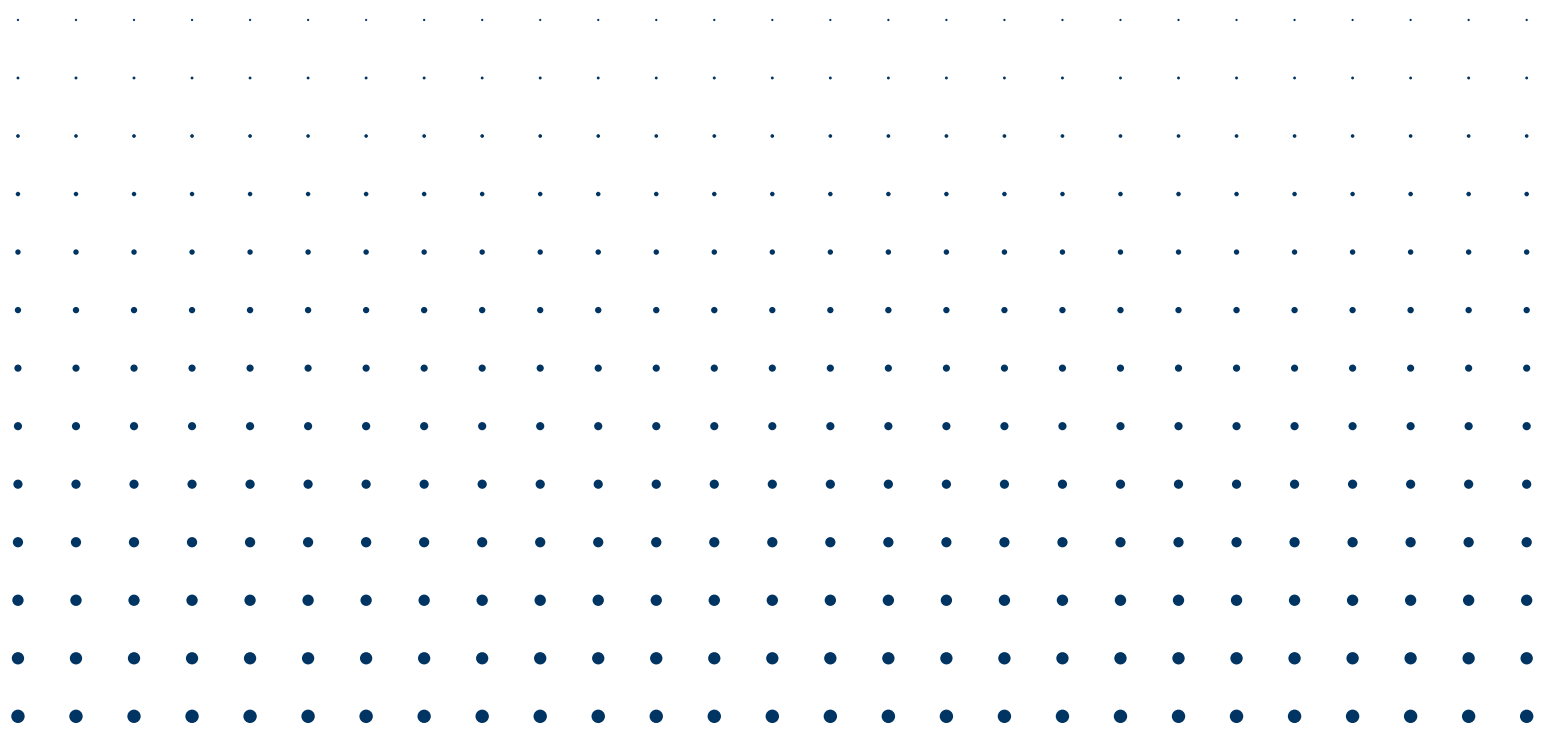
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