



ASILE
Global Asylum
Governance and
the European
Union's Role

Country Report **SERBIA**

WP5. Country Reports

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Table of contents

LIST OF ABBREVIATIONS..... 4

1. Executive Summary 5

2. Introduction 8

 2.1 General Introduction..... 8

 2.2 Introduction to the Serbian report 9

3. Methodology..... 10

 3.1. General methodology of the work package 10

 3.2. General methodology 11

 3.3. National methodology 14

4. The political, legal, and financial instruments between the EU and Serbia . 16

 4.1. Political instrument: Western Balkans Route Leaders Statement 201519

 4.2. Legal Instruments..... 22

 4.2.1. Readmission Agreement with EU..... 22

 4.2.2. Law on Asylum and Temporary Protection (LATP) 31

 4.2.3. Law on Foreigners 33

 4.3. Financial instruments..... 35

 4.3.1. Instrument for Pre-Accession Assistance (IPA) funding..... 37

 4.3.2. ECHO funding 42

 4.3.3. EU Trust Fund in Response to the Syrian Crisis (Madad Fund)..... 43

5. Analysis..... 45

 5.1. Transparency..... 45

 5.1.1. Political instrument: Western Balkans Route Leaders Statement
2015 45

 5.1.2. Legal instruments..... 46

 5.1.3. Financial instruments..... 51

 5.2. Accountability 54

 5.2.1. Political instrument: Western Balkans Route Leaders Statement
2015 54

 5.2.2. Legal instruments..... 55

 5.2.3. National accountability mechanisms 59

 5.2.4. Accountability mechanisms within organizations 64

 5.2.5. International accountability mechanisms..... 65

 5.3. Compatibility with international law 70

 5.3.1. Political instrument: Western Balkans Route Leaders Statement
2015 70

 5.3.2. Legal instruments..... 71

 5.3.3. Financial instruments..... 72

 5.4. Results 74

 5.4.1. Political instrument: Western Balkans Route Leaders Statement
2015 74

 5.4.2. Legal instruments..... 75



5.4.3.	Financial instruments.....	78
5.5.	Containment/mobility (predominantly on basis of interviews)	82
5.5.1.	Political instrument: Western Balkans Route Leaders Statement 2015	82
5.5.2.	Legal instruments.....	83
5.5.3.	Financial instruments.....	85
5.6.	Alignment with Global Compact on Refugees	87
5.6.1.	Easing pressure on host countries	87
5.6.2.	Increasing the autonomy of refugees.....	88
5.6.3.	Improving access to third country solutions.....	90
	Annex 1: List of interviewees	91
	Annex 2: National questionnaire	93



LIST OF ABBREVIATIONS

AVRR	Assisted Voluntary Return and Reintegration
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSOs	Civil Society Organizations
DRC:	Danish Refugee Centre
EASO	European Asylum Support Office
EUAA	European Union Asylum Agency
EC	European Commission
ECHO	EU Civil Protection and Humanitarian Aid Operations
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court for Human Rights
FRONTEX	European Border and Coast Guard Agency
ICMPD	International Centre for Migration Policy Development
IPA	Instrument for Pre-Accession Assistance
KIRS	Commissariat for Refugees and Migration of Republic of Serbia
MADAD	EU Regional Trust Fund in Response to the Syrian Crisis
MEI	Ministry of EU Integration of Republic of Serbia
Mol	Ministry of Interior of Republic of Serbia
MoLEVSA	Ministry of Labour, Employment, Veteran and Social Affairs of Republic of Serbia
MoH	Ministry of Health of Republic of Serbia
OHCHR:	Office of the High Commissioner for Human Rights
ONM:	Observatoire Nationale Pour la Migration
RSD:	Refugee Status Determination
SAA	EU-Serbia Stabilisation and Association Agreement
SAR	Search and Rescue
UNCAT	UN Committee against Torture
UNOPS:	UN Office for Services and Projects



1. Executive Summary

- The EU's role in managing migration and asylum in Serbia has been increasingly gaining in significance since 2015, linked with increasing EU funding (in particular Pre-Accession funding and the Madad Fund) to Serbia. Thus, the EU is becoming the dominant initiator of developments in the field of Serbian migration, asylum, and border management policies, and directly influences the commitment of state institutions thereto. With the Western Balkan Statement of 2015, the EU's policies toward the Western Balkans and Serbia became formalized for the first time in one political instrument. Although the concrete implementation of the Statement was less than transparent and monitored, it continues to influence Serbian policies in managing migration and asylum up to the present moment. Serbia understood its role in EU migration policies in a constructive manner and continues to want to be seen as a part of the solution instead of remaining part of the intercontinental migration problem.
- The EU's strong financial support to Serbia with regard to migration and reception refers predominantly to irregular migrants (without distinguishing refugees and other categories therein). This shows that the EU's priority lies with addressing the current humanitarian situation and with protecting external EU borders, rather than with investing in the long-term sustainability of the Serbian migration and asylum system. That strongly indicates that EU policies are aiming primarily at slowing down and containing migration at its external borders, and at steadily and slowly building conditions necessary for Serbia to become safe for newly-arrived or pushed back refugees. Moreover, the EU evidently is aware of the pushback practices taking place along external EU borders with Serbia, as conducted by three EU Member States – Croatia, Hungary, and Romania. The EU in Serbia is indirectly enabling these pushback practices by focusing on building reception capacities and covering the running costs of the Serbian reception system addressing the humanitarian results of the pushbacks, rather than improving the sustainability of the reception system. The absence of political or legal initiatives by the European Commission to address these EU Member State pushback practices, in combination with the EU's efforts to cover the running costs of Serbia's reception system, together make clear that the EU tolerates illegal pushback practices on its external borders with Serbia.



- Most of the Instruments are lacking transparency from both sides (Serbian and EU), who are finding non-transparency appropriate to existing local and European contexts, in order to avoid political and other consequences at local and EU levels.
- Concerns about accountability arise in particular on three issues. First, it is in the nature of pushback operations that they take place outside any legal framework. As a consequence, people who have fallen victim to such practices from Croatia, Hungary, Romania or Bosnia-Herzegovina face an accountability gap, despite the fact that (apart from the authorities of the states implementing the pushbacks) the Serbian authorities as well as EU representatives are well aware of their frequent occurrence. International legal remedies are valuable as a matter of principle, but not an effective way of addressing day-to-day violations of international and European law. Second, the FRONTEX status agreement foresees criminal, civil, and administrative immunity from Serbian jurisdiction for its staff engaged in actions in Serbia. While FRONTEX does have an internal complaints mechanism, it does not amount to an effective remedy against potential misconduct by FRONTEX staff as required by Article 13 ECHR and Article 47 of the EU Charter of Fundamental Rights. Third, there are many reports of violations of migrants' rights, violence, smuggling, abuse of office, arbitrary behaviour, and incidents related to the staff of the Serbian Commissariat for Refugees and Migration – a major recipient of EU funding. Complaints about this remain ineffective.
- On the point of compatibility with international law, the continuous and widespread pushback practices by three EU Member States along Serbian borders constitute ongoing violations of the *non-refoulement* principle, the prohibition of collective expulsion, and of the prohibition of torture and inhuman or degrading treatment. They also endanger the life and psychical and mental integrity of pushed back individuals. These constitute violations of right to seek asylum and the obligation of non-refoulement (Article 33 of the Refugee Convention, Article 3 and Article 4 Protocol 4 ECHR, Article 18 and 19 CFR) and of general human rights (the right to life laid down in i.a. Article 2 ECHR Article 2 CFR, the right to dignity laid down in article 1 CFR, and the prohibition of torture and inhuman or degrading treatment laid down in, i.a., Article 3 ECHR and Article 4 CFR). Furthermore, the Serbian asylum procedure is so problematic that the European Court of Human Rights concluded that Serbia is not a safe third country because



it denies access to the asylum procedure and exposes people to summary and arbitrary removal to other countries¹.

- The results of the EU-Serbia instruments are ambiguous in their essence. Serbian policies try to respond to the EU and EU Member States policies' demands through the implementation of all EU instruments addressed in this study. These instruments aim at the containment of migrants and refugees in 'peripheral' zones such as Serbia – including through illegal practices such as pushbacks. Obviously, Serbia's willingness to implement EU law is closely related to Serbia's hope to accede to the EU in the near future. However, Serbia is simultaneously trying to avoid stronger migration pressures and becoming a migration hotspot/buffer. Caught between these two conflicting policies aims, Serbia is slowly becoming another migration hotspot, hosting vulnerable refugees and migrants without determined legal status, without recognized and respected basic human and refugee rights. The sub-standard character of the Serbian asylum system (both when it comes to its asylum procedure and when it comes to reception) gives migrants and refugees a strong incentive to move on to the EU.
- It is evident that the EU instruments unambiguously aim at containing migrants and refugees in Serbia.
- Concerning alignment with the Global Compact on Refugees, EU instruments increase the pressure on Serbia through its focus on containment, and then subsequently partly ease this pressure by funding humanitarian relief. However, as this relief is insufficient, the result of the combination of the two faces of EU instruments (containment and humanitarian) is a protracted humanitarian crisis. Humanitarian assistance might lead to enhancing the autonomy of refugees if it were sufficient, which it is not. None of the EU's political, legal, and financial instruments foresee enabling access to third country solutions from Serbia. Therefore, in sum, EU instruments in Serbia are at cross purposes with the letter and spirit of the Global Compact of Refugees (GCR).

¹ I.a. ECtHR (GC) 21 November 2019, 47287/15, *Ilias and Ahmed v Hungary*, para 151-165.



2. Introduction

2.1 General Introduction

This country report is a part of a series of four reports (concerning Niger, Serbia, Tunisia, and Turkey) prepared under the ASILE project concerning arrangements between the EU and third countries of transit which provide modalities and facilities for the protection of persons seeking asylum while preventing onwards movement of such persons towards EU borders. The research within this working package focused on the political, legal, and financial instruments and programmes employed in connection with these arrangements. This has resulted in four country reports concerning Niger, Serbia, Tunisia, and Turkey. These country reports will be the basis of a comparative analysis to be published at a later date.

The research has focused on the effectiveness, fairness, and consistency of these instruments. Effectiveness is assessed considering the extent to which the 'policy objectives' of existing instruments and arrangements are met in practice, i.e. the actual expected or unexpected outputs and what has been specifically achieved by a policy. This analysis of instruments in terms of their own objectives is addressed by the research question concerning the results of instruments (*infra*). Fairness is examined from the perspective of states' responsibilities, and multi-stakeholder accountability, as well as standards of due process, legal certainty, and accessibility by individuals. Fairness is here also assessed in light of guarantees and mechanisms for preventing corruption, fraud or misuse of financial instruments in the implementation phases of existing policies. It relates to the individual rights impacts of policies. These issues are addressed by means of research questions addressing transparency and accountability (*infra*). The effectiveness and fairness of policy instruments will be assessed in relation with the consistency of instruments with international and regional human rights standards, as well as fundamental rights and EU Treaty law. Special consideration is given to the countries' participation in relevant international and regional human rights and refugee protection instruments and monitoring courts and bodies. The consistency analysis will also address the compatibility of instruments with the GCR. Consistency is addressed by means of the research questions concerning compatibility with international law, whether instruments promote mobility or containment, as well as alignment with the GCR.

The four reports contribute to existing literature on European externalization of asylum and migration policy by highlighting a hitherto underexposed ambivalence



in European policy. As will become clear throughout the four country reports, the central tension observed is that between, on the one hand, the policy objective of containment of migrants and refugees in third countries, and on the other hand, the policy objective of supporting asylum systems in third countries. The term containment is used for measures aiming at the prevention of departure of irregular migrants/asylum seekers towards the EU so as to prevent legal responsibility of the EU or European states (i.e. at preventing the applicability of the legal rules that are activated as soon as there is a jurisdictional link between a third country national and a European actor, i.e. the EU or a Member State). Containment takes the form of prevention of departure (e.g. pull backs by third country coast guards); prevention of movement towards a point of departure (e.g. Nigerien Act 2016/36 criminalising domestic transport of undocumented persons to the northern border of Niger); or prevention of movement towards a third country neighbouring the EU (e.g. introduction of visa requirement for Syrians by Tunisia in 2012). Containment is in the interest of European actors because it limits their operational, legal, and political responsibilities. Supporting asylum systems is, at first sight, in the interest of third countries because it reduces the burden they have to share. This can take the form of technical support (border control, asylum legislation), financial support for RSD and refugee reception, and operational support (in border control, RSD, training, refugee reception).

In all four country studies, we observe that European actors are supporting asylum systems in third countries as a tool for containment, which, ironically, leads to resistance by third country actors against support for their asylum systems. In generalizing terms (which will be specified in the country reports), the process is that European actors justify containment (as well as not merely containing irregular migrants/asylum seekers but sending additional ones to third countries; e.g. plans for disembarkation platforms and the Danish/UK Rwanda schemes) by pointing to the improved quality of third country asylum systems. If third country asylum systems are up to the standards of international law, returns are possible (safe third country principle), and preventive containment as well as sending additional irregular migrants/asylum seekers are legitimate (compatible with international law) and optimal (a Euro can do so much more in Rwanda than in Europe).

2.2 Introduction to the Serbian report

With the Western Balkans Route Leaders Statement 2015, the EU started its more active engagement in dealing with migration management challenges in Serbia,



with political, legal, and financial arrangements to follow. From a less prominent role prior to 2015, the EU became the dominant and increasingly proactive stakeholder in Serbia in the years after 2015. This occurred in the process of Serbia's accession to the EU; formal negotiations about Serbia's accession started in 2014. EU influence over Serbian migration and asylum system and its regular functioning was directly proportional to the quantity of EU funding.. The EU has been investing more in the day-to-day functioning of the system than in designing the system in consultation with other actors². Apart from helping Serbia to address the refugee influx since 2015 onwards, the EU perceived Serbia as its long-term external partner in managing migration coming across the Balkan route from Turkey and has *de facto* incorporated Serbia in its regional response to future similar situations. This can be seen in the EU-Serbia Readmission Agreement, the agreement with FRONTEX, memoranda with the European Union Agency for Asylum (EUAA), former EASO, the adjustment of Serbian asylum, migration and border management policies and legislation to the EU *acquis*. However, the EU is certainly aware of the violent and unlawful pushbacks from its Member States to Serbia, of Serbia's weak and dependent asylum and reception system, and of the Serbian initiative to construct a border fence along its border with North Macedonia. The EU thus seems ready to sacrifice its values and refugees' guaranteed human and refugee rights, as long as that happens beyond its borders, in Serbia, in exchange for containment of migration on non-EU territory.

3. Methodology

3.1. General methodology of the work package

Conducting fieldwork in four different countries was already expected to be a challenge from the start of the project. However, the outbreak of the Covid-19 pandemic coincided with the start of the ASILE project and brought with it new challenges for the researchers. According to the initial plan, data collection in the four countries was to be conducted by the researchers at the VU Amsterdam and Aarhus University so as to ensure continuity and consistency of data collection. By the summer 2020, it was clear that (international) travelling would not be possible for the research team. Therefore, instead of collecting data from a distance or fundamentally changing the data collection strategy, the research team decided

² Respondent SRB19; Respondent SRB14; Respondent SRB11; Respondent SRB21; Respondent SRB23.



to work with national researchers in Niger, Serbia, Tunisia, and Turkey. Working in cooperation with national researchers provided the additional advantage of relying more on local expertise and limited the Eurocentric character of the original research plan. Working with a multi-sited research team required developing a new methodology for data collection. Researchers in the four countries were identified through consultation with the members of the advisory board of the ASILE project in the country concerned.

Another challenge to overcome was the fundamentally different backgrounds and the contexts of the selected countries for field research. Each country, with unique bilateral relation histories with the European Union, varying governmental and civil society structures, traditions and experiences, required a tailor-made data collection strategy. To ensure that such differences and nuances would be reflected in the country reports, the national researchers and VU Amsterdam researchers revised and fine-tuned the data collection strategy in each country while the VU Amsterdam researchers developed the general methodology to provide the basis for continuity and consistency of the research.

In the following sections, general methodology and national data collection methodologies are described in detail.

3.2. General methodology

The selection of the four country studies follows a most-different-system design. We have chosen countries that maximise divergence, the only convergence being the key variable of interest, namely: European actors are actively applying political, legal, and financial instruments in the field of asylum in these countries. The axes of divergence are as follows:

- 1) Relation to the EU: Serbia is a candidate member State; Turkey has been a candidate for EU membership for a very long time, but its prospects of accession are the foreseeable future are dim; Tunisia has an Association Agreement with the EU without any prospect of accession; and Niger has no formal institutional tie with the EU.
- 2) Colonial history: Serbia was part of the Ottoman empire, gained permanent full independence in 1878, and has then been part of the Federal People's Republic of Yugoslavia in 1946 until its disintegration in 1992; Turkey was a colonial power until the end of World War I, and has since then been a regional power; Tunisia was part of the Ottoman empire



until the French installed a protectorate in 1881, and became independent in 1956; Niger was a French colony from 1900 until 1960.

- 3) Wealth: In 2020, Niger had a GDP of USD 567,70; Serbia of USD 7.730,70; Tunisia of USD 3.521, 60; and Turkey of USD 8.536,40 (source World Bank).

As an initial step, desk research was conducted to map EU and/or Member State arrangements on asylum governance with four selected countries – Niger, Serbia, Tunisia, and Turkey. The working paper *“Inventory and Typology of EU Arrangements with Third Countries”* was published in January 2021 by Nikolas Feith Tan and Jens Vedsted-Hansen as an outcome of the above-mentioned desk study. The working paper mapped the political, legal, and financial instruments implemented by the EU in/with these countries with the aim of ensuring international protection of persons in need of it while preventing their onwards movement towards EU borders. In addition to the instruments, the working paper provided the initial list of the actors involved in adopting and implementing the instruments.

On the basis of this working paper, two clusters of research questions were designed by the VU Amsterdam researchers. The first cluster addresses the formal issues of transparency, accountability, and compatibility with international law. Whereas the first two are procedural in nature, the last one is both substantive and procedural. These questions were addressed for all actors involved (regional authorities, international organizations, national authorities, and NGOs). The second cluster of questions is about outcomes of the instruments as implemented by the implementing actors. They concern the results of instruments in the instrument’s own terms; in terms of containment/mobility; and in terms of the Global Compact of Refugees.

The general research questions for all four countries (which could be adapted to the specific context in the country concerned, *infra* para 3.3) were the following:

1. **Transparency:** Have actors involved made the instruments used between the EU and the third country public?; more concretely:
 - a. Has the instrument been prepared in a transparent, public process (transparency about draft documents, EU-third country talks and negotiations, parliamentary involvement, IO and NGO stakeholder involvement)?
 - b. Is the adopted instrument itself laid down in a transparent, public document (treaty, MoU, exchange of letters, action fiche, parliamentary document)?
 - c. Is the instrument implemented in a transparent, public manner (procurement, parliamentary involvement, IO and NGO stakeholder involvement)?



2. Accountability: To what extent, and if so to whom, are procedures available to hold actors accountable for purported violations of international human rights and refugee law, including the EU Charter of Fundamental rights as well as regional (ECOWAS, AU) law (control of European, IO and national actors by international, regional and domestic judiciary, parliament, Ombudsperson, Court of Auditors) in the implementation of the instruments?

3. Compatibility: To what extent are the instruments (and to which extent are they implemented) compatible with international human rights and refugee law, including the EU Charter of Fundamental rights as well as regional (ECOWAS, AU) law, with an emphasis on their impact on the protection of vulnerable persons and groups against violence, exploitation, and discrimination. Of particular interest is the European Ombudsperson Opinion on the need to ensure human rights impact assessment by implementation actors of the EU-Turkey Statement (such as the Commission and EU Agencies like FRONTEX and EUAA).

4. Results: Specifically concerning technical assistance provided to enhance reception and protection capacities within the relevant third countries: were/are the partner States prepared to absorb and implement such assistance? To what extent have the arrangements resulted in effective and sustainable capacity-building in the reception and protection structures of the respective third countries?

5. Containment/mobility: Which instruments have promoted the containment or, conversely, the mobility of individuals and groups seeking international protection?

6. Alignment: To what extent are the instruments (and their implementation) in accordance with the three relevant GCR objectives (easing pressures on host countries; enhancing refugee self-reliance; and expanding access to third country solutions)?

Research questions 1 and 2 were addressed by analysing, in particular, parliamentary documents and official journals. For accountability (Research question 3) legislation was the primary source. In addition, respondents were invited to share whether they were aware of the negotiation, agreement, and implementation of the instruments, and whether they are aware of accountability mechanisms. Research question 3 was addressed by two methodologies. Respondents were invited to formulate their opinions on this topic; and the national researchers performed a legal analysis on this point. Research question 4 (results) was based on interviews, and on documents reporting about the implementation of the instruments both in the national and in the EU contexts. Research question 5 (containment/mobility) and 6 (alignment with the GCR) addressed on the basis of interviews and document analysis.



To ensure consistency in data collection, three extra steps were taken. (1) VU Amsterdam and CEPS organized a two-day methodology workshop for the national researchers conducting fieldwork research. Training sessions on fieldwork technics and ethics were provided by experts, each national data collection strategy was discussed, and experts provided feedback on possible country specific problems. The training sessions provided a common understanding and approach to the fieldwork. (2) Following the workshop, regular meetings were organized with the national researchers and VU Amsterdam researchers to further develop the research questions and finalize the data collection strategy in the national context. (3) In December 2021, two online seminars were organized where the national researchers gave feedback to each other's draft reports and discussed common challenges and ways to navigate them. An Anglophone seminar brought together the national researchers from Serbia, Tunisia, and Turkey and staff from VU Amsterdam and CEPS, while a Francophone seminar brought together the national researchers from Niger, Tunisia, and staff from VU Amsterdam and the Centre for Policy Studies (CEPS).

3.3. National methodology

The production of the Serbia country report included a desk research phase and a field research and data analysis phase. The desk research phase consisted of a comprehensive review of the existing primary and secondary sources: conventions; declarations; statements; international and national laws and by-laws; EU legislation; relevant academic and policy articles and investigative journalist reports. This enabled the research team to gain a comprehensive picture of the explored topic and to identify open questions and issues, which would later be subject to tailored-made interviews.

Following the desk research phase, the research team mapped the stakeholders to be approached for the interview and made a tailored-made questionnaire for each respondent, based on the respondent's profile, and taking into account a set of pre-determined questions designed by the core research team. Due to the sensitivity and complexity of the explored topics, setting up and scheduling the interviews was a rather lengthy process. As a result, the respondents asked in several iterations for further explanations and for time to prepare for the interview. Out of 33 approached respondents, 23 responded positively, zero formally declined, while 10 did not respond or did not proceed with interview. Approached respondents included: the Serbian Commissariat for Refugees and



Migration (KIRS), one of the principal stakeholders and subjects of our analysis, who was the only respondent who did not answer at all to the invitation for interview; FRONTEX, whose input was received after four months and three kind reminders; EUAA, who opted for responding in writing, but never responded to the questionnaire sent, in spite of three reminders; the Serbian Ministry of EU Integration (MEI) who opted for responding in writing but never responded to the questionnaire sent, in spite of two kind reminders; the Serbian Ministry of Interior (MoI) who did not issue an approval for the participation of its staff in interviews up to the end of the interviewing and writing phase. Although the official perspectives of non-participating respondents is lacking, their non-participation was mitigated by the availability of relevant field and other relevant data to both participating respondents and project researchers. This data was available through their mutual collaboration and long lasting relations with non-participating respondents, through the extensive practice of participating respondents and project researchers and through the desk researching process undertaken by project researchers .

Interviews were not recorded, as per request of the respondents, who required absolute anonymity and confidentiality. This allowed the research team to gain frank and candid data from respondents, which significantly enriched the study findings.

An additional round of desk research was conducted to complement the research findings and identify the issues which needed to be double-checked with the respondents.

Following the desk and field research phases, the data was analysed using the content analysis method, and within that, the deduction method – following the formulation of a hypotheses, it was tested, results of the ‘test’ were examined and conclusions were reached.

The research team made premises-hypotheses based on the findings from the desk research, conducted interviews, and previous experience. In this process, the responses were analysed contextually, based on the respondents’ relation to the topic, position, and experience (i.e., the claims of the advisor, chief, or senior officer were weighed more than the position of a first level or newly appointed officer, and depending on affiliation to concrete question or topic of the research in matter). Thanks to the confidentiality of the interviews and a trusted interviewing environment, the research team did not notice incompatible responses on major issues. In other words, the premises are a result of a consensus



between different stakeholders on the ground – international/EU, state actors, the civil sector, and academia.

Below is a breakdown of the interview participant categories and response rates.

Participant Type	Number of individuals/ organizations contacted	Did not respond or did not proceed with interview	Interviewed	Declined
Members of Parliament	0	0	0	0
Government/ Ministry official	10	4	6	0
NGOs/activists	11	2	9	0
IOs/UN	7	2	5	0
Academics & Researchers	1	0	0	0
EU/CoE	4	2	3	0
Total	33	10	23	0

4. The political, legal, and financial instruments between the EU and Serbia

Serbia has traditionally been a country of transit for migrants, moving over East Mediterranean Route via Turkey toward EU, as one of the last European non-EU countries to stand on EU European external borders and to border with the EU Schengen zone. Driven by EU pre-accession and accession negotiations³ and EU membership perspective, Serbia is meticulously conducting legal, policy, and institutional reforms in order to synchronize with EU acquis⁴. On course with the

³ Serbia's official request for EU membership was submitted on 22 December 2009 and obtained the status of candidate country on 1 March 2012. Serbia signed the Agreement on Stabilization and Accession with EU (SAA) on 29 of April 2008 that entered into force on 1 September 2013. Serbia Accession Negotiations officially started on 21 January 2014. Serbian Ministry of European Integration, 'Stabilisation and Association Agreement', www.mei.gov.rs/eng/serbia-and-eu/stabilisation-and-association-agreement/.

⁴ Negotiating Position of the Republic of Serbia for the accession of the Republic of Serbia to the European Union, Chapter 24 - 'Justice, Freedom and security', pp. 2-10, www.mup.gov.rs/wps/wcm/connect/1e1dee1d-207f-4ca6-8547-e18f7a9108ca/%D0%9F%D0%A0%D0%95%D0%93%D0%9E%D0%92%D0%90%D0%A0%D0%90%D0%A7%D0%9A%D0%90+%D0%9F%D0%9E%D0%97%D0%98%D0%A6%D0%98%D0%88%D0%90.pdf?MOD=AJPERES&CVID=IGagX87.



Serbia-EU visa liberalization process⁵ and in line with the Readmission agreement⁶ with the EU, Serbia adopted its first Asylum law in 2007 and started building its first asylum system in 2008, without previous asylum knowledge nor experience. As a consequence of the influx of migrants coming via Turkey along the Balkan migration routes in 2015 and the newly built Hungarian fence along its borders⁷, Serbia faced a high risk of becoming a buffer zone with thousands of migrants stranded on its soil in dire humanitarian need. This situation remained a constant challenge leading to great unease in public discourse for Serbian authorities over the next few years. This was reinforced by the unlawful practices of pushbacks, conducted from neighbouring EU Member States to Serbia, in order to slow down the migration influx into their territory. The first pushbacks of migrants to Serbia started in February 2016 from Croatia, soon followed by pushbacks conducted by the Hungarian authorities in July 2016⁸, and finally pushbacks from Romania in April 2017⁹. Since 2017, pushbacks of migrants to Serbia have become a regular and widely tolerated phenomenon practiced by EU Member States and followed by sporadic pushbacks to N. Macedonia and to Bulgaria by the Serbian authorities (*infra*, para. 4(b)(i)). The fear of becoming a new European migration hotspot on the EU's periphery led Serbia to develop a practice of *keeping migrants on the move*¹⁰, preventing migrants from being regularized/legalized (for example on the

⁵ European Commission (2009), 'Visa free travel for citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia before Christmas', IP/09/1852, 30 November, https://ec.europa.eu/commission/presscorner/detail/en/IP_09_1852; European Stability Initiative – ESI, 'Visa liberalisation with Serbia - Roadmap', pp. 3-4, www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Serbia.pdf.

⁶ Signed between the European Union and the Republic of Serbia on 18 September 2007 – Serbian Ministry of European Integration, The Agreement on Visa Facilitation and the Agreement on Readmission, www.mei.gov.rs/eng/documents/agreements-with-eu/the-agreement-on-visa-facilitation-and-the-agreement-on-readmission

⁷ AIDA (2020), 'Country report: Hungary', p. 19, <https://asylumineurope.org/reports/country/hungary/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>.

⁸ UNHCR (2016), 'Serbia inter agency operational update July 2016', 16 August, <https://data2.unhcr.org/en/documents/details/49993>; Hungarian Helsinki Committee (2021), 'European Court of Human Rights: Hungarian Push-backs in breach of prohibition of collective expulsions', 8 July, <https://helsinki.hu/european-court-of-human-rights-hungarian-push-backs-in-breach-of-prohibition-of-collective-expulsions/>.

⁹ UNHCR (2017), 'Serbia Monthly Snapshot July 2017', 10 August, <https://data2.unhcr.org/es/documents/details/58719>.

¹⁰ 'Serbia is not ready to become a migration hotspot or a refugee hub. That exactly shows its acting in the field', Respondent SRB13; Respondent SRB11; Respondent SRB14; 'I was working in big camps in the Near East that were hosting tens of thousands of people, and here Serbian authorities are not able to handle a couple of thousands and supply them with basic living conditions in their camps?! Impossible! That only shows Serbian *keep on the move* policies toward migrants', Respondent SRB13; 'Policy definitely stands behind that practice, having in mind, moreover, that bylaws regarding travel documents, family reunification, etc. have not been brought at all yet. Simply there is no political will for such a thing. Moreover, fact that refugees don't have access to citizenship according to the law, speaks enough about willingness of the Government to enable refugees their permanent stay in the country.', Respondent SRB8.



basis of an asylum application), and preventing more permanent stay in the country¹¹.

Eventually, Serbia started building a fence along its border with North Macedonia during the Covid crisis in 2020, in order to slow down migration from the south. However, the Serbian authorities did so clandestinely and without informing relevant stakeholders¹², experts¹³, nor the general public¹⁴, nor providing any explanation upon media requests¹⁵. To strengthen its borders, and in parallel with similar FRONTEX initiatives in Albania and Montenegro, Serbia signed a Status agreement with FRONTEX in November 2019, that came into force on 1 May 2021. This resulted in a first FRONTEX mission in Serbia on the Serbian side of Serbian-Bulgarian border, beginning 16 June 2021¹⁶.

For the EU, and for individual EU Balkan Member States, Serbia seems an important third country partner in the Western Balkans in terms of migration¹⁷. The 2015 Western Balkans Route Leaders Statement marked the beginning of the EU's more active involvement in migration management along Balkan migration routes. For Serbia, this was followed by the European Aid department of the

¹¹ Respondent SRB13; Respondent SRB11; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB7; Respondent SRB21; Respondent SRB20; Respondent SRB8.

¹² The Government's Working Group on Mixed Migration Flows was not informed about the topic (building of the border fence along border with North Macedonia) over the course of its sessions, according to the member of the Government's Working Group on Mixed Migrations Flows (Respondent SRB22).

¹³ Respondent SRB14.

¹⁴ Deutsche Welle – DW (2020), 'Misteriozna ograda protiv migranata', 24 August, www.dw.com/sr/misteriozna-ograda-protiv-migranata/a-54670606.

¹⁵ Radio Slobodna Evropa (2020), 'Srbija diže žičanu ogradu na granici sa Severnom Makedonijom', 18 August, www.slobodnaevropa.org/a/srbija-dize-zicanu-ogradu-na-granici-sa-severnom-makedonijom/30789825.html; Radio Slobodna Evropa, 'Žičane ograde ne sprečavaju migracije', 6 September, www.slobodnaevropa.org/a/srbija-migranti-ograda-zica-nova-migrantska-politika/30818776.html; Radio Slobodna Evropa (2020), 'Žičana oграда već do graničnog prelaza Srbije i Severne Makedonije, detalji strogo poverljivi', 25 September, www.slobodnaevropa.org/a/severna-makedonija-srbija-granica-zicana-ograda-postavljena-strogo-poverljivo/30857508.html.

¹⁶ FRONTEX (2021), 'Frontex expands presence in Western Balkans with operation in Serbia', 16 June, <https://frontex.europa.eu/media-centre/news/news-release/frontex-expands-presence-in-western-balkans-with-operation-in-serbia-9WRMiW>.

¹⁷ 'The EU considers Serbia to be a key partner for finding a sustainable solution for an orderly management of the flows of displaced persons transiting through the Balkan region.' Council of the European Union (2016), note 'Accession negotiations with Serbia, European Union Common Position, Chapter 24 : Justice, freedom and security', www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_poziacije/Ch24%20EU%20Common%20Position.pdf; European Parliamentary Research Service (2016), 'Serbia's role in dealing with the migration crisis' ('Serbia is an essential and helpful partner of the EU in the Balkans, and that it is therefore indispensable that the EU provide resources and adequate financial help; takes positive note of Serbia's substantial effort to ensure that third country nationals receive shelter and humanitarian supplies with EU and international support'); European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP), European Parliament, www.europarl.europa.eu/doceo/document/TA-8-2016-0046_EN.html?redirect, [www.europarl.europa.eu/RegData/etudes/BRIE/2016/589819/EPRS_BRI\(2016\)589819_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589819/EPRS_BRI(2016)589819_EN.pdf).



European Commission (ECHO)'s immediate humanitarian support, funding from the EU Regional Trust Fund in Response to the Syrian Crisis, the 'MADAD fund', and by further Serbia-EU migration and asylum policy harmonization. Serbia predominantly relied on inputs and initiatives coming from the EU and its neighbouring EU Member States in the shaping of its own asylum and migration management policies and actions¹⁸.

With EU initiative and support since the 2015 refugee crisis, migration challenges began to be addressed by Serbian authorities within the framework of the already-existing asylum and migration negotiation and harmonization process under Chapter 24 of EU-Serbia accession negotiations. The same framework served the EU as an available and comprehensive channel for policy and financial intervention in Serbia¹⁹.

Since 2015, the EU has provided more than EUR 130 million to the Serbian migration reception and asylum system, predominantly covering its systems' running costs (accommodation costs, staff, healthcare, education, social services, humanitarian aid, and Covid response)²⁰ and provided EUR 28 million to border control (IBM system, cross border cooperation, staff, equipment, and trainings), all via its special ECHO and MADAD funding, and lastly, by using its general Instrument for Pre-Accession Assistance (IPA) funding intended for Serbia-EU accession and the harmonization process.

4.1. Political instrument: Western Balkans Route Leaders Statement 2015

¹⁸ Respondent SRB11; Respondent SRB19; Respondent SRB21; Respondent SRB14; Respondent SRB18.

¹⁹ On 18 June 2015 the Government of the Republic of Serbia established the Working Group for Solving Mixed Migration Flows, chaired by Mr. Aleksandar Vulin, Minister of Labour, Employment, Veteran and Social Affairs, with the task to monitor, analyse, and discuss questions of mixed migration flows in the Republic of Serbia, in a coordinated manner.; On 4 September 2015 the Government adopted the Response Plan in case of an increased influx of migrants during the winter 2015/2016. In order to respond to the increasing influx of migrants and to ensure adequate conditions for migrants' registration and additional accommodation along the migrants' route and in case of need for long-term shelter.' EU Commission (2016), EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund', 'Action Document for EU Trust Fund to be used for the decisions of the Operational Board', Ref. Ares(2016)1251006 - 11/03/2016, p. 3. https://ec.europa.eu/trustfund-syria-region/system/files/2018-12/20160928-eu_support_to_serbia_in_managing_the_migration_refugees_crisis_balkan_route.pdf.

²⁰ According to many respondents, the EU is supporting running costs more than investing into development of the system that was initially set up with the support of other actors besides the EU. Respondent SRB19; Respondent SRB14; Respondent SRB11; Respondent SRB21; Respondent SRB23.



On 21 October 2015 the President of European Commission, Jean-Claude Juncker invited the leaders of the Western Balkans countries and of selected EU Member States (Albania, Austria, Bulgaria, Croatia, North Macedonia²¹, Germany, Greece, Hungary, Romania, Serbia, and Slovenia) for a meeting to address the emergency situation along the Western Balkans route²². On 25 October 2015, the Leader's meeting on Western Balkans route²³ took place in Brussels and resulted in a joint statement on common operational measures to address the influx of refugees²⁴. The outcome of the meeting was a 17-point Plan of Action, containing the following elements: permanent exchange of information; limiting secondary movements; supporting refugees and providing shelter and rest; managing the migration flows together; border management; tackling smuggling and trafficking; and information sharing on the rights and obligations of refugees and migrants²⁵.

After the Leader's meeting a number of follow-up video conferences, chaired by the Cabinet of the President of the European Commission, took place. As a contact point, Serbia nominated a minister, Aleksandar Vulin, who was a former Minister of Social Affairs and Serbian Government coordinator for Migration Issues²⁶, to demonstrate the significance, and its appreciation, of the Statement and follow-up initiative for Serbia²⁷, while promising increase of its own accommodation capacities and expressing its willingness to receive a certain number of refugees (6000)²⁸.

²¹ As a result of the Prespa agreement with Greece (17 June 2018) and organized national referendum that followed, Former Yugoslav Republic of Macedonia (FYROM) changed its name to North Macedonia in February 2019

²² European Commission (2015), 'President Juncker calls Leaders' Meeting in Brussels on refugee flows along the Western Balkans route', AC/15/5882, 21 October 2015, https://ec.europa.eu/commission/presscorner/detail/en/AC_15_5882.

²³ European Commission (2015), 'Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action', IP/15/5904, 25 October, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5904.

²⁴ European Union (2015), 'Leaders' Meeting on refugee flows along the Western Balkans Route: Leaders' Statement', 25 October, www.refworld.org/docid/563216cb4.html.

²⁵ Ibid.

²⁶ European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting', IP/15/5924, 27 October, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5924.

²⁷ Respondent SRB21.

²⁸ 'Other countries discussed progress on additional reception capacities capable of providing longer term shelter, which are being put in place in view of reaching an additional 50 000 such reception places along the Western Balkans route by the end of the year. While the work is still ongoing, further commitments were made yesterday, inter alia: Serbia committed an additional 3 000 reception places on top of the 3 000 places already pledged last week, indicating that work is under way'. European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting': Second Contact Points Video Conference, IP/15/6003, 5 November.



In parallel with the agreements at the EU level, there was bilateral or regional cooperation and initiatives, very often in a format that included commitments and agreements of individual EU Member States and countries on the Balkan route, supplementing the general agreements and guidelines reached at EU level. In that context, limitations in the nationalities of refugees allowed to move along the Balkan route were gradually introduced by Croatia, Serbia, North Macedonia, and Slovenia since 19 November 2015, to allow transit only to Syrians, Afghans, and Iraqis²⁹ and since 21 January 2016, only to those intending to travel to Germany or Austria³⁰, in a coordinated action to introduce restrictions on the de facto free movement of migrants across the route. In the following period, Austria summoned a meeting in Vienna on 24 February 2016, gathering some of the states represented at the Leader's meeting (Bulgaria, Croatia, Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia) to discuss measures to curb the number of migrants entering those counties via the Western Balkans route. Notably, Greece was excluded from the summit, while Bulgaria was granted observer status³¹. The Vienna meeting followed Zagreb's joint statement of Heads of police services of Austria, Slovenia, Croatia, Serbia and North Macedonia, from February 18, 2016, which officially showed the Balkan states' determination to reduce the migration flow along Western Balkans route, by introducing joint criteria for entry³². Soon after the Vienna meeting and as early as February (2016), the first pushbacks were observed at the Serbian-Croatian border; migrants of origin other than that of Syria, Afghanistan, or Iraq were forcibly returned to Serbia, after a summary assessment of their dialect and their geographical knowledge of their stated home region ((infra, para. 4(b)(i)).

In early March 2016, just before signing the EU-Turkey statement, Slovenia officially announced closure of the route (8 March). This immediately triggered the same Serbian reaction toward North Macedonia and initiated the North Macedonian instant closure of the Balkan route along its border with Greece the following day (9 March). Croatia, at the time, confirmed its compliance with the

²⁹ RTS (2015), 'UNHCR: Srbija i Makedonija ograničile protok migranata', 19 November, www.rts.rs/page/stories/sr/story/125/drustvo/2109749/unhcr-srbija-i-makedonija-ogranicile-protok-migranata.html; RTS (2015), 'I Slovenija počinje da vraća ekonomske migrante', 19 November,

www.rts.rs/page/stories/sr/story/11/region/2109966/i-slovenija-pocinje-da-vraca-ekonomske-migrante.html; Radio Free Europe (2015), 'UNHCR: Srbija i Makedonija ograničile prolazak migranata', 19 November, www.slobodnaevropa.org/a/27374852.html.

³⁰ Human Rights Watch (2016), 'Greece/Macedonia: Asylum Seekers Trapped at Border', 11 February, www.hrw.org/news/2016/02/11/greece/macedonia-asylum-seekers-trapped-border.

³¹ Council of the European Union (2016), Note 'Conference 'Managing Migration Together'', Vienna, 24 February, <https://data.consilium.europa.eu/doc/document/ST-6481-2016-INIT/en/pdf>.

³² Joint Statement of Heads of Police Services from the meeting held in Zagreb, Croatia (2016), 18 February, https://bordermonitoring.eu/wp-content/uploads/2016/02/18.2.2015_joint_statement.pdf.



acts and position of its neighbours simultaneously. Eventually, the Western Balkans Route was officially closed on 9 March 2016³³.

4.2. Legal Instruments

Serbia adopted a set of new laws in the field of asylum and migration in the context of its accession to the EU and the concomitant harmonization of its legislation with EU *acquis*. The EU-Serbia readmission agreement and the first Serbian asylum law were adopted in the context of the EU-Serbia visa liberalization dialogue³⁴ that had even preceded the EU-Serbia Stabilization and Association Agreement³⁵. The new asylum and migration laws resulted out of expert cooperation and support funded through IPA twinning projects.

4.2.1. Readmission Agreement with EU

The Republic of Serbia concluded the Readmission agreement with the EU on 18 September 2007 in Brussels³⁶ and it was ratified in the Serbian parliament the same year³⁷. The Agreement prescribes that Serbia shall readmit, without many formalities, all third-country nationals who do not, or who no longer, fulfil the legal conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of *prima facie* evidence furnished, that such persons illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of the Serbia³⁸. In implementation of the Agreement, Serbia

³³ Euroactive (2016), 'Balkan Route 'closed' after cascade of border shutdowns', 9 March, www.euractiv.com/section/global-europe/news/balkan-route-closed-after-cascade-of-border-shutdowns/;

The Guardian (2016), 'Balkan countries shut borders as attention turns to new refugee routes', 9 March, www.theguardian.com/world/2016/mar/09/balkans-refugee-route-closed-say-european-leaders.

³⁴ Signed between the European Union and the Republic of Serbia on 18 September 2007 – Serbian Ministry of European Integration, The Agreement on Visa Facilitation and the Agreement on Readmission, www.mei.gov.rs/eng/documents/agreements-with-eu/the-agreement-on-visa-facilitation-and-the-agreement-on-readmission; ESI, Visa Liberalisation with Serbia roadmap, www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Serbia.pdf.

³⁵ Law on ratification of the Stabilisation and Association Agreement between the EC and Serbia (2008), *Official Gazette RS - International treaties*, 83/2008, 29 April, www.paragraf.rs/propisi/zakon_o_potvrdivanju_sporazuma_o_stabilizaciji_i_pridruzivanju_izmedju_evropskih_zajednica_i_njihovih_drzava_clanica.html; Ministry of European Integration, Government of the Republic of Serbia, 'Stabilisation and Association Agreement', www.mei.gov.rs/eng/serbia-and-eu/stabilisation-and-association-agreement/.

³⁶ Agreement between the European Community and the Republic of Serbia on the Readmission of Persons Residing Without Authorisation, *Official Journal L* 334, 19 December 2007.

³⁷ Law on ratification of the Agreement between the European Community and the Republic of Serbia on the Readmission of Persons Residing Without Authorisation, *Official Gazette RS - International treaties*, 103/2007, 8 November 2007.

³⁸ *Ibid.* art.3 par. 1(b)



concluded 19 protocols among which with neighbouring Hungary, Rumania, and Bulgaria³⁹. With Croatia, Serbia concluded a bilateral readmission agreement with protocol, on 25 May 2009 in Rijeka⁴⁰. Readmission agreements are concluded with all other non-EU neighbouring countries, except for Kosovo.

In accordance with the EU-Serbia readmission agreement, it prevails over any bilateral agreement concluded between individual Member States and Serbia, insofar as the provisions of the latter are incompatible with those of this Agreement⁴¹.

However, the implementation of the EU-Serbia readmission agreement concerning third country nationals remained ineffective due to the inactive and irresponsible approach of the country who receiving the readmission request in each concrete case. This concerned in particular, readmission from Hungary⁴², Croatia, and Romania to Serbia, where Serbian authorities failed to respond, or responded slowly to readmission requests issued. Regarding non-EU countries, a similar situation appeared between Serbia and North Macedonia, where readmission hardly functioned due to the irresponsiveness of North Macedonian authorities to issued Serbian readmission requests⁴³. The primary explanation is likely the receiving countries' reluctance to accept migrants back after they have already transited their territories on route to their desired EU destination countries. However, official statistics on the implementation of the EU-Serbia Readmission Agreement, as well as of bilateral readmission agreements related to third-country nationals, have not been made public nor accessible to a general, expert, or any other relevant public.

Pushbacks

The first pushbacks of migrants to Serbia began in February 2016 from Croatia, implemented by the Croatian police, who forcibly returned migrants who were not Syrian, Afghani, or Iraqi in origin to Serbia, after a summary assessment of

³⁹ Serbia, Action Plan for Chapter 24, revised (2020), Belgrade www.mup.gov.rs/wps/wcm/connect/a7fbd693-caec-4f3e-b471-187a2be8bcf0/lat-Akcioni+plan+za+P24+-+revidirana+verzija+23+07+2020.pdf?MOD=AJPERES&CVID=ng1k6t5.

⁴⁰ This bilateral Readmission Agreement is relevant despite the existence of the EU-Serbia Readmission Agreement, but because Serbia did not conclude a protocol with Croatia implementing the EU-Serbia Readmission Agreement.

⁴¹ Ibid. art. 20.

⁴² AIDA (2020), 'Country report: Hungary', 62, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-HU_2020update.pdf.

⁴³ Serbian Ombudsman (2021), 'Izveštaj o praćenju postupanja prema migrantima na državnoj granici sa Republikom Severnom Makedonijom' [Report on follow up on treatment of migrants on state border with North Macedonia], p. 5. www.ombudsman.rs/attachments/article/7189/Izvestaj.pdf.



their dialect and their geographical knowledge of their stated home region⁴⁴. These were followed by pushbacks conducted by the Hungarian authorities to Serbia in July 2016⁴⁵. Hungary 'legalized' these practices in July (5 July 2016) and introduced transit zones as the sole places suitable for those willing to lodge asylum claims coming from Serbia, but only if entering Hungary directly via border crossings and not entering illegally⁴⁶. This access to asylum was restricted via the 'Hungarian waiting list' (*infra*). Pushbacks from Romania came last, in April 2017⁴⁷. Over the course of following five years, the pushback of migrants to Serbia became a regular and widely tolerated phenomenon practiced by EU Member States (Croatia, Hungary and Romania). To avoid becoming a European migration

⁴⁴ Asylum Protection Center (2016), 'Prisilna vraćanja sa srpsko-hrvatske granice' [Forced returns from Serbia border with Croatia], 2 February, www.apc-cza.org/sr-YU/8-vesti/982-prisilna-vracanja-sa-srpsko-hrvatske-granice.html; Moving Europe (2016), 'Report on Push-backs and Police violence at the Serbo-Croatian border', 2 February, <http://moving-europe.org/report-on-push-backs-and-police-violence-at-the-serbo-croatian-border-2/>; UN news (2016), UN rights chief warns police agreement by five European countries will worsen refugee crisis, 25 February, <https://news.un.org/en/story/2016/02/523062-un-rights-chief-warns-police-agreement-five-european-countries-will-worsen>; Centre for Peace Studies, Border Violence Monitoring Network, Are You Syrious, Asylum Protection Centre, No Name Kitchen (2020), 'What is happening at Croatia's external borders?', January, www.cms.hr/system/article_document/doc/625/What_is_happening_at_Croatia_s_external_borders.pdf; REACH (2016), 'Migration to Europe through the Western Balkans, December 2015-May 2016, p. 22, https://reliefweb.int/sites/reliefweb.int/files/resources/reach_report_consolidated_report_on_migration_to_europe_through_the_western_balkans_2015-2016_july_2016.pdf.

⁴⁵ Human Rights Watch (2016), 'Hungary: Migrants Abused at the Border', 13 July, www.hrw.org/news/2016/07/13/hungary-migrants-abused-border; UNHCR (2016), 'UNHCR concerned Hungary pushing asylum seekers back to Serbia', 15 July, www.unhcr.org/news/latest/2016/7/5788c85a4/unhcr-concerned-hungary-pushing-asylum-seekers-serbia.html; UNHCR (2016), 'Serbia inter agency operational update July 2016', 16 August, <https://data2.unhcr.org/en/documents/details/49993>; Hungarian Helsinki Committee (2021), 'European Court of Human Rights: Hungarian Push-backs in breach of prohibition of collective expulsions', 8 July, <https://helsinki.hu/en/european-court-of-human-rights-hungarian-push-backs-in-breach-of-prohibition-of-collective-expulsions/>; Medecins sans Frontieres (MSF) (2016), 'Sharp increase in violence against migrants since border closures in the Balkans', 22 July, www.msf.org/serbia-sharp-increase-violence-against-migrants-border-closures-balkans.

⁴⁶ ECRE (2016), 'Hungary: Latest amendments legalise extrajudicial push-back of asylum-seekers', 7 July, <https://ecre.org/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers/>. 'As a result of the legalisation of pushbacks, in the period between 5 July and 31 December 2016, 19,219 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border. These migrants were not only denied the right to apply for international protection, despite most of them were coming from war zones such as Syria, Iraq or Afghanistan, but many of them were also physically abused by personnel in uniforms and injured as a consequence.' G. Voynov, H. Franková, A. Bakonyi, M. Górczyńska, M. Nabergoj, (2017), Pushed Back at the Door, Denial of Access to Asylum in Eastern EU Member States, HHC, Hungary, p. 12, https://helsinki.hu/wp-content/uploads/pushed_back.pdf.

⁴⁷ Reports from UNHCR Serbia show an increased number of push backs and collective expulsions from Romania, with a total 1 386 cases considered as collective expulsions occurring since April 2017. 'A peak was noted in recent months, with 338 cases in September, 346 in October, 319 in November, and 267 in December 2017.' AIDA-The Asylum Information Database (2017), 'Country report Romania', 31 December, p. 23, https://asylumineurope.org/wp-content/uploads/2018/03/report-download_aida_ro.pdf; Jelena Bjelica (2017), 'The Aftermath of an Exodus: The Balkans' old smuggling routes and Europe's closed borders', p. 12, <https://reliefweb.int/sites/reliefweb.int/files/resources/the-aftermath-of-an-exodus-the-balkans-old-smuggling-routes-and-europes-closed-borders.pdf>; UNHCR (2017), 'Serbia Monthly Snapshot July 2017', 10 August, <https://data2.unhcr.org/es/documents/details/58719>.



hotspot on the EU's periphery⁴⁸ Serbia introduced practices to *keep migrants on the move*⁴⁹ and started preventing migrants from regularising/legalising their stay in Serbia (for example on the basis of an asylum application)⁵⁰, and preventing their more permanent stay in the country⁵¹ even conducting pushbacks of migrants southwards, to North Macedonia and to Bulgaria. Pushbacks from Bosnia-Herzegovina started in early 2018 but were occasional and varied depending on the intensity of the migration influx, while Bosnian border police were more focused on deterrence than on using violence or on conducting systematic pushbacks⁵². Complexity of terrain, remoteness, and difficulties in running efficient border control prevented an increase in systematic and widespread pushbacks of migrants from Bosnia to Serbia, but also prevented the undertaking of efficient and systematic pushbacks-monitoring activities by civil society organizations⁵³. Thus, the practice of pushbacks had spread over all Western Balkan region by early 2018.

The pushbacks became systematic daily practice and were frequently followed by various forms of ill-treatment in Serbia by Serbian state actors. The United Nations High Commissioner for Refugees (UNHCR) reported that in 2020, more than 25 000⁵⁴ refugees and migrants had been collectively expelled to Serbia from these four countries (Croatia, Hungary, Romania, and Bosnia-Herzegovina), and in 2021 almost 28 000⁵⁵. Hungary alone carried out nearly 72 000 pushbacks since July 2016⁵⁶.

⁴⁸ 'Serbia is not ready to become a migration hotspot or a refugee hub. That exactly shows her acting in the field.', Respondent SRB13; Respondent SRB11; Respondent SRB14.

⁴⁹ 'I was working in big camps in the Near East that were hosting tens of thousands of people, and here Serbian authorities are not able to handle a couple of thousands and supply them with basic living conditions in their camps?! Impossible! That only shows Serbian *keep on the move* policies toward migrants.', Respondent SRB13.

⁵⁰ Respondent SRB13; Respondent SRB11; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB7; Respondent SRB21; Respondent SRB20; Respondent SRB8.

⁵¹ 'Policy definitely stands behind it, having in mind, moreover, that bylaws regarding travel documents, family reunification, etc. have not been brought at all yet. Simply there is no political will for such a thing. Moreover, fact that refugees don't have access to citizenship according to the law, speaks enough about willingness of the Government to enable refugees their permanent stay in the country.', Respondent SRB8.

⁵² 'First our field reports reporting pushbacks from Bosnia and Herzegovina dated since 20 April 2018.', Respondent SRB14.

⁵³ Respondent SRB14.

⁵⁴ UNHCR (2021), 'Serbia Statistical Snapshot December 2020', 14 January, <https://data2.unhcr.org/en/documents/details/84223>.

⁵⁵ UNHCR (2022), 'Serbia Statistical Snapshot December 2021', 10 January, <https://data2.unhcr.org/en/documents/details/90372>.

⁵⁶ Hungarian Helsinki Committee (2021), 'European Court of Human Rights: Hungarian Push-backs in breach of prohibition of collective expulsions', 8 July, <https://helsinki.hu/en/european-court-of-human-rights-hungarian-push-backs-in-breach-of-prohibition-of-collective-expulsions/>.



The Serbian authorities were not officially informed of persons to be readmitted, nor were they informed of the pushback actions that were conducted regularly, often daily, along Serbia's borders. The pushback practices varied in size and brutality, depending on the intensity of migration pressures, the time of the year, and the success of smugglers and migrants in crossing the respective borders⁵⁷. Illustratively, migrants were pushed back to Serbia barefooted, or even naked according to the respondents⁵⁸, while others were beaten with batons, forced to lie in the mud or snow or bitten by police dogs before they were forced to return to Serbia⁵⁹.

Respondents said that the Serbian authorities, as well EU representatives in Serbia, are well aware of such border practices⁶⁰. According to the respondents, the Serbian police is either not present on the northern borders or ignores such obvious unlawful practices on the part of its neighbours. Furthermore, following the pushbacks, migrants receive transportation, medical care, reception, and basic needs from the Serbian reception agency (KIRS) predominantly financed with EU funding (MADAD and IPA)⁶¹.

In response to the problems with readmission with North Macedonia, Serbia began undertaking sporadic pushbacks toward North Macedonia since 2016⁶² and

⁵⁷ Asylum Protection Center (2021), 'Report on pushbacks on the northern borders of Serbia in 2021', www.azilsrbija.rs/wp-content/uploads/2021/12/PUSHBACKS-Sever-Srbije-jan-jun-2021-f-1.pdf; Asylum Protection Center (2020), 'Report on "Pushbacks" on the northern borders of Serbia in 2020', www.azilsrbija.rs/wp-content/uploads/2021/05/PUSH-BACKS.pdf.

⁵⁸ Respondent SRB14; Respondent SRB15; Respondent SRB13.

⁵⁹ Centre for Peace Studies, Border Violence Monitoring Network, Are You Syrious, Asylum Protection Centre and No Name Kitchen, WHAT IS HAPPENING AT CROATIA'S EXTERNAL BORDERS?, www.cms.hr/system/article_document/doc/625/What_is_happening_at_Croatia_s_external_borders.pdf; Asylum Protection Center (2021), Twitter, tweets on violence on course of pushbacks from Croatia, Romania and Hungary in 2021, [https://twitter.com/APC_CZA/status/1466383178663436288?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg](https://twitter.com/APC_CZA/status/1466383178663436288?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg;); [https://twitter.com/APC_CZA/status/1419582972806717440?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg](https://twitter.com/APC_CZA/status/1419582972806717440?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg;); https://twitter.com/APC_CZA/status/1405114606985650177?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg; https://twitter.com/APC_CZA/status/1395051988124061696?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg; https://twitter.com/APC_CZA/status/1394218677378105347?s=20&t=KJV2ZUs4vnnw0qy8sFPyHBg.

⁶⁰ Respondent SRB2; Respondent SRB4; Respondent SRB9.

⁶¹ Respondent SRB2; Respondent SRB3; Respondent SRB13; Respondent SRB14; Respondent SRB15.

⁶² AIDA (2016), County report Serbia, 31 December, p. 11, https://asylumineurope.org/wp-content/uploads/2017/02/report-download_aida_sr_2016update.pdf.



has conducted unlawful pushbacks more systematically since 2019⁶³. Serbia began building a barbed-wire fence on its border with North Macedonia in 2020⁶⁴. Our respondents point out that the pushbacks practices of the Serbian border police along its southern borders were possibly indirectly supported within IPA Special measures and IBM support projects (*supra* para 4(c))⁶⁵.

The Hungarian waiting list

In answer to the problems with dysfunctional readmission with Serbia, and to slow down the influx of exiles over their borders, Croatia, Romania, and Hungary began conducting consecutively de facto pushbacks of migrants to Serbia.

In the case of Hungary, pushbacks have been conducted over the fence to Serbia since 2016⁶⁶, while Hungary legalized the same practices in July (5 July 2016). Moreover, Hungary allowed access to the asylum procedure only to those entering

⁶³ UNHCR (2022), 'Serbia Statistical Snapshot December 2021', 10 January, <https://data2.unhcr.org/en/documents/details/90372>. Asylum Protection Center (2019), 'Forced refugee push backs to Macedonia from January to April 2019', 30 April, www.apc-cza.org/en/8-vesti/1628-forced-refugee-push-backs-to-macedonia-from-january-to-april-2019.html; Asylum Protection Center (2021), 'Migracije na jugu Srbije' [Migration in the south of Serbia], (www.azilsrbija.rs/wp-content/uploads/2021/12/Pushbacks-South-Serbia-jan-jun-21-f.pdf); Asylum Protection Center (2020), 'Southern camps and pushbacks', www.azilsrbija.rs/wp-content/uploads/2021/07/Pushbacks-South-2020.pdf; Asylum Protection Center (2020), 'Pushbacks on the southern borders of Serbia in 2020', www.azilsrbija.rs/wp-content/uploads/2022/01/Pushbacks-South-2020.pdf); Asylum Protection Center (2021), 'Pushbacks report for Southern Serbia borders, first half of 2021', www.azilsrbija.rs/pushbacks-report-for-southern-serbia-borders-first-half-of-2021/?lang=en.

⁶⁴ Deutsche Well-DW (2020), 'Misteriozna ograda protiv migranata', 24 August, www.dw.com/sr/misteriozna-ograda-protiv-migranata/a-54670606.

⁶⁵ Respondent SRB8, SRB14, SRB16; IOM, EU Supports Serbia to Improve Border Management in the Context of the Migration Crisis, Project Duration: 15 September 2016 - 30 June 2017, <http://serbia.iom.acsifactory.com/eu-supports-serbia-improve-border-management-context-migration-crisis>; Annual Action Programme for Serbia 2016, IPA II SERBIA Sector Reform Contract for Integrated Border Management, <https://ec.europa.eu/neighbourhood-enlargement/system/files/2017-05/ipa2016-039803.06-serbia-sector-reform-contract-for-integrated-border-management.pdf>; EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund' (2017), 'EU support to the Western Balkans in managing the migration and refugee crisis', Action Document, 30 June, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3AWestern%20Balkans%20.

⁶⁶ Human Rights Watch (2016), 'Hungary: Migrants Abused at the Border', 13 July, www.hrw.org/news/2016/07/13/hungary-migrants-abused-border; UNHCR (2016), 'UNHCR concerned Hungary pushing asylum seekers back to Serbia', 15 July, www.unhcr.org/news/latest/2016/7/5788c85a4/unhcr-concerned-hungary-pushing-asylum-seekers-serbia.html.



Hungary directly via border crossings and not entering country illegally⁶⁷. The same conditions for legal entry to Hungary, via border crossings, in order to claim asylum and avoid being pushed back to Serbia, resulted in huge numbers of migrants remaining stranded on the Serbian side of the border and staying in the vicinity of border crossings and transit zones⁶⁸. To attempt to resolve the situation, ease the pressures on the Serbian reception system, enable the outflow of migrants from Serbia and to reduce tensions and migrants' discontent with local communities, Serbian authorities organized a mechanism of lists (called the 'Hungarian waiting list') for those willing to proceed toward Hungary, to claim asylum there and to avoid being push backed to Serbia. To get on the list, migrants needed to be registered in one of the temporary reception centres in Serbia and wait there for their turn (often for more than a year), to enter the Hungarian transit zone. The lists were compiled by the Serbian Commissariat for Refugees and Migration (KIRS) but communicated with Hungarian border police via migrants/community leaders present at the border and with no official contact between the Hungarian and Serbian authorities on this matter⁶⁹.

KIRS was the agency organizing the 'Hungarian waiting list' (supra, para 4 (b)), creating a de facto mechanism for access to Hungarian transit zone for all migrants

⁶⁷ ECRE (2016), 'Hungary: Latest amendments legalise extrajudicial push-back of asylum-seekers', 7 July, <https://ecre.org/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers/>; 'As a result of the legalisation of pushbacks, in the period between 5 July and 31 December 2016, 19,219 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border crossings. These migrants were not only denied the right to apply for international protection, despite most of them were coming from war zones such as Syria, Iraq or Afghanistan, but many of them were also physically abused by personnel in uniforms and injured as a consequence.' G. Voynov, H. Franková, A. Bakonyi, M. Górczyńska, M. Nabergoj, (2017), Pushed Back at the Door, Denial of Access to Asylum in Eastern EU Member States, HHC, Hungary, p. 12., https://helsinki.hu/wp-content/uploads/pushed_back.pdf.

⁶⁸ 'Hungarian practice have resulted in an increase in number of asylum-seekers awaiting admission at designated transit zones near the border crossing, facing dire conditions without adequate facilities in Serbia. While the number of those awaiting admission to the two 'transit zones' in Hungary reached over 1,400.' UNHCR (2016), Europe's Refugee Emergency Response - Update #28, 21 June - 18 July, 15 August, <https://reliefweb.int/report/greece/europe-s-refugee-emergency-response-update-28-21-june-18-july-2016>.

⁶⁹ Respondent SRB14; Respondent SRB15; Respondent SRB1; Respondent SRB12; AIDA (2021), Hungarian Helsinki Committee, 'Hungary Country Report: Access to the territory and push backs', 15 April, <https://asylumineurope.org/reports/country/hungary/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>. 'On each working day, five persons were usually admitted to each of the two transit zones. According to the information provided to the delegation by staff, a list of the foreign nationals to be admitted was prepared by a 'community leader' in Serbia who was in touch with the Serbian immigration authorities and was submitted to the staff in the transit zones. As a result, many foreign nationals were compelled to wait for several months or even longer before they were given an opportunity to apply for international protection in Hungary.' Council of Europe: Committee for the Prevention of Torture, Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2018), 18 September, CPT/Inf (2018) 42, p. 19, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2.



staying in KIRS reception camps, willing to proceed from Serbia to Hungary. KIRS was recruiting candidates from all camps across the country, compiling waiting lists and organizing transports from camps to the Hungarian border entrance, thus buying peace with the migrant population, avoiding tensions in local communities, and keeping the migration process going by ensuring the outflow of migrants from Serbia.

Legal response to the pushbacks

The Serbian Constitutional Court confirmed in a ruling in December 2020 that 17 Afghans had been expelled collectively, i.e. pushed back, by Serbian border police authorities from Serbia to Bulgaria in 2017⁷⁰. The Court found these actions to be in breach of the non-refoulement principle and the right not to be exposed to torture, inhuman or degrading treatment, or punishment, envisaged by the Constitution and ordered compensation of non-pecuniary damage for the victims, of whom many returned themselves to Serbia soon after the pushback⁷¹. The latest Serbian Ombudsperson's report on human rights of migrants at the borders presented testimonies of many migrants facing pushbacks, violence, or inhumane treatment by Serbian police or KIRS while only one individual expressed readiness to submit their complaint to the Ombudsperson⁷². In spite of the Ombudsperson's recommendations, the number of allegations of pushbacks and border violence continued to rise⁷³.

The European Commission initiated an infringement procedure before the European Court of Justice (ECJ) against Hungary to address its responsibility for

⁷⁰ European Commission (2021), 'Serbia 2021 Report', p. 51, https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en.

⁷¹ Constitutional Court of Republic of Serbia (2021), Judgement no. Уж-1823/2017, Official Gazette RS 6/2021, 29 January, www.asylumlawdatabase.eu/sites/default/files/aldfiles/%D0%A3%D0%96%201823-17.pdf.

⁷² European NHRIs, Protector of Citizens of Republic of Serbia (2021), 'National Report on the situation of human rights of migrants at the borders, 2020-2021', <https://npm.ils.rs/attachments/article/466/Serbian-National-Report.pdf>.

⁷³ Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB13; Respondent SRB8. Asylum Protection Center (2021), 'Migracije na jugu Srbije' [Migration in the south of Serbia], www.azilsrbija.rs/wp-content/uploads/2021/12/Pushbacks-South-Serbia-jan-jun-21-f.pdf; Asylum Protection Center (2020), 'Southern camps and pushbacks', www.azilsrbija.rs/wp-content/uploads/2021/07/Pushbacks-South-2020.pdf.



breaching EU acquis⁷⁴, among others; the Returns Directive, conducting *de facto* removals (i.e. pushbacks) to Serbia that constituted breaches of the international prohibition of *refoulement* principle⁷⁵, as well as breaches of the Readmission Agreement with Serbia. Eventually, the European Commission requested the Court to order Hungarian payment of financial penalties, in the form of a lump sum and daily penalty payment, for its determination not to comply with the Court ruling⁷⁶. The EU Ombudsperson undertook an inquiry into the possible failure of the European Commission to ensure that the Croatian authorities respected fundamental rights while conducting EU-funded border operations against migrants and refugees along Croatian-Bosnia and Herzegovina and Croatian-Serbian borders in the context of reports of persistent abuses and pushbacks of migrants and refugees along Croatian borders⁷⁷.

The European Court of Human Rights (ECtHR) ruled in two separate cases that the Croatian and Hungarian pushbacks to Serbia had violated the prohibition of collective expulsion (article 4 protocol 4). In *M.H. and others v. Croatia*⁷⁸, which

⁷⁴ EU Commission initiated five infringement procedures before ECJ against Hungary related to asylum. ECRE (2020), 'Hungary: Facing Fifth Infringement Procedure Related to Asylum Since 2015', 6 November, <https://ecre.org/hungary-facing-fifth-infringement-procedure-related-to-asylum-since-2015/>; Court of Justice of the European Union (2020), 'Hungary has failed to fulfil its obligations under EU law in the area of procedures for granting international protection and returning illegally staying third-country nationals', PRESS RELEASE No 161/20, Luxembourg, 17 December, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-12/cp200161en.pdf>; Court of Justice of the European Union (2020), Judgement C-808/18, 17 December, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0808&from=en>; Court of Justice of the European Union (2021), Judgement C-821/19, 16 November, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=249322&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5264853>.

⁷⁵ UNHCR Geneva (2007), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January, <https://www.unhcr.org/4d9486929.pdf>.

⁷⁶ These penalties are calculated taking into account: the importance of the rules breached and the impact of the infringement on general and particular interests; the period the EU law has not been applied; the country's ability to pay, ensuring that the fines have a deterrent effect. EU Commission, Infringement procedure, https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en#:~:text=According%20to%20the%20EU%20treaties%20cases%2C%20can%20impose%20financial%20penalties; EU Commission (2021), 'Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgment', Press release, 12 November, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801.

⁷⁷ ECRE (2020), 'Balkans: Ombudsman Investigates Commission's Possible Failures Regarding Abuse at Croatian Border, Absurdity within Hungary's Asylum System, Bosnia and Herzegovina Signed Readmission Agreement with Pakistan', 13 November, <https://ecre.org/balkans-ombudsman-investigates-commissions-possible-failures-regarding-abuse-at-croatian-border-absurdity-within-hungarys-asylum-system-bosnia-and-herzegovina-signed-readmission-a/>; European Ombudsman (2020), 'Ombudsman inquiry opened on how European Commission seeks to ensure protection of fundamental rights in border management operations by Croatian authorities', CASE 1598/2020/VS, 10 November, <https://www.ombudsman.europa.eu/en/news-document/en/134797>; For the most recent update see: www.ombudsman.europa.eu/en/case/en/57811.

⁷⁸ *M.H. and others v. Croatia* applications nos. 15670/18 and 43115/18 (ECtHR 18 November 2021), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-213213%22%7D>.



concerns an Afghan family that was pushed back by Croatian authorities after crossing the border from Serbia in November 2017, resulting in death of a six-year-old child, the Court found that Croatia violated several articles of the ECHR including the prohibition of collective expulsion, since the applicants were collectively expelled by Croatian police outside official border crossing points and without prior notification to the Serbian authorities. Also, in *Shahzad v. Hungary*⁷⁹, which concerns the summary removal of the applicant and other Pakistani nationals in August 2016 after entering Hungary by cutting a border fence on the Hungarian-Serbian border, the Court found a violation of Article 4 of Protocol No. 4, since the applicant was removed without having been subjected to any identification procedure or examination of his situation by the Hungarian authorities. Furthermore, the European Court of Human Rights communicated a case to the Government of the Republic of Serbia in 2021 that concerns the chain expulsion of a Sudanese applicant who was subjected to several summary removals to North Macedonia by the Serbian authorities and to Greece by the authorities of North Macedonia, in 2016⁸⁰. The Special Representative of the Secretary General of the Council of Europe on migration and refugees conducted a fact-finding mission to Serbia and two transit zones in Hungary in 2017 and referred in a subsequent report to pushbacks from EU Member States to Serbia and to those conducted by Serbian authorities to Macedonia and Bulgaria⁸¹.

4.2.2. Law on Asylum and Temporary Protection (LATP)

The Law on asylum and temporary protection (LATP)⁸² was adopted on the 22 March 2018 and resulted from a EUR 1 million twinning project funded by the IPA⁸³. Its harmonisation was planned in two phases. The first phase included harmonisation with Directive 2013/32/EU (the Asylum Procedures Directive), Directive 2011/95/EU (the Qualification Directive) 2001/55/EC (the Temporary

⁷⁹ *Shahzad v. Hungary* application no. 12625/17 (ECtHR, 8 October 2021, final), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-210853%22%7D>.

⁸⁰ *A.H v Serbia and North Macedonia and A.H. against Serbia*, applications nos. 60417/16 and 79749/16 (ECtHR, communicated 27 May 2021), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-210657%22%7D>.

⁸¹ Council of Europe (2017), Information Documents SG/Inf(2017)33, Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, 12-16 June, https://search.coe.int/cm/Pages/result_details.aspx?objectId=090000168075e9b2.

⁸² Law on asylum and temporary protection, *Official Gazette RS* 24/2018, 26 March 2018.

⁸³ Twinning project 'Support to the National Asylum System in the Republic of Serbia' (IPA 2014) was implemented in the period from September 2015 to February 2018. Serbia, Action plan 24, revised (2020), http://www.mup.gov.rs/wps/wcm/connect/9be2669f-e783-4911-9471-7f20ae6145ce/Revised+AP24_worksheet.pdf?MOD=AJPERES&CVID=nbca4H; EU in Serbia (2018), 'EU support for Serbia's asylum system', <https://europa.rs/eu-support-for-serbias-asylum-system/?lang=en>.



Protection Directive), and Directive 2013/33/EU (the Reception Conditions Directive). The relevant changes were made in the field of refugee definition (including acts of persecution, actors of persecution, exclusion clauses) as well as procedural issues such as safe third country, safe country of origin, first country of asylum, border procedure, and scope of rights. In the second phase, harmonisation with the Dublin system (including the EURODAC Regulation 2725/2000/EC, Regulation 407/2002/EC implementing EURODAC, as well as Dublin Regulation 604/2013/EU) is planned to be realized two years before accession.

Despite changes in law, Serbian asylum remained weak. Many international⁸⁴ and domestic⁸⁵ actors report on impossibility of asylum seekers to access Serbian territory and, once on Serbian territory, to access the asylum procedure. Furthermore, they point to lengthy asylum procedures and low recognition rates, inconsistency in the decision-making process regarding similar cases, and ineffective appeal procedures. Access to information is also problematic as well as free legal aid, which is not state funded and consequently depends on civil society and international donors.

First and sporadic pushbacks *from* Serbia began in October 2016, while pushbacks practices *towards* Serbia began in February 2016, and assumed proportions of systematic pushbacks in course of that year (*supra*, para. 4(b)(i)).

Reception capacities of the Republic of Serbia are limited and usually substandard. Besides unhygienic conditions, lack of privacy, and issues of violence, ill-treatment and related incidents from reception staff have been reported as well⁸⁶. The integration capacities of KIRS are limited, so the integration of refugees and asylum seekers predominantly relies on NGO assistance⁸⁷. No travel documents to persons granted international protection were ever issued⁸⁸.

⁸⁴ Human Rights Watch (2021), 'World report 2021', p. 587, https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf; European Commission (2021), 'Serbia 2021 Report', p. 51, https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en; AIDA (2020), 'Country Report: Serbia', pp. 11-13, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf.

⁸⁵ Belgrade Centre for Human Rights (2021), 'Right to Asylum in the Republic of Serbia 2020', pp. 23-24, 55-56, 65-66, <http://azil.rs/en/wp-content/uploads/2021/02/Right-to-Asylum-in-Serbia-2020.pdf>.

⁸⁶ AIDA (2020), 'Country Report: Serbia', p. 12, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf.

⁸⁷ AIDA (2020), 'Country Report: Serbia', p. 13, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf.

⁸⁸ European Commission (2021), 'Serbia 2021 Report', p. 52. https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en; AIDA (2020), 'Country Report: Serbia', p. 13, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf.



The serious deficiencies within the Serbian asylum system were raised as a question before the ECtHR in *Ilias and Ahmed v. Hungary*⁸⁹. The case concerned two Bangladeshi nationals who transited through Greece, North Macedonia, and Serbia before reaching Hungary in September 2015, where they applied for asylum and were held in a transit zone until they were sent back to Serbia, considered by the Hungarian authorities as a 'safe third country'. The court found that Hungary violated article 3 of ECHR by failing to conduct an efficient and adequate assessment when applying the safe third country clause for Serbia. It was stated in the judgement that Hungarian authorities did not take into account available and reliable information regarding the real risk of denial of access to an effective asylum procedure in Serbia and summary removal from Serbia to North Macedonia and then to Greece, and that the Hungarian authorities exacerbated the risks facing the applicants by inducing them to enter Serbia illegally instead of negotiating an orderly return⁹⁰.

Croatian authorities similarly tried to declare Serbia as a 'safe third country' and dismiss applications of asylum seekers who entered Croatia from Serbia. The Croatian Ministry of interior dismissed Afghan family cases based on the concept of 'safe third country', but the Croatian Constitutional court eventually upheld constitutional complaints and stopped such attempts. The Court assessed relevant reports and concluded that it could not be established with sufficient certainty that Serbia was a safe third country, having in mind the inefficiency of its asylum system and the risk of *refoulement*⁹¹.

4.2.3. Law on Foreigners⁹²

The Law on Foreigners (LOF)⁹³ that was adopted in March 2018, and came into force in October 2018, resulted from a EUR 4.11 million twinning project funded

⁸⁹ *Ilias and Ahmed v Hungary*, application no 47287/15 (ECtHR 21 November 2019 final), <https://hudoc.echr.coe.int/eng#%20>.

⁹⁰ *Ilias and Ahmed v Hungary*, application no 47287/15 (ECtHR 21 November 2019 final), p. 163. [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-198760%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-198760%22]).

⁹¹ AIDA (2020), 'Country report: Croatia', pp. 67-68. https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-HR_2020update.pdf.

⁹² *Official Gazette RS*, no. 24/2018.

⁹³ Law on Foreigners, *Official Gazette RS* 24/2018, 26 March 2018.



by the IPA⁹⁴. The law was harmonised with Directive 2003/86/EC (the Family Reunification Directive), Directive 2003/109/EC (the Long Term Residence Directive), Directive 2005/71/EC (the Blue Card Directive), Directive 2004/114/EC (the Student Directive), Directive 2004/81/EC (the Human Trafficking Directive), Directive 2008/115/EC (the Return Directive), Directive 2002/90/EC (the Facilitation Directive), Directive 2011/51/EU (extending the Long Term Residence Directive to beneficiaries of international protection), and Regulation 810/2009/EC (the Visa Code). The LOF expanded the institute of humanitarian residence and introduced new forms of temporary residence. It also prescribed procedural guarantees for the refusal of entry and for return procedures.

The LAMP and the LOF provide a legal basis for assisted voluntary return. It is prescribed as a new competence of the Commissariat for Refugees and migration (KIRS). Current KIRS activities in the field of assisted voluntary return (especially information sessions and identification), that have been conducted together with the International Organization for Migration (IOM), are funded for EUR 9.5 million through MADAD⁹⁵, while assisted voluntary return is an element of a broader EUR 27.45 million project funded through IPA II funding⁹⁶.

FRONTEX Status Agreement 2019

Operational cooperation between FRONTEX and the Serbian Ministry of Interior officially started over the course of the visa liberalization process⁹⁷ with a Working

⁹⁴ Project Fiche, 'Police reform and migration management', https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/pf_2_police_reform_and_migration_management.pdf; 'Within the realisation of the Twinning project IPA 2012 – Police Reform and Migration Management, the GAP analysis of the national legislation was performed, in the field of legal and irregular migration, based on which the Law on Foreigners was drafted. The Law was adopted in March 2018 and has been applied since October 2018.' Serbia, Action plan 24, revised (2020), www.mup.gov.rs/wps/wcm/connect/9be2669f-e783-4911-9471-7f20ae6145ce/Revised+AP24_worksheet.pdf?MOD=AJPERES&CVID=nbca4H.

⁹⁵ Assisted Voluntary Return is one of the two components of the project 'EU Support to Serbia in Managing The Migration/Refugees Crisis/Balkan Route', 11 March 2016, see the Action Fiche at https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3Aserbia.

⁹⁶ From the IPA 2019 Annual Programme an action document was adopted and signed on 10 December 2019 in the value of EUR 27.45 million. Realization of AVRR by KIRS and IOM was one out of many financed activities. See: Annex to the Commission Implementing Decision adopting a Special Measure as regards Strengthening the Response Capacity of the Republic of Serbia to Manage Effectively Mixed Migration Flows, https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-11/c_2019_7077_f1_annex_en_v1_p1_1043932_0.pdf; Comp. Serbia, Action plan 24, revised (2020), http://www.mup.gov.rs/wps/wcm/connect/9be2669f-e783-4911-9471-7f20ae6145ce/Revised+AP24_worksheet.pdf?MOD=AJPERES&CVID=nbca4H;

⁹⁷ Negotiating Position of the Republic of Serbia for the accession of the Republic of Serbia to the European Union, Chapter 24 - 'Justice, Freedom and security', pp. 2-10, www.mup.gov.rs/wps/wcm/connect/1e1dee1d-207f-4ca6-8547-e18f7a9108ca/%D0%9F%D0%A0%D0%95%D0%93%D0%9E%D0%92%D0%90%D0%A0%D0%90%D0%A7%D0%9A%D0%90+%D0%9F%D0%9E%D0%97%D0%98%D0%A6%D0%98%D0%88%D0%90.pdf?MOD=AJPERES&CVID=lgagX87.



Arrangement signed on 17 February 2009 in Belgrade. Although not an international treaty, the Working Arrangement regulated mutual relations between Serbia and FRONTEX in the area of countering illegal migration and related cross-border crime, as well as strengthening security at the borders between EU Member States and Serbia⁹⁸.

Since 2017 the FRONTEX Liaison Officer for Western Balkans operates from Belgrade⁹⁹. Serbia has been an active participant in the Western Balkans Risk Analysis Network¹⁰⁰, while the cooperation with FRONTEX was further emphasized within Western Balkans Route Leaders Statement 2015¹⁰¹.

The EU-Serbia Status agreement for the deployment of the European Border and Coast Guard Agency (FRONTEX) was signed in November 2019¹⁰² and came into force on 1 May 2021 after ratification in the Serbian parliament¹⁰³. The first joint operation 'Joint operation Serbia - Land 2021' was launched on 16 June 2021 with the aim of technical and operational assistance to Serbia by coordinating operational activities at the land borders of Serbia with Bulgaria¹⁰⁴.

4.3. Financial instruments

Since 2015 and the signing of the 2015 Western Balkan Statement (*supra*, 4(a)), the EU has assisted Serbia with more than 130 million EUR in providing humanitarian aid and protection to migrants, ensuring an increase of accommodation capacities (6000 beds) and conditions for reception and running of reception and asylum centres, including food, health care and education, assisting migrant-hosting communities, fight against migrant smuggling as well as

⁹⁸ Working Arrangement establishing operational cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the Ministry of the Interior of Republic of Serbia, https://frontex.europa.eu/assets/Key_Documents/Working_Arrangements/WA_with_Serbia.pdf.

⁹⁹ FRONTEX webpage, 'Frontex Liaison Officers to non-EU countries', <https://frontex.europa.eu/we-build/other-partners-and-projects/liaison-officers-network/>.

¹⁰⁰ Serbia, Action plan 24, revised (2020), http://www.mup.gov.rs/wps/wcm/connect/9be2669f-e783-4911-9471-7f20ae6145ce/Revised+AP24_worksheet.pdf?MOD=AJPERES&CVID=nbcu44H.

¹⁰¹ Respondent SRB11; European Union (2015), 'Leaders' Meeting on refugee flows along the Western Balkans Route: Leaders' Statement', 25 October, art. 13, www.refworld.org/docid/563216cb4.html.

¹⁰² Council Decision (EU) 2019/400 on the signing, on behalf of the Union, of the Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia, *Official Journal* L 72/1, 22 January 2019.

¹⁰³ Law on ratification of the Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia, *Official Gazette RS - International treaties*, 3/21, 2 March 2021.

¹⁰⁴ FRONTEX (2021), 'Launch of the Joint Operation Serbia - Land 2021', https://www.statewatch.org/media/2597/20210716_ed-notification-letter_ep_jo-serbia-land-2021.pdf.



capacity building of the institutions dealing with migration management. Through financial means, the EU has supported the Assisted Voluntary Return and Reintegration approach and strengthened operational capacities of law enforcement authorities by deploying visiting officers from EU Member States. It also increased the technical capacity of the Serbian Border Police by purchasing specialized equipment for border surveillance. In addition, the EU has supported Serbia with more than EUR 28 million in the field of border control (Integrated Border Management-IBM)¹⁰⁵.

These substantial financial funds were allocated through several complementary measures and funding instruments such as the EU Regional Trust Fund in response to the Syrian Crisis (the 'MADAD Fund')¹⁰⁶, the ECHO Fund¹⁰⁷, and the IPA II¹⁰⁸. The EU was never questioning, *prima facie*, the legal status of migrants in the country, out of whom the majority were staying in an irregular position in the country.

It should also be noted that the EC adopted seven Special Measures addressing different needs in Serbia for managing migration over the period of 5 years (2015-2020). Furthermore, Serbia activated the EU Civil Protection Mechanism in September 2015 with aggregate value of up to EUR 950 000.

Over time, the EU shifted its financial support to Serbia's migration management/response costs from special migration crisis funds, like the Madad Fund, to regular IPA funding (taking place in the context of Serbia's Accession to the EU). This has been opposed by the Serbian Government. The Serbian Ministry of EU Integration (MEI) argued that the response to the migration crisis was an additional challenge, which has to be considered apart from the regular Serbia-EU Accession Negotiation process, and thus needs to be addressed with additional and separate EU funding instead of with IPA funds¹⁰⁹. This disagreement has led to a halt in IPA III programming¹¹⁰. This issue highlighted the EU's attempt to address the increasing issues related to Serbia's migration crisis

¹⁰⁵ Annual Action Programme for Serbia 2016, IPA II SERBIA Sector Reform Contract for Integrated Border Management, https://ec.europa.eu/neighbourhood-enlargement/system/files/2017-05/ipa2016-039803.06-serbia-sector_reform_contract_for_integrated_border_management.pdf.

¹⁰⁶ For an overview see: https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?page=0.

¹⁰⁷ The general webpage of the ECHO Fund does not provide information on projects in Serbia, https://ec.europa.eu/echo/where/europe_en, but below there are ECHO funded projects.

¹⁰⁸ For an overview of IPA funding in Serbia see: https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/overview-instrument-pre-accession-assistance/serbia-financial-assistance-under-ipa-ii_en.

¹⁰⁹ Respondent SRB3; Respondent SRB2; Respondent SRB9; Respondent SRB10.

¹¹⁰ Respondent SRB3; Respondent SRB2; Respondent SRB9; Respondent SRB10.



management/response within the ongoing EU-Serbia Accession Negotiation process. In the end, the MEI was moved to the position of observer in IPA programming. Thus, the side-lining of the MEI allowed the EU Delegation to programme financial support for migration and asylum policies in direct consultations with the KIRS and Ministries (of Interior, Health, Education, MOLEVSA)¹¹¹.

4.3.1. Instrument for Pre-Accession Assistance (IPA) funding

An amount of 4 million EUR was recentralized from the IPA 2013 Annual Programme following a request by Minister Joksimović on 28 September 2016. It was allocated to a project implemented by UNDP in consortium with WHO, the United Nations Office for Project Services (UNOPS), and IOM for the support to health, communal and social services in Serbian municipalities hosting migrants in order to increase community acceptance of asylum seekers and migrants¹¹².

The IPA 2014 Annual Programme for Serbia contained a EUR 28.45 million project aiming at; combatting human trafficking; enhancing the efficiency of management of migration flows (which included expanding existing capacities to accommodate asylum seekers and supporting return); supporting the functioning of border management and controls between Serbia and Bosnia-Herzegovina; and increasing effective and efficient control by improving common crossing points¹¹³. The action document does not break down the overall budget into these four components, but one of the interviewees confirmed that the project allocated EUR 3.2 million for the construction of an asylum centre¹¹⁴.

Funds from IPA 2014 also supported a twinning project 'Support to the national asylum system' in the amount of EUR 1 million with the objective to contribute to

¹¹¹ Respondent SRB2; Respondent SRB9; Respondent SRB3.

¹¹² Respondent SRB1. UNDP, Open Communities-Successful Communities, project page, <https://open.undp.org/projects/00103911>; UNDP, Open Communities-Successful Communities, Project document, <https://info.undp.org/docs/pdc/Documents/SRB/OCSC%20Prodoc%20signed.pdf>.

¹¹³ Respondent SRB2. Instrument for Pre-Accession Assistance (IPA II) 2014-2020 Serbia, Annual Action Programme for Serbia 2014, Support to Home Affairs Sector, 2014/ 032-078.04/Serbia, p. 16., result 2.2., [https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/2014-032078.04-serbia-support to home affairs sector.pdf](https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/2014-032078.04-serbia-support%20to%20home%20affairs%20sector.pdf).

¹¹⁴ Respondent SRB2.



Serbian efforts to harmonise national policies within the home affairs sector in line with EU standards and the EU acquis in the field of asylum and migration¹¹⁵.

From the MC IPA funds for the year 2014, an amount of EUR 8.25 million was allocated as regional assistance to IPA II Beneficiaries in the Western Balkans for strengthening their capacity for support to the establishment of a migration management system and information exchange in the region¹¹⁶. The project, entitled 'Regional support to protection-sensitive migration management systems' is focused on the introduction and sharing of EU standards and best practices on protection-sensitive migration management in targeted countries through developing a protection-sensitive response to mixed migration flows. Actions are implemented jointly by FRONTEX, EUAA, IOM, and UNHCR with the goal of complementing national efforts in the area of migration management by providing a mixture of horizontal and regional support. The duration of the programme, that began in 2016, was 3 years and included two project components – Component 1 led by FRONTEX in the amount of EUR 5.5 million and Component 2, led by IOM in the amount of EUR 2.5 million¹¹⁷. The available documents do not allow us to break down what percentage of the total EUR 8.25 million was destined for projects in Serbia. According to a press release, the project was 'mainly related to Serbia and the former Yugoslav Republic of Macedonia'¹¹⁸.

On 7 October 2015, the European Commission (EC) adopted a 'Special measure on strengthening the response capacity of the most affected countries in the Western Balkans to cope effectively with the increased mixed migration flows'¹¹⁹. This

¹¹⁵ Respondent SRB2. 'EU twinning project of €1 million is already ongoing with a focus on drafting a new law on asylum and stepping up the reform of the asylum system'. EU Commission (2015), Funding to main migration-related activities in the Western Balkans and Turkey, 6 October, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5535. Serbia, Action plan 24, revised (2020) (http://www.mup.gov.rs/wps/wcm/connect/9be2669f-e783-4911-9471-7f20ae6145ce/Revised+AP24_worksheet.pdf?MOD=AJPERES&CVID=nbcu4H);

EU in Serbia (2018), 'EU support for Serbia's asylum system' (<https://europa.rs/eu-support-for-serbias-asylum-system/?lang=en>)

¹¹⁶ EU u Srbiji (2016), 'EU assistance for migrants and refugees in Serbia', 17 November, <https://europa.rs/factsheet-eu-assistance-for-migrants-and-refugees-in-serbia/?lang=en>.

¹¹⁷ Respondent SRB2. IPA II Multi-country action programme 2014, Regional support to protection-sensitive migration management systems, IPA 2014/031-603.07/MC/migration, https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/ipa_ii_2014_031-603.07_mc_migration.pdf; IPA II project 'Regional Support to protection-Sensitive Migration Management in the Western Balkans and Turkey' (2016-2019) - Phase I, <https://euaa.europa.eu/sites/default/files/IPA-II-activities-phase-I.pdf>.

¹¹⁸ EU in Serbia (2016), 'EU assistance for migrants and refugees in Serbia', 17 November, <https://europa.rs/factsheet-eu-assistance-for-migrants-and-refugees-in-serbia/?lang=en>. For this reason, in Table 1 infra, EUR 3.5 million EUR has been allocated to this project for Serbia.

¹¹⁹ C(2015) 6925 final, Brussels, 7 October.



decision allocated 10 million EUR to the Republic of Serbia from Multi-Country IPA (MC IPA) funds. The funding components are: direct support to national and local authorities in Serbia to increase operational capacity in the field of reception (EUR 1.5 million); direct support to national and local authorities in Serbia and North Macedonia by providing necessary equipment and supply (vehicles for the Mol and KIRS, a portable field hospital, medical supplies, other basic supplies, EUR 5.5 million); and EUR 3 million support to government through NGO's (the Danish Refugee Council, the Arbeiter-Samaritaner Bund, and HELP International) in Serbia in the field of accommodation, translation, transportation. With the assistance of these funds, works on reconstruction and adaptation of centres for temporary shelter of migrants in Krnjača, Bosilegrad, Pirot, and Dimitrovgrad were conducted. The Special Measure allowed for the hiring of an additional 271 staff for the KIRS and covered most of the running costs for all centres in the Republic of Serbia. Finally, 82 patrol vehicles, vans, and mini-buses were procured for the Mol, and 24 vehicles for the KIRS¹²⁰.

In February 2016, the European Commission adopted Special Measure 2 in the value of EUR 10 million for North Macedonia and Serbia, of which EUR 1 million was allocated to the Republic of Serbia for a project aimed at strengthening efficient border management. In September 2016, the EC signed an agreement with the IOM for the implementation of this project in order to ensure systematic border control and surveillance, identification and registration of border crossings, suppression and prevention of smuggling of migrants, trafficking and cross border crime, by covering running costs for at least 100 foreign and domestic border police officers, equipping domestic border police with necessary equipment, as well as strengthening the capacities of the Mol in border management¹²¹.

¹²⁰ Respondent SRB2; EU Commission, 'EU Commission implementing decision adopting a special measure on strengthening the response capacity of the most affected countries in the Western Balkans to cope effectively with increased mixed migration flows under the instrument for Pre-Accession(IPAII) for the year 2015', 7 October 2015, https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/jpa_ii_2015-038-754_special_measure_migration_western_balkans.pdf; ASB (2015), 'Start of implementation of new EU aid package of €7 million to help Serbia deal with refugee crisis', 3 November, <https://asb-see.org/plementation-of-new-eu-aid-package-of-e7-million-to-help-serbia-deal-with-refugee-crisis/>; EU u Srbiji (2016), 'EU assistance for migrants and refugees in Serbia', 17 November, <https://europa.rs/factsheet-eu-assistance-for-migrants-and-refugees-in-serbia/?lang=en>; EU in Serbia (2015), 'Start of implementation of new EU aid package of €7 million to help Serbia deal with refugee crisis', 2 November, <https://europa.rs/start-of-implementation-of-new-eu-aid-package-of-e7-million-to-help-serbia-deal-with-refugee-crisis-2/?lang=en>.

¹²¹ Respondent SRB2; IOM, EU Supports Serbia to Improve Border Management in the Context of the Migration Crisis, Project Duration: 15 September 2016 - 30 June 2017, <http://serbia.iom.acsitefactory.com/eu-supports-serbia-improve-border-management-context-migration-crisis/>; EU Commission (2016), 'EU approves additional €10 million to help the former Yugoslav Republic of Macedonia deal with the refugee crisis', Brussels, 15 February, https://reliefweb.int/sites/reliefweb.int/files/resources/IP-16-304_EN.pdf.



In March 2017, the European Commission adopted a project amounting to EUR 30 million for support to Serbia, North Macedonia, and IPA II beneficiaries in the Western Balkans to improve their border and migration management capabilities in the context of the European migration crisis. Of this, EUR 9.5 million was allocated for assistance available to all IPA II beneficiaries, of which EUR 3 million was contracted for a second phase of support for border management in Serbia (Special Measure 2), to be implemented by the IOM. An amount of EUR 500 000 was dedicated to support national authorities (KIRS) in Serbia to increase their operational capacity and implemented by the IOM; and EUR 20 million as a contribution to the EU Regional Trust Fund in response to the Syrian crisis (the Madad Fund). The Operational Board of the Madad Fund adopted additional support for Serbia, to the value of EUR 21 million by the June 2017. The objective of that action was to ensure continuity of EU support while scaling up and upgrading services in the reception centres in order to meet the needs of migrants for longer term stays. An amount of EUR 16 million EUR implemented by the Government of Serbia and EUR 5 million by the IOM¹²².

A second phase of the Regional Support to Protection-sensitive Migration Management in the Western Balkans and in Turkey was implemented from MC IPA 2017 from July 2019 through June 2021. The overall objective is to develop and operationalize a comprehensive migration management system in the IPA II beneficiaries focused on protection, resilience, and human rights promotion. The specific objective is to further build the institutional capacities and operations of the relevant institutions of first and second points of contact with migrants and persons in need of international protection, that is in full respect of fundamental rights and international standards. The program aims also at local communities' resilience and promotes social inclusion of migrants, asylum seekers, and people in need of international protection. The total value of the program was EUR 5 million¹²³.

The IPA 2019 Annual Programme project was adopted and signed on 10 December 2019 to the value of EUR 27.45 million. This project, entitled 'Strengthening the

¹²² EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund' (2017), 'EU support to the Western Balkans in managing the migration and refugee crisis', Action Document, 30 June, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3AWestern%20Balkans%20.

¹²³ Respondent SRB2; European Union Agency for Asylum, *EASO outside the EU+*, <https://euaa.europa.eu/easo-outside-eu>; European Union Agency for Asylum, IPA II project 'Regional Support to Protection-Sensitive Migration Management systems in the Western Balkans and Turkey', July 2019 – June 2021, Phase II, <https://euaa.europa.eu/sites/default/files/IPA-II-phase-II.pdf>.



Response Capacity of the Republic of Serbia to Manage Effectively Mixed Migration Flows', has the objective of strengthening the protection and resilience of migrant or refugee populations in Serbia, and improving the capacity of authorities to manage migration flows in a protection sensitive manner, including enhancing shelter capacities and the delivery of services. It aims to ensure and expand the direct operational capacity of the authorities to effectively respond to the needs of the refugees, migrants, and unaccompanied and separated children under their overall responsibility and within their experience and expertise; ensure adequate access to all types of necessary healthcare services for migrants, refugees and asylum seekers both in the reception/transit/asylum centres and in the public health system (direct grant to Ministry of Health; and, in cooperation with IOM, support the operational capacities of national institutions (Ministry of Education, KIRS, MoLEVSA and MoI) to effectively respond to the needs of refugees and migrants, in particular vulnerable groups through the provision of: access to quality formal and non-formal education, continuation of protection-related services in the centres, Assisted Voluntary Return and Reintegration (AVRR), distribution of non-food items in the reception and asylum centres, smaller infrastructure improvements in the reception centres and social protection institutions, and more efficient outreach activities of the Asylum Office¹²⁴.

From the IPA 2020 Annual Programme a project was developed to the amount of EUR 11.8 million. The project aimed to meet needs that emerged following the outbreak of the Covid-19 pandemic and the subsequent stringent measures taken by the Government of Serbia concerning migrants and refugees. Due to a significant change in the migrant flow, support under the project adopted in 2019 (*supra*) was being depleted at a much faster rate than anticipated, in particular with respect to food, running costs, non-food items, and funds needing to be allocated to hygiene measures. As such, the project was directed towards a continuation of supporting these needs. Although other aspects of the 2019 project continued without much disruption, due to the unprecedented nature of the pandemic situation, the IOM component remained flexible¹²⁵.

¹²⁴ Respondent SRB2; ANNEX to the Commission Implementing Decision adopting a Special Measure as regards Strengthening the Response Capacity of the Republic of Serbia to Manage Effectively Mixed Migration Flow, Instrument for Pre-accession Assistance (IPA-II), 2019/041-258, https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-11/c_2019_7077_f1_annex_en_v1_p1_1043932_0.pdf.

¹²⁵ Respondent SRB2; ANNEX to the Commission Implementing Decision adopting the Annual Action Programme for the Republic of Serbia for the year 2020 – part II, https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-12/c_2020_8284_f1_annex_en_v1_p1_1103933_1.pdf.



4.3.2. ECHO funding

Through the Directorate General for Humanitarian Aid and Civil Protection (DG ECHO) of the European Commission, the EU has allocated humanitarian aid exceeding EUR 13 million to Serbia as a part of regional support to countries of the Western Balkans (mostly for Serbia and North Macedonia) towards issues of mass migrations, i.e. for addressing humanitarian aid, shelter, legal and psychosocial protection, emergency education, tracking mechanisms, medical assistance, food, water, and sanitation¹²⁶.

In September 2015, the EU Civil Protection Mechanism was activated. The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Interior, and the Commissariat for Refugees and Migrations of Serbia submitted to DG ECHO a list of necessary equipment and goods in the area of migration that included mobile showers, toilets, kitchens, beds, mattresses, pillows, blankets, sheets, sleeping bags, housing containers, protective gloves and masks, generators and water pumps, without a budget estimation for the listed items. Humanitarian aid has come from Romania (to the value of EUR 220 000), Great Britain (EUR 400 000), Hungary (EUR 123 000), Luxembourg (over EUR 10 000), Austria (EUR 2 000), Spain (EUR 53 000), Slovakia (EUR 48 000), Ireland (EUR 17 000), and the

¹²⁶ 20 August 2015, EUR 1.5 million for humanitarian aid to North Macedonia and Serbia, additional EUR 150 000 to Serbia to the International Federation of Red Cross (IFRC). European Commission, European Civil Protection and Humanitarian Aid Operations (2015), 'ECHO Daily Map of 3 September 2015', Commission Implementing Decision of 14 September 2015, financing emergency humanitarian actions supporting refugees, asylum seekers and migrants in the Western Balkans from the general budget of the European Union, Project code ECHO/-BA/BUD/2015/01000, Start Date 01/08/2015 - End Date 31/01/2016, SERBIE 1445042.19 €, NSPE 54957.81 €, Humanitarian aid; Project code ECHO/-BA/BUD/2015/01001 Danish Refugee Council, Emergency Humanitarian Aid and Protection Response to Refugees in Serbia Start Date 01/10/2015- End Date 31/03/2016, SERBIE, Protection Response to Refugees in Serbia - 243301.8 €, Shelter - 256698.2 €; Project code ECHO/-BA/BUD/2015/01002, International Federation of Red Cross, Western Balkans Population Movement, Start Date 01/11/2015 - End Date 29/02/2016, Shelter – EUR 1 million; European Commission, 'European Civil Protection and Humanitarian Aid Operations', EDRIS <https://webgate.ec.europa.eu/hac/>, <https://erccportal.jrc.ec.europa.eu/ECHO-Products/Maps#/maps/1285>. Commission Implementing Decision of 07/11/2014, Humanitarian Implementation Plan for Syria, ECHO/SYR/BUD/2015/91000, Start Date 01/01/2015 - End Date 31/12/2016, 337 000 €, for Serbia - 4939572.9 € to finance International Federation of Red Cross, Danish Refugee Council, MDM, World Vision, UNHCR, UNICEF, Norwegian Refugee Council, IOM in providing emergency support in shelter, legal and psychosocial protection, emergency education, tracking mechanisms, medical assistance; accessible on European Commission, European Civil Protection and Humanitarian Aid Operations, EDRIS <https://webgate.ec.europa.eu/hac/>. Commission Implementing Decision of 30/11/2015, Humanitarian Implementation Plan Central Asia, Eastern Neighbourhood and Western Balkans, ECHO/-EN/BUD/2016/91000, Start Date 01/01/2016 - End Date 31/12/2017, 10460326.75 €, for Serbia - 3569121.26 € to finance Caritas International, Care Germany, MDM, IFRC in providing food, protection, health and medical, water and sanitation; accessible on European Commission, European Civil Protection and Humanitarian Aid Operations, EDRIS <https://webgate.ec.europa.eu/hac/>.



Netherlands (EUR 79 000). The aggregate value received through the EU Civil Protection Mechanism is EUR 950 000¹²⁷.

4.3.3. EU Trust Fund in Response to the Syrian Crisis (Madad Fund)

In 2016, EUR 12.3 million worth of Madad funds were dedicated to Serbia to fund a project entitled 'Strengthening protection and food security for migrants and refugees in the Western Balkans'. It aimed at providing food security for migrants and refugees in reception centres; and to improve access to protection services for refugees. Concretely, this contributed to running and operational costs of reception centres and engagement of additional human resources, while in cooperation with the IOM, part of those funds supported the reconstruction of reception centres, the establishment of two mobile migrant centres, the procurement of specialised vehicles, and health services¹²⁸.

A project for additional assistance under the Madad Fund in the amount of EUR 12 million was approved by the Operational Board of the Fund on 16 December 2017. These funds were meant to ensure food security in reception centres and improve protection services and assistance for migrants and refugees. An amount of EUR 8.3 million was implemented by a consortium of NGOs led by Oxfam Italy (CARE, Caritas, Oxfam, Serbian Red Cross), while up to EUR 3.7 million EUR dedicated to protection services and implemented by the IOM¹²⁹.

A EUR 21 million project adopted in June 2017, implemented in the framework of the Madad Fund but funded via the IPA, was already mentioned *supra*.

¹²⁷ Respondent SRB2. On 24 March 2020, Serbia requested assistance from the EU Civil Protection Mechanism (UCPM) Member and Participating States to ensure basic temporary accommodation in reception centres. The request by Serbian authorities (Mol on behalf of KIRS) aimed at improving the capacity of refugee/migrants hosting structures, due to increased people flows and Covid prevention standards. AT, IE, SI (through the UCPM), and HU (on a bilateral basis) have offered more than 9 200 non-food items, i.e. Slovenia (10 tents S-2, 60 field beds, 60 sleeping bags, 10 tent heaters, 1500 blankets, 100 pieces of cutlery, 20 garbage bag racks), Ireland (5000 blankets, 200 family tents), Austria (300 field beds/Red Cross standards, 1000 blankets 1,4X2 m / Red Cross Standards, 500 mattresses, 25 family tents (type VIVA with winterization kits). European Commission, European Civil Protection and Humanitarian Aid Operations, ERCC - Emergency Response Coordination Centre, ECHO Daily Map of 24 April 2020, <https://erccportal.jrc.ec.europa.eu/ECHO-Products/Maps#/maps/3298>.

¹²⁸ EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund' (2016), 'EU support to Serbia in managing the migration/refugees crisis / balkan route', Action Document, 11 April, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3Aserbia.

¹²⁹ Respondent SRB2; EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund', Strengthening protection and food security for migrants and refugees in the Western Balkans, Action Document, 6 December 2017, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3AWestern%20Balkans%20.



Table 1 gives an overview of the projects for which we could find financial information. For three projects (marked yellow), it was not possible to assign the total budget to the categories protection/return/governance.

Table 1

Source/type	border	protection	return	governance
Communities, a project implemented by UNDP in consortium with WHO, UNOPS and IOM for the support to health, communal and social services in Serbian municipalities hosting		4,000,000.00		
The IPA 2014 Annual Programme for Serbia, combatting human trafficking; enhance the efficiency of managing migration flows (which included expanding existing capacities to accommodate	22,860,000.00			5,590,000.00
IPA 2014, a twinning project 'Support to the national asylum system'				1,000,000.00
Multicountry IPA 2014, Regional support to protection-sensitive				3,500,000.00
Multicountry IPA 2015, Special measure on strengthening the response capacity of the most affected countries in the Western				7,000,000.00
EU 2016 Supports Serbia to Improve Border Management in the C	1,000,000.00			
EU MADAD 2016 Strengthening protection and food security for migrants and refuge			12,300,000.00	
EU MADAD 2017 Support to Serbia in managing the migration and refugee crisis	3,000,000.00	21,000,000.00		500,000.00
Multicountry IPA 2017, Regional Support to Protection-Sensitive Migration Management systems in the Western Balkans and Turkey' (July 2019 – June 2021) – Phase II				5,000,000.00
IPA 2019 Annual Programme, Strengthening the Response Capacity of the Republic of Serbia to Manage Effectively Mixed Migration Flows				27,450,000.00
IPA 2020 Annual Programme, to meet the needs emerged following the effects that the COVID-19 pandemic and the subsequent stringent measures taken by the Government of Serbia concerning migrants and refugees.				11,800,000.00
SBS IBM Integrated Border Management - Internal Realocation	1,150,000.00			
Regional support to countries of the Western Balkans for issues of mass migrations, Directorate General for Humanitarian Aid and Civil Protection (DG ECHO) of the European Commission,		13,000,000.00		
EU Civil Protection Mechanism, DG ECHO		950,000.00		
Total	28,010,000.00	38,950,000.00	51,550,000.00	22,590,000.00
Grand total				141,100,000.00



5. Analysis

5.1. Transparency

5.1.1. Political instrument: Western Balkans Route Leaders Statement 2015

Almost all respondents had difficulty recalling the Statement, suggesting significant lack of transparency in the preparation, form, and implementation of the document. Only two respondents had in-depth knowledge of the instrument, but were aware that they made no reference to the Statement in their day-to-day work, nor to the expert/general public¹³⁰.

The Serbian public was not aware of the negotiations or the preparation of the document. Moreover, the Serbian state did not play a significant role in the process of negotiating the instrument. One of the respondents stated 'the Statement is an EU document', signalling that it was not a result of negotiations with all participants involved and challenging the equal role of Western Balkan countries, among them Serbia, in the decision-making process of that political meeting. The same respondent claimed that although formally it had an opportunity to speak, Serbia had in fact solely observatory status at the summit¹³¹. The representative of the Serbian Government's Working Group on Mixed Migration Flows (formed in 2015) said that this was the first time that Serbia got an opportunity/was invited to participate and speak at a meeting of such political level (i.e. the summit with EU Member States; radio program Radio Beograd 1, Talasanje, 19 November 2015).

The adopted document had the form of a statement that was signed in Brussels on 25 October 2015. It was made public in the form of a European Commission press release. Although the wording states that Leaders agreed on 17-point plan of action, the nature of the document is political, not legal, since the document was not subject to the procedure of ratification. Also, its aim was not to create formal obligations among the signatories. The Serbian public was informed about the document through the media and the website of the EU Delegation in Serbia. However, the document was not communicated to stakeholders and actors

¹³⁰ Respondent SRB19; Respondent SRB21.

¹³¹ Respondent SRB19.



involved in the Serbian asylum/migration system, nor was it communicated to a wider or expert public¹³².

Although the media covered the Statement to some extent, the implementation of the Statement was not subject to further substantial public discussion. The Serbian state did not share the outcomes of the follow-up video conferences, chaired by the Cabinet of the President of the European Commission, with the public. Moreover, respondents could not recall that the Statement had been referred to by state authorities on any occasion in the subsequent years. Sporadic referrals were made only in a short period of time after the Statement was released¹³³. The European Commission on the other hand, made only some of the follow-up video conferences publicly available on its website and on the EU Delegation in Serbia webpage¹³⁴.

5.1.2. Legal instruments

Readmission Agreement with EU

The Readmission Agreement itself, together with its Protocols, is publicly available and accessible online (webpage of the MoI), while statistics related to readmission of third country nationals to/from Serbia are not available to the public¹³⁵ nor to the requests of relevant non-state actors¹³⁶.

Serbian authorities are silent about violations of the Agreement, concerning continuous and numerous pushbacks from Croatia, Hungary, and Romania

¹³² Respondent SRB20; Respondent SRB19; Respondent SRB14; Respondent SRB21; Respondent SRB11; Respondent SRB6; Respondent SRB8.

¹³³ Respondent SRB20; Respondent SRB14; Respondent SRB21; Respondent SRB11; Respondent SRB6.

¹³⁴ European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting', IP/15/5924, 27 October, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5924; European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting: Contact Points Video Conference', IP/15/5952, 29 October, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5952; European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting: Second Contact Points Video Conference', IP/15/6003, 4 November, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6003;

EU Delegation in Serbia (2015), 'Progress following Western Balkans Route Leaders' Meeting: Third Contact Points Video Conference', 11 November, <http://europa.rs/progress-following-western-balkans-route-leaders-meeting-third-contact-points-video-conference/?lang=en>; EU Delegation in Serbia (2015), 'Progress following Western Balkans Route Leaders' Meeting: Tenth Contact Points Video Conference', 30 December, <https://euusrbiji.europa.rs/progress-following-western-balkans-route-leaders-meeting-tenth-contact-points-video-conference/?lang=en>; EU Delegation in Serbia (2016), 'Progress following Western Balkans Route Leaders' Meeting: Eleventh Contact Points Video Conference', 8 January, <https://euusrbiji.europa.rs/progress-following-western-balkans-route-leaders-meeting-eleventh-contact-points-video-conference/?lang=en>.

¹³⁵ Respondent SRB14; Respondent SRB13; Respondent SRB20.

¹³⁶ Respondent SRB14; Respondent SRB8; Respondent SRB19.



without application of the Readmission Agreement (*supra* para 4 (b)(i)). Moreover, some respondents confirmed the attempts of KIRS field staff to prevent their access to persons pushed back to Serbia and stop them gathering related information in the field¹³⁷, often by trying to intimidate their fieldworkers¹³⁸.

Law on Asylum and Temporary Protection (LATP)

The process of drafting of the Law on Asylum and Temporary Protection was transparent and, since its early stages, involved UNHCR, OSCE, EUAA, civil society, institutions, and even the general public¹³⁹. The MoI Asylum Office was building upon the original initiative that came from UNHCR and the MoI State Secretary in 2014, and on the goals envisaged under EU Negotiations Chapter 24 Action Plan in 2015. It relied on Dutch and Swedish legal and asylum *acquis* expert support to Serbia, achieved via a EUR 1 million EU funded Twinning project (*supra* para. 4(c)). Three public debates were organized in 2017 and 2018 by the MoI, a draft of the law was publicly available via the MoI webpage, and all stakeholders were invited to provide their comments on a draft version of the Law. Some of comments were adopted by the MoI and some were adopted even during the legislative procedure before Parliament in later phase¹⁴⁰. During the drafting stage, the EU Delegation in Serbia and EUAA were involved. For the EU it was important that Serbia adopts three new laws that are harmonized with EU *acquis*. Peer review of the drafts was undertaken by the EU Delegation, providing suggestions to the state that were not obligatory. Border procedures, the duration of asylum proceedings, and integration were the focus of the EUAA according to one respondent who met with the EUAA on same issue¹⁴¹. Moreover, Serbia aligned the criteria for verifying safe countries of origin and the list of safe third countries, which was highly

¹³⁷ Respondent SRB14; Respondent SRB13.

¹³⁸ Respondent SRB14; Respondent SRB15; Respondent SRB13.

¹³⁹ Respondent SRB20; Respondent SRB19; Respondent SRB14, Respondent SRB15; Respondent SRB16; Respondent SRB2.

¹⁴⁰ Respondent SRB19; Grupa 484 (2019), 'Politike migracija i azila - Standardi Evropske unije i nacionalni pravni okvir', p. 61, <https://www.grupa484.org.rs/h-content/uploads/2020/04/Politike-migracija-i-azila-grupa-484.pdf>.

¹⁴¹ Respondent SRB11.



problematic in Serbian asylum legal practice at the time¹⁴², with the EU acquis upon the explicit recommendation of the EU¹⁴³.

The adopted version of the LAMP was published in Official Gazette and is publicly available on the Parliament's webpage and on webpages of other state actors involved in the asylum system, as well as on the webpages of the UNHCR and relevant Civil Society Organisations (CSOs). Regarding implementation of the Law, statistical data is available only upon request of expert CSOs, while many researchers and even embassies are obtaining the same statistics via UNHCR. For the general public and for the media, there is no updated statistical data accessible online. Only the Serbian Annual Migration Profile document (drafted by KIRS) is available, usually with a six months' delay. Some data, but not systematized statistical data nor substantial asylum data, are available via KIRS' Annual Work Report¹⁴⁴.

Regarding the LAMP's substantial implementation data, the MoI Asylum Office, the Asylum Commission and KIRS are not making them available to the public, apart from the very limited data presented in the Serbian Annual Migration Profile compiled by KIRS and the Chapter 24 Action Plan Update by the MoI. Thus, substantial amounts of data remain inaccessible¹⁴⁵. A few periodical meetings of various working groups (for a narrow circle of institutions,¹⁴⁶ CSOs and other expert actors involved in asylum system) provide opportunities to obtain relevant and substantial data for a few actors.¹⁴⁷ On the other side, the EU Annual Progress reports gives basic LAMP implementation updates, as one of the few sources

¹⁴² Ivana Krstić (2018), 'The Efficiency of the Asylum System in Serbia: Main Problems and Challenges', *The New Asylum and Transit Countries in Europe during and in the Aftermath of the 2015/2016 Crisis*, Brill Nijhoff, p. 183.

¹⁴³ 'To align with the relevant EU rules, the asylum system of Serbia needs to align the criteria for verifying safe countries of origin and the list of safe third countries with the acquis.' SERBIA Twinning Facility, Instrument for Pre-Accession Assistance (IPA II) 2014-2020, 1. Rationale problem and stakeholder analysis, p. 4, https://ec.europa.eu/neighbourhood-enlargement/system/files/2017-05/ipa2016-039802.03-serbia-twinning_facility.pdf; EU Commission (2016), Serbia 2016 Report, Brussels, 9 November, SWD(2016) 361 final, pp. 67-68, https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-12/20161109_report_serbia.pdf.

¹⁴⁴ Serbian Commissariat for Refugees and Migration, Izveštaji, <https://kirs.gov.rs/cir/izvestaji/izvestaji>.

¹⁴⁵ Respondent SRB14, Respondent SRB8; Respondent SRB19. AIDA (2020), 'Country Report: Serbia', p. 16, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf.

¹⁴⁶ E.g. EU Convent run by Belgrade Centre for Security Policy - BCBP and Serbian institutions, Protection Working Group run by UNHCR and Serbian institutions, Child Protection Group run by UNICEF and Serbian institutions, etc. Respondent SRB14; Respondent SRB8; Respondent SRB15; Respondent SRB1; Respondent SRB3; Respondent SRB4; Respondent SRB6; Respondent SRB7; Respondent SRB9; Respondent SRB10, Respondent SRB11.

¹⁴⁷ Respondent SRB8; Respondent SRB19; Respondent SRB14.



available for understanding existing trends and practices in the LATP's implementation process, and available online to the general public¹⁴⁸.

Law on Foreigners and Law on Border Control

The drafting process of the Law on Foreigners included several public debates across the country, involving UNHCR, CSOs and expert public in the process of commenting and proposing changes to the initial draft proposed by the MoI. By contrast, although the Law on Border Control was drafted and adopted under the same package with Law on Asylum and Temporary Protection and Law on Foreigners, its drafting process did not include public discussion nor did it involve relevant non-institutional actors. Both laws were adopted in a parliamentary procedure and published in Serbian Official Gazette, available to the public via webpages of Parliament and other relevant institutions and CSOs.

Transparency in the implementation of the Law of Foreigner remains limited however when it comes to statistical data. Namely, the same data was generally not made available in a structured nor systematized manner, not even upon the formal requests of expert CSOs coming from the field¹⁴⁹. Even an initiative of one of the respondent expert CSOs before the Trustee for Information of Public Importance and Personal Data Protection, relating to access to concrete law implementation data, was unsuccessful¹⁵⁰.

Incomplete statistical data is partially presented in the Annual Migration Profile and in Progress report on Action Plan for Chapter 24 of SAA, but not structured nor systematized in a manner conducive to any efficient use of same data for

¹⁴⁸ European Commission, Directorate-General for Neighbourhood Policy and Enlargement Negotiations, Document Repository web page, EU Country Progress Reports on Serbia https://ec.europa.eu/neighbourhood-enlargement/about-us/documents-repository_en?f%5B0%5D=country_country%3Ahttp%3A//publications.europa.eu/resource/authority/country/SRB&f%5B1%5D=document_repository_filters_document_repository_filters%3A129&page=0; Serbian Ministry of European Integration's web page, Annual progress reports of the European Commission for Serbia, www.mei.gov.rs/eng/documents/eu-documents/annual-progress-reports-of-the-european-commission-for-serbia/.

¹⁴⁹ Respondent SRB14 and Respondent SRB8 were denied statistical data by MoI, Border Police, upon their request. Respondent SRB14; Respondent SRB8.

¹⁵⁰ 'We even gave up from our research activities due to inability to access structured information regarding foreigners from the MoI. We even initiated cases before Trustee for Information of Public Importance and Personal Data Protection due to denial of institutions to provide data systematized upon gender, age, etc., but remaining without any success.' Respondent SRB8.



research or other awareness purposes¹⁵¹. The EU Annual Progress reports make rather limited data available online to the broader public, concerning only the most significant implementation of the Law on Foreigners and the Law on Border Control. This is one a few remaining important information sources for understanding existing trends and practices in Law on Foreigners and Law on Border Control implementation process¹⁵².

FRONTEX Status Agreement 2019

The Long-standing practical cooperation between Serbia and FRONTEX, dating back to 2009¹⁵³ resulted in the initiating of the Status Agreement on 20 of September 2018¹⁵⁴ and in the signing of the mutual Status Agreement in Belgrade and Skopje on 18 and 19 November 2019. The Serbian general and expert public were not informed of the drafting process of the Agreement, nor on the content of the draft. They learnt about it for the first time from a Deutsche Welle article¹⁵⁵. The responsible Serbian institutions and high state officials, together with EU representatives who were negotiating the drafting process itself misled journalists and the public about the process and about the content of the draft¹⁵⁶. No international organizations, local CSOs, academics, experts or other actors, were

¹⁵¹ Serbian Commissariat for Refugees and Migration's webpage, Publications, <https://kirs.gov.rs/eng/documents-and-publications/publications>. Serbian Ministry of Interior's webpage, Evropske integracije [European Integration], Progress reports on Action Plan for Chapter 24 of SAA, www.mup.gov.rs/wps/portal/sr!/ut/p/z0/04_Sj9CPykssy0xPLMnMzOvMAfIjo8zi_S19zQzdDYy83c1cjQwcA80tXbxdlYwtPAz0g4uL4oOC45V9Ekvy9AuyHRUBMZJpA!!/?1dmy&urile=wcm%3Apath%3A/public_latin/baner/baner+sadrzaj/evropske+integracije.

¹⁵² European Commission, Directorate-General for Neighbourhood Policy and Enlargement Negotiations, Document Repository web page https://ec.europa.eu/neighbourhood-enlargement/about-us/documents-repository_en?f%5B0%5D=country_country%3Ahttp%3A//publications.europa.eu/resource/authority/country/SRB&f%5B1%5D=document_repository_filters_document_repository_filters%3A129&page=0; Serbian Ministry of European Integration's web page <https://www.mei.gov.rs/eng/documents/eu-documents/annual-progress-reports-of-the-european-commission-for-serbia/>.

¹⁵³ Working Arrangement establishing operational cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the Ministry of the Interior of Republic of Serbia, agreed in Belgrade, on the 17 February 2009; FRONTEX liaison officer responsible for entire Western Balkans, appointed in Belgrade, Serbia in 2017.

¹⁵⁴ The draft Agreement was paraphed by Minister of Interior and Commissioner for Migration and Home affairs in Belgrade, on 20th of September 2018. European Commission (2018), 'European Border and Coast Guard: Agreement reached on operational cooperation with Serbia', IP/18/5835, 20 September, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5835.

¹⁵⁵ Deutsche Welle (2018), 'Fronteks stiže u Srbiju, sabirni centri na Balkanu?', 17 September, https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=09&dd=17&nav_category=1262&nav_id=1444818.

¹⁵⁶ Danas (2018), 'MUP demantuje da Fronteks dolazi u Srbiju', 18 September, <https://www.danas.rs/vesti/drustvo/mup-demantuje-da-fronteks-dolazi-u-srbiju/>; Euroactiv.rs (2018), 'Šef delegacije EU najavio sporazum Srbije i Fronteksa', 18 September, <https://euractiv.rs/2-srbija-i-eu/102-vesti/13044-ef-delegacije-eu-njavio-sporazum-srbije-i-fronteksa>.



consulted nor informed on the drafting process of the agreement¹⁵⁷. The FRONTEX Status Agreement was ratified on 2 March 2021 by the Serbian Parliament, entering into force on 1 May 2021, and published in the Official Gazette and is available on Parliaments webpage and websites of other relevant institutions. Up to now, implementation of the Agreement remains obscure and non-transparent for public and media, and only highly limited implementation information was accessible to narrow circle of expert CSOs involved in National Convent on EU Accession Negotiation progress under chapter 24¹⁵⁸. The Agreement builds on the standard FRONTEX agreement and was modified to satisfy Serbian requirements regarding the immunity of FRONTEX's mission staff in Serbia¹⁵⁹.

5.1.3. Financial instruments

In addition to its support to border management and the asylum system under the regular IPA programmes, the European Union (EU) has allocated substantial financial support to the Republic of Serbia since the summer of 2015, with the aim of increasing control of migration flows and improving reception capacities for migrants and refugees through several complementary measures and funding instruments (e.g. ECHO, IPA and the EU Regional Trust Fund in response to the Syrian Crisis - Madad Fund).

ECHO funding

Lack of transparency was evident to the Serbian expert and general public regarding the drafting of ECHO support that was provided in 2015 and in 2016 as emergency support to Serbia for addressing the existing humanitarian crisis. Nevertheless, the Government's Mixed Migration Working Group, the local EU Delegation and major international organizations, such as UNHCR and the Danish Refugee Council (DRC), were involved and consulted during the course of the instrument drafting process. Most local CSOs were not even informed about the existence of this funding, about the grant selection process, or about implementing partners and granted projects. On the other hand, additional

¹⁵⁷ Respondent SRB20; Respondent SRB11; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB8.

¹⁵⁸ Respondent SRB20; Respondent SRB11; Respondent SRB14; Respondent SRB8.

¹⁵⁹ While the agreements with Albania, Montenegro, and North Macedonia include a provision holding that the FRONTEX executive director's decision on nature of committed action is binding upon the authorities of the host state, no such article is found in the agreements with Bosnia and Herzegovina and Serbia. Statewatch (2021), 'Briefing: External action: Frontex operations outside the EU', 11 March, <https://www.statewatch.org/analyses/2021/briefing-external-action-frontex-operations-outside-the-eu/>.



information was for the most part available via EU Commission press releases and the ECHO webpage and its portal IDRIS.

MADAD funding

In the phase of programming, the MADAD instrument involved the participation of relevant Serbian ministries and other state actors, major international organizations such as IOM, DRC, OXFAM, and CARE, in order to address running and operational costs of reception centres and human resources, specialised vehicles with medical equipment, health services, and voluntary return of migrants to countries of origin. Relevant local CSOs, the media or the wider public remained outside these consultations. The general public was informed about MADAD funding via MADAD and relevant state actors' webpages in the form of news items. However, detailed information on the development process, on the form the instrument took, (often non-public contracts concluded by the Serbian Government) or on the results of MADAD funding remained fragmented and unsystematised, offering less opportunity for the public to understand the purpose and effects of the states' and international organizations' funding¹⁶⁰. Several respondents had the impression that state institutions, as well as the EU Delegation, did not invest in the visibility of this instrument, suggesting this was not significant to them given their own interests at the time. They perceive it being in the EU Delegation's interest to avoid publicly linking EU financial support with the containment of migrants in Serbia, while Serbian state institutions found communicating to the Serbian public about MADAD funding in the field of asylum and migration a non-priority within their own political agenda¹⁶¹.

IPA funding

State projects regarding asylum, migration and border management, financed under IPA financial instruments, were programmed in order to respond to the concrete needs of Serbian institutions in the existing circumstances. They were prior, complementary and posterior to MADAD funding, but did not involve a wider public in programming, nor other relevant actors beside UNHCR and a limited number of international organizations. Although the Law upon confirmation of IPA II¹⁶² envisaged binding principles of transparency and visibility

¹⁶⁰ Respondent SRB4; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB10; Respondent SRB7; Respondent SRB9.

¹⁶¹ Respondent SRB2; Respondent SRB21; Respondent SRB9.

¹⁶² Law on ratification of Framework Agreement Between the Republic of Serbia and the European Commission on the Arrangements for implementation of Union Financial Assistance to the Republic of Serbia under the Instrument for Pre-accession Assistance, *Official Gazette RS - International treaties* 19/2014, 29 December 2014.



for IPA II asylum, migration and border management projects, funded projects themselves were approved in the Government's annual conclusion, where no all-inclusive, transparent information was clearly presented to Serbian experts or the general public regarding content¹⁶³ or implementation¹⁶⁴. This left the public unable to understand various projects' purposes, their interconnection and their final scope. Besides the webpages of ministries and other Serbian institutions involved, information regarding projects and their implementation was communicated via the IOM webpage and social media, and EU channels of communication¹⁶⁵. On the other side, Regional Multi-country IPA actions, initially programmed before the migration crisis (in 2014) and adopted in the form of an action document¹⁶⁶, were adjusted during their implementation to the circumstances of the refugee crisis from 2016 onwards, and drafted and implemented jointly by FRONTEX, EUAA, IOM, and UNHCR, marking the EUAA's entry point into Serbia's migration and asylum system development. Information regarding the implementation of this regional financial instrument remains dispersed and only partially accessible via the webpages of all four partners involved. However, these provide all-inclusive or exhaustive information to the public¹⁶⁷.

Beside the cooperation with FRONTEX that was formalised with the Status agreement, Serbian cooperation with EU Agencies continues through active cooperation with EUAA, in the first place in the field of training as well as other support. That cooperation started in 2017 with an exchange of letters of understanding and was formalised with a Memorandum of cooperation in 2018.

¹⁶³ Respondent SRB10; Respondent SRB1; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB7; Respondent SRB20; Respondent SRB3; Respondent SRB9.

¹⁶⁴ Respondent SRB4; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB10; Respondent SRB7; Respondent SRB9.

¹⁶⁵ Podrška Evropske unije upravljanju migracijama u Republici Srbiji [European Union Support to Migration Management in the Republic of Serbia], <http://euinfo.rs/podrska-eu-upravljanju-migracijama/en/>; Youtube, Podrška Evropske unije upravljanju migracijama u Republici Srbiji [European Union Support to Migration Management in the Republic of Serbia], www.youtube.com/channel/UC5xi0hh7giP3jOs33SP-3nw; Podrška Evropske unije upravljanju migracijama u Republici Srbiji [European Union Support to Migration Twitter, Management in the Republic of Serbia], <https://twitter.com/eusmmserbia>; EU za tebe -EU projekti u Srbiji [EU for you - EU projects in Serbia], www.euzatebe.rs/en/sectors/migration-management.

¹⁶⁶ EU Commission, Instrument for pre-accession assistance, IPA II Multi-country action programme 2014, Regional support to protection-sensitive migration management systems, IPA 2014/031-603.07/MC/migration, https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/ipa_ii_2014_031-603.07_mc_migration.pdf.

¹⁶⁷ EUAA webpage, <https://euaa.europa.eu/sites/default/files/IPA-II-phase-II.pdf>; FRONTEX webpage, https://frontex.europa.eu/assets/Partners/Third_countries/IPA_II_Phase_II.pdf; UNHCR webpage, www.unhcr.org/see/11407-eu-supports-protection-sensitive-approaches-integrated-into-migration-management-practices-in-the-western-balkan-and-turkey.html; IOM webpage, <http://serbia.iom.acsifactory.com/regional-support-protection-sensitive-migration-management-western-balkans-and-turkey-phase-i>.



Based on that, two roadmaps, signed and confirmed by both EUAA and Serbia, were implemented, but are not available to the expert or general public¹⁶⁸. The EU Migration liaison officer responsible for whole region, operates from Belgrade¹⁶⁹.

5.2. Accountability

5.2.1. Political instrument: Western Balkans Route Leaders Statement 2015

The accountability of the EU and its agencies, Member States or Western Balkan countries in the implementation of the Western Balkans Route Leaders Statement is hard to establish. The Statement's form and substance indicate its nonbinding character, and relies more on Parties' good faith than on concrete legal obligations. As a political instrument expressing commitment of the EU and Non-EU Western Balkan route countries to cooperate on addressing migration challenges, the Statement itself did not foresee any specific accountability mechanism before international or EU instances, notwithstanding regular monitoring meetings regarding implementation of the instrument.

The Statement produced effects in a period immediately after its adoption until the closure of the Western Balkans route, though the Statement itself has been implemented and interpreted differently by its signatories over the course of time. State acts implementing the Statement were not a subject of any legal procedure before domestic or international bodies. However, according to the

¹⁶⁸ Respondent SRB14; Respondent SRB15; Respondent SRB16;

¹⁶⁹ EU Commission (2020), Commission staff working document, Serbia 2020 Report, 6 October, p. 50, https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf.



respondents¹⁷⁰, officials statements¹⁷¹ and progress reports¹⁷² suggest that Serbia is still considering itself bound by the Statement, far after the closure of the route, e.g. in the number of available refugee accommodation capacities (6000 beds).

After the signing of the instrument, a number of follow-up video conferences were held on weekly basis, chaired by cabinet of the EC President. There were no defined monitoring implementation indicators. Indeed, follow-up meetings (according to the respondents) were limited information exchanges among signatories on the current state of affairs regarding the points agreed within the instrument. These monitoring video conferences were discontinued after the Western Balkans route was closed in early 2016.

5.2.2. Legal instruments

Readmission Agreement with EU

There are no bilateral or supranational accountability mechanisms for the application or non-application (i.e. pushbacks) of the Readmission Agreement between Serbia and EU Member States. The Agreement's Joint Readmission Committee is responsible for, among others, the implementation arrangements of

¹⁷⁰ Respondent SRB21; Respondent SRB14;

¹⁷¹ "However, the numbers don't add up. Miskovic said the Serbian government has pledged to make 6,000 beds available for asylum seekers..", Diego Cupolo, *Train to Nowhere: Refugees in Serbia Stranded on E.U. Border*, The New Humanitarian, 21 December 2016, (<https://deeply.thenewhumanitarian.org/refugees/articles/2016/12/21/train-to-nowhere-refugees-in-serbia-stranded-on-e-u-border>);

EURACTIV.rs, *Serbia: 7000 asylum seekers estimated in the country, 02 February 2017*, (www.euractiv.com/section/enlargement/news/serbia-7000-asylum-seekers-estimated-in-the-country/).

¹⁷² "The long-term accommodation capacity in Serbia is about 6,000 places. The Commissariat for Refugees and Migration is regularly reviewing its contingency plan": European Commission, *Serbia 2019 Report*, 29 May 2019, (<https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-serbia-report.pdf>);

Ministry of Interior, *Izveštaj o sprovođenju Strategije suprotstavljanja iregularnim migracijama za period 2018-2020*, June 2021, p.17, (<http://mup.gov.rs/wps/wcm/connect/d6fe856c-bcc1-4ba8-891b-77a4667e1479/lregularne+-+izve%C5%A1taj+18-20-lat.pdf?MOD=AJPERES&CVID=nEp50-v>);



the Agreement (Article 18 EU-Serbia Readmission Agreement)¹⁷³. Although its role did not significantly result in the improvement of implementation of the Agreement, in the case of readmission with Romania, the involvement of the EU Commission in the Joint Readmission Committee significantly improved its functioning since 2019¹⁷⁴. To a certain extent, Serbian authorities started responding timely to requests for readmission submitted from the Romanian side, enabling the implementation of the readmission agreement¹⁷⁵.

Besides national accountability mechanisms (including judicial procedures and procedures before Parliament and Ombudsperson (*infra*), to hold actors accountable for violations of human and refugee rights in their soil) there are supranational mechanisms such as the EU Ombudsperson, the ECtHR, the ECJ, and the UN Committee against Torture for holding actors accountable for purported violations of human rights guaranteed within the EU *acquis* and the ECHR and the CAT.

Furthermore, political or diplomatic initiatives of signatories could raise certain bilateral responsibility issues to a higher level of importance/attention. Unfortunately, *de facto* breaches of readmission provisions by Croatia, Hungary, and Romania (conducting continuous refugee pushbacks to Serbia) have remained unaddressed legally, politically and diplomatically by Serbia, the EU, and other signatory countries, nor did these actors bring such cases to the media or raise them before a general, expert, or international public.

The European Commission initiated an infringement procedure against Hungary before the ECJ, but not for the ongoing breaches of the Readmission Agreement with Serbia. The ECJ declared Hungary responsible for failing to fulfil its obligations under Reception, Procedure, and Return directives. Eventually, the EC requested the Court to order Hungary to pay a financial penalty (*supra*, para. 4(b)(i)).

The main attribute of the pushback practice is that it is conducted outside of any legal procedure – in other words, contrary to the EU-Serbia Readmission Agreement and bilateral readmission agreements. Although it seems that such wide spread unlawful practices are conducted without the official cross-border

¹⁷³ The Readmission Committee is envisaged to have a consultative and facilitating role, collect, exchange information and follow the implementation of the agreement, give recommendations for future changes of modalities of the agreement, art. 18.

¹⁷⁴ European Commission (2019), 'Serbia 2019 Report', pp. 38-40, <https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-serbia-report.pdf>.

¹⁷⁵ Respondent SRB18.



cooperation of state authorities, many respondents said that the Serbian authorities as well EU representatives in Serbia are well aware of such border practices. With EU funding (MADAD and IPA),¹⁷⁶ the Serbian state is providing pushbacked migrants with transportation, medical care and responding to their reception and basic living needs through the activities of KIRS. According to the respondents, the Serbian police is either not present on the northern borders or ignores pushbacks at its borders. Furthermore, following the pushbacks, migrants receive transportation, medical care, reception, and basic needs from the Serbian reception agency (KIRS) predominantly financed with EU funding (MADAD and IPA)¹⁷⁷.

FRONTEX Status Agreement

FRONTEX Status Agreement foresees criminal, civil, and administrative immunity from Serbian jurisdiction for its staff engaged in their actions in Serbia (Article 7 FRONTEX Status Agreement), performed in the exercise of the official functions in accordance with the operational plan agreed between FRONTEX and Serbia for each FRONTEX action (Article 4 FRONTEX Status Agreement). This has raised serious concerns among Serbian experts and the general public, especially due to the character of FRONTEX field-oriented activities in preventing irregular migration along EU-Serbian borders¹⁷⁸. Additionally, there is no common monitoring mechanism of joint Serbia-FRONTEX missions established along Serbian borders, nor sharing of field information regarding the implementation of the Agreement¹⁷⁹.

Having in mind that FRONTEX'S executive director has a crucial and exclusive role in determining if an unlawful act was performed in the exercise of the official functions or not (Article 7 FRONTEX Status Agreement), FRONTEX has the unilateral capacity to exclude itself from responsibility from the Serbian legal accountability system. On the other hand, FRONTEX members of the joint field teams are limited to performing tasks and exercising powers in the presence and under instructions of the Serbian state's border guards or other relevant authorities. Tasks and powers may only be performed under instructions from and, as a general rule, in the presence of Serbian border guards or other police officers (Article 5 FRONTEX Status Agreement). According to the Agreement,

¹⁷⁶ Respondent SRB2; Respondent SRB3; Respondent SRB9; Respondent SRB13; Respondent SRB14; Respondent SRB15.

¹⁷⁷ Respondent SRB2; Respondent SRB3; Respondent SRB9; Respondent SRB13; Respondent SRB14; Respondent SRB15.

¹⁷⁸ Respondent SRB19; Respondent SRB14; Respondent SRB11.

¹⁷⁹ Respondent SRB19.



Serbia may authorize members of the team to use force in the absence of Serbian border or other police officers (Article 5 FRONTEX Status Agreement). Particularly in cases of violations of fundamental rights, of the principle of *non-refoulement* or of data protection rules, both the FRONTEX executive director and the Republic of Serbia may suspend or terminate an action if the Status Agreement or the Operational Plan are not respected (Article 6 FRONTEX Status Agreement).

In regard to violation of basic human rights each party uses its own mechanisms (Article 9 FRONTEX Status Agreement). In the case of FRONTEX, the complaint mechanism can be triggered by an individual complaint and managed by FRONTEX human rights officer who oversees the admissibility of complaints¹⁸⁰. When allegations concern permanent FRONTEX staff, the agency is expected to conduct an examination and impose disciplinary measures (Article 72 FRONTEX Regulation)¹⁸¹. For border guards and staff seconded to the FRONTEX action by an EU Member State and for criminal investigations, FRONTEX can only refer complaints to the Member States concerned and receive periodical reports, findings and follow up¹⁸².

The internal FRONTEX complaints mechanism cannot be considered an effective remedy within the meaning of article 47 of the EU Charter of Fundamental Rights and article 13 of the European Convention on Human Rights (ECHR). As an employee of FRONTEX, the FRONTEX human rights officer lacks the independence required by these provisions. Moreover, even if the rights officer accepts the complaint against a staff member, the FRONTEX executive director is responsible for investigating it. An adequate level of protection can only be granted by allowing victims of mistreatments access to a court or an administrative body providing same guarantees as a court¹⁸³.

¹⁸⁰ FRONTEX, 'Frontex rules on the complaints mechanism', https://frontex.europa.eu/assets/Key_Documents/Complaints/Annex_1_Frontex_rules_on_the_complaints_mechanism.pdf; FRONTEX, Code of Conduct, Public registry of documents, file:///E:/U%20radu/PROJEKTI%202016/ASILE%20NETWORK/Dokumenti/FRONTEX%20code_of_conduct_staff_2015.pdf; FRONTEX, Complaint mechanism, <https://frontex.europa.eu/accountability/complaints-mechanism/>.

¹⁸¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, *Official Journal* L 295/1, 14 November 2019, art. 111, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>.

¹⁸² Ibid. Human Rights Watch (2021), 'Frontex Failing to Protect People at EU Borders', 23 June, www.hrw.org/node/379025/printable/print.

¹⁸³ CEPS (2018), 'Complaint mechanisms in border management and expulsion operations in Europe', pp. 32-47, https://www.ceps.eu/wp-content/uploads/2018/03/Complaint%20Mechanisms_A4.pdf.



5.2.3. National accountability mechanisms

Parliament

The control role of the Serbian parliament in the implementation of the instruments can be seen as almost non-existent, while its legislative role remains limited to formal approval. Moreover, none of the respondents saw parliamentary control as an efficient accountability mechanism for the instruments' implementation. This is in line with the character of the Serbian parliament, which has been widely and continuously criticized by the public for its more formalistic and less substantive role in parliament's legislative and executive-control processes – among others by the European Commission¹⁸⁴.

Ombudsperson and National Preventive Mechanism

The accountability of institutions conducting themselves as a public authority can be raised before the Ombudsperson, either via lodging concrete complaints or via initiatives undertaken by the Ombudsperson itself. The Ombudsperson's role, defined by the Constitution of the Republic of Serbia and the Law on the Protector of Citizens, is to control public administration and to protect endangered rights of private individuals; and to constantly influence the administration so as to respect human liberties and rights of individuals, with special focus on protection of children rights, rights of disabled persons, rights of people deprived of liberty, and gender rights. Since 2015, the Ombudsperson undertook many visits to migration accommodation camps, transit/border zones and other places, in order to control acts of the Commissariat for Refugees and Migration, camp management, police, and other institutions in respecting human rights of refugees who were accommodated in the same facilities. The Ombudsperson issued

¹⁸⁴ European Commission (2018), 'The parliament still does not exercise effective oversight of the executive', Serbia 2018 Report, p. 6, <https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20180417-serbia-report.pdf>; 'The ruling coalition's parliamentary practices led to a deterioration in legislative debate and scrutiny, and significantly undermined the parliament's oversight of the executive.' European Commission (2019), Serbia 2019 Report, pp. 6-7, <https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-serbia-report.pdf>; 'Overall, parliamentary oversight of the executive remains rather formalistic and, thus, the democratic accountability of the executive branch is weak.', European Commission (2020), Serbia 2020 Report, p. 11, https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf; 'Legislators do not have adequate opportunities to ask questions about government activities and legislation', Freedom house (2019), 'Freedom in the world 2019', C3, <https://freedomhouse.org/country/serbia/freedom-world/2019>; Freedom house (2020), 'Freedom in the world 2020', C3, <https://freedomhouse.org/country/serbia/freedom-world/2020>; Freedom house (2021), 'Freedom in the world 2021', C3 <https://freedomhouse.org/country/serbia/freedom-world/2021>; Freedom house (2022), 'Freedom in the world 2022', C3 <https://freedomhouse.org/country/serbia/freedom-world/2022>.



recommendations for improvement of institutional acting in that regard¹⁸⁵, that were however never fully respected by these institutions¹⁸⁶.

Most of respondents pointed out the mechanism before the Ombudsperson when talking on accountability of state actors for purported violations of migrants' rights, but they also confirmed its ineffectiveness and expressed concerns regarding Ombudsperson's real capacity to protect endangered human rights of individuals in need of international protection. They referred to the non-binding character of recommendations and weak mechanisms for exerting pressure on the state actor in question. Respondents called for legal responsibility in managing officials in concrete cases, and for informing the wider public, Parliament, or the Government on administrative misconduct.

Moreover, the fact that Global Alliance of National institutions for Human Rights postponed accreditation of the Serbian Ombudsperson due to its deviation from the internationally accepted Paris principles for accreditation within this Alliance,

¹⁸⁵ E.g. Enlargement of accommodation capacities, improving bad living conditions in the reception camps, relieving overcrowded camps, enabling refugees access to Ombudsman and its contacts, refraining from using violence or punishments toward refugees, sending clear message to staff regarding zero tolerance against violence, punishments, ill-treatment of camp occupants, providing access to asylum at the airports and to relevant information about asylum, free legal aid and on available support from international and local nongovernmental organisations. Serbian Ombudsman, NPM (2021), 'Regional report on treatment of migrants at state borders', <https://npm.ils.rs/attachments/article/466/Serbian-National-Report.pdf>. Illustratively, ill-treatment and de facto deprivation of liberty in Obrenovac camp were recognized in Annual report in 2018 and suggested to be improved again in Annual report in 2020, bad living conditions and lack of hygiene were identified regarding transit reception camps in Annual reports in 2018 and recommended to be improved again in 2020, etc. While same was confirmed through social networks and online reports of CSOs, and many respondents in 2020 and 2021. Asylum Protection Center (2022), https://twitter.com/APC_CZA/status/1484459026100461568?s=20; Asylum Protection Center (2021), 'Migracije na jugu Srbije' [Migration at south Serbia], www.azilsrbija.rs/wp-content/uploads/2021/12/Pushbacks-South-Serbia-jan-jun-21-f.pdf; Asylum Protection Center (2020), 'Southern camps and pushbacks', www.azilsrbija.rs/wp-content/uploads/2021/07/Pushbacks-South-2020.pdf.

¹⁸⁶ According to many respondents, institutions and especially KIRS were not acting in accordance with the Ombudsman's recommendations, keeping their practices regarding insufficient and inappropriate accommodation, inadequate and disrespectful treatment of refugee occupants in the camps, limitation of information and access to asylum, limitation of access to free legal and psychosocial aid provided by local civil society organisations, etc. Respondent SRB7; Respondent SRB8; Respondent SRB13; Respondent SRB14; Respondent SRB15; Respondent SRB16.



raised concerns of prominent local human rights CSOs regarding the Ombudsperson's independence and impartiality¹⁸⁷.

A complaint before the Ombudsperson's Office was one of the mechanisms that can be used by CSOs or individual persons in cases where individual rights and liberties were endangered. Additionally, the Ombudsperson has issued opinions on disputable practices and even acts as mediator between concrete institutions and complainants to preventively act, improve the work of concrete institutions, and protect and improve respect of the rights and liberties of refugees and migrants.

Furthermore, the National Preventive Mechanism against torture was serving as a mechanism for holding institutions accountable in cases of inhuman and degrading treatment of refugees that were accommodated in detention and detention-like facilities including some of reception camps and airport detention facilities. Nevertheless, the independence of this National Preventive Mechanism against torture is disputable, causing most prominent CSOs to withdraw after the 2019 re-election, under allegation of partiality¹⁸⁸. One of the respondents explained, 'Nothing is done, reports are changed 'a posteriori', visits are

¹⁸⁷ 'Main identified deficiencies indicated delays in resolving citizens' complaints and a significant reduction in the number of complaints received since 2017, which may indicate reduced citizens' trust in the work of institutions; insufficient activities of the Protector regarding the protection of economic, social and cultural rights and weaker response of institutions to recommendations in this area; unsatisfactory work on cases of police abuse and reduction of the number of visits of the National Mechanism for the Prevention of Torture (NPM) in the observed period; non-transparency and insufficient involvement of civil society organisations in the process of electing the Protector of Citizens in 2017; weak cooperation of the Protector of Citizens with civil society organisations.' CRTA (2021), 'Ugrožen međunarodni status Zaštitnika građana zbog odstupanja od međunarodnih principa funkcionisanja nezavisnih institucija za ljudska prava' [International status of the Protector of Citizens threatened due to deviations from international principles of functioning of independent human rights institutions], <https://cрта.rs/ugrozen-medjunarodni-status-zastitnika-gradjana-zbog-odstupanja-od-medjunarodnih-principa-funkcionisanja-nezavisnih-institucija-za-ljudska-prava/>; Komitet pravnika za ljudska prava – YUCOM (2019), 5 GODINA: ANALIZA RADA ZAŠTITNIKA GRAĐANA REPUBLIKE SRBIJE U PERIODU 2015–2019. GODINE, November, www.yucom.org.rs/wp-content/uploads/2019/11/Analiza-rada-Ombudsmana-2015-2019-1.pdf; A 11 – Initiative for Economic and Social Rights and CRTA (Centre for Research, Transparency and Accountability), Joint Submission to the GANHRI Subcommittee on Accreditation (SCA) on the occasion of re-accreditation of Serbian National Human Rights Institution, www.a11initiative.org/wp-content/uploads/2021/01/Joint-Submission-to-the-GANHRI-Sub-Committee-on-Accreditation-on-the-occasion-of-re-accreditation-of-Serbian-NHRI-2.pdf.

¹⁸⁸ Belgrade Centre for Human Rights (2020), 'Human Rights in Serbia January - June 2020', p. 71, www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-I-VI-2020.pdf. The Belgrade Centre for Human Rights report on Human Rights in Serbia for 2017 reported some controversy about the election and noted that in the past the NPM had been subject to: 'challenges, public criticisms, attacks and difficulties.' The changes in leadership and the political environment in which the NPM conducted its work created concerns about the ability of the NPM to carry out its work independently. NPM Observatory (2019), 'Observation visits to the National Preventive Mechanism of Serbia', p. 27.



announced, organizations are pressured to change or withdraw their complaints, or similar¹⁸⁹.

The latest Ombudsperson's report on human rights of migrants at the borders presented testimonies of many migrants facing pushbacks, violence, or inhumane treatment by Serbian police or KIRS while only one individual expressed readiness to submit complaint to the Ombudsperson¹⁹⁰. In spite of the Ombudsperson recommendations, the number of pushbacks and border violence allegations continued to rise¹⁹¹.

Complaints against administrative acting/omission

According to the Law on Administrative Procedure, the legal remedies available to individual migrants are complaints to senior responsible officers against the legal acts of administration staff or against their failure to perform legal acts. In case of asylum, border or reception procedures, the same such complaint could be raised against Mol and KIRS staff, or against staff of other institutions involved. In practice, this mechanism had limited effect in urgent situations. In concrete cases related to denial of accommodation, forced eviction, and registration of asylum seekers, automatic rejection of complaints by the senior staff led to lengthy court procedures, which, combined with uncertain accommodation and the regularized and insecure stay of applicants, made these proceedings meaningless and caused applicants to eventually leave Serbia¹⁹².

Criminal charges

Many respondents mentioned the possibility of raising criminal charges against officers committing criminal acts remaining as an accountability mechanism, but only two respondents confirmed they knew that such charges were submitted¹⁹³. Criminal charges were brought extremely rarely by migrants and refugees due to reasons linked with lack of information and free legal aid, their fear, systems

¹⁸⁹ Respondent SRB7.

¹⁹⁰ European NHRIs, Protector of Citizens of Republic of Serbia (2021), 'National Report on the situation of human rights of migrants at the borders, 2020-2021', <https://npm.ils.rs/attachments/article/466/Serbian-National-Report.pdf>.

¹⁹¹ Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB13; Respondent SRB8; Asylum Protection Center (2021), 'Migracije na jugu Srbije' [Migration in the south of Serbia], www.azilsrbija.rs/wp-content/uploads/2021/12/Pushbacks-South-Serbia-jan-jun-21-f.pdf; Asylum Protection Center (2020), 'Southern camps and pushbacks', www.azilsrbija.rs/wp-content/uploads/2021/07/Pushbacks-South-2020.pdf.

¹⁹² Respondent SRB14.

¹⁹³ Respondent SRB14; Respondent SRB8; Belgrade Centre for Human Rights (2020), 'BCHR Files Criminal Report against Guards for Violence against Unaccompanied Children in the Bogovada Asylum Centre', 19 May, www.bgcentar.org.rs/bgcentar/eng-lat/bchr-files-criminal-report-against-guards-for-violence-against-unaccompanied-children-in-the-bogovada-asylum-centre/.



ignorance, but also to their short stay at one place and/or their desire to swiftly leave Serbia and proceed toward the EU.

While almost all respondents confirmed that most of accountability initiatives remained futile due to the regular movement of migrants and refugees that were trying to leave Serbia towards the EU, such absconding and their short stays in Serbia prevented further actions of local professional CSOs in using these or other accountability mechanisms¹⁹⁴.

Commissariat for Refugees and Migration - KIRS

As a special agency responsible for managing migration and reception of migrants and refugees in Serbia, KIRS is independent and not under direct the ministerial control. It is accountable directly to the Government, informing it with an annual report on the situation regarding migration management¹⁹⁵. KIRS's privileged position is highly disputable according to many respondents, having in mind many reported violations of migrants' rights, violence, and smuggling, abuse of office, arbitrary behaviour, and incidents related to its staff in camps and across the country¹⁹⁶. Illustratively, a case of psychical violence against unaccompanied minors in Bogovadja asylum camp, committed by security staff of the camp in 2020, was reported by local SCOs and media and recognized by Ombudsperson¹⁹⁷. Usually, such incidents, according to the respondents, remained unaddressed and did not result in liability of the perpetrators or of the institution itself. According to one respondent, 'reporting violence resulted only with KIRS pressures to individuals and organizations who did the reporting, to stop reporting in the future. We have access to the camps, but in case we notice violence or corruption within them, we would be immediately denied access'¹⁹⁸.

¹⁹⁴ Respondent SRB4; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB7; Respondent SRB12.

¹⁹⁵ Law on migration management (2012), *Official Gazette RS* 107/2012, 9 November, art. 10, <https://www.paragraf.rs/propisi/zakon-o-upravljanju-migracijama.html>.

¹⁹⁶ Respondent SRB14; Respondent SRB4; Respondent SRB15; Respondent SRB8; Respondent SRB13. Issues of violence, ill-treatment and related incidents from KIRS reception staff continued to be reported throughout the years. AIDA Serbia (2020), p. 12, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf.

¹⁹⁷ RTS (2020), Pašalić: Utvrditi okolnosti zlostavljanja maloletnih migranata, [Ombudsman Mr Pašalić: To determine the circumstances of the abuse of underage migrants], 23 June, www.rts.rs/page/stories/sr/story/125/drustvo/3996452/zastitnik-gradjana-migranti-bogovadja-nasilje.html; Serbian Ombudsman's webpage (2020), Zaštitnik građana traži da MUP Srbije utvrdi sve okolnosti fizičkog zlostavljanja maloletnih migranata, [The Protector of Citizens is asking the Ministry of the Interior of Serbia to determine all the circumstances of the physical abuse of underage migrants], 23 June, www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/6662-nisu-pr-duz-dg-v-r-uc-r-p-v-d-fizic-g-zl-s-vlj-nj-l-l-nih-igr-n-b-z-pr-nj-u-c-n-ru-z-zil-u-b-g-v-du.

¹⁹⁸ Respondent SRB7.



Additionally, KIRS was the agency responsible for organizing the 'Hungarian waiting list' (*supra*, para 4 (b)), the de facto mechanism for access to the Hungarian transit zone for all migrants staying in KIRS reception camps, willing to proceed from Serbia to Hungary¹⁹⁹, by recruiting candidates from all camps across country, compiling waiting lists, and organizing transports from camps to Hungarian border entrance. Some of respondents mentioned allegations of bribery where money was taken for advancing faster on the waiting list by KIRS staff working in the reception camps²⁰⁰.

Moreover, KIRS's institutional unaccountability, as separate, independent agency responsible to none of the ministries, (but as mentioned, reporting solely annually, directly, to the Government²⁰¹) caused, according to many respondents, problems related to coordination with other state institutions and other system actors, and often influenced the effectiveness of their common action or endangered the results of actions of other actors in the system.²⁰²

KIRS is heavily financially supported by the EU under MADAD and IPA funding in running reception system for migrants and refugees (*supra*, para 4(d)), but unlike the Ministry of Labour, Employment, Veteran and Social Affairs (MOLEVSA), did not opt for independent external evaluation²⁰³.

5.2.4. Accountability mechanisms within organizations

¹⁹⁹ See p. 14.

²⁰⁰ Respondent SRB14; AIDA (2020), 'Country report: Hungary', p. 20, <https://asylumineurope.org/reports/country/hungary/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>. 'The existence of this waiting list, as well as the waiting times, are cause for concern. The delegation heard reports that a child had referred to a 'fee' of 500€ to be paid in Serbia to the person in charge of the waiting list, to move up the waiting list and enter Hungary. Other asylum-seekers also spoke of money changing hands. The delegation is concerned that sexual favours may also be exacted to move up the list and shortcut the overly long waiting times.' Council of Europe (2018), Lanzarote Committee, Special report further to a visit to transit zones at the Serbian/Hungarian border, T-ES(2017)11, 30 January, p. 13, <https://rm.coe.int/special-report-further-to-a-visit-undertaken-by-a-delegation-of-the-la/1680784275>; Council of Europe (2017), Information Documents SG/Inf(2017)33, Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, 12-16 June, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2.

²⁰¹ As special agency responsible for managing migration and reception of migrants and refugees in Serbia, KIRS is independent, out of the ministerial control and accountable directly to the Government, informing it with an annual report on the situation regarding migration management. Law on Migration Management, Official Gazette RS 107/2012, 9 November 2012, art. 10, www.paragraf.rs/propisi/zakon-o-upravljanju-migracijama.html.

²⁰² Respondent SRB9; Respondent SRB3; Respondent SRB14; Respondent SRB4; Respondent SRB15; Respondent SRB16; Respondent SRB10; Respondent SRB2.

²⁰³ Respondent SRB2; Respondent SRB3; Serbian Commissariat for Refugees and Migration KIRS (2018), Charter of Internal Evaluation, 23 April, https://kirs.gov.rs/media/uploads/Povelja_IR.pdf.



International organizations implementing projects within identified financial instruments, confirmed the existence of their internal accountability mechanisms that were sporadically initiated, and mostly stopped due to absconding of migrants that were trying to continue their migration toward the EU and leave Serbia as soon as possible²⁰⁴. Within EU-funded state projects, the responsibility of those who did not behave properly and in accordance with internal and human rights safeguarding procedures was engaged only in rare and extreme circumstances and resulted in initiatives for stopping their involvement in the project concerned²⁰⁵.

Regarding the EU, existing internal accountability mechanisms were not accessible for migrants nor for refugees²⁰⁶. Moreover, the EU did not perceive itself as a higher accountability instance for the projects it supported, rejecting responsibility for actions of organizations implementing the projects it funds, having in mind that funded projects were not implemented by EU staff, but by IOM and other grantees' staff, subjected to the liability under domestic regulations and under their institutional/organizational *in house* accountability procedures²⁰⁷. Only in extreme circumstances, accountability of project staff lead toward termination of their engagement within project implementing organizations²⁰⁸.

5.2.5. International accountability mechanisms

European Ombudsperson

The European Ombudsperson investigates complaints about poor administration by EU institutions or other EU bodies, lodged by citizens or residents of EU countries or by EU-based associations or businesses. No complaints against EU institutions or bodies were raised regarding EU's support to asylum and migration management and border control in Serbia, while the EU Ombudsperson undertook an inquiry into the possible failure of the European Commission to ensure that Croatian authorities respected fundamental rights while conducting EU-funded border operations against migrants and refugees along Croatian-BiH

²⁰⁴ Respondent SRB6; Respondent SRB7; Respondent SRB4; Respondent SRB12; Respondent SRB1.

²⁰⁵ Respondent SRB2, Respondent SRB9.

²⁰⁶ 'Refugees did not know, nor were able to point out abuses and hold individuals accountable within the projects'. Respondent SRB1; Respondent SRB2. 'There is no way to initiate liability of individual staff, or to hold institutions accountable for acts of violence or violation of human rights, before EU.' Respondent SRB2; Respondent SRB7; Respondent SRB9.

²⁰⁷ Respondent SRB2.

²⁰⁸ Respondent SRB2; Respondent SRB9.



and Croatian-Serbian borders in context of reports of persistent abuses and pushbacks of migrants and refugees along Croatian borders²⁰⁹.

European Court for Human Rights

The ECtHR ruled in two separate cases that Croatia and Hungary violated prohibition of collective expulsion (article 4 protocol 4) related to pushbacks to Serbia (supra, para. 4(b)(i)). The procedure before the ECtHR was international accountability mechanism used in cases of violations of human rights and international refugee rights caused by pushbacks.

Many of the respondents mentioned the ECtHR as an international accountability mechanism, available to be used by applicants under risk of persecution or torture if deported or pushed back from Serbia regarding violation of article 2 and 3 of ECHR. SCOs respondents emphasized especially the use and efficiency of the court's interim measures to prevent *refoulement* from the airport or land borders by Serbia in practice²¹⁰. In that regard, Serbian authorities largely adhered to the court's interim measures and were allowing applicants access to asylum, entrance, and stay in Serbia. This only until recently however, following the case of extradition of a Bahraini citizen at risk of political and religious persecution in Bahrain, in which the Serbian authorities ignored the courts interim measure that ordered the stopping of deportation²¹¹.

Council of Europe

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) provides a non-judicial preventive mechanism with its visits, reports, and recommendations to protect persons deprived of their

²⁰⁹ ECRE (2020), 'Balkans: Ombudsman Investigates Commission's Possible Failures Regarding Abuse at Croatian Border, Absurdity within Hungary's Asylum System, Bosnia and Herzegovina Signed Readmission Agreement with Pakistan', 13 November, <https://ecre.org/balkans-ombudsman-investigates-commissions-possible-failures-regarding-abuse-at-croatian-border-absurdity-within-hungarys-asylum-system-bosnia-and-herzegovina-signed-readmission-a/>; European Ombudsman (2020), 'Ombudsman inquiry opened on how European Commission seeks to ensure protection of fundamental rights in border management operations by Croatian authorities', CASE 1598/2020/VS, 10 November, <https://www.ombudsman.europa.eu/en/news-document/en/134797>; For the most recent update see: www.ombudsman.europa.eu/en/case/en/57811.

²¹⁰ Respondent SRB14, Respondent SRB15, Respondent SRB8.

²¹¹ ECtHR Interim measure ECHR LE2,2bR CHR/ARI/gdu, Application no.4662/22, Mohamed v. Serbia, 21 January 2022, www.bgcentar.org.rs/bgcentar/wp-content/uploads/2022/01/ECHR-Interim-measure-1.pdf. Reuters (2022), 'Bahraini extradited from Serbia after ECHR ordered stay', 26 January, <https://www.reuters.com/world/middle-east/bahraini-extradited-serbia-after-echr-ordered-stay-2022-01-26/>; HRW (2022), 'Serbia: Bahraini Dissident Unlawfully Extradited', 27 January, <https://www.hrw.org/news/2022/01/27/serbia-bahraini-dissident-unlawfully-extradited>; Balkan Insight (2022), 'Serbia Criticised for Deporting Bahrain Dissident, Defying European Court', 25 January, <https://balkaninsight.com/2022/01/25/serbia-criticised-for-deporting-bahrain-dissident-defying-european-court/>.



liberty against torture and other forms of ill-treatment. It thus complements the judicial work of the European Court of Human Rights. The CPT organized visits to Croatia in 2020, finding severe ill-treatment of migrants by the police, ignoring their asylum requests and denying them access to the fundamental safeguards, without effective accountability mechanisms in place to identify the perpetrators, and without independent police complaints body to undertake effective investigations²¹². The CPT visits to Serbia in 2015, 2017 and 2021 did not address refugee and migration issues related to torture, but the 2015 visit report referred to the Belgrade International Airport 'Nikola Tesla' Holding Premises of the Border Police and identified that persons placed in the 'transit zone' were not systematically informed, in a language they understood, of their legal position and rights and without arrangements for medical care²¹³.

Moreover, the Special Representative of the Secretary General CoE on migration and refugees conducted a fact-finding mission to Serbia and two transit zones in Hungary in 2017 and referred in his report to pushbacks from EU Member States to Serbia and to those conducted by Serbian authorities to Macedonia and Bulgaria. The representative also identified the lack of basic information available for migrants regarding the possibility for obtaining international protection in Serbia, identified existence of the Hungarian list, and the existence of the irregular but 'state tolerated status' of migrants staying in Serbian reception facilities and desiring to proceed toward EU or other countries. The representative recognized uneven age-assessment practices, a weak guardianship system and apparent smuggling threats, especially to unaccompanied migrant children²¹⁴.

The Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is an independent body of the CoE, tasked with monitoring the implementation of the Council of Europe Convention

²¹² Council of Europe, Committee against Torture, Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, <https://rm.coe.int/1680a4c199>.

²¹³ Council of Europe (2015), Committee against Torture, 'Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)', 26 May to 5 June', <https://rm.coe.int/1680697c94>; Council of Europe (2017), 'Committee against Torture, Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)', 31 May to 7 June, <https://rm.coe.int/16808b5ee7>; Council of Europe (2021), Committee against Torture, 'Council of Europe anti-torture Committee carries out 11-day visit to Serbia', 23 March, www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-carries-out-11-day-visit-to-serbia;

²¹⁴ Council of Europe (2017), Information Documents SG/Inf(2017)33, Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, 12-16 June, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2.



on Preventing and Combating Violence against Women and Domestic Violence ([Istanbul Convention](#)) by the parties to this convention, doing monitoring and publishing reports and recommendations. In 2019, GREVIO recommended Serbia: ensure the practical implementation of Article 59 of the Law on Foreigners for migrant women victims of violence based on standards of proof that they are able to meet; raise awareness among migrant women entering Serbia on the basis of a family reunification scheme of the possibility to obtain an autonomous residence permit on the grounds of being a victim of abuse; ensure that asylum seekers and migrants transiting through Serbia are, in practice, informed of their rights and the legal procedures available to them; to ensure the de facto access of all residents of asylum and reception/transit centres to legal and other counselling offered by specialist lawyers and non-governmental organisations; remove any remaining de facto barriers to women's access to the asylum determination procedure; to step up the efforts made to identify women asylum seekers who have experienced or are at risk of gender-based violence by developing and disseminating gender guidelines for refugee status determination; ensure the practical implementation of the right to an interpreter of the same sex and trained in the nature of gender-based violence, related trauma, stigma and shame; and strengthen the system of protection and support from violence against women available to female asylum seekers residing in asylum or reception/transit centres by ensuring their de facto access to support services such as domestic violence shelters and counselling services outside of reception facilities; and to develop conditions conducive to the reporting of incidents of violence against women in reception facilities, for example by informing women migrants and asylum seekers of their rights to protection and support²¹⁵.

UN Committee against Torture

UNCAT is the independent and expert body of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that monitors the implementation of the Convention by its State parties via a compulsory State monitoring mechanism (article 19), its own inquiry procedure (article 20), considering inter-State complaints (article 21), considering individual complaints (article 22), and adoption of its General comments on the meaning of Convention. UNCAT interim measures, concluding observations, recommendation and decisions are not binding but recommendatory, imposing mostly political and

²¹⁵ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) SERBIA, 22 January 2020, <https://rm.coe.int/grevio-report-on-serbia/16809987e3>.



diplomatic pressures to Signatories to adhere to the Convention and remedy committed violations. In that regard, in the case of the individual complaint of a Turkish asylum seeker against Serbia, who was in a risk of torture in the event of deportation/*refoulement* to the country of origin, Serbia eventually deported this applicant to Turkey in spite of a CAT interim measure issued against Serbia to refrain from deportation. Moreover, CAT concluded that Serbia violated article 3 and 22 of the Convention, did not engage in post-expulsion monitoring of the complainant and his conditions in Turkey, did not provide redress for the complainant, and did not provide additional information in that regard²¹⁶.

Additionally, in UNCAT's concluding observations on Serbian initial and compulsory four year periodic Convention implementation reports²¹⁷, it recognized that Serbia should continue and intensify its efforts to facilitate access to a prompt and fair individualized asylum determination procedure with substantive review in order to avoid the risk of *refoulement*²¹⁸; secure the civil structure of Asylum Office out of Border Police; introduce judicial review at the second instance of asylum procedure; provide training on international refugee law and human rights law, specifically on the principle of *non-refoulement*, to immigration officials; ensure access to the territory and sufficient and effective protection from *refoulement* at the Belgrade airport; and introduce a border monitoring mechanism that includes representatives of independent international and CSO entities, with expertise in international refugee and human

²¹⁶ Committee against Torture (2019), 'Decision adopted by the Committee under article 22 of the Convention', concerning Communication No. 857/2017, CAT/C/67/D/857/2017, 2 September, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuOMGYTziGXu2yX5ndBaQLse7MWFXXkiMOBEluted8LRuUNXMSqnoEFACSev6gACN8Hlu%2bsfsNgvKQGaR4o7ua3coKsWf9r1PmL6CnRSPoW987QZTxsVAob3tkKMQ%2fVqNA%3d%3d>.

²¹⁷ Committee against Torture (2009), 'Concluding observations of the Committee against Torture Serbia', CAT/C/SRB/CO/1, 19 January 2009, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpjuQncrsNq%2fvvQoDB5mPbB4PIUrjxVtsLCA6%2bSmo8LeJQNxlGcztsVAbq%2f0mgbo2vte05s8206BLE4DE9riqh1b0eGFY>; Committee against Torture, 'Concluding observations on the second periodic report of Serbia', CAT/C/SRB/CO/2, 3 June, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpjuQncppZ1Nq6xPjYePRKLFQ1ZNSnmJYaSrGl46Ce2sCAjC%2b1rN3YxuxGlerpiPEnzqCgPcH4QoyqHape1tU7cDyxfXf>; Committee against Torture (2021), 'Concluding observations on the third periodic report of Serbia', CAT/C/SRB/CO/3, 20 December, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SRB/CAT_C_SRB_CO_3_47273_E.pdf.

²¹⁸ Committee against Torture (2015), 'Concluding observations on the second periodic report of Serbia', CAT/C/SRB/CO/2, 3 June, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpjuQncppZ1Nq6xPjYePRKLFQ1ZNSnmJYaSrGl46Ce2sCAjC%2b1rN3YxuxGlerpiPEnzqCgPcH4QoyqHape1tU7cDyxfXf>.



rights law to ensure that border authorities are acting in line with the principle of non-refoulement and the prohibition of collective expulsion²¹⁹.

5.3. Compatibility with international law

5.3.1. Political instrument: Western Balkans Route Leaders Statement 2015

The 2015 Leaders Statement was drafted so as not to violate international human rights and refugee law, confirming countries' responsibilities and obligations under international law, in particular the Geneva Convention, and EU law (for EU Member States)²²⁰, emphasizing humane treatment of refugees²²¹, access to accommodation and information²²², and the fight against smuggling and trafficking²²³. It also sought to discourage secondary movements of refugees²²⁴ and addressed the possibility for states to refuse entry to those that were not seeking asylum²²⁵. Nevertheless, Western Balkan countries' practices immediately following the statement included constructing fences on the Austrian, Slovenian, and North Macedonian borders, and discriminatory denial of entry to migrants of other nationalities than Syrians, Iraqis, and Afghans by Slovenia, Croatia, Serbia, and North Macedonia (since 18 November 2015) regardless of their willingness to claim asylum, thus denying their right to seek international protection (supra, para 4(a))²²⁶. This constituted an ongoing violation of the right to seek asylum, the obligation of non-refoulement and of the prohibition of discrimination (Article 3 and 33 of the Refugee Convention, Article 3 and 14 and Protocol 12 ECHR, Article 18 and 21 CFR).

²¹⁹ Committee against Torture (2021), 'Concluding observations on the third periodic report of Serbia,' CAT/C/SRB/CO/3, 20 December, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SRB/CAT_C_SRB_CO_3_47273_E.pdf.

²²⁰ European Union (2015), 'Leaders' Meeting on refugee flows along the Western Balkans Route: Leaders' Statement', 25 October 2015, Preamble, www.refworld.org/docid/563216cb4.html.

²²¹ Ibid.

²²² Ibid. point 4, 16.

²²³ Ibid. point 15.

²²⁴ Ibid. point 3.

²²⁵ Ibid. point 14.

²²⁶ Respondent SRB19; RTS (2015), 'UNHCR: Srbija i Makedonija ograničile protok migranata', 19 November, www.rts.rs/page/stories/sr/story/125/drustvo/2109749/unhcr-srbija-i-makedonija-ogranicile-protok-migranata.html; Asylum Protection Center (2015), Video, Emisija „Talanjanje" (Radio Beograd 1) – Radoš Đurović, Nenad Ivanišević, Igor Gerginov, 19 November, www.apc-cza.org/sr-YU/8-vesti/956-emisija-talanjanje-radio-beograd-1-rados-durovic-nenad-ivanisevic-igor-gerginov.html; RTS (2015), 'I Slovenija počinje da vraća ekonomske migrante', 15 November, www.rts.rs/page/stories/sr/story/11/region/2109966/i-slovenija-pocinje-da-vraca-ekonomske-migrante.html; Radio Free Europe (2015), 'UNHCR: Srbija i Makedonija ograničile prolazak migranata', 19 November, www.slobodnaevropa.org/a/27374852.html.



Moreover, border police in Serbia and other states started to use violence against migrants in order to prevent their further influx²²⁷ and made efforts to prevent any longer stay of migrants or their being stranding on their territories²²⁸. These well-documented practices constitute an ongoing violation of the prohibition of torture and inhuman or degrading treatment laid down in, i.a., Article 3 ECHR and Article 4 CFR.

Widespread pushbacks since the closure of Balkan route in 2016 and which continue until the moment of publication of this report (supra, para. 4(b)(i)) constitute violations of the right to seek asylum, the obligation of non-refoulement and of the prohibition of discrimination (Article 3 and 33 of the Refugee Convention, Article 3 and 14 and Protocol 12 ECHR, Article 18 and 21 CFR) and of general human rights (the right to life laid down in i.a. Article 2 ECHR Article 2 CFR, the right to dignity laid down in article 1 CFR, and the prohibition of torture and inhuman or degrading treatment laid down in, i.a., Article 3 ECHR and Article 4 CFR).

Thus, the implementation of the statement was accompanied by massive and ongoing violations of international law, which neither the leaders who issued the statement, nor the officials who did the follow-up of the statement have addressed.

5.3.2. Legal instruments

The legal instruments addressed supra, para. 4(b) (the EU-Serbia Readmission Agreement, the Law on Asylum and Temporary Protection (LATP), the Law on Foreigners and Law on Border Control, and the FRONTEX Status Agreement) will be addressed together.

While the texts of these legal instruments are in compliance with EU and international human rights and refugee law, their implementation in practice shows difficulties for asylum seekers in accessing the asylum procedure, and

²²⁷ Reuters (2015), 'Police, migrants clash on Macedonia border; soldiers build fence', 28 November, www.reuters.com/article/us-europe-migrants-macedonia-idUSKBN0TH04M20151128.

²²⁸ Amnesty International (2015), 'Refugee Crisis: Balkans border blocks leave thousands stranded', 20 November, www.amnesty.org/en/latest/news/2015/11/refugee-crisis-balkans-border-blocks-leave-thousands-segregated-and-stranded-in-greece/.



difficulties in accessing information and free legal aid, as well as low recognition rates, long delays, and lengthy asylum procedures²²⁹.

Moreover, constant violations of readmission agreement and its protocols in the form of continuous and widespread pushback practices along Serbian borders (*supra*, para. 4(b)(i)) are violating the *non-refoulement* principle, the prohibition of collective expulsion, and the prohibition of torture and inhuman or degrading treatment. They also endanger the life and psychical and mental integrity of pushed back individuals. These constitute violations of right to seek asylum and the obligation of non-refoulement (Article 33 of the Refugee Convention, Article 3 and Article 4 Protocol 4 ECHR, Article 18 and 19 CFR) and of general human rights (the right to life laid down in i.a. Article 2 ECHR Article 2 CFR, the right to dignity laid down in article 1 CFR, and the prohibition of torture and inhuman or degrading treatment laid down in, i.a., Article 3 ECHR and Article 4 CFR).

However, the first launched FRONTEX joint operation in Serbia (June 2021) along its borders with Bulgaria had a positive effect on implementation of readmission protocol with Bulgaria and increase of persons readmitted back to Bulgaria according to the same protocol (*supra*, para. 4(b)).

5.3.3. Financial instruments

The EU financial instruments (*supra*, para. 4(c)) were conceived and introduced to support the functioning of the migration, asylum and border protection system as part of the Serbia-EU Accession Negotiations framework and EU acquis harmonization process. Despite this institutional context that should lead to approximation with European law standards, many respondents reported violence, arbitrary behaviour, and irresponsibility of KIRS staff. The activities of

²²⁹ Respondent SRB20; Respondent SRB14; Respondent SRB8; Human rights watch (2021), World Report 2021 – Serbia, pp. 585-588, www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf.



these functionaries were funded through IPA and MADAD funded projects²³⁰. Migrants and refugees in the field were maltreated, our respondents report²³¹, and they also point to the pushbacks practices of the Serbian border police along its southern borders with non-EU countries²³², which were supported within IPA Special measures and IBM support projects (*supra* para 4(c))²³³. Illustratively, KIRS officers were conducting age assessments of unaccompanied minors in spite of being unauthorized and unexperienced to undertake these actions. According to one of respondents, Obrenovac camp staff were assessing age of individuals judging upon development of their genitals in the period 2018-2019²³⁴. The management of the infamous of 'Hungarian Waiting List' (*supra* para. 4(b)) was done by KIRS within its own reception system management costs, predominantly covered by IPA and MADAD funding²³⁵.

Thus, the extensive and ongoing violations of international and European law reported *supra* took, and continue to take place, in a migration, asylum and border management system that is enabled to a decisive extent by EU funding.

²³⁰ EU Commission (2015), EU Commission implementing decision adopting a special measure on strengthening the response capacity of the most affected countries in the Western Balkans to cope effectively with increased mixed migration flows under the instrument for Pre-Accession(IPAII) for the year 2015, 7 October, https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/ipa_ii_2015-038-754_special_measure_migration_western_balkans.pdf; EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund' (2016), 'EU support to Serbia in managing the migration/refugees crisis / balkan route', Action Document, 11 April, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3Aserbia; EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund', EU support to the Western Balkans in managing the migration and refugee crisis, Action Document, 30 June 2017, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3AWestern%20Balkans%20; ANNEX to the Commission Implementing Decision adopting a Special Measure as regards Strengthening the Response Capacity of the Republic of Serbia to Manage Effectively Mixed Migration Flow, Instrument for Pre-accession Assistance (IPA-II), 2019/041-258, https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-11/c_2019_7077_f1_annex_en_v1_p1_1043932_0.pdf; ANNEX to the Commission Implementing Decision adopting the Annual Action Programme for the Republic of Serbia for the year 2020 – part II, https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-12/c_2020_8284_f1_annex_en_v1_p1_1103933_1.pdf.

²³¹ Respondent SRB4; Respondent SRB14, Respondent SRB15; Respondent SRB16; Respondent SRB7.

²³² Respondent SRB8, SRB14, SRB16; Asylum Protection Center (2021), 'Migracije na jugu Srbije' [Migration in the south of Serbia], www.azilsrbija.rs/wp-content/uploads/2021/12/Pushbacks-South-Serbia-jan-jun-21-f.pdf; Asylum Protection Center (2020), 'Southern camps and pushbacks', www.azilsrbija.rs/wp-content/uploads/2021/07/Pushbacks-South-2020.pdf.

²³³ IOM (2017), 'EU Supports Serbia to Improve Border Management in the Context of the Migration Crisis', Project Duration: 15 September 2016 - 30 June, <http://serbia.iom.acsifactory.com/eu-supports-serbia-improve-border-management-context-migration-crisis>; Annual Action Programme for Serbia 2016, IPA II SERBIA Sector Reform Contract for Integrated Border Management, https://ec.europa.eu/neighbourhood-enlargement/system/files/2017-05/ipa2016-039803.06-serbia-sector_reform_contract_for_integrated_border_management.pdf; EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund' (2017), 'EU support to the Western Balkans in managing the migration and refugee crisis', Action Document, 30 June, https://ec.europa.eu/trustfund-syria-region/state-play-action-documents_en?f%5B0%5D=document_title%3AWestern%20Balkans%20.

²³⁴ Respondent SRB4.

²³⁵ Respondent SRB2, SRB14.



5.4. Results

5.4.1. Political instrument: Western Balkans Route Leaders Statement 2015

Although the 2015 Western Balkans Statement directly opened opportunity for signatories, Serbia among others, to look for support of international financial institutions in dealing with the migration challenges (Western Balkan Statement, point 7), it more importantly opened the doors for EU humanitarian aid and EU financial support in building Serbian system's reception and protection capacities. Serbia and other signatories stated their own accommodation capacities and willingness to receive certain number of refugees (in the case of Serbia capped at 6 000)²³⁶, and almost simultaneously started receiving EU financial support in realizing this capacity, through the IPA, ECHO and MADAD funding. Moreover, with the Western Balkans Statement, the first coordination regarding the transit and reception of refugees among EU and non-EU Western Balkan countries, was initiated. This meant that cross-border coordination was piloted, allowing further regional initiatives and processes to take place, aiming at limiting and slowing down refugee movement across the Western Balkan migration route in the following years. The introduction of discriminatory denial of entry as of 18 November 2015 and the closure of the borders as of 9 March 2016 (*supra*, para. 5(b)(i)) were tangible results of this coordination.

Although both meetings were not officially organized by the EU, the participation of the President of European Commission and EU agencies (FRONTEX and EUAA) left some respondents with the impression that the meetings were planned and synchronized by the EU. In support of that stands the EU's tacit consent to the results of the initiatives, in a form of non-opposition to what was agreed on both occasions and undertaken later on²³⁷. Also, the European Commission published documents concerning the Western Balkan meetings on its website (*supra*, para. 4(a)). However, case law of the EU Court of Justice disregarding Article 3(2) TFEU

²³⁶ European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting: Contact Points Video Conference', IP/15/5952, 29 October, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5952; European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting: Second Contact Points Video Conference', IP/15/6003, 5 November, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6003.

²³⁷ Respondent SRB19; Respondent SRB14.



has made it unclear when acts of European institutions are to be regarded as such²³⁸.

The Western Balkans Route was eventually closed in March 2016, just before the EU-Turkey statement was signed. Up to the present day, according to the government and respondents, Serbia adhered to the reception capacities (6 000 beds) declared in follow ups of the Statement²³⁹. Nevertheless, irregular migration over Serbia and Western Balkans to EU did not stop and was measured in the tens of thousands of refugees each year onwards²⁴⁰.

5.4.2. Legal instruments

Readmission Agreement with EU

Legal readmission procedures were heavily disturbed and dysfunctional as a result of Serbia's reluctance to answer positively on official readmission requests coming

²³⁸ *N.F., N.G. and N.M. v European Council*, Cases T-192/16, T-193/16, T-257/16, General Court 28 February 2017; *N.F. and Others v European Council* Joined Cases C-208/17 P to C-210/17 P, CoJ 12 September 2018. About this case law, see: Nariz Idrin, 'The EU-Turkey Statement or the 'Refugee Deal': The Extra-Legal Deal of Extraordinary Times?', in Dina Siegel and Veronika Nagy (eds.) (2018), *The Migration Crisis?: Criminalization, Security and Survival*, Eleven Publishing, p. 61; Antoine Guérin (2019), 'Déclaration UE-Turquie du 18 mars 2016: la CJUE ou les singes de sagesse' *Revue des droits de l'homme*, Vol. 16; Jorrit J. Rijpma (2017), 'External Migration and Asylum Management: Accountability for Executive Action Outside EU-Territory', *European Papers*, Vol. 2, pp. 571, 579; Thomas Spijkerboer (2018), 'Bifurcation of Mobility, Bifurcation of Law. Externalization of migration policy before the EU Court of Justice', *Journal of Refugee Studies*, Vol. 31, p. 216.

²³⁹ Respondent SRB11; Respondent SRB14; Respondent SRB21; European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting: Contact Points Video Conference', IP/15/5952, 29 October, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5952. European Commission (2015), 'Progress following Western Balkans Route Leaders' Meeting: Second Contact Points Video Conference', IP/15/6003, 5 November, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6003.

²⁴⁰ Friedrich-Ebert-Stiftung, 'The Myth of the Closed Balkan Route', www.fes.de/en/displacement-migration-integration/article-page-flight-migration-integration/the-myth-of-the-closed-balkan-route; Bodo Weber (2017), 'The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route', June, <http://library.fes.de/pdf-files/bueros/sarajevo/13436.pdf>; FRONTEX (2022), 'EU external borders in 2021: Arrivals above pre-pandemic levels', 11 January, <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>; Euroactiv (2021), 'Twice as many illegal migrants along 'Balkan route' this year', 25 June, www.euroactiv.com/section/politics/short_news/twice-as-many-illegal-migrants-along-balkan-route-this-year/; Schengenvisainfo (2021), 'FRONTEX: Illegal Migration Increased by Over 90% in the Mediterranean, Balkan & Western African Route', 15 September, www.schengenvisainfo.com/news/frontex-illegal-migration-increased-by-over-90-in-the-mediterranean-balkan-western-african-route/; Intellinews (2022), 'Migrants meet smugglers in Serbia: Is the Balkan route really closed?', January 12, <https://intellinews.com/migrants-meet-smugglers-in-serbia-is-the-balkan-route-really-closed-231642/>; Euronews (2021), 'Preko Srbije do boljeg života: Broj migranata se ne smanjuje uprkos pandemiji, ove godine 40.000 ljudi ušlo u zemlju', 17 November, www.euronews.rs/srbija/drustvo/29540/preko-srbije-do-boljeg-zivota-broj-migranata-se-ne-smanjuje-uprkos-pandemiji-ove-godine-40000-ljudi-uslo-u-zemlju/vest.



from its neighbouring EU Member State countries²⁴¹. This reluctance can be seen as related to Serbia's limited reception capacity. As of 2016, there have been widespread illegal pushbacks to Serbia (*supra* para 4(b)(i)). According to many respondents, these practices included denial of access to asylum procedure, use of violence, inhuman treatment against migrants and refugees, as well as unilateral unlawful practices of returning people back to Serbia outside official border crossings and apart of official readmission procedures²⁴². Numerous testimonies of victims and field reports of local and international CSOs pointed to this practice, while the ECtHR confirmed individual cases of collective expulsion of migrants in need of protection (*M.H. v. Croatia, Shahzad v. Hungary*) (*supra*, para and 4(b)(i)).

In spite of all this, the EU Delegation and the Serbian authorities remained silent on these practices. Moreover, with pushbacks tolerated by Serbian authorities and committed by the Serbian authorities themselves along the southern border, a sense of arbitrariness and irresponsibility spread among Serbian institutions. Their staff expressed their indifference with the transitional character of migration and temporary stay of persons in need of international protection in Serbia. Fast-changing circumstances in the field and pushbacks happening on a daily basis additionally hardened the functioning of the Serbian asylum system and slowed down institutions responsible for providing health, social, or other protection services to migrants and refugees.

According to some respondents, pushbacks serve first and foremost as a *de facto* instrument which can be exercised unilaterally, with the aim of slowing down irregular migration from Serbia to the EU, thus buying precious time for the recuperation of reception capacities, strategies, and plans of EU Member States. It also gave them time for reaching common EU migration management strategies

²⁴¹ Respondent SRB18. 'Despite Hungary's insistence, Serbia refuses to officially readmit any asylum-seeker that entered Hungary from its territory. As the Hungarian government's expensive and inhuman deterrence strategy failed, only 'extrajudicial' options remain, such as push-backs to the external side of the border fence, without any official procedure – no matter how much human suffering it entails'. ECRE (2016), 'Hungary: Latest amendments legalise extrajudicial push-back of asylum-seekers', 7 July, <https://ecre.org/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers/>; European Commission (2019), 'Serbia 2019 Report', p. 36, <https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20180417-serbia-report.pdf>; European Commission (2019), 'Serbia 2019 Report', p. 38, <https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-serbia-report.pdf>; EU Commission (2017), 'First Report under the Visa Suspension Mechanism', Brussels, 20 December, COM(2017) 815 final, p. 7, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0815&from=EN>; EU Commission (2018), 'Second Report under the Visa Suspension Mechanism', Brussels, 19 December, COM(2018) 856 final, p. 7.

²⁴² Respondent SRB1; Respondent SRB15; Respondent SRB13; Respondent SRB7.



and actions to address irregular migration coming along East Mediterranean Migration Route²⁴³.

Law on Asylum and Temporary Protection (LATP) and Law on Foreigners and Law on Border Control

Changes to the existing asylum, border and law on foreigners' legislation (LATP, LF and LBC) conducted within Chapter 24 of EU-Serbia accession negotiation process in 2018 (*supra*, para. 4(b)) led to harmonization with the EU *acquis*, thus leading to improvement of the existing structures and procedures. This provided the legal basis for improvement of operational and expert capacities of relevant institutions (Asylum Office, Asylum Commission, KIRS, Border police, etc.) and for the improvement of their existing field practices. Changes in legislation involved clarification of existing notions (persecution, well-founded fear, actors of persecution, etc.), alignment of the criteria for verifying safe countries of origin and the list of safe third countries with the *acquis*²⁴⁴, the introduction of new notions and procedures (border procedures, types of residence, etc.), expansion of the jurisdiction of KIRS related to voluntary or forced return, the introduction of the IBM approach to border control, and introduced the concept of blocking migration (erecting border barriers to prevent irregular migration, etc.).

Moreover, the EU used the opportunity provided by the Action Plan for Chapter 24 to advocate for improvements related to the response to sudden challenges (such as the one that arose in 2015) and gave recommendations for setting emergency and contingency planning related to reception and the sudden influx of migrants, for improving institutional coordination (forming the Government Mix Migration Coordination Group for solving problems of mixed migrations flows), and for introducing special measures for reception of minors, etc.²⁴⁵. Serbia introduced some EU legal concepts that were previously unknown to the system (asylum border procedure, different specific types of residence, the IBM system of border control, the concept of blocking migration, etc.) In spite of more detailed normative solutions in the laws, their efficient implementation remained

²⁴³ Respondent SRB18; Respondent SRB14;

²⁴⁴ SERBIA Twinning Facility, Instrument for pre-accession assistance (IPA II) 2014-2020, 1. rationale, problem and stakeholder analysis, p. 4, https://ec.europa.eu/neighbourhood-enlargement/system/files/2017-05/ipa2016-039802.03-serbia-twinning_facility.pdf.

²⁴⁵ Respondent SRB11; Serbian MoI, Revised Action Plan for Chapter 24 – Justice, Freedom and Security, www.mup.gov.rs/wps/wcm/connect/9be2669f-e783-4911-9471-7f20ae6145ce/Revised+AP24_worksheet.pdf?MOD=AJPERES&CVID=nbcu44H; EU recommendations Action Plan for Chapter 24, http://arhiva.mup.gov.rs/cms_cir/oglasni.nsf/ap-p24.pdf. 'In September 2015 Serbia adopted an emergency response plan to cope with a sudden large influx of migrants which was revised in July 2016.' EU Commission (2016), Serbia 2016 Report, Brussels, 9 November, SWD(2016) 361 final, pp. 67-68, https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-12/20161109_report_serbia.pdf.



disputable, given the limited actual knowledge and expertise of institutional staff and their capacities for improvement in that regard. This especially related to KIRS and Asylum Office staff that faced challenges regarding enforcement of their jurisdiction, lacking expertise and staff to run procedures and secure access to accommodation, access to fair and efficient asylum procedure, and to successful integration. The changes in the law introduced in the framework of approximation of Serbia's asylum system to EU law were not implemented because of understaffing and underfunding.

On the other side, free legal aid to asylum seekers and refugees, although envisaged in the LATP to be exclusively provided by professional NGOs²⁴⁶, was directly and manifestly exempted from state funding according to the Law on Free Legal Aid²⁴⁷.

FRONTEX Status Agreement 2019

It is still early to assess the results of the FRONTEX Status Agreement with Serbia bearing in mind its implementation start date of 1 May 2021, and that the first joint mission along Serbian-Bulgarian border was established only in June of 2021. Nevertheless, according to the MoI Border Police²⁴⁸ and respondents²⁴⁹, the first joint mission started to give positive results in improving readmission between Serbia and Bulgaria, with an increase of the number of persons readmitted from Serbia to Bulgaria on the basis of the Readmission Agreement. The respondents relate this to FRONTEX presence in the field from both sides of the border, and to its coordination with Bulgarian authorities.

Via IPA country and regional IPA multi-country projects in Serbia, the EU has supported previous and existing cooperation among Serbia and FRONTEX, field operations, joint patrols, technical equipment, transfer of knowledge, etc., improving capacities of MoI Border police in border protection and border management.

5.4.3. Financial instruments

²⁴⁶ Law on Asylum and Temporary Protection, *Official Gazette RS* 24/2018, 26 March 2018, art. 56, https://kirs.gov.rs/media/uploads/Law_on_asylum_and_temporary_prot.pdf.

²⁴⁷ Law on Free Legal Aid (2019), *Official Gazette* no. 87/2018, 1st of October 2019, art.39, stance 3, 4.

²⁴⁸ Convent meeting with Border police for Chapter 24 of EU-Serbia SAA, CIV, Belgrade, 9 November 2021.

²⁴⁹ Respondent SRB18; Respondent SRB11; Respondent SRB14; Respondent SB15; Respondent SRB16.



ECHO funding was meant to urgently respond to the humanitarian refugee crisis arising in 2015 and in 2016. ECHO funded projects supported temporary and urgent reception and protection capacities through humanitarian non-state partners in helping with the provision of basic emergency and protection services (water, hygiene, health care, winterization, and basic protection)²⁵⁰. Projects also provided assistance to Serbia's fragile and unstable state reception system. This support was channelled via ECHO's civil protection mechanism²⁵¹. MADAD and IPA funding also served for building Serbia's state response to the protracted humanitarian refugee crisis in Serbia caused by constant influx of refugees and migrants on one side and by continuous refugee and migrants pushbacks from EU countries to Serbia on the other. In that regard, in highly volatile and unpredictable situation, the EU was funding almost the entirety of the functioning of the Serbian reception system, as well as of the costs of KIRS, MOLEVSA, MOE and MOH related to accommodation, social care, education and healthcare of migrants and refugees. Only the functioning of asylum procedure, of the Asylum Office and the Asylum Commission costs²⁵² and of refugee hospitalization costs²⁵³ remained outside the scope of EU support.

²⁵⁰ 20 August 2015, EUR 1.5 million for humanitarian aid to North Macedonia and Serbia, additional EUR 150 000 to Serbia to IFRC. European Commission, European Civil Protection and Humanitarian Aid Operations (2015), 'ECHO Daily Map of 3 September 2015', <https://ercportal.jrc.ec.europa.eu/ECHO-Products/Maps#/maps/1285>; Op. cit. COMMISSION IMPLEMENTING DECISION of 14.9.2015 financing emergency humanitarian actions supporting refugees, asylum seekers and migrants in the Western Balkans from the general budget of the European Union Project code ECHO/-BA/BUD/2015/01000, Project code ECHO/-BA/BUD/2015/01001 Project code ECHO/-BA/BUD/2015/01002; Op. cit. COMMISSION IMPLEMENTING DECISION of 07/11/2014, ECHO/SYR/BUD/2015/91000; Op. cit. COMMISSION IMPLEMENTING DECISION of 30/11/2015, ECHO/-EN/BUD/2016/91000.

²⁵¹ The EU Civil Protection mechanism (EUCPM) was activated 21 September 2015. Serbia requested vehicles, fuel, heaters, shelters, beds, mattresses, pillows, blankets, mobile showers and toilets, hygiene items, food, etc. but provided Personal protective equipment, sleeping bags, blankets, bedding, beds, mattresses, heating devices, generators, raincoats, lanterns. European Commission (2015), European Civil Protection and Humanitarian Aid Operations, ERCC - Emergency Response Coordination Centre, ECHO Daily Map of 30 September, <https://ercportal.jrc.ec.europa.eu/ECHO-Products/Maps#/maps/1314>. EU Civil Protection Mechanism (UCPM) response on 24 March 2020, Serbia requested assistance from the UCPM Member and Participating States to ensure basic temporary accommodation in reception centres. The request by Serbian authorities (MoI on behalf of KIRS) aimed at improving capacity of refugee/migrants hosting structures, due to increased people flows and Covid prevention standards. AT, IE, SI (through the UCPM), and HU (on a bilateral basis) have offered more than 9 200 non-food items. I.e. Slovenia (10 tents S-2, 60 field beds, 60 sleeping bags, 10 tent heaters, 1500 blankets, 100 pieces of cutlery, 20 garbage bag racks), Ireland (5 000 blankets, 200 family tents), Austria (300 field beds/Red Cross standards, 1 000 blankets 1,4X2 m / Red Cross Standards, 500 mattresses, 25 family tents (type VIVA with winterization kits). European Commission (2020), European Civil Protection and Humanitarian Aid Operations, ERCC - Emergency Response Coordination Centre, ECHO Daily Map of 24 April, <https://ercportal.jrc.ec.europa.eu/ECHO-Products/Maps#/maps/3298>.

²⁵² Respondent SRB2.

²⁵³ Respondent SRB9.



Initially, the EU was setting up the structure of state reception and protection system, supported the renovation of reception facilities, the purchase of technical equipment, the engagement and training of needed field staff, the set-up of operational procedures, and continued to cover almost completely the ongoing running costs of reception and state protection system ever since (*supra*, para c(4)), decisively contributing to system's functioning²⁵⁴. In that manner, the EU is covered almost all costs of KIRS in managing reception and migration, including ongoing costs of reception and asylum camps, KIRS reception and migration staff costs, fuel and interpretation costs²⁵⁵. It covers also the complete work of MOLEVSA regarding the social protection of migrants and refugees²⁵⁶, significant Mol technical costs in border management and in border protection, the costs of cross-border bilateral Serbia-EU Member States cooperation, and Serbia-FRONTEx cooperation, supporting voluntary return, twinning projects, and EUAA-Serbia cooperation and trainings for improving skills and knowledge of state staff (not only regarding reception and protection of migrants but also related to border control, security and border management)²⁵⁷. Costs for health care and for education of migrants and refugees were also covered by EU funds²⁵⁸.

Despite EU financial support, the access of migrants and refugees to legal and other reliable information, to the legal system, to asylum or other legal procedure and to fair proceedings in general, remained seriously limited. It relies solely on local NGO professional free legal aid that was not financed by the state nor sufficiently financed by the EU²⁵⁹. It is also important to notice that EU financial support to the system was mostly covering the costs of services provided predominantly to irregular migrants without questioning *prima facie* their legal status in the country. Moreover, the protection of highly vulnerable migrants and refugees, access to accommodation, access to education, protection from violence, accountability of representatives of institutions, remained limited and

²⁵⁴ Respondent SRB2; Respondent SRB10; Respondent SRB3; Respondent SRB9; Respondent SRB14; Respondent SRB20.

²⁵⁵ Respondent SRB2.

²⁵⁶ Respondent SRB4; Respondent SRB2.

²⁵⁷ Respondent SRB5; Respondent SRB11.

²⁵⁸ Respondent SRB9; Respondent SRB2.

²⁵⁹ Respondent SRB14; Respondent SRB8. EU Delegation was supporting few projects of APC and 484 regarding free legal aid to asylum seekers and refugees since 2015 refugee crisis, via its limited, uncertain and general EIDHR and CSF funding reserved for CSOs in Serbia. Same funding was not necessarily certain nor continuous, limiting organizational planning and sustainability of such support on long term. Respondent SRB14; Respondent SRB7. EU za tebe -EU projekti u Srbiji [EU for you - EU projects in Serbia], 'Road map for migrants - Guide through the labyrinth', <https://roadmapformigrants.euzatebe.rs/en/about-project>; EU za tebe -EU projekti u Srbiji [EU for you - EU projects in Serbia], 'LOVE (Law, Order, Values) to migrants/asylum seekers/persons granted asylum in enjoying rights without discrimination founded', <https://law-order-values.euzatebe.rs/en/about-project>.



dependable on arbitrary decisions in concrete circumstances, while prospects for granting asylum²⁶⁰, integration and employment of asylum seekers and refugees²⁶¹ remained scarcely possible and only with support of local civil society organizations that are not financed significantly, continuously nor systematically by EU funds²⁶².

The EU failed to recognize the important role of local CSOs in reception and protection of asylum seekers and refugees, in the functioning of the system, as well as in building of understanding and tolerance within local receiving communities and in creating of positive and constructive image and narrative in Serbian media and general public. The EU has failed to provide continuous and long-term institutional support to local CSOs and local initiatives enabling local interaction, integration, employment, socialization, and inclusion of asylum seekers and refugees in local communities. The EU directed its expectations predominantly toward state response and institutional capacities²⁶³.

Finally, limited and often insufficiently qualified institutional human resources²⁶⁴, bureaucratic challenges, reluctant institutional approach to the matter²⁶⁵, political struggles and Serbian *de facto* anti-stay migration polices²⁶⁶, hampered effective and sustainable capacity building of the system²⁶⁷. Together with EU financial support, focused mostly on covering the reception system's ongoing costs, this led to the Migration, asylum and border system being dependent on EU financial support. This creates a serious risk of the systems' disintegration in case of termination of EU support in the future²⁶⁸.

²⁶⁰ Only 13 persons out of 2030 that managed to register asylum intention were granted asylum in 2021 in Serbia were granted asylum. In 2020, only 29 persons out of 2 829 that had managed to register asylum intention were granted asylum, in 2019 only 34 persons out of 12 937 that had managed to register asylum intention were granted asylum. All asylum seekers granted asylum were represented and aided legally by local NGOs, predominantly by APC and BGCHR. Respondent SRB14; Respondent SRB8.

²⁶¹ Only a few local NGOs supporting employment and integration. Mostly APC and BGHCR, both are not financed by EU. Respondent SRB14; Respondent SRB8.

²⁶² Respondent SRB14; Respondent SRB7; Respondent SRB8.

²⁶³ Respondent SRB14; Respondent SRB18; Respondent SRB2.

²⁶⁴ KIRS has recruitment problems and difficulties to find, train and keep new generations of professionals. Whole KIRS is dependable on a few concrete leading high staff, i.e. KIRS successful and efficient functioning is dependent on Commissioner's deputy. Respondent SRB2; Respondent SRB14; Respondent SRB15; Respondent SRB1.

²⁶⁵ Respondent SRB7; Respondent SRB4; Respondent SRB14; Respondent SRB15; Respondent SRB16.

²⁶⁶ Most of government and local respondents were perceiving migration as transit challenge, arguing possible inactivity with migrants desire to leave Serbia as soon as possible. Respondent SRB9; Respondent SRB10; Respondent SRB3; Respondent SRB4; Respondent SRB7; Respondent SRB14.

²⁶⁷ Respondent SRB4; Respondent SRB14.

²⁶⁸ Respondent SRB4; Respondent SRB14; Respondent SRB7; Respondent SRB16; Respondent SRB15.



5.5. Containment/mobility (predominantly on basis of interviews)

5.5.1. Political instrument: Western Balkans Route Leaders Statement 2015

This instrument served as the starting point of EU-Western Balkan countries' (including Serbia) coordinated approach regarding the process of controlling, slowing down, and eventually interrupting migration across the Western Balkan route. Although this instrument did not invoke precise and rigorous implementation mechanisms or well-defined obligations, it created space for coordination and joint planning among all countries along the Balkan route, no matter whether they were inside or outside the EU zone²⁶⁹. The Statement secured additional accommodation in Serbia and in other Balkan countries, although less than initially planned²⁷⁰, while its containment effects did not occur immediately. The first containing effects on the Balkans came in 2015 with discriminatory rejections at the border, and a further containment effect was the formal closure of the route on 9 March 2016, just before the EU-Turkey statement. Serbia and other Balkan countries started with the coordinated closure of the route building upon two political meetings in Vienna and Zagreb on 24 and 28 February 2016, that stemmed from the 2015 Western Balkan Statement initiative.

²⁶⁹ In parallel with the agreements at the EU level, there were bilateral or regional cooperation and initiatives, very often in a format that included commitments and agreements of individual EU Member States and countries on the Balkan route, aimed at supplementing the general agreements and guidelines reached at EU level. In this respect, the Vienna Conference Declaration and Zagreb Joint statement were the most prominent examples. Respondent SRB19; Respondent SRB14; Respondent SRB23; Respondent SRB21.

²⁷⁰ AIDA (2016), 'Wrong counts and closing doors. The reception of refugees and asylum seekers in Europe', 19-20, https://asylumineurope.org/wp-content/uploads/2020/11/aida_wrong_counts_and_closing_doors.pdf; 'Countries on the route agreed to create 50,000 additional reception places. However the current capacity is still short of this target - around half of this figure is currently available or being developed. Countries which participated in the Western Balkans Leaders' meeting now need to urgently speed up the provision of reception capacities.' European Commission (2016), 'Implementing the European Agenda on Migration: Commission reports on progress in Greece, Italy and the Western Balkans', IP/16/269, 10 February, https://ec.europa.eu/commission/presscorner/detail/en/IP_16_269.



It is however important to note that migration has never entirely stopped along the Western Balkan route²⁷¹, but, according to many respondents, that the complete cessation of the migration influx was not the intention of the EU and its Balkan partners (including Serbia) at that moment either. According to them, the EU was buying time for its final destination Member States to reorganize to receive newcomers, while preparing more elaborate migration management strategy aiming to significantly reduce irregular immigration in the long run²⁷². As one expert respondent emphasized, 'with the buffer zone established in Serbia and/or in other Balkan non-EU countries, the influx of irregular migrants in the EU itself would reduce to only few in need of international protection, others would eventually strand in Balkans'²⁷³.

In sum, the implementation of the Western Balkan Leaders Statement has been directed in a straightforward manner towards containment. Serbia was a provisional place of containment, allowing the EU to work on containment further down the line, in locations more removed from EU territory itself (such as Turkey).

5.5.2. Legal instruments

Readmission Agreement with EU

Despite existing readmission agreement and protocols with Serbia, unlawful pushbacks practices conducted by Croatian, Hungarian, and Romanian border authorities to Serbia and those conducted by Serbian authorities to North Macedonia and more rarely to Bulgaria (*supra* para. 4(b)(i)) directly contributed to containment of persons in need of international protection in Serbia or in its neighbouring countries although, in a majority of cases this containment only

²⁷¹ Respondent SRB20; Respondent SRB13; Friedrich-Ebert-Stiftung, 'The Myth of the Closed Balkan Route', www.fes.de/en/displacement-migration-integration/article-page-flight-migration-integration/the-myth-of-the-closed-balkan-route; Bodo Weber (2017), The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route, June, <http://library.fes.de/pdf-files/bueros/sarajevo/13436.pdf>; FRONTEX (2022), 'EU external borders in 2021: Arrivals above pre-pandemic levels', 11 January, <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>; Euroactiv (2021), 'Twice as many illegal migrants along 'Balkan route' this year', 25 June, www.euractiv.com/section/politics/short_news/twice-as-many-illegal-migrants-along-balkan-route-this-year/; Schengenvisainfo (2021), 'FRONTEX: Illegal Migration Increased by Over 90% in the Mediterranean, Balkan & Western African Route', 15 September, www.schengenvisainfo.com/news/frontex-illegal-migration-increased-by-over-90-in-the-mediterranean-balkan-western-african-route/; Intellinews (2022), 'Migrants meet smugglers in Serbia: Is the Balkan route really closed?' January 12, <https://intellinews.com/migrants-meet-smugglers-in-serbia-is-the-balkan-route-really-closed-231642/>; Euronews (2021), 'Preko Srbije do boljeg života: Broj migranata se ne smanjuje uprkos pandemiji, ove godine 40.000 ljudi ušlo u zemlju', 17 November, www.euronews.rs/srbija/drustvo/29540/preko-srbije-do-boljeg-zivota-broj-migranata-se-ne-smanjuje-uprkos-pandemiji-ove-godine-40000-ljudi-uslo-u-zemlju/vest.

²⁷² Respondent SRB18; Respondent SRB3; Respondent SRB21.

²⁷³ Respondent SRB18;



lasted for a limited period of time. Moreover, these pushbacks practices of EU Member States seemed decidedly tolerated by Serbian authorities and the EU Delegation in Serbia that were both fully aware of their existence (*supra* para. 4(b)(i)) but made no opposition in legal or political terms nor raised critics in public or in media. Serbian institutions were providing healthcare, accommodation, and basic humanitarian support to pushed back persons via projects financed by EU, through EU's regular Serbia IPA funding²⁷⁴, while Serbian authorities were periodically transporting migrants from the northern border areas of the country to the southern parts of Serbia in order to further reduce migration pressures on its EU-Serbia external borders and slow down migration²⁷⁵.

Law on Asylum and Temporary Protection (LATP) and Law on Foreigners and Law on Border Control

Neither the LATP, the Law on Foreigners nor the Law on Border Control promoted nor led in its implementation either containment or mobility²⁷⁶. Although these laws did not foresee legal alternative for migrants' *de facto* stay in Serbia, once stranded in the country and staying out of the asylum procedure, such irregular stays appeared to be commonplace in practice. Most of the migrants/refugees accommodated in state official collective accommodation were in an irregular situation, outside of any existing legal procedure, invisible to the system, and remained out of system's legal framework. Migrants' *de facto* irregular position was vastly tolerated by camp managements and by police, and almost none of the migrants were held responsible for their illegal stay in the country. This *de facto* tolerated irregular stay of migrants/refugees in Serbia enabled them to keep looking for smuggling or other illegal opportunities to cross EU-Serbia borders and to enter the EU for good. Moreover, it increased their vulnerability and risks to become victims of smuggling, trafficking, violence, discrimination or abuse during their stay in Serbia²⁷⁷. The majority of stranded migrants managed to leave Serbia and enter the EU zone, sooner or later²⁷⁸. With envisaged voluntary return

²⁷⁴ Respondent SRB9; Respondent SRB4; Respondent SRB2.

²⁷⁵ Coordination Body of the Government of the Republic of Serbia for the Municipalities of Preševo, Bujanovac and Medveđa (2021), 'Over 400 migrants relocated to South Africa', 25 March, www.kt.gov.rs/en/news/news-archive/over-400-migrants-relocated-to-south-serbia/; RTS (2020), 'Više stotina migranata prebačeno sa Horgoša u prihvatne centre', 16 November, www.rts.rs/page/stories/sr/story/125/drustvo/4152854/zandarmerija-horgos-migranti-prebacivanje.html; Coordination Body of the Government of the Republic of Serbia for the Municipalities of Preševo, Bujanovac and Medveđa, 'Over 300 migrants transported from Subotica to the reception center in Preševo', www.kt.gov.rs/en/news/news-archive/over-300-migrants-transported-from-subotica-to-the-reception-center-in-presevo/.

²⁷⁶ Respondent SRB20.

²⁷⁷ Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB8; Respondent SRB7.

²⁷⁸ Respondent SRB14; Respondent SRB15; Respondent SRB8; Respondent SRB7; Respondent SRB13; Respondent SRB18; Respondent SRB21.



alternatives and KIRS's role in that process, LATP indirectly but only slightly hampered mobility. No significant number of stranded migrants opted for return to their countries of origin²⁷⁹, while the LATP did not foresee any third country legal mobility alternative for persons in need of international protection in its provisions.

FRONTEX Status Agreement 2019

The FRONTEX Status Agreement 2019 directly contributed to containment, achieving concrete results in strengthening the readmission of migrants/refugees from Serbia to Bulgaria from its presence/mission in the ground and upon existing readmission legislation. According to MoI, the FRONTEX mission dispatched in the field directly enabled the efficient readmission of third country nationals caught along the Serbian-Bulgarian border to Bulgaria, upon validation of their illegal entry and communication with Bulgarian and FRONTEX Bulgaria counterparts.

5.5.3. Financial instruments

ECHO fund

ECHO funding responded to the urgent humanitarian needs related to the refugee situation in its early phase in 2015 and 2016. Thus, ECHO projects did not influence the mobility or containment of refugees but were focused on addressing the dire humanitarian situation in Serbia, and funding emergency support in shelter, legal and psychosocial protection, emergency education, tracking mechanisms, medical assistance, providing food, protection, water and sanitation, etc.²⁸⁰.

MADAD fund and IPA fund

State projects supported with MADAD and IPA funding were easing pressures on the existing Serbian system of reception and support to migrants and persons in need of international protection, preventing a total collapse of the system and delaying a dire humanitarian crisis situation along EU external border with Serbia, that could have led to political, social, security, and other turbulence in Serbian

²⁷⁹ In 2020, just 66 persons used AVRR services and returned to their countries of origin. Serbian Commissariat for Refugees and Migration (2020), 'Serbian migration profile 2020', pp. 34-35, [https://kirs.gov.rs/media/uploads/Migracioni%20profil%20Republike%20Srbije%202020%20FINAL%20\(1\).pdf](https://kirs.gov.rs/media/uploads/Migracioni%20profil%20Republike%20Srbije%202020%20FINAL%20(1).pdf). In 2019, just 196 persons used AVRR services and returned to their countries of origin. Serbian Commissariat for Refugees and Migration (2019), 'Serbian migration profile 2019', pp. 25-26, https://kirs.gov.rs/media/uploads/Migracije/Publikacije/Migracioni_profil_Republike_Srbi.%20godinu.pdf.

²⁸⁰ European Commission, European Civil Protection and Humanitarian Aid Operations, ERCC - Emergency Response Coordination Centre Map, <https://erccportal.jrc.ec.europa.eu/ECHO-Products/Maps#/maps/1285>.



society (and this in the vicinity of EU external borders)²⁸¹. In that manner, by providing support to collective accommodation camps, health and social systems, to KIRS and Ministries of Social Welfare, Education and Health, migration was indirectly, but not significantly, slowed down in Serbia²⁸², due to the fact that migrants and refugees could receive basic humanitarian support and services and stay in Serbia, in state collective reception facilities, for a certain period of time to recover and proceed further on. However, in the vast majority of cases, they were staying outside of any legal procedures, outside the legal system and without any perspective to regularize their legal status in the country²⁸³. There was a wide-spread idea among state institutions and their staff that migrants are only transiting through Serbia and not willing to permanently stay, bolstered by the de facto state policy of keeping migrants on the move. These ideas received their fullest expression through KIRS 'Hungarian waiting list' mechanism (supra para 4.2.1)²⁸⁴. This led to personal disinterest of many institutions' field staff in their work²⁸⁵. The same wide-spread opinion within the state support system led to the idea that only urgent and humanitarian aid is needed for migrants, in order to support them to move swiftly toward the much desired and reachable neighbouring EU zone²⁸⁶. Of course, it could be argued, that as much as those financial instruments were helping Serbia to cope with the migration crisis along its shores, they helped EU to mitigate migration pressures on its Balkan external borders as well, helping EU to shift part of its migration reception burden to Serbia, as the nearest functional neighbouring third country.

Support provided to the MoI and the Border police, via projects under MADAD and IPA funding and via EU direct state support, enabled police access to technical and software equipment, improved police procedures and raised its expertise. It further expanded the engagement of its staff in border protection efforts, in

²⁸¹ Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB21.

²⁸² Respondent SRB11; Respondent SRB10; Respondent SRB14; Respondent SRB7; Respondent SRB6; Respondent SRB9.- Respondent SRB4; Respondent SRB13; Respondent SRB21; Respondent SRB3. 'This year, there were about 55 310 detections of illegal border crossings into the EU via the Western Balkan route. The figure is up 138 % from the same period in 2020 and 387 % compared to 2019 (11 362).' FRONTEX (2021), 'Migratory situation November: The highest number of detections in November since 2015', 15 December, <https://frontex.europa.eu/media-centre/news/news-release/migratory-situation-november-the-highest-number-of-detections-in-november-since-2015-Vn2CSr>.

²⁸³ Respondent SRB8; Respondent SRB14; Respondent SRB15; Respondent SRB16;

²⁸⁴ AIDA (2020), 'Country report: Hungary', pp. 19-21, <https://asylumineurope.org/reports/country/hungary/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>.

²⁸⁵ Respondent SRB3; Respondent SRB4; Respondent SRB7; Respondent SRB8; Respondent SRB9; Respondent SRB10, Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB21; Respondent SRB22.

²⁸⁶ Respondent SRB4; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB7; Respondent SRB9; Respondent SRB3; Respondent SRB10; Respondent SRB19.



fighting smuggling²⁸⁷ and in stopping illegal border entries²⁸⁸, thus directly (be it temporarily) containing irregular migrants coming from Serbia's south neighbouring countries (North Macedonia, Bulgaria)²⁸⁹.

Eventually, these EU financial instruments and the projects they funded did not stop irregular migration in Serbia, nor did it slow it down dramatically.²⁹⁰ They did initially provide more time for the EU and EU final destination Member States to prepare, to plan and build adequate response and strategies in order to overcome existing and new challenges related to the influx of refugees coming via the Western Balkan route across Serbia to the EU zone²⁹¹.

EU financial instruments paved the way for further developments of Serbia's migration management system in building its more effective containment capacities and strategies, with perspectives of EU financial and political support in that regard in the upcoming period.

5.6. Alignment with Global Compact on Refugees

5.6.1. Easing pressure on host countries

Although EU's efforts in closing the Balkan route and EU Member States' ongoing pushbacks practices (*supra* para. 4(b)(i)) have imposed tremendous pressures and challenges on Serbia to deal with intercontinental migration on its own and as the last non-EU country on the route, EU financial support came as a crucial relief for Serbia.

²⁸⁷ The recommendations from the 2020 country report remain outstanding, except for continuing increasing border controls, especially border surveillance including identification and registration measures in full respect of fundamental rights and increase efforts to detect and prevent smuggling of migrants. European Commission (2021), 'Serbia 2021 Report', p. 41, https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en.

²⁸⁸ In 2020, 22 560 individuals were intercepted at the border; in the same period, 127 criminal charges (including 5 against 5 organised crime groups) were filed for 132 criminal offenses, involving 176 perpetrators (56 members of organised criminal groups) suspected of people smuggling. COMMISSION STAFF WORKING DOCUMENT Serbia (2021), Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Communication on EU Enlargement Policy SWD/2021/288 final, page 49, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0288>; Op. cit. Asylum Protection Center (2020), 'Southern camps and pushbacks'; Op. cit. Asylum Protection Center (2021), 'Migracije na jugu Srbije' [Migration in the south of Serbia].

²⁸⁹ Respondent SRB2; Respondent SRB19; Respondent SRB14; Respondent SRB18;

²⁹⁰ Respondent SRB4; Respondent SRB13; Respondent SRB14; Respondent SRB15; Respondent SRB16.

²⁹¹ Respondent SRB21; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB18.



While Serbia do not perceive itself as a host country²⁹², shaping its migration de facto policies either in the manner to stop refugees' influx into country or to keep refugees *on the move* once they enter Serbia²⁹³, EU financial instruments were programmed to provide crucial support to Serbia in dealing with existing migration pressures and to prevent a total collapse of the Serbian reception system²⁹⁴. However, EU support has never conceptualized its efforts as pursuing GCR goals, nor has the GCR been mentioned as such by EU or other stakeholders participating in any of the interviews conducted in the course of the research.

EU financial support was designed to cover the on-going running costs of the whole reception system, including fuel, utilities, staff, humanitarian aid, camp maintaining costs, but also to cover healthcare costs, social support costs, education costs to migrants and refugees, including significant border protection and border management costs of MoI in order to suppress migration pressures on Serbia, coming from Bulgaria, North Macedonia, and Kosovo via the Western Balkan route.

Therefore, the EU instruments analysed here are two-faced. On the one hand, EU instruments created pressure in Serbia by preventing the onward movement of migrants and refugees to the EU Member States they considered as their destination. On the other hand, the EU provided crucial support to Serbia in facing the burden thus created.

5.6.2. Increasing the autonomy of refugees

The 2015 Western Balkan Leaders Statement announced solidarity and coordination among countries along the Balkan route in the reception of refugees and migrants and in fighting irregular migration. Legal instruments provide an initial legal ground for the enjoyment of a basic set of rights for persons seeking or granted asylum, allowing them to access fair asylum procedure, to regularise their stay in Serbia, to access education, health care, basic social care, camp accommodation, and to integrate in local community. However, most of the rights guaranteed in this legislation are hardly accessible in practice²⁹⁵, especially without institutional professional free legal support provided by a few legal CSOs,

²⁹² Respondent SRB3; Respondent SRB9; Respondent SRB10; Respondent SRB21; Respondent SRB22.

²⁹³ Respondent SRB9; Respondent SRB10; Respondent SRB21; Respondent SRB19; Respondent SRB14.

²⁹⁴ Respondent SRB14; Respondent SRB4; Respondent SRB7; Respondent SRB1; Respondent SRB11; Respondent SRB10; Respondent SRB2; Respondent SRB6; Respondent SRB3; Respondent SRB9; Respondent SRB15; Respondent SRB16.

²⁹⁵ Respondent SRB14; Respondent SRB8; Respondent SRB7.



or UNHCR, leaving most of individuals in a dire, uncertain and highly vulnerable position²⁹⁶. Moreover, violent pushbacks practices (*supra* para. 4(b)(i)) are leaving it toll on psychophysical condition of migrant victims.

Up to now, EU financial instruments were supporting the Serbian asylum system's ongoing humanitarian response to a situation that is best compared to a protracted humanitarian crisis situation. This went at the expense of developing Serbia's systemic migration and refugee response to migration. Through EU financed ECHO, MADAD and IPA projects, the basic living needs of migrants and refugees, but mostly of those accommodated in network of state reception camps, were partially satisfied²⁹⁷. This includes accommodation, food, health care, and rudimentary social protection for vulnerable individuals²⁹⁸ such as women, unaccompanied minors, girls, children, etc. In that regard, general conditions for raising self-reliance of refugees were set, but remaining without further individual upgrade in concrete cases²⁹⁹. According to a government respondent, 'increasing the autonomy of vulnerable persons is a systemic challenge within our system. Our citizens, as well, hardly leave the social welfare system's support once they start receiving it'³⁰⁰.

The funding failed to secure continuous information and legal support in asylum procedures or in other legal procedures, failed to substantially support integration³⁰¹, employment, education³⁰², failed to register or regulate residence of the majority of migrants and refugees³⁰³, failed to support inclusion, naturalization, failed to issue Serbian travel and other documents, and failed to

²⁹⁶ Respondent SRB8; Respondent SRB14; Respondent SRB20.

²⁹⁷ Respondent SRB10; Respondent SRB7; Respondent SRB6; Respondent SRB9; Respondent SRB11; Respondent SRB8.

²⁹⁸ Respondent SRB10; Respondent SRB4; Respondent SRB7; Respondent SRB4.

²⁹⁹ Respondent SRB3; Respondent SRB8; Respondent SRB14; Respondent SRB7; Respondent SRB11.

³⁰⁰ Respondent SRB3.

³⁰¹ Asylum Protection Center (2017), APC/PPRC JOINT STUDY - Integration of refugees in Serbia 2017, www.azilsrbija.rs/wp-content/uploads/2021/01/Study-2017-Integration-.pdf; Asylum Protection Center (2018), 'Izazovi u integraciji migranata, tražilaca azila i izbeglica u Srbiji 2018', www.azilsrbija.rs/wp-content/uploads/2021/01/Brief-2018-Integracija.pdf.

³⁰² Asylum Protection Center (2017), 'MIGRACIJE I OBRAZOVANJE Izazovi integracije dece migranata/azilanata u obrazovni sistem u Republici Srbiji 2017', www.azilsrbija.rs/wp-content/uploads/2021/01/Brief-2018-Procena-uzrasta.pdf.

³⁰³ Asylum Protection Center (2017), 'Politika i praksa zaštite migranata i izbeglica u Srbiji – privremena zaštita 2017', www.azilsrbija.rs/wp-content/uploads/2018/11/c7db643c2b61c8d610076539b9cbe11c.pdf.



successfully fight discrimination³⁰⁴. Nevertheless, local, but non-systematically EU financed, CSO support proved to be a highly important (and sometimes the only) mechanism to assist refugees and asylum seekers to enjoy their lacking rights. Complementary to the state system (artificially kept functioning with EU financial support), local CSOs were using their local experience and expertise, their already developed local network of support and their social capital, building support for refugees by relying upon the mobility and flexibility of their actions that proved to be their advantage³⁰⁵.

5.6.3. Improving access to third country solutions

None of EU's political, legal, and financial instruments foresee or enable access to third country solutions from Serbia³⁰⁶, focusing predominantly on preventing and containing further migration along Serbian and EU external borders. Only voluntary return remains stipulated in Serbian law (introduced with new LATP and LF)³⁰⁷ and is financially and technically supported by EU financed IPA projects and implemented by IOM and KIRS³⁰⁸. This AVR mechanism proved efficient and working, especially for returning migrants from Iran that were coming to Serbia using free visa regime among Iran and Serbia in the period August 2017- October 2018 but has never served significant numbers of returnees³⁰⁹.

Nevertheless, there were a few examples of third country solutions for refugees staying in Serbia, emerging out of individual and specific initiatives of local CSOs, international CSOs and local institutions. In such cases minor refugees stuck in Serbia were reunited with their family members in the EU³¹⁰. Moreover, in one single case, a refugee from Afghanistan residing in Serbia was reunited in Serbia with his wife and four children coming from Afghanistan, again only through the

³⁰⁴ Respondent SRB8; Respondent SRB14. Asylum Protection Center (2019), 'Joint Annual Report on Asylum/Migration Practice and Discrimination Challenges in Serbia in 2019', www.azilsrbija.rs/wp-content/uploads/2021/01/Monitoring-Report-2019.pdf; Asylum Protection Center (2018), 'Joint Annual Report on Asylum/Migration Practice and Discrimination Challenges in Serbia in 2018', www.azilsrbija.rs/wp-content/uploads/2021/01/Monitoring-Report-2018.pdf; Asylum Protection Center (2017), 'Joint Annual Report on Asylum/Migration Practice and Discrimination Challenges in Serbia in 2017', <https://www.azilsrbija.rs/wp-content/uploads/2021/01/Monitoring-Report-2017.pdf>.

³⁰⁵ Respondent SRB7; Respondent SRB14; Respondent SRB15; Respondent SRB16; Respondent SRB4; Respondent SRB8.

³⁰⁶ Respondent SRB2; Respondent SRB5; Respondent SRB4; Respondent SRB14.

³⁰⁷ Law on Asylum and Temporary Protection (2018), Official Gazette RS 24/2018, 26 March, art.85; Law on Foreigners (2018), Official Gazette RS 24/2018, 26 March, art.77.

³⁰⁸ Respondent SRB2; Respondent SRB5; Respondent SRB4; Respondent SRB14.

³⁰⁹ Respondent SRB2; Schengenvisainfo (2018), 'EU forces Serbia to return visa regime for Iranian passport holders', 11 October, <https://www.schengenvisainfo.com/news/eu-forces-serbia-to-return-visa-regime-for-iranian-passport-holders/>.

³¹⁰ Respondent SRB14; Respondent SRB4; Respondent SRB7.



legal intervention of local CSO, Asylum Protection Center (APC), within a long-lasting and bureaucratic process³¹¹.

Annex 1: List of interviewees

	Person/organization interviewed	Date	Modality	Level of Organisation
SRB1	International Organisation Representative	13 September, 2021	In vivo	International
SRB2	International Organisation Representative	20 September, 2021	In vivo	International
SRB3	National governance practitioner	27 September, 2021	In vivo	National
SRB4	Civil Society practitioner	15 October, 2021	In vivo	International
SRB5	International Organisation Representative	19 October, 2021	Online	International
SRB6	Civil Society practitioner	27 October, 2021	Online	International
SRB7	Civil Society practitioner	29 October, 2021	In vivo	International
SRB8	Civil Society practitioner	18 October, 2021	In vivo	National
SRB9	National governance practitioner	14 October, 2021	In vivo	National

³¹¹ Respondent SRB14; Asylum Protection Centre (2020), 'Prvi slučaj spajanja porodice izbeglice u Srbiji', 20 July, www.azilsrbija.rs/prvi-slucaj-spajanja-porodice-izbeglice-u-srbiji/?lang=en.



SRB10	National governance practitioner		22 November, 2021	In vivo	National
SRB11	Academic, researcher		9 November, 2021	In vivo	National
SRB12	Civil Society practitioner		17 November, 2021	Online	International
SRB13	Civil Society practitioner		10 November, 2021	Online	International
SRB14	Civil Society practitioner		1 September, 2021	In vivo	National
SRB15	Civil Society practitioner		3 September, 2021	Online	National
SRB16	Civil Society practitioner		6 September, 2021	Online	National
SRB17	International Organisation Representative		28 January, 2022	Written response	International
SRB18	International Organisation Representative		8 December, 2021	In vivo	International
SRB19	Civil Society practitioner		26 November, 2021	In vivo	National
SRB20	International Organisation Representative		29 November, 2021	In vivo	International
SRB21	National governance practitioner		30 November, 2021	In vivo	National
SRB22	National governance practitioner		20 December, 2021	In vivo	National



SRB23	Civil practitioner	Society	10 November, 2021	Online	International
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Annex 2: National questionnaire

The four country studies are to be guided by the following research questions:

1. **Scope:** Based on the Working paper, are there additional instruments and actors between this country and the EU that need to be incorporated into the research in order to get a full picture of arrangements since 2015?
2. **Transparency:** Have actors involved made the instruments used between the EU and the third country public?; more concretely:
 - a. Has the instrument been prepared in a transparent, public process (transparency about draft documents, EU-third country talks and negotiations, parliamentary involvement, IO and NGO stakeholder involvement)?
 - b. Is the adopted instrument itself laid down in a transparent, public document (treaty, MoU, exchange of letters, action fiche, parliamentary document)?
 - c. Is the instrument implemented in a transparent, public manner (procurement, parliamentary involvement, IO and NGO stakeholder involvement)?
3. **Accountability:** To what extent, and if so to whom, are procedures available to hold actors accountable for purported violations of international human rights and refugee law, including the EU Charter of Fundamental rights as well as regional (ECOWAS, AU) law (control of European, IO and national actors by international, regional and domestic judiciary, parliament, Ombudsperson, Court of Auditors) in the implementation of the instruments?
4. **Compatibility:** to what extent are the instruments (and to which extent are they implemented) compatible with international human rights and refugee law, including the EU Charter of Fundamental rights as well as regional (ECOWAS, AU) law, with an emphasis on their impact on the protection of vulnerable persons and groups against violence, exploitation, and discrimination? Of particular interest is the European Ombudsperson Opinion on the need to ensure human rights impact assessment by implementation actors of the EU-Turkey Statement (such as the Commission and EU Agencies like FRONTEX and EUAA).



5. **Results:** specifically concerning technical assistance provided to enhance reception and protection capacities within the relevant third countries: were/are the partner states prepared to absorb and implement such assistance? To what extent have the arrangements resulted in effective and sustainable capacity-building in the reception and protection structures of the respective third countries?
6. **Containment/mobility:** which instruments have promoted the containment or, conversely, the mobility of individuals and groups seeking international protection?
7. **Alignment:** To what extent are the instruments (and their implementation) in accordance with the three relevant GCR objectives (easing pressures on host countries; enhancing refugee self-reliance; and expanding access to third country solutions)?



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