

EU Asylum Reform and the Western Balkans: What Does the Future Hold for Serbia?

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Executive Summary

What Is the Matter?

In June 2023, the EU’s Justice and Home Affairs Council agreed to reform the Common European Asylum system and drastically change how asylum applications are handled at the EU’s external borders. In the future, EU countries will be allowed to more easily reject asylum applications as inadmissible when they deem that an applicant could find protection in a non-EU country. The reform will have consequences beyond the EU, too, as Serbia’s case shows. The reform is likely to incentivize pushbacks at Serbia’s borders, thus exacerbating a broader rule-of-law crisis, and counteract years-long political and financial efforts by EU institutions to build a functioning asylum system. It may also alter EU-Serbia relations and harm the accession process.

What Should Be Done?

The EU plays a key role in asylum policy decisions in Serbia. Examples from the recent past – on access to territory, asylum procedures, reception, and access to services – show where this influence is particularly strong, and why. One principal observation is clear: Serbia can make gradual progress in developing its asylum system but requires the EU to set positive framework conditions. This would include the following points:

In respect to EU asylum reform/the future Procedures Regulation:

1. Detail the required state of the asylum system and quality of protection required for “Safe Third Countries”;
2. Make EU institutions responsible for assessing whether a third state can be considered a “Safe Third Country”;
3. Clarify the consequences of failed return for access to the asylum procedure;
4. Agree on the kind of support granted to third states considered “Safe Third Countries”.

In respect to current non-compliance by EU countries and collaboration with Serbia:

5. The EU Commission should fulfil its supervisory role of EU law;
6. External action should double down on policy dialogue and measures aimed at strengthening the Serbian asylum system;
7. DG NEAR’s progress reports should reflect the state of the Serbian asylum system.

A Breakthrough Reform Relevant Beyond the EU

On June 8–9, 2023, the EU Justice and Home Affairs Council reached a breakthrough on two new laws that are vital for the EU’s asylum system: the Asylum and Migration Management Regulation (replacing the current “Dublin” Regulation) – a law regulating responsibility for assessing asylum applications and solidarity among Member States; and the Asylum Procedure Regulation – a law specifying the rules of the asylum procedure.

The Council agreement foresees Member States using a border procedure for people from countries with low rates of successful EU asylum claims, detaining them in the border’s vicinity, and increasingly using an inadmissibility procedure for people deemed able to receive protection in another country outside the EU, according to the “Safe Third Country” concept.

The criteria for non-EU countries to be classified as able to offer protection have been drastically lowered: it is now individual states that declare a non-EU country safe, and EU Member States can apply the concept to people who have merely transited the country in question. Meanwhile, the old Dublin rules largely remain, complemented by a solidarity mechanism under which Member States can decide to either accept people (relocation) or provide capacity-building or funding to EU countries responsible for a large share of asylum applications.

The European Parliament must still agree on these points for them to become law. However, it is expected to agree without major changes. This is due to a long-standing quarrel over asylum reform, the centrality of the Council agreement to the whole asylum system, and the current majorities in Parliament and in the Council.

Above all, the reform will affect EU countries at the Union’s external borders, where the highly problematic Greek “model” of reception will spread.¹ However, the reform will also affect non-EU countries, particularly those likely considered “Safe Third Countries.” This will be apparent in Western Balkan states, primarily Serbia, for four reasons: First, compared to third countries that share a sea border with the EU, the land border between EU countries and Serbia makes return easier.² Second, contrary to other Western Balkan countries, Serbia already has an existing asylum system that will tempt other EU states to declare Serbia safe. Third, the reform could give Hungary a face-saving way out of its blatantly illegal – as per the EU’s top court – border practice, which openly pushes people back to Serbia. Finally, the EU and Serbia have a degree of cooperation and shared policy interests that does not exist with other neighbor countries, such as Tunisia. The following discussion builds on qualitative research for ASILE to explore these points in greater detail.³

1 Dimitriadi, A. (2023). “The Greek Asylum Regime: From Latecomer on Reception to ‘Inspirational’ Model on Asylum Procedures.” in C. Finotelli, I. Ponzio, (eds.), *Migration Control Logics and Strategies in Europe*. IMIS-COE Research Series. Springer.

2 The experience in Greece shows that consideration of another country as safe does not automatically mean people are returned. Turkey refuses people returned from Greece.

3 This builds on document reviews and interviews with key informants. Lehmann, J. (2022). “Borders, Money, and a B&B: Policy Drivers on the Global Compact on Refugees in Serbia.” ASILE.

Lessons from the EU's Influence on Asylum Policy in Serbia

Serbia is strategically important to the EU as a migration management partner,⁴ due to its candidate status for EU membership and its geographic location (Serbia remains one of the main countries for migrant transit through the Western Balkans).⁵ Since 2016, Serbia and the EU have been in accession negotiations over Chapter 24, which is relevant for migration and asylum.

Although Serbian actors have shaped the country's asylum policy most extensively, EU Member States and institutions have been a strong influence, albeit with inconsistent aims. Recent examples show where and why this influence is particularly strong. A principal observation is that Serbia can make gradual progress in developing its asylum system, but this requires the EU to set positive framework conditions.

Lesson on Access to Territory: EU Member States' Restrictive Practice Is Copied in Serbia as Policy Interests on Reducing Entry Converge

One area of clearly visible EU influence is asylum seekers' access to territory, which has become more difficult over the years. Between 2015 and 2016, Serbia had emerged as the central theater of the "Balkan route," facilitating movement by issuing temporary permits and offering registered migrants transportation to its northern borders. However, agreement between the EU Commission and Western Balkan leaders, as well as restrictive practices by Hungary and Croatia that included pushbacks and border closures, ended this formalized corridor in 2016.⁶

Similarly to 2016, today's practice among EU neighbors, particularly including collective expulsions from Hungary, Romania and Bulgaria into Serbia,⁷ also influences policy decisions. Serbian officials have repeatedly stated that they would not allow Serbia to become a "parking lot," and have copied restrictive practice, including pushbacks, building a fence on a (still short) part of the border with North Macedonia, and intensified border control. Violence against migrants in transit is rampant across the region.

Serbia has received considerable bilateral support to increase border control. Border management and combating smuggling accounts for over half of all EU Member

4 Council of the EU. (May 12, 2020). "Presidency Discussion Paper: Strengthening Migration Management Capacities in the Western Balkans." Doc 7896/20.

5 Although there are no precise numbers for arrivals, and the actual number of new arrivals is likely lower than the most recent official reports, official statistics point to rising numbers in recent years. This was particularly visible in summer 2022, when the number of new arrivals almost tripled compared to the first seven months of 2021, rising to 45,308. See Kovačević, N. (2022). "Country Report: Serbia." Asylum Information Database.

6 Beznec, B., Speer, M., and Stojić Mitrović, M. (2016). "Governing the Balkan Route: Macedonia, Serbia, and the European Border Regime." Rosa Luxemburg Stiftung Southeast Europe, Research Paper Series 5. Abikova, J. and Piotrowicz, W. (2021). "Shaping the Balkan Corridor: Development and Changes in the Migration Route 2015–16." *International Migration*, 59(5): 248–65.

7 According to monthly statistical snapshots from UNHCR Serbia, the number of people subject to expulsion to Serbia has increased dramatically in recent years, from 10,555 in 2019 to 27,233 in 2021. The vast majority of these reported cases (93 percent) are expulsions from the EU Member States Romania and Hungary.

States' bilateral support in the Western Balkans.⁸ In addition, Member States have supported with personnel. In December 2022, Serbia, Hungary and Austria deepened their cooperation for more officers from the three countries to patrol the border with North Macedonia.⁹ This followed a statement by Hungarian President Viktor Orbán, during a joint meeting with Serbia's Aleksandar Vučić and Austrian Minister of Interior Karl Nehammer, that the three countries would like to see the "line of defence against irregular migration" pushed southward to the border between Serbia and Macedonia.¹⁰

Cooperation with Hungary shows that restrictive border practice "upstream" on migration routes is no barrier to Serbia entering strategic partnerships with the responsible governments. Serbia does not criticize Hungary, and Hungary's pushbacks are absent from public debate. Instead, Serbia's Commissariat for Refugees and Migration (*Komesarijat za izbeglice i migracije: KIRS*) acquiesced to Hungary's practice of rejecting all applicants for asylum that have not voiced intent in Serbia. KIRS has effectively become the governmental gate-keeper to Hungary's policy, by compiling lists of people in reception centers willing to enter transit zones in Hungary – the "Hungarian Waiting List" – based on migrant community leaders' communication to Hungarian border police.¹¹

There are several reasons for Serbia's stance. First, the strategic considerations of maintaining a good bilateral relationship with Hungary, its most important EU partner. Second, similar practices have occurred in Serbia, amidst a shared preference to reduce migrant arrivals. Third, the lackluster reaction to breaches of EU border standards by EU institutions (for example, access to territory is not assessed in progress monitoring for the EU accession process).¹² Finally, pushbacks into Serbia have not fundamentally changed Serbia's almost exclusive role as a transit country: even for migrants and refugees who officially register and lodge an asylum application, the average stay is only 23 days.¹³

Lesson on Asylum Procedures: Serbia Has Aligned Its Asylum Procedure with EU Standards, But This Has Limited Practical Effects Because Serbia Seeks to Remain a Transit Country

Serbia's Law on Asylum and Temporary Protection (LATP), in place since 2018, aligns several aspects of EU and Serbian asylum procedures. The adoption of the law is commonly ascribed to harmonization for the EU accession process. Under the EU Instrument for Pre-Accession Assistance (IPA), the EU has also supported the law's

8 Including expert assistance, equipment and financial assistance. Council of the EU. (May 12, 2020).

9 *Vreme* (November 16, 2022). "Vučić, Orban i Nehamer: Izbeglica proći neće". This follows other agreements with Hungary, including a "protocol and methodology about mixed patrols along their common border" signed in September 2021, and a July 2022 Hungarian-Serbian cooperation agreement on border control.

10 *Der Standard* (October 3, 2022).

11 Djurovic, O., Djurovic, R., and Spijkerboer, T. (April 19, 2022), p. 27–9.

12 European Commission (October 2021). "Serbia 2021 Report." SWD (2021) 288 final.

13 Danas (May 5, 2022). "Cucić: U Srbiji između 5.500 i 6.000 migranata" [Cucić: There are between 5,500 and 6,000 migrants in Serbia].

implementation with capacity development.¹⁴ However, critics argue that legislative reform has not significantly improved asylum procedure. Indeed, recognition rates have fallen over recent years,¹⁵ as have the numbers of asylum decisions taken.¹⁶ This has contributed to a large number of people without legal status. Although one factor affecting the low number of positive decisions appears to be the onward movement of people who lodge asylum applications, some people perceive a result of deliberate policy. This is because many challenges in the asylum procedure are seen as solvable, if politically desirable. This includes inadequate information provided to asylum seekers, obstruction to legal assistance, a failure to budget for interpretation, and the failure of authorities to use support for procedures like remote interpretation. A “transit-bingo” is apparent, in which transit is both a *justification* for a lack of progress on access to procedures and solutions, and a *policy direction* to facilitate onward movement.

Lesson on the Reception System and Access to Services: The EU Can Set Framework Conditions for Progress

In contrast with the previous examples, Serbia has made some progress on reception, service provision and the inclusion of asylum seekers, with support from EU partners.

This is most evident in the March 2022 decision (prolonged in 2023) to grant temporary protection to people fleeing the war against Ukraine, regularizing their stay and access to basic services and the labor market. EU and neighbor country policies contributed to favorable framework conditions for this decision. First, the Temporary Protection instrument exists in the LATP as the result of the accession process.¹⁷ Second, the 2022 decision was uncontroversial within the government because the EU, too, had activated the Temporary Protection Directive for Ukrainians, and even Hungary was cooperating. The decision would clearly be relatively risk-free for the capacity of Serbia’s reception system. For Serbia as a Russian partner country, the decision was also an easy foreign policy gain with the EU, as the Serbian government has faced pressure by EU partners to more clearly change its stance.¹⁸

The EU setting positive framework conditions has also been visible in reception and service provision for other nationalities. Over the past 10 years, Serbia has built a reception system with some 5,500 places,¹⁹ making arrangements for access to

14 Djurovic, O., Djurovic, R., and Spijkerboer, T. (April 19, 2022). “Serbia Country Report.” ASILE.

15 Recognition was 30 percent in 2019, 27 percent in 2020, and 24 percent in 2021.

16 In 2021, 114 decisions were taken, including 10 inadmissible (safe third country or subsequent application), 14 positive decisions (granting refugee status or subsidiary protection), 39 negative decisions, and 51 were discontinued after asylum seekers’ onward movement. Kovačević, N. (2022).

17 European Union (July 20, 2001). “Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing.” *Official Journal of the European Union*, L 212: 12–23.

18 Samorukov, M. (June 10, 2022). “Last Friend in Europe: How Far Will Russia Go To Preserve Its Alliance with Serbia?” Carnegie Europe.

19 This statement accounts for the build-up of reception capacity over the past 10 years and the reception systems of other non-EU countries in the region but is not to make a claim regarding the quality of accommodation in light of guidance by the EU Asylum Agency or the minimum standards under the EU Procedures Directive (Directive 2013/32/E of the European Parliament and of the Council of June 26, 2013 on common procedures for granting and withdrawing international protection [recast], OJ L 180/60).

accommodation, food, clothing, and a cash allowance. Healthcare eligibility has been extended to everyone registered and primary healthcare either provided by medical teams in Asylum Centres or local public health centers. Numerous serious issues remain on reception conditions, access to asylum procedures in the centers, and access to services.²⁰ However, Serbia has made some progress in nationally owned arrangements over the past 10 years. A key factor has been EU funding. Although the exact distribution cannot be ascertained, it is clear that the EU has provided the overwhelming majority of financing necessary for reception arrangements through pre-accession funds. To counter rampant anti-migrant sentiment in early 2020, the then-head of KIRS, Vladimir Cucić, even claimed that until 2022 “the migrants’ stay will not cost the citizens of Serbia a single Dinar.”²¹ Under the second funding cycle of the EU Instrument for Pre-Accession Assistance (IPA, running until 2022), Serbia has received € 40 million for migration and asylum,²² the majority of which has been disbursed to KIRS.

Meanwhile, there has been little progress in transitioning funding sources from EU instruments to the national budget. This is encouraged by the EU Commission, but not yet a hard requirement to receive IPA funding. One government interlocutor voiced the expectation that, were EU funding to end, government-run reception facilities would have to close for lack of funding or political will to provide it. In 2022, the EU Commission therefore unilaterally decided to allocate regional IPA funds of € 60 million to migration and asylum in Serbia. This came after the Serbian government chose not to request IPA funding after 2022, a decision said to be rooted in a conviction “above” line ministry level that IPA funds should first be used for Serbia’s own population.

What Are the Consequences for Serbia If the EU’s Justice and Home Affairs Council Recommendations Become Law?

A *leitmotiv* of legislative reform and practice among EU Member States at the Union’s external borders has been to shift as much of border control and ultimately responsibility for the reception of asylum seekers as possible to states outside the EU. The Council reform proposals turn what has been tested in Greece into the new normal: through procedural rules, eligibility for protection becomes more difficult. Meanwhile, with a solidarity mechanism that makes it easy for Member States to avoid relocation, EU states at the external borders will continue to bear most initial responsibility, meaning that there are no political incentives to change the status quo (of pushbacks and sub-standard reception).

If the reform proposals become law,²³ Member States bordering Serbia will likely be tempted to declare Serbia a “Safe Third Country.” This is currently difficult, as EU

20 Kovačević, N. (2022).

21 *Danas* (January 2, 2020). “Cucić: Nema pogoršanja nivoa bezbednosti zbog prisustva velikog broja migranata.”

22 For an overview of funding instruments, see Djurovic, O., Djurovic, R., and Spijkerboer, T. (April 19, 2022). European Commission (2019). “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.”

23 For the legal requirements of safe third countries, see Lehmann, J. (2020). *Protection in European Union Asylum Law*. Brill.

law requires a connection to the state, rather than mere transit, as well as protection in accordance with the 1951 Convention relating to the Status of Refugees. Past policy changes suggest that such a decision would prompt Serbia to drastically harden its stance on access to territory, that is, to increase pushbacks. More returns to Serbia would also put pressure on a still-nascent asylum system that is not fit to cope with high inflows. In its current form, the reform would disincentivize Serbia to invest in improving that system.

The proposals becoming law would not only affect people on the move. It would also counteract years of EU political and financial investment to build the asylum system in Serbia. Building such a system is not only a declared aim of the external dimension of the EU's pact on migration and asylum;²⁴ it is also an important issue for Chapter 24 (on justice, freedom and security) of the accession process. This can be seen in the broader lack of progress on Chapter 24, given restrictions on fundamental rights, media freedom and fairness of the election.²⁵ Violations of individual rights at the border would therefore exacerbate a crisis of fundamental rights that is very much ongoing.

Conferring on individual states the decision as to whether Serbia is safe may also affect power dynamics amidst EU relations with Serbia. Given increased pressure on the asylum system, migration would become an even more central topic, binding Serbia to its bilateral partners most invested in supporting border control, who may continue to support Serbia's membership bid because this would mean deflecting more responsibility to Serbia for border control and handling asylum applications. Migration policy has already played a key role in the strategic relationship between Serbia and Hungary, for example. That cooperation not only risks crowding out vital EU external action goals on asylum, but so far it has also had no beneficial side-effects for the EU. Thus, Hungary has not used its ties to influence other key EU issues, particularly the rising tensions in Kosovo.

Finally, the reform proposal does not contribute to an appealing EU membership prospect: were Serbia to become an EU member, it would have primary responsibility not only to protect the external border, but also for handling asylum applications under the old and new Dublin criteria. EU countries at the external borders gain almost nothing from the reform, as the agreed solidarity mechanism makes it easy to avoid the most politically contentious forms of sharing responsibility (relocating people). Domestically, this will not be popular. In the past, one central fake narrative of right-wing groups has been that Serbia already needs to take care of all asylum seekers, including those who have moved on to EU countries, under the Dublin rules.²⁶

24 Pichon, E. (2021). "The external dimension of the new pact on migration and asylum: A focus on prevention and readmission." European Parliamentary Research Service.

25 See, e.g., Freedom House (2023). "Nations in Transit Report – Serbia." Article 19 (April 26, 2023). "Serbia: Independent journalism faces biggest crisis in years." *Politico* (October 5, 2021) "Olivér Várhelyi: Europe's Under-Fire Gatekeeper."

26 Vucic, M. (2021). "Hate, Lies and Vigilantes: Serbian 'Anti-Vaxxer' Brigade Plays With Fire."

Conclusions and Recommendations

The EU should have a firm interest in supporting the development of the Serbian asylum system, but the Council's reform proposals for the Asylum Procedure Regulation would counteract such efforts. It would likely have adverse effects for people on the move, the rule of law in the country, EU-Serbia relations, and the accession process. In its current form, the reform is blind to these effects. It will sacrifice long-term effective cooperation on the basis of the EU *acquis* for short-term “gains” in limiting irregular arrivals.

As part of the Global Compact on Refugees, the EU has committed to supporting responsibility sharing in the refugee regime. However, Serbia's example shows that the EU has been inconsistent in doing so, and that the EU's externalization agenda is harmful to this aim.

Past lessons – in particular the examples of service provision in reception and temporary protection for people fleeing Ukraine – show that the EU can set positive framework conditions for better protection in Serbia. Given the political preferences, it is unlikely that the EU will in the foreseeable future have an asylum system that will be a lot more favorable to developing asylum in third countries (such as by incentivizing in EU countries compliance with EU minimum standards rather than pushbacks to third countries). However, options for a more effective “external dimension” of the EU asylum policy do exist.

In respect to EU asylum reform:

1. In the final negotiations on reform, the European Parliament and the Council should consider the reform's implications for the external dimension of the new pact on migration and asylum. The future Procedures Regulation should detail what is effective protection in “Safe Third Countries,” considering reception, access to and quality of asylum procedures, legal review, and quality of protection.
2. EU institutions, particularly the EU Asylum Agency in collaboration with the EU Commission, and not individual Member States, should assess whether or not a third state can be considered a “Safe Third Country”.
3. The regulation should clarify the consequences of failed return for access to the asylum procedure – based on the Greek experience that people who cannot be returned to the “Safe Third Country” end up in legal limbo.²⁷
4. There should be agreement on the kind of support granted to third states considered “Safe Third Countries,” including for resettlement and technical and and financial support, and it should be agreed that this support is a common responsibility of Member States.

²⁷ Dimitriadi, A. (2023) “No Turning Back: Greece and the EU-Turkey Statement Seven Years On”, GPPI/ASILE (forthcoming).

In respect to current non-compliance by EU countries and collaboration with Serbia:

5. The EU Commission should fulfil its supervisory role of EU law, including by collecting evidence on non-compliance at the external borders, by holding Member States to account to investigate allegations of non-compliance, and by following up on the findings. EU collaboration on border control should be contingent on compliance.
6. The Commission should double down on policy dialogue and measures aimed at strengthening the Serbian asylum system, including in respect to: access to and quality of the asylum procedure; service delivery; access to the labor market; institutional “anchoring” of asylum policy; and support for Serbian civil society organizations active on reception and/or monitoring.
7. The Commission should reflect in DG NEAR’s progress reports the rule of law issues of access to and quality of the asylum procedure as well as the reception of asylum seekers.



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