



ASILE

Global Asylum
Governance and
the European
Union's Role

EU Asylum Reform and the Western Balkans: What could the future hold for Serbia?

—
2 October 2023

Julian Lehmann



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement n° 870787. This document reflects only the author's view and the Commission is not responsible for any use that may be made of the information it contains.



TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1. A breakthrough reform relevant beyond the EU	4
2. Lessons from the EU's influence on asylum policy decisions in Serbia	5
3. What are the consequences for Serbia if the EU's Justice and Home Affairs Council recommendations become law?	9
4. Conclusions and recommendations	10



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 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 may have consequences beyond the EU, too, as Serbia's case shows. The reform could incentivise pushbacks at Serbia's borders, exacerbating a broader rule-of-law crisis, and counteract year-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 could make gradual progress in developing its asylum system, but one necessary condition for this is that the EU sets positive framework conditions, within and in addition to those of the membership process. This would include the following points.

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

1. Provide as much detail as possible on 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 of 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.



1. A breakthrough reform relevant beyond the EU

On 8–9 June 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 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 EU 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 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 neighbour countries, such as Tunisia. The

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*. IMISCOE 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.



following discussion builds on qualitative research for ASILE, including key informant interviews and document review.³

2. Lessons from the EU's influence on asylum policy decisions 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, as 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 importantly, 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, within and in addition to those of the membership process.

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 theatre of the "Balkan route," facilitating movement by issuing temporary travel 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 more formalised corridor in 2016.⁶

³ The analysis relies on document review and semi-structured interviews with 16 key informants in Serbia conducted between July and August (n=14), and in September and October 2022 (n=2). In one additional instance, written input was provided. The key informants represent government institutions (Serbian government, EU institutions, and other government institutions), international organisations, civil society, academia, and journalism. Interviews were conducted under condition of anonymity/non-attribution of statements. Lehmann, J. (2022). "[Borders, Money, and a B&B: Policy Drivers on the Global Compact on Refugees in Serbia](#)." ASILE.

⁴ Council of the EU. (12 May 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](#)



Similarly to 2016, today's practice among EU neighbours, particularly including collective expulsions from Hungary, Romania, and Bulgaria into Serbia,⁷ also influences policy decisions. Serbian officials have repeatedly stated 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.⁸

Serbia has received considerable bilateral support to increase border control. Border management and combating smuggling accounts for over half of all EU Member States' bilateral support in the Western Balkans.⁹ In addition, Member States have supported with personnel. In December 2022, Serbia, Hungary, and Austria deepened cooperation for more officers from the three countries to patrol the border with North Macedonia.¹⁰ This follows the signature of a Memorandum of Understanding between the three countries, with the declared aim of moving the “line of defence”¹¹ southward to the border between Serbia and Macedonia.¹²

Serbia does not criticise Hungary, and Hungary's pushbacks are absent from public debate. Serbia's Commissariat for Refugees and Migration (*Komesarijat za izbeglice i migracije: KIRS*) has reacted to Hungary's practice of rejecting all applicants for asylum that have not voiced intent in Serbia by compiling lists of people in reception centres willing to enter transit zones in Hungary – the so-called “Hungarian Waiting List”. These were then communicated to Hungarian border police by migrant community leaders.¹³ While this was intended 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”¹⁴, it also means that KIRS has effectively acted as a gatekeeper to Hungary's policy.

[Migration Route 2015–16.](#)” *International Migration*, 59(5): 248–65. See also Djurovic, O., Djurovic, R., and Spijkerboer, T. (19 April 2022),

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.

⁸ Djurovic, O., Djurovic, R., and Spijkerboer, T. (19 April 2022), p. 23-26.

⁹ Including expert assistance, equipment, and financial assistance. Council of the EU. (12 May 2020).

¹⁰ *Vreme* (16 November 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.

¹¹ [Memorandum on cooperation of Serbia, Hungary and Austria in fight against illegal migration](#), The Government of the Republic of Serbia Press Release, 16 November 2022.

¹² *Der Standard* (3 October 2022).

¹³ Djurovic, O., Djurovic, R., and Spijkerboer, T. (19 April 2022), p. 27–9.

¹⁴ *Ibid.*



There are several potential reasons for Serbia's stance towards Hungary. First, the strategic considerations of maintaining a good bilateral relationship with Hungary, its most important EU partner.¹⁵ Second, similar practices have occurred in Serbia, amidst a shared preference to reduce migrant arrivals. Third, the lacklustre reaction to breaches of EU border standards by EU institutions; for example, access to territory is not assessed in progress monitoring reports for the EU accession process.¹⁶ 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.¹⁷

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 harmonisation for the EU accession process. Under the EU Instrument for Pre-Accession Assistance (IPA), the EU has also supported the law's implementation with capacity development.¹⁸ However, critics argue that legislative reform has not significantly improved asylum procedure. Indeed, recognition rates, as one important metric among others, have fallen over recent years,¹⁹ as have numbers of asylum decisions taken.²⁰ 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 were perceived by interviewees as solvable, if politically desired. 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.

¹⁵ E.g., In early 2023, cooperation was described by the Serbian MFA as being "[at the highest level in the past 10 years](#)", coming after a 2021 statement that the bilateral relation was "[best in history](#)".

¹⁶ European Commission (October 2021). "[Serbia 2021 Report](#)." SWD(2021) 288 final.

¹⁷ *Danas* (5 May 2022). "[Cucić: U Srbiji između 5.500 i 6.000 migranata](#)" [Cucić: There are between 5,500 and 6,000 migrants in Serbia].

¹⁸ E.g., under the Twinning project 'Support to the National Asylum System in the Republic of Serbia' (IPA 2014).

¹⁹ Recognition was 30 percent in 2019, 27 percent in 2020, and 24 percent in 2021.

²⁰ 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).



Lesson on the reception system and access to services: The EU can set framework conditions for progress.

In contrast with the previous examples, there has been modest progress in reception, service-provision, and inclusion of asylum seekers, albeit dependent on 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, regularising their stay and access to basic services and the labour market. EU and neighbour country policies contributed to favourable framework conditions for this decision. First, the Temporary Protection instrument exists in the LATP as the result of the accession process.²¹ Second, the 2022 decision was perceived by multiple interview partners 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.²²

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,²³ making arrangements for access to 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 centres. Numerous serious issues remain on reception conditions, access to asylum procedures in the centres, and access to services.²⁴ A key factor has been EU funding. Although the exact distribution cannot be ascertained, it is clear that the EU has clearly provided the overwhelming majority of finance necessary for reception arrangements through pre-accession funds. 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."²⁵ Under the second funding cycle of

²¹ European Union (20 July 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.

²² Samorukov, M. (10 June 2022). "[Last Friend in Europe: How Far Will Russia Go To Preserve Its Alliance with Serbia?](#)" *Carnegie Europe*.

²³ 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 26 June 2013 on common procedures for granting and withdrawing international protection [recast], OJ L 180/60).

²⁴ Kovačević, N. (2022).

²⁵ *Danas* (2 January 2020). "[Cucić: Nema pogoršanja nivoa bezbednosti zbog prisustva velikog broja migranata](#)".



the EU Instrument for Pre-Accession Assistance (IPA, running until 2022), Serbia has received 40 million EUR for migration and asylum,²⁶ 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 EUR to migration and asylum in Serbia. This came after the Serbian government chose not to request IPA funding after 2022.

3. What are possible 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 border control and ultimately responsibility for the reception of asylum seekers as much as possible outside EU states. 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 push backs, and sub-standard reception).

If the reform proposals become law,²⁷ Member States will likely be tempted to declare Serbia a "Safe Third Country." This is currently difficult, as EU 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.

The use of border procedures and inadmissibility decisions on Serbia as a safe third country would – for those Member States currently conducting pushbacks to Serbia – create a legal alternative to returns, and further increase the number individuals returnable to Serbia. Past policy changes suggest that such a shift would prompt Serbia to further harden its stance on access to territory; that is, to increase pushbacks. More returns to Serbia would also put pressure on a still-

²⁶ For an overview of funding instruments, see Djurovic, O., Djurovic, R., and Spijkerboer, T. (19 April 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.](#)"

²⁷ For the legal requirements of safe third countries, see Lehmann, J. (2020). *'Protection' in European Union Asylum Law*. Brill.



nascent asylum system that is not fit to cope with high inflows. In its current form, the reform would create additional incentives for Serbia not to invest in improving that system. This 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.²⁸ 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 progress on Chapter 24, given restrictions on fundamental rights, media freedom, and fairness of the election.²⁹ 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, bind Serbia to its bilateral partners most invested in supporting border control, who may continue to support Serbia's membership bid because this would mean deflect 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.

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 likely not be popular. In the past, one centrally 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.³⁰

4. 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

²⁸ Pichon, E. (2021). "[The external dimension of the new pact on migration and asylum: A focus on prevention and readmission](#)," European Parliamentary Research Service.

²⁹ See, e.g., Freedom House (2023). "[Nations in Transit Report – Serbia](#)." Article 19 (26 April 2023). "[Serbia: Independent journalism faces biggest crisis in years](#)." *Politico* (5 October 2021) "[Olivér Várhelyi: Europe's Under-Fire Gatekeeper](#)."

³⁰ Vucic, M. (2021). "[Hate, Lies and Vigilantes: Serbian 'Anti-Vaxxer' Brigade Plays With Fire](#)."



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. Yet, Serbia’s example shows that the EU has been inconsistent in in doing so, and that the EU’s externalisation 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 have in the foreseeable future an asylum system that will be a lot more favourable to developing asylum in third countries (such as by incentivising in EU countries compliance with EU minimum standards rather than push backs to third countries). However, options for a more effective “external dimension” of the EU asylum policy do exist:

In respect of EU asylum reform:

1. In the final negotiations on reform, the EU 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 granted;
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;³¹
4. There should be agreement on the kind of support granted to third states considered “Safe Third Countries,” including for resettlement, technical, and financial support; and it should be agreed that this support is a common responsibility of Member States.

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

1. 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;

³¹ Dimitriadi, A. (2023) “No Turning Back: Greece and the EU-Turkey Statement Seven Years on”, GPPI/ASILE (forthcoming).



2. The Commission should double down on policy dialogue and measures aimed at strengthening the Serbian asylum system, including in respect of access to and quality of the asylum procedure; service delivery; access to the labour market; institutional “anchoring” of asylum policy; and support for Serbian civil society organisations active on reception and/or monitoring.
3. The Commission should reflect in DG NEAR’s progress reports the rule of law issue access to and quality of the asylum procedure, as well as the reception of asylum seekers.

ASILE PARTNERS



SCHOOL OF BUSINESS AND SOCIAL SCIENCES
AARHUS UNIVERSITY



UNIVERSITY OF
GOTHENBURG



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES



MIGRATION
POLICY CENTRE



ABI

ARNOLD
BERGSTRÄESSER
INSTITUT

GPPi

GLOBAL PUBLIC POLICY
INSTITUTE

DRC DANISH
REFUGEE
COUNCIL



UNHCR
The UN Refugee Agency



ASILE

Global Asylum
Governance and
the European
Union's Role



The ASILE project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870787

Project Coordinator

CEPS

1 Place du Congrès, B-1000
Brussels, Belgium
info.asileproject@ceps.eu

Follow us:

www.asileproject.eu
[@AsileProject](https://twitter.com/AsileProject)