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Orestis Nicolaou

EU Border Policies Between Securitisation and Human Rights

The Impact of the New Pact on Migration and
Asylum on BiH and The Western Balkans

ERMA, European Regional Master's Programme
in Democracy and Human Rights in South East Europe

Orestis Nicolaou

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Foreword

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- Nicolaou, Orestis, *EU Border Policies Between Securitisation and Human Rights: The Impact of the New Pact on Migration and Asylum on BiH and The Western Balkans*. Supervisor: Anna Krasteva, New Bulgarian University. Master's Programme in Democracy and Human Rights in South East Europe (ERMA), coordinated by University of Sarajevo and University of Bologna.
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- Salakhunova, Alina, *Decentralization and Renewable Energy Policy in Central Asia: Exploring the Role of Local Governance and Community Participation*. Supervisor: Sergey Sayapin, KIMEP University (Almaty, Kazakhstan). The Master of Liberal Arts in Human Rights and Sustainability (MAHRS - GC Central Asia), coordinated by the OSCE Academy in Bishkek.

- Torres Cuenca, Laura, *El camino del retorno. Experiencias de mujeres rurales víctimas del conflicto armado en el proceso burocrático de ingreso al Registro de Tierras Despojadas y Abandonadas Forzosamente para el departamento del Cesar, Colombia*. Supervisor: Ezequiel Fernández Bravo, Universidad Nacional de San Martín - Consejo Nacional de Investigaciones Científicas y Técnicas (UNASAM-CONICET). Master's Programme in Human Rights and Democratisation in Latin America and the Caribbean (LATMA), coordinated by National University of San Martin (Argentina).

Biography

Orestis Nicolaou is a human rights and migration studies researcher, a recent graduate of the European Regional Master's Programme in Human Rights and Democracy (ERMA), jointly offered by the University of Sarajevo and the University of Bologna. He also holds an MA in Political Sociology and Comparative Politics from Panteion University in Athens, where he graduated as a valedictorian. His academic interests include refugee studies, migration governance and human rights.

Abstract

The thesis explores the intersection of securitisation and human rights within the framework of the European Union (EU) border and migration policies, with a particular focus on the New Pact on Migration and Asylum and its future affections for Bosnia and Herzegovina (BiH) and the broader region, the Western Balkans (WB). Following the adoption of the New Pact, EU MS seek to harmonise border management and asylum procedures, but its policies, especially the externalisation of border control, raises significant human rights concerns. This study critically analyses the evolving dynamics of borders, informed by theoretical frameworks such as borderscapes and bordering processes, to understand the contemporary geopolitics of migration in the region. Reaching a case study of BiH, the research examines the country's transformation from one of the largest 'refugee-producing' nations in the 1990s to a crucial transit hub for migrants between 2012 and 2016. It further explores the impact of EU policies on Bosnia's border governance, illustrating how these policies may ultimately contribute to the country becoming a space where people on the move find themselves 'trapped.' By integrating desk research, policy analysis, qualitative interviews, and media discourse analysis, the thesis reveals how EU external migration policies shape migration management and human rights outcomes in non-EU countries like BiH, where security and fear gradually come to dominate migration discourse and practices, both at the public and governance levels.

Keywords: EU Border Policies, Securitisation, Human Right, Migration Governance, New Pact on Migration and Asylum, Bosnia and Herzegovina, Western Balkans

While finalising this research at the Fortress of Bertinoro, we learned from the guide about the smallest of all its gates, known as the “Porta del Soccorso” (Rescue Gate), which offered refuge to those in need without requiring payment-unlike the other gates - and it was always open. The parallels to today are inevitable.

This work is dedicated to those who lost their lives in search of a safe gate.

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Table of Abbreviations

BiH	Bosnia and Herzegovina
CEAS	Common European Asylum System
EU	European Union
EURODAC	European Dactyloscopy (European fingerprint database)
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
IOM	International Organisation for Migration
MS	Member States
NGO	Non-Governmental Organisation
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WB	Western Balkans
EMPACT	European Multidisciplinary Platform Against Criminal Threats

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Introduction

After four years of negotiations, the European Union (EU) institutions have approved the *New Pact on Migration and Asylum*.¹ The new pact aims to lessen the ongoing tensions among EU member states (MS) that have persisted since the 2015 refugee management crisis.² It seeks to achieve this by establishing a more consistent and predictable system for managing migration flows by introducing mechanisms for sharing the responsibility of asylum claims across the MS and reform the existing asylum system. The need for this New Pact resulted from the failure of the Common European Asylum System (CEAS) to successfully reform and adapt to the post-2016 situation.³ Nevertheless, the new pact's complexity, the resistance from certain MS, and its dependence on agreements with third-party countries cast doubt on its successful implementation.

The New Pact on Migration and Asylum consists of five main pillars, aiming to balance the responsibility of frontline nations-like Italy, Greece, Spain, Malta and Cyprus, who handle the initial processing of most asylum seekers-with the support and

¹ I will refer to the 'New Pact on Migration and Asylum' as the 'New Pact' for brevity.

² Instead of the use of "refugee crisis" or "migration crisis", in this research I will be using the term "management crisis" which most correctly expresses and reflects the situation that the states of the European Union and the neighbouring states still face today. The terms "migration" or "refugee crisis" are terms which describe the countries of emigration. Additionally, more accurate terms than the latter, better describing the situations in Europe, could be "governance crisis" or european "solidarity crisis". For more on the terminology issue of the broader migration phenomenon as well as the usage of the use "crisis", see Sahin-Mencutek, Zeynep, Soner Barthoma, N. Ela Gökalp-Aras, and Anna Triandafyllidou. "A crisis mode in migration governance: comparative and analytical insights." *Comparative migration studies* 10, no 1 (2022): 12.

³ Natascha Zaun, 'Fence-Sitters No More: Southern and Central Eastern European Member States' Role in the Deadlock of the CEAS Reform' (2022) 29(2) *Journal of European Public Policy* 196–217.

solidarity of other MS. After long deliberations, MS reached an agreement on two of the five proposed regulations, which were subsequently approved by the Council in June 2022.⁴ Two years later, in April 2024, the European Parliament approved the regulations that form the New Pact on Migration and Asylum, integrating the remaining three pillars proposed by the European Commission. The final agreement materialised in a revised and more elusive version, structured into ten legislative acts, encompassing key aspects of migration governance, border management, and asylum policies.⁵

Although most of the time MS fail to see eye to eye on the matter, their common goal is the same: securing greater control over arrivals, which implies fewer possibilities of requesting asylum at Europe's external borders. In the same context, the pact promises the harmonisation of border procedures and standards at reception centres, yet significant national differences will persist regarding the level of state assistance provided to asylum seekers, including housing and social support, acceptance rates for various nationalities, and the likelihood of deportation following a rejection.

A major issue concerning the human rights of the *people on the move*,⁶ which arises at this point, is normalising the practice of the EU externalising its borders control procedures for security reasons. This concerns not only the creation of border control

⁴ Council of the EU, Press release 22 June 2022: 'Asylum and migration: the Council approves negotiating mandates on the Eurodac and screening regulations and 21 states adopt a declaration on solidarity' (22 June 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/06/22/migration-and-asylum-pact-council-adopts-negotiating-mandates-on-the-eurodac-and-screening-regulations/>> accessed 19 September 2024.

⁵ Council of the EU, Press Release: 'The Council adopts the EU's pact on migration and asylum' <<https://www.consilium.europa.eu/en/press/press-releases/2024/05/14/the-council-adopts-the-eu-s-pact-on-migration-and-asylum/>> accessed 2 September 2024.

⁶ The term "people on the move" is not a legal term but a broad, non-specific expression used to refer inclusively to all individuals who are migrating, regardless of their reasons or legal status. It encompasses various groups such as migrants, refugees, asylum seekers, and internally displaced persons, without assigning specific legal classifications. UNESCO, in collaboration with The Hague Process on Refugees and Migration, addressed migration terminology in their 2008 publication, *People on the Move: Handbook of Selected Terms and Concepts*. While the handbook promotes precise and accurate language in discussions about migration and refugees, it does not define "people on the move" as a legal term. Given its broad usage, the phrase is suitable for general discourse, policy discussions, and academic contexts.

facilities for asylum seekers close to borders, but also the legitimacy of the new trend of outsourcing these procedures to third countries. Regarding the latter, EU countries are considering non-EU countries of the Western Balkans.

On this note, while the New Pact was voted by EU member-states, it is highly possible that its procedures and policies will have an impact on third countries that share borders with the external borders of the EU. This research will focus on the creation of European Union borderscapes in the region of Western Balkans and how this translates for people on the move, with a focus on the case of BiH. As a general query, I aim to examine the way human rights of asylum seekers are affected when a region consisting of 'transit countries' comes under the influence of the European borderscapes notion. Furthermore, I intend to investigate whether the externalisation of European border control genuinely enhances and protects the well-being of people on the move, as proponents of the New Pact claim.⁷ To reach the broader objectives, the thesis builds on smaller research questions, which are formulated and analysed in the respective chapters.

The first chapter delves into the world of *border studies* and border theory, a rather new academic discipline which aspires to reveal aspects and dynamics that borders produce, beyond their physical purpose. The idea that borders produce and reproduce notions for policies, meanings, symbols and dynamics in a diverse way on multiple levels with different actors, is encapsulated in what Chiara Brambilla refers to as "borderscapes".⁸ With this concept as guidance - which I will further develop later on - this research adopts a critical point of view regarding the understanding of borderlands from nation-states and the process of everyday-bordering through the Europeanisation of bordering processes which strengthens and gives new meanings to otherness.⁹ Therefore, the

⁷ Vincenzo Genovese, 'Ylva Johansson: Europe's New Migration Pact Is "a Huge Achievement' *Euronews* (12 April 2024) <www.euronews.com/2024/04/12/ylva-johansson-says-europes-new-migration-pact-is-a-huge-achievement> accessed 31 August 2024.

⁸ Chiara Brambilla, 'Exploring the Critical Potential of the Borderscapes Concept' (2015) 20(1) *Geopolitics* 16–17.

⁹ According to the French Geographer Jean-François Staszak, *Otherness* is the result of a discursive process by which a dominant in-group ("Us," the Self) constructs one or many dominated out-groups ("Them," Other) by stigmatizing a difference - real or imagined - presented as a negation of identity and thus a motive for potential discrimination. Difference belongs to the realm of fact and otherness belongs to the realm of discourse.

research question of this first chapter will concern the conceptualisation of the contemporary geopolitical imaginary (*imaginaire*)¹⁰ surrounding the issue of bordering. This chapter will provide a strong foundation to better understand the theoretical process of border externalisation but also, the logic of the EU's external border regime¹¹ in the Western Balkans.

The second chapter will try to address the question about the institutional, structural, ethical and to some extent practical changes that the New Pact will create, as well as the human rights issues that have already arisen. To do so, firstly it will be necessary to briefly review the background of the EU policies that have defined border policies. During this phase, the context of the policies and their evolution will contribute to the understanding of the logic behind the journey which led to the agreement for the New Pact. The EU's border policies have long been characterized by a complex balance between facilitating internal movement and securing external borders. This intricate framework, shaped by both visible and invisible boundaries within the Eurozone and Schengen Area¹², reflects the EU's ongoing efforts to maintain internal cohesion while addressing external pressures. As the chapter progresses, it will delve into key regulations like the Dublin Regulation,¹³ which laid the groundwork for what is often termed "Fortress Europe," and explore how the New Pact aims to reform this structure.

In the third chapter, the focus shifts to the intricate relationship between the European Union and the Western Balkans in the context of migration and border policies, with particular attention to the future affections of the New Pact on Migration and Asylum. The chapter starts by examining the Balkan Route, a key corridor for migrants and refugees seeking to enter the EU, and how the Europeanisation of migration management along this route has

¹⁰ I use of the concept "imaginary" as is interpreted by the philosopher Cornelius Castoriadis and not the way Jaque Lacan uses it. For more on the terminology of "imaginary", see: Castoriadis, Cornelius. *The Imaginary Institution of Society* (United Kingdom: MIT Press, 1987).

¹¹ Henk Van Houtum, 'Human Blacklisting: The Global Apartheid of the EU's External Border Regime' (2010) 28(6) *Environment and Planning D: Society and Space* 959.

¹² Schengen Area is a zone in the EU where internal border controls have been largely eliminated, allowing for free movement of people between member countries.

¹³ The Dublin Regulation determines which country is responsible for considering an application for protection. An asylum seeker can only have his or her application considered in one of the Dublin countries. The main rule is that an application will be processed by the first Dublin country the asylum seeker arrives in.

played a central role in efforts to “rescue” the Schengen Area. As the discussion progresses, the chapter explores the way Western Balkans are increasingly being treated as a single security space and a buffer zone for the EU. The key research question addressed is: How will the EU’s intensified externalisation of its borders, particularly through the New Pact, affect the migration and security policies of the Western Balkans, and what are the broader implications for the region’s relationship with the EU?

In the fourth and final chapter, the focus transfers on the case of Bosnia and Herzegovina, exploring its unique experience with migration and border policies through four distinct dimensions. First, the chapter examines the profile of BiH, highlighting the country’s dramatic transformation from being the largest producer of refugees in the Balkans during the 1990s to becoming a significant receiver and transit point for refugees today. Next, it delves into BiH’s political approach to migration and border management, analysing how national policies have evolved in response to both internal challenges and external pressures. The chapter then explores the impact of EU border and migration policies on BiH, with a particular focus on re-bordering processes and how these have reshaped the country’s geopolitical role. This chapter addresses the most crucial dimension of the thesis, which is the human rights perspective, by examining both the violations and protections of human rights within the context of BiH’s migration and border (affected) practices.

Methodology

This study engages with a multimethod approach by integrating desk research, interviews, and discourse analysis, the methodology captures the complexity of migration dynamics and border management in the region. Such approach allows for a comprehensive understanding of the interactions between EU policies, national responses, and the lived experiences of migrants, contributing to the growing academic and policy discussions on EU migration and border management.

The first method is split into two distinct approaches: desk research and policy analysis. Desk research involves the use of existing data sources, which can provide a broader context for understanding a research problem, typically without requiring fieldwork or the generation of new data.¹⁴ This method will be used to reflexively analyse the existing literature, identifying both key findings and gaps within the academic discourse surrounding EU migration policies, border control mechanisms, and associated human rights issues. The second approach, policy analysis, will focus on reviewing EU and national strategies, policies, and programs. This includes gathering and analysing policy documents, governmental reports, and relevant studies to understand the broader implications of the New Pact, particularly in terms of its influence on migration and border management through the countries shaping the Balkan Route, with a specific emphasis on Bosnia and Herzegovina.

¹⁴ Mark Saunders et al, 'Understanding Research Philosophy and Approaches to Theory Development' in Mark NK Saunders et al, *Research Methods for Business Students* (Pearson education, 2019) 144. <https://www.researchgate.net/publication/330760964_Research_Methods_for_Business_Students_Chapter_4_Understanding_research_philosophy_and_approaches_to_theory_development> accessed 7 August 2024.

Qualitative interviews form the second method employed in this research, offering in-depth insights from key stakeholders involved in migration and border management. Interviews will be conducted with three main groups: Bosnian government officials, EU and international representatives and diplomats, and NGOs and human rights organizations. These interviews will explore national policies, EU implementation strategies, and the role of civil society in protecting asylum seekers, refugees and migrants' rights.

The third method involves discourse analysis of media publications, focusing on how migration and border issues are portrayed in selected media outlets. This analysis mainly follows English-language news agencies who are focusing on the region, such as “Balkan Insight” from “Balkan Investigative Reporting Network (BIRN),” to understand the narratives surrounding migration in the Western Balkans. Balkan Insight is BIRN’s flagship English-language website, and it provides daily news, as well as analytical insight and investigations, on key issues in ten countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, North Macedonia, Moldova, Montenegro, Romania and Serbia, with occasional coverage of Turkey and Greece.¹⁵ The news agency was selected for analysis of its articles and reports on migration and border control in the Balkans, firstly due to its specialisation and demonstrated expertise in the region, and secondly because its publications are in English. The goal is to identify how these media representations reflect or challenge EU migration policies and local responses. This analysis will provide insights into the dominant themes and sentiments in public discourse, revealing how media coverage influences or mirrors the broader migration debate in the region.

The limitations of this research should also be noted. Since I do not speak the local languages (Bosnian, Serbian or Croatian – known as “Serbo-Croatian” in the former Yugoslavia) it was difficult for me to follow more than three news agencies that are reporting for the region. On the same note, during the interviews conducted in the English language with ministry officials from BiH, I felt that it is highly possible they could express themselves

¹⁵ ‘About BIRN’ *Balkan Insight* (blog, 25 June 2024) <<https://balkaninsight.com/about-birn/>> accessed 25 June 2024.

better and with more accuracy if the interviews were conducted in the local language. This was not the case with EU delegation officers and diplomats, and NGO workers, as they were highly comprehensive.

The most important limitation this research has faced was the topic of research. Ministry officials from three different ministries, who were formally in charge of border control, immigration policies, and human rights issues, were consistently replying that they were not personally responsible for these areas while I was requesting to interview them. Instead, they were directing me to colleagues in other departments or even a different ministry. A notable example is a ministry employee working in the Border and General Security Department, who clarified that border policy does not fall under her jurisdiction. I would assume this was happening either out of mistrust towards me as a foreign researcher, or because of the sensitivity of my research topic. However, I must underline that the subject of my investigation, combined with the fact that I am not from Bosnia, has led to an interesting reversal: some ministerial officials reached out to me, not only for formal interviews but also to share their personal views on broader issues concerning the Western Balkans and the functioning of their respective ministries. And for that, I thank them.

Overall, the study seeks to offer a detailed understanding of the New Pact on Migration and Asylum's effects on the Western Balkans, with a special focus on Bosnia and Herzegovina. By adopting a multimethod approach, the research will try to uncover how EU policies are externalised and their impact on regional migration management and human rights. The findings are expected to illuminate the complex dynamics at play, offering fresh insights into the intersection of EU migration policies and local responses. Ultimately, the intention is for this research to significantly contribute to the early academic exploration of the New Pact, providing valuable perspectives for future policy and scholarly discussions.

1. Theoretical framework

The dangerous conditions people on the move face in the EU borderlands highlight the contentious issues surrounding border control and human rights.¹⁶ This situation underlines a broad moral and political dilemma between the sovereign right of states to control their borders and the right of people to seek and receive protection in countries other than their own. Border policies reflect the way states perceive themselves-as sovereign actors tasked with defending their territory against perceived external threats. This self-perception often translates into a security-oriented approach to migration governance, ultimately contributing to the *securitisation of migration*. The issue which arises at this point is that human rights seem to be “taking a back seat” in the name of border (in)security¹⁷ where border control is strengthened during times of migration influxes at levels which endangers human life.¹⁸

¹⁶ Berna Turam, ‘Refugees in Borderlands: Safe Places versus Securitisation in Athens, Greece’ (2021) 43(6) *Journal of Urban Affairs* 759.

¹⁷ Zygmunt Bauman, *Life in Fragments: Essays in Postmodern Morality* (repr, Blackwell 1995) 135 <<https://archive.org/details/lifeinfragmentse0000baum/mode/1up>> accessed 16 August 2024.

¹⁸ Martin Lemberg-Pedersen, ‘Losing the Right to Have Rights: EU Externalisation of Border Control’ in Erik André Andersen and Eva Maria Lassen (eds), *Europe and the Americas* (Brill | Nijhoff 2015) 397.

Moreover, there is a potential risk of legitimising in the public's consciousness the-not so true-narrative of the "security or human right"¹⁹ dichotomy that modern territorialist geopolitical imaginary²⁰ is offering today through border management, the roots of which are found in securitarian discourses²¹ which, in turn, have and continue to produce anti-immigration and anti-refugee policies. Therefore, one could argue that border securitisation upgrades the "role" of borders today to something more than just territorial obstacles.

As stated in the introduction, this first chapter aims to first conceptually state the research. The theoretical foundation of this paper is rooted in the concept of borderscapes and "border-scaping", following Anke Strüver's argument that the border-scape combines two dimensions: the representation of reality and its symbolic meaning. It draws upon narratives, images, and imagined realities of the border that shape its significance and influence, including the practices associated with it. Much like the term "landscape", which functions as both a noun and a verb, borderscape similarly refers to "border-scaping" – "of shaping the border not on the ground, but in people's minds".²² Understanding the concept of borderscaping, along with the ideas surrounding it, helps one better grasp the existing logic behind border policies, which then facilitates the identification and deconstruction of the narratives that drive policies that not only threaten the lives of people on the move, but also create-and maintain-a dehumanised normality.

¹⁹ Desislava Todorova, 'The Anatomy of the EU Pact on Migration and Asylum: Disconnecting from the Realities on the Ground and the Fundamental Human Rights – The Case of Bulgaria as an EU External Border' (September 2024) *Center for Legal Aid – Voice in Bulgaria* (blog) 4 <<https://centerforlegalaid.com/wp-content/uploads/2024/09/The-Anatomy-of-the-EU-Pact-on-Migration-and-Asylum-D-Todorva-2024.pdf>> accessed 19 September 2024.

²⁰ Chiara Brambilla et al, 'Introduction: Thinking, Mapping, Acting and Living Borders under Contemporary Globalisation' in Chiara Brambilla et al (eds), *Borderscaping: Imaginations and Practices of Border Making* (Ashgate 2015) 3.

²¹ Anna Krasteva, 'If Borders Did Not Exist, Euroscepticism Would Have Invented Them Or, on Post-Communist Re/De/Re/Bordering in Bulgaria' (2020) 25(3) *Geopolitics* 680.

²² Anke Strüver, *Stories of the "Boring Border": The Dutch-German Borderscape in People's Minds* (LIT Verlag Münster 2005) 35. <<https://lit-verlag.de/isbn/978-3-8258-8890-8/>> accessed 19 June 2024.

1.1 Conceptualising borderscapes

The very idea of a re-conceptualisation of borders was born as a need. In the face of contemporary global changes, the modern approaches of borders which are exhausted in their materialistic dimension appeared to have limitations, and it was necessary to develop new concepts capable of revealing the dynamic social and spatial relationships that take place in and across borders. My point of departure is the concept of borderscapes, which is driven by the practical application of the so-called “New Borderlands.”²³ In order to reach smoothly into the borderscape model, the conceptual objections must first be preceded. Here, the rethinking of borders as a process that expresses “bordering” through a multilevel complexity, allows them to be viewed as dynamic social processes and practices of spatial differentiations.²⁴

Within this framework, the first chapter begins by utilising the concept of borderscapes as an analytical lens to broaden the understanding of contemporary political spatiality. It offers a political perspective on critical border studies, employing a multi-sided approach across various levels. Focusing on concepts is essential because they offer a structured way to analyse complex phenomena, such as the spatiality of politics and the negotiation of borders. By providing a clear framework in this case, concepts enable us to critically examine interactions between political visions, socio-cultural practices, and social spaces, fostering deeper insights into critical border studies.

1.1.1 The Borderscape model and border theory

Borders are no longer viewed merely as static geographical boundaries that demarcate nation-states. Instead, they are understood as dynamic, fluid, and multidimensional spaces influenced by various social, cultural, and political processes. This shift in perspective is captured in the **borderscape model**, which emerged

²³ Basak Zeynep Alpan et al, *BordEUR: New European Borderlands Fences, Refugee Boats, and the New Borderlands: Making Sense of the European Union's Emerging Internal and External Borders* (bord[EU]r 2022) 11 <https://inex.univie.ac.at/fileadmin/user_upload/p_inex/Fences_Refugee_Boats_FULL_PDF_2_.pdf> accessed 10 September 2024.

²⁴ Chiara Brambilla, Jussi Laine, and Gianluca Bocchi, *Borderscaping: Imaginations and Practices of Border Making* (Routledge 2016) <<https://www.routledge.com/Borderscaping-Imaginations-and-Practices-of-Border-Making/Brambilla-Laine-Bocchi/p/book/9781138308411?srsId=AfmBOoqezCVR2XQVCocH4Nily3EKhsb1EmCaPTYeSyTX1aZkjhhoDW3>> accessed 27 August 2024.

as an alternative framework for understanding the complex nature of borders. **Brambilla et al (2015)** emphasise that borders are constantly produced and reproduced through cultural, social, and political practices, making them inherently unstable and subject to change.²⁵ The term **borderscape**, coined by **Guillermo Gómez-Peña and Roberto Sifuentes** in the 1990s, describes borders as not merely geographical lines but as spaces shaped by cultural and social flows.²⁶

This model gained further traction through the work of scholars like **Dell’Agnese and Szary**, who argue that borderscapes also include aesthetic and performative dimensions.²⁷ Borderscapes encompass not only physical spaces but also the imaginaries, narratives, and cultural productions that surround them, turning borders into spaces of meaning-making and identity formation.²⁸ In this sense, borderscapes transform borders into dynamic landscapes where power relations and identities are continually negotiated.

In parallel, **border studies** have evolved significantly over recent decades, moving beyond a purely geopolitical focus. Historically, borders were seen as impermeable lines designed to protect states and maintain territorial integrity. However, academics in the field of modern **border studies** emphasize the **flexibility** of borders and their role as spaces of interaction, conflict, and exchange. This interdisciplinary approach incorporates (political) sociology, anthropology, and cultural studies, offering a more nuanced understanding of how borders reflect and reproduce power relations and societal hierarchies.²⁹

Border theory expands on these ideas by arguing that borders are not simply territorial markers but **socially constructed processes**. According to **Paasi (1998)**, borders are active participants in shaping identities and organising space.³⁰ This is another understanding which marks a critical shift from viewing borders as fixed

²⁵ Chiara Brambilla et al, ‘Introduction’ in Chiara Brambilla et al. (eds), *Borderscapes: Imaginations and Practices of Border Making* (Routledge 2016) 35.

²⁶ Elena Dell’Agnese and Anne-Laure Amilhat Szary, ‘Borderscapes: From Border Landscapes to Border Aesthetics’ (2015) 20(1) *Geopolitics* 5.

²⁷ *ibid* 8.

²⁸ *ibid* 9.

²⁹ Thomas M Wilson and Hastings Donnan, ‘Borders and Border Studies’ in Thomas M. Wilson and Hastings Donnan (eds), *A Companion to Border Studies* (Wiley 2012) 3.

³⁰ Anssi Paasi, ‘Boundaries as Social Processes: Territoriality in the World of Flows’ (1998) 3 *Geopolitics* 17–18.

lines to recognising them as **dynamic**, continuously produced spaces. **Brambilla (2015)** supports this, noting that borders are embedded in the social fabric, influencing everything from migration policies to individual identities.³¹

Both the **borderscape model** and **border theory** climax the importance of non-state actors in border-making schemes. Unlike conventional models that focus primarily on state control, these approaches acknowledge the role of migrants, artists, activists, and local communities in **borderscaping**, or actively transforming border spaces through cultural and social practices. This is important to understand because by engaging in everyday negotiations of borders, these actors shape and reshape borders in ways that challenge state-centric models of border management.

1.2 Bordering, othering, and ordering: A reflective heuristic

The triad concept of “bordering, othering, and ordering” provides a comprehensive framework for understanding the socio-political dimensions of borders. As developed by van Houtum and van Naerssen (2002), these processes are intertwined mechanisms that work to define spaces, identities, and power dynamics along borders. This framework is crucial in examining how borders are working as social constructs that reflect and perpetuate inequalities and exclusions.

1.2.1 Bordering as a dynamic process

Bordering, in the contemporary sense, is no longer confined to the physical act of demarcating territory; it encompasses the ongoing procedures by which boundaries are created, maintained, and reshaped in various contexts. Borders, therefore, are dynamic and reflect the changing needs and desires of states and societies. As David Newman (2006) asserts, bordering is tied to identity

³¹ Brambilla, ‘Exploring the Critical Potential of the Borderscapes Concept’ (2015) *Geopolitics* 19.

formation and the structuring of spaces, wherein borders become a symbol of inclusion and exclusion.³² This ongoing act of bordering plays a key role in the construction of political identities and the regulation of who belongs and who “does not”.³³

The evolution of modern borders coincides with global shifts in governance, economy, and migration patterns. Borders today are increasingly seen as sites where different actors negotiate access, rights, and privileges, often in response to global pressures such as migration influxes or security threats. As noted by Brambilla, bordering can extend far beyond traditional territorial limits, affecting spaces and communities in ways that transcend the state-centric model. This has led to a proliferation of “soft borders” within nations, where internal mechanisms of surveillance and control, such as biometric data collection, serve to delineate who is allowed to participate fully in societal life.³⁴

In the context of globalisation, borders are increasingly un-solidified and diffuse, no longer restricted to national perimeters but embedded in everyday life and social practices. One essential aspect of bordering is how it creates distinctions between the “self” and the “other.” Through bordering, states and societies define not only political territories but also social and cultural boundaries. These practices are often accompanied by exclusionary mechanisms that reinforce national identity while marginalising or “othering” those deemed outside the border. This intersection of “bordering” and “othering” is evident in contemporary migration governance, where national borders become sites of both physical and symbolic exclusion.³⁵

In summary, the evolving understanding of borders and bordering reflects broader changes in how we conceptualise space, sovereignty, and identity in an increasingly interconnected world. Borders are not static; they are social constructs that play a critical role in the processes of inclusion and exclusion, constantly

³² David Newman, ‘Borders and Bordering: Towards an Interdisciplinary Dialogue’ (2006) 9(2) *European Journal of Social Theory* 175.

³³ *ibid.*

³⁴ Brambilla, ‘Exploring the Critical Potential of the Borderscapes Concept’ (2015) *Geopolitics* 25.

³⁵ David Newman, ‘Borders and Bordering: Towards an Interdisciplinary Dialogue’ (2006) 9(2) *European Journal of Social Theory*, 173-174

shifting in response to changing political, economic, and cultural dynamics. This understanding of borders focuses on the importance of rethinking traditional geopolitical frameworks to account for the complex realities of contemporary border-making processes.

1.2.2 Othering: defining the “other”

At the heart of bordering practices is the process of “othering”, which involves the creation of an “us” versus “them” dichotomy. As stated above, this binary logic is essential in shaping national identity and reinforcing state power. As Wilson and Donnan (2012) explain, othering is a key tool used by states to differentiate between those who are considered legitimate members of a political community and those who are excluded, often for reasons related to ethnicity, race, or religion.³⁶ Othering serves to solidify borders not only physically but also ideologically, by marking outsiders as threats to the cohesion and security of the nation-state.

In my understanding, othering manifests itself in various forms, from the openly hostile policies aimed at migrants to more subtle forms of exclusion such as economic marginalisation and social discrimination. The aspect of othering is closely linked to global power relations, where dominant groups define and control the parameters of inclusion, often relegating minorities and vulnerable populations to the status of outsiders. According to van Houtum and van Naerssen (2002), this process is closely tied to historical practices of colonialism and imperialism, which have left lasting legacies of exclusion that continue to shape contemporary bordering practices.³⁷

The process of “ordering”, as discussed by van Houtum and van Naerssen, refers to the ways in which borders are used to impose order and control over space and populations. Through ordering, states and institutions create hierarchies that privilege certain groups and individuals while excluding or marginalising others. Borders become instruments of governance, used to regulate

³⁶ Thomas M Wilson and Hastings Donnan, ‘Borders and Border Studies’ in Thomas M. Wilson and Hastings Donnan (eds), *A Companion to Border Studies* (Wiley 2012) 75.

³⁷ Henk Van Houtum and Ton Van Naerssen, ‘Bordering, Ordering and Othering’ (2001) 93(2) *Tijdschrift voor Economische en Sociale Geografie* 129.

the flow of goods, people and ideas. This is particularly evident in the securitisation of borders, where states employ technologies and policies aimed at controlling who can cross their borders and under what conditions.³⁸

Ordering also involves the internal structuring of societies, where certain groups are afforded more rights and privileges than others based on their proximity to the state's idealised vision of citizenship. This can be seen in the ways that migrants, refugees, and other marginalised groups are often relegated to precarious legal statuses that limit their access to social, economic, and political rights. The borders that define these categories are not just physical but are also embedded within the structures of society, manifesting in legal frameworks, social norms, and institutional practices.³⁹

It is therefore fair to say that these three processes (bordering, othering, and ordering) are deeply interconnected and mutually reinforcing. The act of bordering serves to demarcate spaces and identities, while othering defines who belongs within those borders and who does not. Ordering, in turn, establishes the hierarchies that govern the relationships between these groups. Together, these concepts form the foundation of modern border regimes, which are not only concerned with the physical management of space but also with the social, political, and economic control of populations, shaping who is included, excluded, or marginalised within and across territorial boundaries.⁴⁰ As scholars such as van Houtum and van Naerssen (2002) argue, it is essential to view borders as sites where power is enacted and contested. Understanding the interconnectedness of bordering, othering, and ordering provides valuable insights into the ways in which borders shape and are shaped by broader social and political processes.

³⁸ *ibid* 131.

³⁹ Thomas M Wilson and Hastings Donnan, 'Borders and Border Studies' in Thomas M. Wilson and Hastings Donnan (eds), *A Companion to Border Studies*, (Wiley 2012), 81–83.

⁴⁰ David Newman, 'Borders and Bordering: Towards an Interdisciplinary Dialogue' (2006) 9(2) *European Journal of Social Theory*, 179.

1.3 Frontiers as zones of transition

The concept of *frontiers* is crucial to this research due to the focus of the research on the relationship between the WB and the EU, and the relationship between the latter and Bosnia and Herzegovina (BiH), a state which recently elevated⁴¹ its candidate status.⁴² The idea of zones of transition also challenge the traditional notion of borders as rigid lines separating distinct territories. Unlike strict borders, frontiers are often fluid spaces where cultures, economies, and politics intersect.⁴³ These areas serve as zones of negotiation and interaction, making them dynamic regions of transition rather than fixed divisions.

Harbers' (2003) concept of "borderscapes" can also be understood in the context of zones of transition, where borders extend beyond mere lines of division to encompass broader areas of interaction. In these zones, the influence of national boundaries shapes not only spatial planning but also the exchange between different cultural, political, and social practices with the unintended result of the "merging" of these spaces that interact. Rather than rigid separations, these areas become spaces where sovereignties overlap and transition, turning borders into dynamic environments of negotiation and adaptation.⁴⁴ This perspective shows how borders in transition zones continuously shape and are shaped by the surrounding regions, for example like the way ex-Yugoslav countries were facilitating the Western Balkan Route for people on the move, acting again as a "whole" within the framework of a big *transit borderscape*, before its "closure" in 2015. Dell'Agnes and Szary (2020) further develop this idea by focusing on the performative nature of borders in transition zones. They argue that borders are continuously reshaped through cultural, political, and social practices, making frontiers the spaces where these processes are

⁴¹ European Council, 'European Council Meeting (21 and 22 March 2024) – Conclusions' (General Secretariat of the Council, 22 March 2024) <www.consilium.europa.eu/media/70880/euco-conclusions-2122032024.pdf> accessed 30 August 2024.

⁴² European Commission, 'Bosnia and Herzegovina' (European Commission 23 July 2024) <https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/bosnia-and-herzegovina_en> accessed 31 July 2024.

⁴³ Christian Langer and Manuel Fernández-Götz, 'Boundaries, Borders and Frontiers: Contemporary and Past Perspectives' (2020) 7s eTopoi 34–35.

⁴⁴ Arjan Harbers, *Borderscapes: The Influence of National Borders on European Spatial Planning* (Must Publishers AetA 2003) 159. <https://www.researchgate.net/publication/317014303_Port_City_Borderscapes_Origin_Nature_and_Evolution_of_the_Administrative_Boundary> accessed 29 June 2024.

most visible. In frontier zones, the interaction between political entities, local communities, and migrants features the variability of borders which are constantly shifting and evolving, reflecting broader geopolitical changes.⁴⁵

This very nature of frontiers as dynamic transition zones of negotiation and interaction exists within the contrast of the securitisation regime that has increasingly defined modern border policies. While frontiers foster exchange and cultural blending, the shift toward securitisation has turned many of these transitional spaces into militarised zones where the focus is on control rather than cooperation. The post-9/11 era, marked by a growing emphasis on security, has reshaped the way borders are managed, particularly within the context of migration. As we move from understanding the transformative potential of frontiers to exploring the securitisation of borders, we witness how this shift impacts not only migration routes but also the fundamental rights of those seeking refuge. This transition sets the stage for examining the broader implications of securitisation policies in the Western Balkans and beyond.

1.3.1 Manifesting the securitisation apparatus

The events of September 11, 2001⁴⁶ increased resources for border security and amplified rhetoric about the need for more security in the borderlands and marked a critical moment in the global discourse on border security. In response to the attacks, the United States rapidly increased its focus on securitising its borders, particularly along its southern frontier.⁴⁷ The U.S. Department of Homeland Security (DHS), alongside Customs and Border Protection (CBP), received unprecedented funding and resources to secure borders from external threats. This security approach became a model that influenced much of the Western world, including Europe, as the focus on preventing terrorism increasingly became intertwined with migration and border control.

⁴⁵ Elena Dell'Agnese and Anne-Laure Amilhat Szary, 'Borderscapes: From Border Landscapes to Border Aesthetics' (2015) 20(1) *Geopolitics* 10.

⁴⁶ On September 11, 2001, coordinated terrorist attacks carried out by al-Qaeda resulted in the destruction of the World Trade Center in New York City and extensive damage to the Pentagon, causing the loss of nearly 3,000 lives and significantly altering U.S. foreign policy in the following decades.

⁴⁷ Jodi Dueck-Read, 'Transnational Activism: Intersectional Identities and Peacebuilding in the Border Justice Movement' (2016) 21.

In Europe, the end of the Cold War initially led to hopes of economic integration and free movement across borders, but these aspirations began to shift with rising security concerns.⁴⁸ The migration influx of 2015-2016, largely driven by conflicts in Syria, Iraq, and Afghanistan, intensified the need for stronger border controls, particularly along the EU's external borders. The Dublin Regulation, which sought to allocate responsibility for asylum seekers to the first EU country of entry, coupled with agreements like the EU-Turkey Deal,⁴⁹ contributed to this securitisation trend, transforming Europe's borders into militarised zones.⁵⁰ The transition of asylum policies toward securitisation, combined with the lack of a comprehensive migration strategy, has resulted in numerous violations of fundamental human rights.⁵¹

These policies have manifested physically and symbolically through the construction of fences, the increased use of surveillance technologies, and the deployment of border enforcement personnel. However, the manifestation of the securitisation of migration is not only limited to the erection of fences or the deployment of AI-powered drones and surveillance technologies, but also deeply rooted in the political and discursive process through which migration is framed as a security threat. Drawing on the securitisation theory developed by Buzan et al, this process involves presenting migration as an existential danger that justifies extraordinary measures, thus shifting it from the domain of regular

⁴⁸ Marta Stojić-Mitrović et al, *The Dark Sides of Europeanisation: Serbia, Bosnia and Herzegovina and the European Border Regime* (Rosa Luxemburg Stiftung Southeast Europe 2020) 8 <https://rosalux.rs/wp-content/uploads/2022/04/169_the-dark-side-of-europeanisation- vladan_jeremic_and_wenke_christoph_ rls_and_ickz_2020.pdf> accessed 7 September 2024.

⁴⁹ The EU-Turkey Deal, agreed in March 2016, aimed to curb irregular migration from Turkey to Greece by implementing a return system where migrants arriving on the Greek islands after the deal's implementation would be sent back to Turkey if their asylum claims were rejected. For every Syrian refugee returned, the EU pledged to resettle one Syrian refugee from Turkey. Additionally, the EU committed €6 billion to support refugees in Turkey, enhancing services such as healthcare and education. The agreement also promised to accelerate Turkey's visa liberalisation process and EU accession talks, although progress on these fronts has been slow. For more, see: <<https://www.europarl.europa.eu/legislative-train/carriage/eu-turkey-statement-action-plan/report?sid=8201>> accessed 22 June 2024.

⁵⁰ Marta Stojić-Mitrović et al, *The Dark Sides of Europeanisation: Serbia, Bosnia and Herzegovina and the European Border Regime* (Rosa Luxemburg Stiftung Southeast Europe 2020) 14-15 <https://rosalux.rs/wp-content/uploads/2022/04/169_the-dark-side-of-europeanisation- vladan_jeremic_and_wenke_christoph_ rls_and_ickz_2020.pdf> accessed 7 September 2024.

⁵¹ Maria Paraskeva, *The Militarisation of EU Borders: The Greek Case Study within the European Context* (Rosa Luxemburg Stiftung Office in Greece, 2023) 7-8. <<https://rosalux.gr/en/publication/the-militarisation-of-eu-borders/>> accessed 22 August 2024.

political debate to that of emergency security responses.⁵² What began as a reaction to terrorist threats has evolved into a broader framework where migration is deliberately constructed as a threat to national and societal security. This framing does not necessarily reflect an objective danger, but rather a successful rhetorical strategy that enables the implementation of exceptional policies; surveillance expansion, militarised borders, and the circumvention of rights-based frameworks. In turn, these securitised responses often push migrants and asylum seekers into more perilous routes, exacerbating human suffering at Europe's borders.

⁵² Barry Buzan, Ole Wæver, and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers, 1998) 21–23 <https://www.academia.edu/39047709/Buzan_Waever_and_De_Wilde_1998_Security_A_New_Framework_For_Analysis> accessed 15 September 2024.

2. EU Migration policies

It is generally accepted that the EU's migration and border policies reflect a complex framework that balances the dual objectives of internal unity and external security. The Schengen Area allows for the free movement of people, goods, and services across internal EU borders, symbolising European integration. At the same time, it seems the EU has fortified its external borders to manage irregular migration and security concerns. This dual approach has been shaped by broader political and legal developments, as well as ongoing tensions between the EU's humanitarian commitments and its desire to control migration. This chapter explores the various dimensions of EU border policies, focusing on the differentiation and multiplication of borders that are created through the Schengen Area by giving an overview of the applications and the outcomes of EU's directives on border controls, as well as its asylum and migration policies. By examining the existing system, this chapter will also consider the potential impact of the New Pacts' future implementation and the associated human rights concerns.

2.1 EU policies on borders: strengthening external, deleting internal

EU policies on borders are characterised by a dual strategy: the elimination of internal borders within the Schengen Area and the strengthening of external ones. Internally, the Schengen Agreement has facilitated free movement across MS, symbolising

European integration and unity.⁵³ As EU external borders become more fortified, the challenge lies in balancing these measures with the EU's humanitarian commitments, such as upholding asylum seekers' rights under international law.⁵⁴

However, this internal openness is balanced by a stringent control of the EU's external borders. Technologies such as biometric entry-exit systems, coupled with Frontex's role in securing external borders, illustrate how the EU emphasises securitisation in its migration policies. External border control has been further strengthened through initiatives like the EU-Turkey deal, which externalises migration management to neighbouring states, aiming to reduce the number of arrivals at the EU's southern borders.⁵⁵ This strategy features the EU's broader goal of minimising irregular migration by tightening external entry points while maintaining the Schengen zone's internal mobility. However, the focus on securing external borders has led to concerns about the EU's commitment to humanitarian obligations and asylum rights, creating tension between security and human rights.⁵⁶ The suspension of the Schengen zone can occur during times of "crisis" but also for solely political reasons, as we recently witnessed

⁵³ Bernd Kasperek and Marc Speer, 'Of Hope: Hungary and the Long Summer of Migration | bordermonitoring.eu' (9 September 2015) *bordermonitoring.eu* (blog) 11. <<https://bordermonitoring.eu/ungarn/2015/09/of-hope-en/>> accessed 24 August 2024.

⁵⁴ Hameršak, Marijana et al, 'The Forging of the Balkan Route: Contextualizing the Border Regime in the EU Periphery' (2020) 5 *Journal for Critical Migration and Border Regime Studies* 11–29 <https://www.researchgate.net/publication/344365821_The_Forging_of_the_Balkan_Route_Contextualizing_the_Border_Regime_in_the_EU_Periphery> accessed 20 September 2024.

⁵⁵ Barbara Beznec, Marc Speer, and Marta Stojić Mitrović, *Governing the Balkan Route: Macedonia, Serbia and the European Border Regime* (Rosa Luxemburg Stiftung Southeast Europe 2016) 13 <www.rosalux.de/en/publication/id/14554/governing-the-balkan-route> accessed 17 September 2024.

⁵⁶ Hameršak, Marijana et al, 'The Forging of the Balkan Route: Contextualizing the Border Regime in the EU Periphery' (2020) 5 *Journal for Critical Migration and Border Regime Studies* 32 <https://www.researchgate.net/publication/344365821_The_Forging_of_the_Balkan_Route_Contextualizing_the_Border_Regime_in_the_EU_Periphery> accessed 20 September 2024.

with Germany's decision to tighten border control with the fear of "Schengen closure".⁵⁷ The question which arises at this point concerns the ambiguous meaning of "crisis" as is left to the discretion of each Member-State.⁵⁸

2.2 Asylum and migration policies

The EU's asylum and migration policies are deeply intertwined with its border control strategies and since before the official adoption of the New Pact, the EU's strategy in several cases involved customised targeted and operational actions.⁵⁹ The Common European Asylum System (CEAS) was designed to harmonise asylum procedures across the EU, but disparities between MS have led to an unequal distribution of responsibility for asylum seekers.⁶⁰ This imbalance places significant pressure on frontline states like Greece and Italy, which face large numbers of people arriving through irregular routes.⁶¹ EU migration policies increasingly focus on preventing people from reaching EU borders, relying on agreements with countries like Turkey, Libya and now Albania, to intercept people before they enter the EU.⁶² The externalisation of asylum responsibilities to third countries has raised significant human rights concerns, as these countries often do not provide adequate protection for asylum seekers.⁶³ Instances such as the beatings of irregular migrants by state security services and private militias, arbitrary deprivation of liberty in inhumane and

⁵⁷ Jon Henley, "The End of Schengen': Germany's New Border Controls Put EU Unity at Risk," *The Guardian*, (10 September 2024). <www.theguardian.com/world/article/2024/sep/10/the-end-of-schengen-germanys-new-border-controls-put-eu-unity-at-risk> accessed September 12.

⁵⁸ Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 [2024] <<https://eur-lex.europa.eu/eli/reg/2024/1359/oj/eng>> accessed 4 September 2024.

⁵⁹ 'Progress Made to Manage Migration and Asylum in the EU - European Commission' *European Commission*. <https://commission.europa.eu/news/progress-made-manage-migration-and-asylum-eu-2024-03-12_en> accessed September 2, 2024.

⁶⁰ Sabine Hess and Bernd Kasperek, 'Under Control? Or Border (as) Conflict: Reflections on the European Border Regime' (2017) 5(3) *Social Inclusion* 58–68.

⁶¹ *ibid.*

⁶² Council of the European Union, 'EU-Turkey Statement, 18 March 2016' <<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>> accessed 17 May 2024.

⁶³ Gregor Noll (ed), *Negotiating Asylum: The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*, The Raoul Wallenberg Institute Human Rights Library, 6 (Brill 2000) 70–75.

degrading conditions, deliberate family separation, and the detention and mistreatment of children are both evident and egregious in these third countries that the EU is funding and in some cases Frontex is collaborating with.⁶⁴ In light of this, I suppose it is obvious through its migration policies the EU reflects broader tensions between its commitment to human rights and their desire to control migration flows, particularly through the use of external border controls and agreements with non-EU states.⁶⁵

2.2.1 The Dublin Regulation

The Dublin Regulation is a cornerstone of the European Union's asylum policy, initially designed to ensure that responsibility for processing asylum applications rests with the first EU member state that an asylum seeker enters.⁶⁶ This system, introduced in 1990 and revised into the current Dublin III Regulation in 2013, aimed to prevent "asylum shopping" while ensuring that applications are processed efficiently. This system was originally designed to prevent "refugees in orbit" and clarify which country is responsible for processing asylum claims. Over time, it has evolved into a tool to contain asylum-seekers and recognised refugees, even within the EU. The system, still in place today (until its full replacement by the New Pact), is often understood to require that the first EU country where an asylum seeker arrives must process their asylum claim.

However, its rules are more complex, though the main goal remains to contain asylum-seekers at the EU's borders. The Dublin system developed alongside the "Safe Third Country" (STC) practices, which allow participating states to treat each other as "safe" for asylum seekers.⁶⁷ STC further reinforces the idea that asylum seekers can be protected elsewhere. Many EU MS, therefore, view countries like Italy and Greece as safe for asylum seekers, a concept that extends to non-EU countries like Libya and

⁶⁴ Cathryn Costello and Itamar Mann, 'Border Justice: Migration and Accountability for Human Rights Violations' (2020) 21(3) German Law Journal 312.

⁶⁵ Barbara Beznec, Marc Speer, and Marta Stojić Mitrović, *Governing the Balkan Route: Macedonia, Serbia and the European Border Regime* (Rosa Luxemburg Stiftung Southeast Europe 2016) 13-15 <www.rosalux.de/en/publication/id/14554/governing-the-balkan-route> accessed 17 September 2024.

⁶⁶ "Country Responsible for Asylum Application (Dublin Regulation) - European Commission," <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en> accessed 2 August 2024.

⁶⁷ Costello and Mann, 'Border Justice', 317.

Turkey. National courts and the European Court of Human Rights (ECtHR) have stepped in to challenge these assumptions, setting human rights conditions for returning asylum-seekers to “unsafe” states. However, while courts can block deportations in specific cases, they have not fully questioned the STC practices as a whole.

As Armstrong (2020) points out, the Dublin system has been widely criticized for exacerbating the burden on frontline countries like Greece, Italy, and Hungary, which, due to their geographic location, often become the primary recipients of asylum seekers. This uneven distribution of responsibility has significantly impacted on these nations’ asylum systems, leading to overcrowded camps, underfunded services, and humanitarian crises.⁶⁸ By forcing these states to manage disproportionate migration flows, the Dublin Regulation has contributed to the creation of “Fortress Europe,” a term which shows the EU’s increasingly securitised and exclusionary approach to migration.⁶⁹

2.2.2 The role of borders under the Dublin directives

The Dublin Regulation’s principle of assigning responsibility to the first country of entry has turned EU borders into points of containment, placing significant pressure on frontline states. As Hameršak and Pleše (2018) argue, this approach has exacerbated inequalities within the EU, forcing peripheral countries to handle the bulk of asylum claims, while other MS avoid sharing the burden. This has resulted in overwhelmed asylum systems, with inadequate resources to process claims effectively, leading to significant human rights violations.⁷⁰ The administrative and legal frameworks under Dublin create both physical and procedural barriers, confining asylum seekers to the country of first entry and limiting their mobility within the EU. The emphasis on border enforcement under Dublin III has also led to the implementation of advanced surveillance and biometric tracking systems, further tightening control over asylum seekers and reinforcing the EU’s external borders.⁷¹

⁶⁸ Ashley Binetti Armstrong, ‘You Shall Not Pass! How the Dublin System Fueled Fortress Europe’ (2019) SSRN Electronic Journal 332.

⁶⁹ *ibid* 333.

⁷⁰ Marijana Hameršak, Sabine Hess, Marc Speer, and Marta Stojić Mitrović, ‘The Forging of the Balkan Route: Contextualizing the Border Regime in the EU Periphery’ (2020) 5(1) *movements: Journal for Critical Migration and Border Regime Studies*, 19.

⁷¹ Binetti Armstrong, ‘You Shall Not Pass! How the Dublin System Fueled Fortress Europe’ (2019) SSRN Electronic Journal 334.

Under the New Pact, the Dublin III Regulation will be replaced by the Asylum and Migration Management Regulation (AMMR), which seeks to address many of the inequities stemming from the current system.⁷² While the first country of entry remains primarily responsible for processing asylum claims, the AMMR introduces a mandatory solidarity mechanism to redistribute responsibility among MS. This mechanism allows for the relocation of asylum seekers or, alternatively, financial or operational support to ease the burden on frontline states. By incorporating stricter timelines for processing claims and prioritizing family reunification, the AMMR aims to create a more equitable and efficient framework while discouraging secondary movements. However, its reliance on external border screening and fast-track procedures raises concerns about the continued emphasis on border containment, potentially perpetuating some of the same issues that the Dublin system has long been criticized for.

2.2.3 Creating the “fortress”

Today, the concept of “Fortress Europe” reflects the EU’s increasingly securitised approach to migration, largely fuelled by the Dublin Regulation. The need for change indicates the system’s failure to equitably distribute responsibility and has led to the construction of physical barriers, such as fences along the borders of Hungary, Slovenia, and Greece, which aim to prevent the arrival of asylum seekers.⁷³ These physical barriers are complemented by legal mechanisms that limit asylum seekers’ access to protection within the EU, such as the creation of designated transit zones and the restriction of asylum claims to specific points of entry. Frontex, the EU’s border and coast guard agency, has played a crucial role in reinforcing these borders, contributing to the militarisation of migration management.⁷⁴ However, this fortress mentality has had significant humanitarian consequences, as overcrowded refugee camps, like the infamous Moria camp in Greece, illustrate the failures of the Dublin system to

⁷² Council of the European Union. “Asylum and Migration Management.” *EU Migration Policy*, n.d. <<www.consilium.europa.eu/en/policies/eu-migration-policy/eu-migration-asylum-reform-pact/asylum-migration-management/> accessed July 18, 2024.

⁷³ *ibid* 335.

⁷⁴ Giuseppe Campesi, “The EU Pact on Migration and Asylum and the Dangerous Multiplication of “Anomalous Zones” for Migration Management’ (27 November 2020) *Asile* (blog) 199.

manage asylum claims effectively. The emphasis on securitisation has led to violations of international law, particularly the *principle of non-refoulement*⁷⁵, as migrants are often prevented from accessing protection or are returned to unsafe countries.⁷⁶

By reinforcing physical and legal barriers, the Dublin Regulation has effectively transformed the EU's southern and eastern borders into the frontlines of Europe's management crisis. Armstrong highlights how this approach has turned countries like Greece and Italy into gatekeepers for the EU, while other MS remain insulated from the humanitarian consequences of the "refugee crisis".⁷⁷ Again, this shift towards securitisation and exclusion raises serious concerns about the EU's commitment to upholding its obligations under international refugee law, particularly regarding the protection of asylum seekers' rights.

2.3 The New Pact on Migration and Asylum

The New Pact on Migration and Asylum, introduced by the European Commission in 2020 and adopted by the European Parliament after protracted negotiations in April 2024, represents an effort to harmonise migration policies across EU MS. The new pact seeks to strike a balance between the need for security at external borders and the humanitarian commitment to international asylum obligations. Among its most significant features is the proposal for a comprehensive, coordinated asylum system that addresses the long-standing challenges exacerbated by the so-called "refugee crisis" during 2015-2016. However, despite its ambitious goals, the pact has already faced considerable criticism for continuing the trend of securitisation and externalisation of EU

⁷⁵ The *principle of non-refoulement* is a fundamental rule in international law that prohibits states from returning individuals to a country where they would face a real risk of persecution, torture, or other serious human rights violations. This protection extends to refugees, asylum seekers, and other migrants, regardless of their legal status.

⁷⁶ 'Policy Note: Border Procedures Not a Panacea' *European Council on Refugees and Exiles (ECRE)* 3 <<https://ecre.org/policy-note-border-procedures-not-a-panacea/>> accessed 18 September 2024.

⁷⁷ Binetti Armstrong, 'You Shall Not Pass! How the Dublin System Fueled Fortress Europe' (2019) SSRN Electronic Journal 336.

migration policies.⁷⁸ Moreover, as Carmen González Enríquez points out, the pact’s primary focus remains on asylum seekers, leaving broader issues of economic migration and labour shortages outside its scope.⁷⁹

Despite its title, the New Pact on Migration and Asylum disproportionately emphasises asylum seekers while neglecting broader migration issues. This imbalance becomes evident when comparing migration and asylum statistics from 2023. According to Eurostat⁸⁰ the EU processed approximately 1 million asylum applications; while issuing nearly 4 million first residence permits to migrants.⁸¹ These figures show that most individuals entering the EU do so through legal migration channels rather than seeking asylum. Yet, the New Pact is primarily structured around addressing asylum procedures and border management, leaving significant gaps in policies that could address the needs and rights of legal migrants, mainly for their integration. This narrow focus raises questions about the comprehensiveness and coherence of a pact purportedly addressing “migration” alongside asylum, as it fails to reflect the realities of migratory flows and the larger population of migrants contributing to EU societies.

2.3.1 What really changes?

The New Pact introduces several changes aimed at streamlining the asylum process and reinforcing EU border security. One of the most significant changes is the creation of a unified screening mechanism at the EU’s external borders. This involves checks for identity, security risks, and vulnerability to determine whether an applicant qualifies for asylum, all before they officially enter the member state’s territory.⁸² EURODAC, the fingerprint database that tracks asylum seekers across the Schengen Area, is

⁷⁸ Campesi, ‘The EU Pact on Migration and Asylum and the Dangerous Multiplication of “Anomalous Zones” for Migration Management’ (27 November 2020) *Asile* (blog) 197

⁷⁹ Carmen González Enríquez, ‘The EU Pact on Migration and Asylum: Context, Challenges and Limitations’ Elcano Royal Institute, accessed August 19, 2024 <www.realinstitutoelcano.org/en/analyses/the-eu-pact-on-migration-and-asylum-context-challenges-and-limitations/> accessed 19 August 2024.

⁸⁰ Eurostat is the statistical office of the European Union, responsible for publishing high-quality Europe-wide statistics and indicators that enable comparisons between countries and regions.

⁸¹ European Commission, Eurostat, ‘First Residence Permits by Reason, Length of Validity, and Citizenship’ *Eurostat News*, September 12, 2024, <<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240912-1>> accessed 14 September 2024.

⁸² Campesi, ‘The EU Pact on Migration and Asylum’ (2020) 195.

upgraded to a biometric system under the pact, providing real-time monitoring of entries and exits.⁸³ These measures are designed to prevent “asylum shopping” and unauthorised movements between MS. However, critics argue that these reforms prioritise border control over humanitarian protection, reinforcing a system that screens out those from low-recognition countries.⁸⁴

Moreover, the pact’s solidarity mechanism, which allows states to pay a fee rather than accept asylum seekers, has raised concerns about the unequal distribution of responsibility among EU MS. This means that one of the most contentious elements of the EU’s migration framework, the Dublin system, sees minimal or no significant reform in the new pact.⁸⁵ The responsibility for handling arrivals and assessing asylum claims remains with the countries of first entry. The only noteworthy development is the introduction of a mandatory but flexible solidarity mechanism. MS can assist frontline countries either by relocating migrants or, if they choose not to accept any, by making financial contributions to support the return of irregular third-country nationals, enhancing capacity in overburdened MS, or aiding non-EU countries hosting large migrant populations.

The Joint NGO Policy Brief on the Screening Regulation Proposal⁸⁶ adds valuable insight into the potential pitfalls of these reforms. According to the brief, the proposed screening mechanisms risk undermining refugees and migrants’ rights by introducing procedures that may not fully account for their vulnerabilities. In particular, the brief raises concerns about the potential for refoulement (returning individuals to unsafe countries) due to the expedited nature of the screening process. The brief also underlines that the proposed regulation replicates many of the shortcomings observed for example in the current Greek asylum system, where ineffective vulnerability screenings and poor living conditions in reception centres have compounded the suffering of those seeking protection. It is therefore understood that

⁸³ González Enríquez, ‘The EU Pact on Migration and Asylum’.

⁸⁴ Campesi, ‘The EU Pact on Migration and Asylum’ (2020) 196.

⁸⁵ Alberto Tagliapietra, ‘Outsourcing Responsibility: The EU’s New Pact on Migration and Asylum | German Marshall Fund of the United States’ *GMF* <www.gmfus.org/news/outourcing-responsibility-eus-new-pact-migration-and-asylum> accessed 3 September 2024.

⁸⁶ ‘For a Europe That Truly Protects: Joint NGO Policy Brief on the Screening Regulation Proposal’ *International Rescue Committee (IRC)* 3.

the absence of adequate legal aid and oversight mechanisms in the proposed screening process could lead to errors in the initial registration of asylum seekers, further exacerbating the challenges they face.

Furthermore, the NGO policy brief underlines the need for a more comprehensive and humane approach to asylum screening, one that fully respects the rights and dignity of individuals seeking protection. The brief calls for revisions to the proposed regulation, emphasising that any screening process must ensure that asylum seekers' medical and protection needs are properly assessed and addressed. This aligns with broader critiques of the New Pact, which argue that its focus on security and border control often comes at the expense of the EU's humanitarian commitments.

2.3.2 Outsourcing asylum

A central feature of the New Pact on Migration and Asylum is the provision for outsourcing asylum responsibilities to third countries, which includes provisions and mechanisms that enable such outsourcing, though these are framed within specific legal and procedural contexts. This notion was not introduced for the first time through the New Pact, as it already existed through bilateral agreements between EU MS and third countries and even between the EU and the latter. The New Pact enables EU MS to return asylum seekers to countries deemed "safe" or where the applicants have previously established connections, thus bypassing the EU asylum process.⁸⁷ This strategy, while aimed at reducing the strain on EU systems, has raised significant human rights concerns, particularly in countries with poor track records of treating asylum seekers. Countries like Turkey and Libya, often used in the EU's outsourcing strategy, have been criticised for their inadequate refugee protections, unsanitary conditions, and frequent human rights abuses in detention centres.⁸⁸

One of the central critiques of outsourcing asylum is the potential violation of the principle of non-refoulement, which prohibits returning individuals to countries where they may face persecution or harm. Numerous NGOs, including Amnesty International, have condemned the EU's approach, pointing out that outsourcing asylum processing to third countries risks subjecting

⁸⁷ Campesi, 'The EU Pact on Migration and Asylum' (2020) 198.

⁸⁸ González Enriquez, 'The EU Pact on Migration and Asylum'.

vulnerable migrants to prolonged detention in legal limbo, often under dire conditions.⁸⁹ This practice has drawn parallels with Australia’s offshore processing system, notorious for its human rights violations, which has been heavily criticised by the international community.⁹⁰ The United Nations has similarly documented severe human rights abuses in countries like Libya, where asylum seekers face trafficking, torture, forced labour, and mass expulsions.⁹¹ Despite these well-documented issues, the EU continues to collaborate with such countries, raising ethical concerns about complicity in human rights violations. The UN High Commissioner for Human Rights, Volker Türk, recently called for a review of the EU’s cooperation with Libyan authorities, highlighting the prevalence of arbitrary detention and extrajudicial killings.⁹²

While outsourcing aims to alleviate the burden on EU MS, it has severe consequences for the protection of migrants’ rights. According to González Enríquez,⁹³ this strategy exacerbates the vulnerability of asylum seekers, placing them at the mercy of countries that may not respect their rights under international law. This outsourcing reflects a broader trend in EU migration policy, where security concerns and reducing migrant arrivals take precedence over humanitarian protection.

⁸⁹ ‘Joint Statement: The Future EU Must Uphold the Right to Asylum in Europe’ *Amnesty International* (9 July 2024). <www.amnesty.org/en/latest/research/2024/07/joint-statement-the-future-eu-must-uphold-the-right-to-asylum-in-europe/> accessed 25 August 2024.

⁹⁰ Olivia Sundberg, ‘“Offshoring” Asylum—Time to Reject a Disastrous Model’ (30 July 2024) <www.socialeurope.eu/offshoring-asylum-time-to-reject-a-disastrous-model/> accessed 18 September 2024.

⁹¹ ‘Libya: UN Human Rights Report Details Violations of Migrants’ Rights amid “Assisted Return” Programmes’ *OHCHR*, accessed 18 September 2024.

⁹² Daniel Johnson, ‘Arbitrary Detentions and Impunity Widespread in Libya, Warns UN’s Türk’ *UN News Global Perspective Human Stories* (9 July 2024). <<https://news.un.org/en/story/2024/07/1151866>> accessed 10 July 2024.

⁹³ González Enríquez, ‘The EU Pact on Migration and Asylum’.

2.3.3 Are 'safe third countries' really "safe"?

The designation of certain countries as “safe third countries” is one of the most controversial aspects of the New Pact.⁹⁴ People who travelled through so-called “safe third countries” (the definition of which will be left to MS’ discretion) before reaching Europe will risk having their requests dismissed without assessment. As Alberto Horst Neidhardt, who is the head of the migration programme at the European Policy Center think-tank, points out:

Under European Law, asylum requests should be processed by the first EU country that asylum seekers reach. The concept of a ‘third safe country’ provides an exception to the rule, allowing member states to transfer responsibility for processing an asylum claim to that country, providing it is considered “safe”, has functioning asylum system and a ‘connection’ with the asylum seeker. The country in question must also agree to return them(...) We can expect that there will be more and more efforts to sign cooperation agreements that make it possible for persons to be returned(...) Likely, the focus of the attention of policymakers in Brussels and at the national level will turn to both North Africa and the Western Balkan Countries.⁹⁵

Under this framework, asylum seekers can be returned to these countries without their claims being processed in the EU, on the assumption that they will receive adequate protection there. However, many of these countries, such as Libya and Turkey, have been widely criticised for their poor human rights records and inadequate asylum systems.⁹⁶ Migrants returned to these countries often face violence, exploitation, and detention in overcrowded camps with limited access to legal representation or humanitarian assistance. The EU’s reliance on these countries as part of its externalisation strategy raises serious questions about the safety and legality of such returns, especially given the reports of widespread

⁹⁴ Chloe Bouvier, ‘The EU Migration Pact: A Dangerous Regime of Migrant Surveillance’ *PICUM* (11 April 2024) <<https://picum.org/blog/the-eu-migration-pact-a-dangerous-regime-of-migrant-surveillance/>> accessed 27 July 2024.

⁹⁵ Tommi Siviero, ‘EU Migration Reform “Bad News” for Refugees, and Western Balkans’ (19 June 2023) *Balkan Insight* (blog) <<https://balkaninsight.com/2023/06/19/eu-migration-reform-bad-news-for-refugees-and-western-balkans/>> accessed 17 September 2024.

⁹⁶ Noll, *Negotiating Asylum*, 325.

abuse and neglect.⁹⁷ This practice undermines the EU's commitment to upholding international protection standards and creates a system where migrants are denied access to the asylum process within the Union.⁹⁸

2.3.4 Externalisation of borders

The externalisation of EU borders is another critical element of the New Pact on Migration and Asylum. While outsourcing asylum focuses on shifting the responsibility for processing claims to third countries, externalisation extends this strategy by reinforcing border control through cooperation with non-EU countries. At this point, the concept of the “shifting border,” as articulated by Ayelet Shachar, refers to the transformation of borders into fluid, individualised barriers that follow people beyond traditional geographical lines. Within this framework, the evolving nature of EU migration policies has introduced a complex legal landscape, shaped by hybrid and informal mechanisms of cooperation with third countries.⁹⁹ Shachar states that these arrangements often blur accountability lines, creating a deficit in oversight and responsibility.

Furthermore, the regulation of mobility at the EU's external borders - both physically and legally - frequently relies on sophisticated infrastructures designed not only to manage but also to deter and redirect migration flows. This dynamic reimagining of borders shows the EU's strategic effort to externalise control while raising critical questions about the implications for legal accountability and human rights

⁹⁷ 'Policy Note: Border Procedures Not a Panacea' *European Council on Refugees and Exiles (ECRE)* 3 <<https://ecre.org/policy-note-border-procedures-not-a-panacea/>> accessed 18 September 2024.

⁹⁸ Sergio Carrera and Marco Stefan, *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union: Complaint Mechanisms and Access to Justice* (Routledge 2020) 15 <https://www.routledge.com/Fundamental-Rights-Challenges-in-Border-Controls-and-Expulsion-of-Irregular-Immigrants-in-the-European-Union-Complaint-Mechanisms-and-Access/Carrera-Stefan/p/book/9781032174877?srsltid=AfmBOoqgAazvlqZVChf2Aoiaa8VoOQjRWAVbGG8xsZC3wQhN_YXHlls> accessed 29 August 2024.

⁹⁹ Evangelia Tsourdi, Andrea Ott, and Zvezda Vankova, 'The EU's Shifting Borders Reconsidered: Externalisation, Constitutionalisation, and Administrative Integration' (2022) *European Papers – A Journal on Law and Integration* 1(2022) 87–108.

Frontex, the EU's border and coast guard agency, plays a central role in this process, extending the EU's control over migration flows by conducting joint operations with countries like Serbia, Albania, and Libya.¹⁰⁰ This strategy, referred to as “re-bordering through externalisation”, transforms these nations into buffer zones, where migrants are detained or turned back before they can reach European soil.¹⁰¹ Unlike outsourcing, which shifts asylum responsibilities, externalisation directly involves Frontex in operational activities that have drawn widespread criticism for exacerbating human rights abuses. Numerous reports have documented mistreatment of migrants during Frontex-led operations, including arbitrary detention, violence, and forced returns to unsafe countries.¹⁰² These operations often occur in legally ambiguous spaces, leading to what Lemberg-Pedersen calls a “border-scape” with the meaning of shifting jurisdictions where migrants find themselves caught in a web of legal uncertainties and limited access to rights.¹⁰³

Externalisation also reflects the EU's broader securitisation agenda, where reducing the number of migrant arrivals at its borders is prioritised over humanitarian obligations. The New Pact allows MS to declare a “state of emergency,” opt out of their asylum responsibilities, and close their borders at any time and for as long as they consider necessary. “Trapping” people on the move between borders has led to serious human rights violations, and even deaths, including the detention of migrants in overcrowded and unsafe conditions. This process distances the EU from the humanitarian consequences of its border policies, as it relies on third countries to handle most of the migration control.

The implications of this strategy are profound. By externalising its borders through its policies, it appears that the EU reinforces a “Fortress Europe” mentality, where migrants are kept at arm's length from EU territory and its protections. Buffer zones in the Western Balkans and North Africa have become holding areas for migrants, who are often left in legal limbo without access to adequate legal representation or humanitarian aid. The externalisation of borders ultimately serves the EU's security interests but

¹⁰⁰ Campesi, ‘The EU Pact on Migration and Asylum’ (2020) 199.

¹⁰¹ González Enríquez, ‘The EU Pact on Migration and Asylum’.

¹⁰² Carrera and Stefan, *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union* 202.

¹⁰³ Lemberg-Pedersen, ‘Losing the Right to Have Rights’, 396.

raises significant ethical concerns about the EU's role in perpetuating human rights abuses through its partnerships with countries that lack the capacity or will to uphold international protection standards.

2.3.4.1 Militarising through Frontex

Frontex, the European Border and Coast Guard Agency, plays a key role in managing the EU's external borders, especially in controlling migration. Established in 2004, its mandate has expanded significantly, enabling it to deploy personnel, conduct joint operations, and collaborate with non-EU countries.¹⁰⁴ Frontex is central to the EU's border management strategy, which not only protects the Union's borders but also externalises border controls through partnerships with third countries to prevent migrants from reaching EU territory.¹⁰⁵ However, Frontex's growing role has raised concerns over transparency, accountability, and potential human rights violations linked to its operations.

Frontex's operations also extend to the use of advanced surveillance technologies, which play a crucial role in intercepting migrants before they reach the EU's external borders. As detailed in "*The Militarisation of EU Borders*", Frontex has increasingly relied on technologies such as drones, biometric systems, and satellite surveillance to monitor migration flows.¹⁰⁶ These technologies enable the agency to detect and intercept migrants long before they arrive at EU territory, reinforcing the externalisation of borders by creating a digital frontier that operates far beyond the Union's physical boundaries. It is fair to say that this reliance on technology, while enhancing border security, raises significant ethical concerns, particularly regarding the lack of transparency and accountability in the use of surveillance tools. The militarisation of EU borders, as argued in the article, has transformed the nature of migration management, shifting the focus from humanitarian protection to securitisation and control.¹⁰⁷

¹⁰⁴ Frontex, 'Fundamental Rights Office' <<https://www.frontex.europa.eu/fundamental-rights/fundamental-rights-at-frontex/fundamental-rights-office/>> accessed 3 August 2024.

¹⁰⁵ *ibid.*

¹⁰⁶ Paraskeva, *The Militarisation of EU Borders: The Greek Case Study within the European Context*, 47.

¹⁰⁷ Lemberg-Pedersen, 'Losing the Right to Have Rights' 402.

Moreover, the expansion of Frontex's mandate has allowed the agency to conduct operations in countries beyond the EU's immediate borders, further complicating the landscape of migration management. As Lemberg-Pedersen explains, Frontex has been instrumental in implementing the EU's externalisation agenda by establishing partnerships with non-EU countries, often with little regard for the human rights implications of such cooperation. For example, Frontex's involvement in the Central Mediterranean, particularly in Libya, has led to the interception and return of thousands of migrants to detention centres, where they face inhumane conditions and a lack of basic protections. This highlights the moral and legal challenges posed by the externalisation of borders, where the EU's emphasis on security often comes at the expense of its humanitarian obligations.

From the above, one can understand that Frontex plays a central role in the externalisation of EU borders, acting as the Union's primary instrument for managing migration flows beyond its territorial boundaries. While this strategy has developed border security, it has also led to significant human rights violations, particularly in countries where migrants are detained or returned under Frontex's watch. The agency's reliance on advanced surveillance technologies and its expanding role in third countries reflect the EU's broader shift towards securitisation, raising critical questions about the balance between security and human rights in the Union's migration policies.

2.3.4.2 Frontex and the failure of accountability mechanisms

In addition to the militarisation of EU borders through surveillance and control, Frontex's lack of accountability has drawn sharp criticism. The agency's expanded mandate allows it to conduct operations beyond EU borders, often resulting in human rights violations. Frontex has been involved in numerous pushbacks and violent confrontations with migrants, particularly in the Aegean Sea and the Central Mediterranean. Despite these allegations, mechanisms for holding the agency accountable remain weak, allowing these practices to persist unchecked.¹⁰⁸

¹⁰⁸ Elspeth Guild (ed), *Monitoring Border Violence in the EU: Frontex in Focus* (Taylor & Francis 2023) 74.

Investigations by OLAF (European Anti-Fraud Office) have revealed that Frontex failed to adequately report or prevent human rights violations during joint operations. These violations include violent pushbacks, where migrants were forcibly returned to non-EU countries without access to asylum procedures, a clear breach of international law and EU legal frameworks.¹⁰⁹ The lack of oversight over these activities contributes to the systemic disregard for human rights, reinforcing the security-first approach of the EU's externalisation agenda.¹¹⁰ Moreover, while Frontex has established a Fundamental Rights Officer (FRO), tasked with ensuring compliance with human rights standards, reports suggest that the FRO's capacity to intervene in ongoing operations remains severely limited. The inadequacies of this accountability mechanism highlight the structural gaps in EU migration governance, which allow Frontex to operate with little scrutiny or consequence.¹¹¹ This undermines the EU's humanitarian obligations, as the agency's practices often prioritise border control over the protection of vulnerable individuals.

The lack of independent monitoring has been a key concern. Scholars and human rights organisations have repeatedly criticised the opacity surrounding Frontex's activities.¹¹² Without effective oversight, the agency is free to act with impunity, exacerbating the ethical dilemmas surrounding the EU's externalisation of borders. This imbalance between the EU's security imperatives and its commitment to international protection standards continues to draw criticism, particularly in light of repeated reports of migrant mistreatment and violations of the principle of non-refoulement in Frontex-led operations.¹¹³

The situation emphasises the need for stronger accountability mechanisms to ensure that Frontex adheres to the EU's legal and moral obligations under international law. The expansion of its role in migration management beyond EU borders, combined with the increasing reliance on advanced surveillance

¹⁰⁹ Elspeth Guild (ed), *Monitoring Border Violence in the EU: Frontex in Focus* (Taylor & Francis 2023) 74, 81.

¹¹⁰ *ibid* 87.

¹¹¹ *ibid* 92.

¹¹² *ibid* 103.

¹¹³ *ibid* 111.

technologies, further compounds the agency's capacity to act without proper checks. Thus, while Frontex plays a central role in the externalisation of EU borders, this comes at a significant humanitarian cost that challenges the EU's identity as a protector of human rights.

2.3.5 First reactions: human rights critiques on the New Pact

The New Pact on Migration and Asylum has faced significant criticism from human rights organisations for its emphasis on border control and securitisation at the expense of protection for migrants and asylum seekers.¹¹⁴ As Bosnian human rights activist and researcher Nidzara Ahmetasevic told me:

We can see the EU imposed a peace treaty on the Balkan region. Even though the area has no power to decide anything related to the Pact, we will have to follow it. The first obvious consequence is deportation to countries of origin, which is already happening. The EU finances these deportations, forces involved are trained and equipped by the EU. The region will already be some kind of dumping ground for people who are not wanted in the West. (...) The New Pact cannot encourage respect for human rights anywhere in the region and in general. It is based on the premise that migrations should be "managed", controlled, punished and prevented, and that is a violation of human rights.¹¹⁵

It is therefore understandable that while the New Pact claims to offer more efficient asylum processing, it relies heavily on pre-entry screening and outsourcing to third countries, both of which have been linked to human rights violations.¹¹⁶ The detention of migrants in hotspots and other confined areas, as well as the increasing use of Frontex to intercept migrants before they reach EU territory, has raised concerns about the EU's commitment to upholding the principles of the Refugee Convention.¹¹⁷

¹¹⁴ 'Joint Statement: The Future EU Must Uphold the Right to Asylum in Europe' *Amnesty International* (9 July 2024). <www.amnesty.org/en/latest/research/2024/07/joint-statement-the-future-eu-must-uphold-the-right-to-asylum-in-europe/> accessed 25 August 2024.

¹¹⁵ Nidzara Ahmetasević, interview questions of author (29 September 2024) [Appendix 3].

¹¹⁶ Campesi, 'The EU Pact on Migration and Asylum' (2020) 198-199.

¹¹⁷ 'Policy Note: Border Procedures Not a Panacea' *European Council on Refugees and Exiles (ECRE)* 2-3 <<https://ecre.org/policy-note-border-procedures-not-a-panacea/>> accessed 18 September 2024.

Critics argue that the Pact institutionalises practices that limit access to asylum and expose migrants to harmful conditions in third countries, further distancing the EU from its humanitarian obligations. The focus on preventing migration rather than ensuring protection reflects a broader trend in EU policy, where security concerns are prioritised over human rights.¹¹⁸

2.4 Differentiation and multiplication of borders

Transitioning to the broader thesis context by reflecting on implications, the EU's border policies are marked by a complex system of differentiation and multiplication, creating visible and invisible layers of control. The Schengen Area, established to eliminate internal borders between participating countries, contrasts with the highly fortified external borders designed to regulate migration and security threats. These dynamics demonstrate how the EU creates various zones of inclusion and exclusion, where some borders are erased while others are reinforced. This approach results in a multi-tiered system of border control, often making it difficult to discern where the EU's physical borders actually lie. It became rather apparent from *Chapter I* that the idea of “borders” extends beyond geography, affecting social, economic, and legal realms, which can be observed through practices like externalising border controls to third countries. As Mountz (2010) suggests, the EU's complex geography of borders serves not just as territorial demarcation but also as a mechanism for governing mobility both inside and outside its physical boundaries.¹¹⁹ The rise of advanced surveillance technologies, such as biometric systems and drones, has further complicated the landscape, creating invisible borders where the movement of people is controlled long before they reach EU soil.¹²⁰ It seems that this differentiation and multiplication of borders will continue to create new challenges for both migration management and human rights protection.

¹¹⁸ Thomas Gammeltoft-Hansen, 'Extraterritorial Migration Control and the Reach of Human Rights' in Vincent Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar Publishing 2014) 116–18 <www.elgaronline.com/downloadpdf/edcoll/9780857930040/9780857930040.00009.pdf> accessed 16 September 2024.

¹¹⁹ Alison Mountz, *Seeking Asylum: Human Smuggling and Bureaucracy at the Border* (2010) 34.

¹²⁰ Elspeth Guild, *Security and Migration in the 21st Century* (Polity 2009) 45–50.

In addition to this, Krasteva (2020) provides valuable insight into how the EU's bordering practices are not only spatial but deeply political and social. In her analysis of post-communist re-bordering in Bulgaria, Krasteva argues that borders in the EU serve as instruments of both inclusion and exclusion, reflecting broader geopolitical and identity struggles. The EU's external borders, she explains, have increasingly become sites of control and securitisation, mirroring the region's historical legacies of closed borders during the communist era. Krasteva's concept of re-bordering highlights how borders are recontextualised in different political periods, transforming from barriers to freedom under communism to fortifications against external threats in the current EU landscape.¹²¹ This resonates with the EU's strategy of externalising border and migration control through agreements with neighbouring states, effectively creating new forms of borders far from the Union's physical territory.

According to van Houtum, the EU has developed what can be called a "global border machine" that extends beyond its immediate territory, creating a division between those who are seen as belonging to the EU and those who are classified as outsiders, based on their place of birth. This system is operationalised through mechanisms like the Schengen visa list, which separates travellers into a positive list of those who are welcome and a negative list of those deemed a security risk. The implications of this division are profound, as it not only regulates physical movement but also enforces socio-economic stratification, contributing to what van Houtum terms a "global apartheid regime".¹²²

This differentiation of borders aligns with the EU's broader approach of externalising its border policies, as seen in agreements with countries like Turkey and Libya. These agreements effectively shift the EU's borders beyond its geographic boundaries, outsourcing the management of migration to third countries. Van Houtum argues that this outsourcing represents a form of othering, where migrants from non-EU countries are dehumanised and categorised as threats rather than individuals in need of protection.¹²³ The EU's reliance on biometric technologies, as explored by Guild (2009),

¹²¹ Krasteva, 'If Borders Did Not Exist, Euroscepticism Would Have Invented Them Or, on Post-Communist Re/De/Re/Bordering in Bulgaria' (2020) *Geopolitics* 688.

¹²² Van Houtum, 'Human Blacklisting', 963.

¹²³ *ibid* 961.

and the establishment of detention centres in third countries further complicate the landscape, creating invisible digital borders where individuals are screened and categorised long before they physically reach the EU.¹²⁴

Moreover, the externalisation of borders is deeply intertwined with the notion of ordering, where the EU not only demarcates its physical borders but also establishes a socio-political hierarchy that dictates who is allowed entry and who is excluded. As van Houtum explains, this process is increasingly driven by fear of the “Other”; those who are perceived as threats to European security, identity, or economy. This securitisation of borders has led to the creation of buffer zones along the EU’s periphery, where migrants are detained and controlled, reinforcing the image of a “Fortress Europe”.¹²⁵

The militarisation of borders adds another dimension to this differentiation. The use of advanced technologies has transformed border management into a highly securitised operation, where migrants are intercepted and monitored long before reaching EU.¹²⁶ This shift towards remote control of borders highlights how the EU is using technology to create invisible frontiers, further complicating the distinction between internal and external borders. These practices reflect the EU’s attempt to manage migration through increasingly sophisticated and layered control mechanisms, which, as van Houtum argues, lead to the dehumanisation of migrants and reinforce exclusionary policies.

Overall, it seems that the differentiation and multiplication of EU borders are not limited to geographical lines but extends into the socio-political realm. The processes of bordering, ordering, and othering, as outlined by van Houtum, and the historical re-bordering dynamics analysed by Krasteva, illustrate how the EU creates complex systems of inclusion and exclusion, where some individuals are privileged while others are marginalised. This multi-tiered border system, driven by securitisation and externalisation, raises critical questions about the balance between security and human rights in the EU’s migration policies.

¹²⁴ Guild, *Security and Migration in the 21st Century (Dimensions of Security)*, 92. <<https://books.google.com.pa/books?id=uOOJAFotZMC&printsec=frontcover#v=onepage&q&f=false>> accessed 11 June 2024.

¹²⁵ David Brown, ‘Storming the Fortress: The External Border Regime in an Enlarged Europe’ in Ingham H, Ingham M eds, *EU Expansion to the East: Prospects and Problems* (Edward Elgar 2002) 89–109.

¹²⁶ Paraskeva, *The Militarisation of EU Borders: The Greek Case Study within the European Context* 12.

3. The relationship between the EU and the WB on migration and border policies

Following the introduction of the third chapter, it is essential to delve into the historical and political landscape that has shaped the relationship between the European Union (EU) and the Western Balkans (WB) in the context of migration policies. The Balkan Route, which emerged as a critical pathway during the 2015-2016 so-called migration crisis, revealed both the strategic importance and the vulnerabilities of the region. Although the Balkan route is no longer the most popular path to Europe, it was once one of the most widely used and dangerous migration routes. According to Frontex, nearly 100,000 irregular border crossings occurred on this route in 2023.¹²⁷ The true death toll is difficult to verify and likely underestimated, but the IOM Missing Migrants Project has recorded 377 people as missing along the route since 2014.¹²⁸ At its peak in 2015, the Balkan route saw 764,000 people traveling toward Europe. While this route remains in use today, new agreements, such as the EU's partnership with Serbia, highlight efforts to curb migration far from the borders of EU MS which led to the creation of sub-routes. This period highlighted the Western Balkans as both a transit zone and a key partner in controlling migratory flows into the EU.

The EU responded by intensifying cooperation with the region, promoting the *Europeanisation* of migration management. This process, involving the adoption of EU standards in border control and asylum policies, is critical to understanding the role the Western Balkans play in the broader European security

¹²⁷ Council of the European Union. (2024). Illegal Border Crossings on the Western Balkans Route (infographic) <<https://www.consilium.europa.eu/en/infographics/western-balkans-migration-route/>> accessed 14 August 2024

¹²⁸ International Organization for Migration (IOM), 'Europe | Missing Migrants Project' <<https://missingmigrants.iom.int/region/europe>> accessed 24 September 2024.

landscape. The ongoing externalisation of EU border policies has positioned the region as a buffer zone, tasked with managing migration before it reaches EU territory. Thus, the following sections will explore the mechanisms of Europeanisation and the impact of the New Pact on Migration and Asylum, focusing on how these developments reshape the security and migration policies of the Western Balkans.

3.1 EU migration policies and the Western Balkans Route

The European Union has placed significant focus on managing migration flows through the Western Balkans route, a major pathway for irregular migration from the Middle East, Asia, and Africa into Europe. This region, comprising Albania, Bosnia and Herzegovina, Serbia, North Macedonia, Kosovo, and Montenegro, is geographically positioned at the crossroads of Europe and has become a key transit corridor for migrants seeking entry into the EU.¹²⁹ In response, the EU has implemented a range of policies designed to strengthen border management, align visa policies, combat migrant smuggling, and support effective asylum procedures and return systems in the Western Balkans.¹³⁰

Since the migration “crisis” of 2015, the EU has sought to establish a more sustainable framework to manage migration pressures along this route. In December 2022, the European Commission launched an EU Action Plan on the Western Balkans, which laid out 20 operational measures to reinforce border management and align migration policies with EU standards.¹³¹ The plan builds

¹²⁹ Council of the European Union. (2022a). EU migration policy: Western Balkans route <<https://www.consilium.europa.eu/en/policies/eu-migration-policy/western-balkans-route/>> accessed 18 July 2024.

¹³⁰ Council of the European Union. (2022b). Joint press statement EU-Western Balkans Ministerial Forum on Justice and Home Affairs, Tirana, 3-4 November 2022 <<https://www.consilium.europa.eu/en/press/press-releases/2022/11/04/joint-press-statement-eu-western-balkans-ministerial-forum-on-justice-and-home-affairs-tirana-3-4-november-2022/>> accessed 18 July 2024.

¹³¹ European Commission. (2022). EU Action Plan on the Western Balkans <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/humane-and-effective-return-and-readmission-policy_en> accessed 18 July 2024.

on existing partnerships, notably the Stabilisation and Association Agreements (SAA) that frame the EU's relations with the Western Balkans countries, with the aim of preparing these countries for potential future EU membership.

One of the key areas of focus is the deployment of Frontex, to assist with border surveillance, migrant registration, and cross-border cooperation under newly negotiated agreements with the region.¹³² The cooperation with Frontex reflects the EU's commitment to enhancing the capacity of the Western Balkans to manage migration flows effectively, while also addressing security concerns and tackling organised crime related to smuggling networks.

The Instrument for Pre-Accession Assistance (IPA III), which allocates financial and technical assistance to EU enlargement regions, is a key tool supporting these efforts. Between 2021 and 2022, €201.7 million were dedicated to migration-related actions in the Western Balkans under IPA III, focusing on enhancing the region's border management capacity, improving reception facilities for asylum seekers, and supporting voluntary and non-voluntary returns.¹³³ Potential beneficiaries from IPA are also civil society, NGOs and any other objective that falls under one of the five thematic areas of this instrument. The thematic area concerning this research regards: rule of law, democracy, respect for human rights, fundamental rights and international law, civil society, security and migration management, and border management. During my interview with officials who specialize in human rights and migration management from the EU Delegation to Bosnia and Herzegovina, I asked whether they officially collaborate with NGOs of BiH and how they support them. The EU official (X1) replied

¹³² Council of the European Union. (2022c). Border management: Council authorizes the opening of negotiations with four Western Balkans partners on Frontex cooperation. <<https://www.consilium.europa.eu/en/press/press-releases/2022/11/18/border-management-council-authorises-the-opening-of-negotiations-with-four-western-balkans-partners-on-frontex-cooperation/>> accessed 18 July 2024.

¹³³ Council of the European Union, 2022a.

We support NGOs who work in the Migration and Asylum domain through IOM, so we provide financial support indirectly... our collaboration is with IOM and whomever cooperates with IOM gets our support”. When I followed with the question asking him “Is there a reason you don’t have or want direct contact with the NGOs of BiH?”, the answer was “It’s just the way we do things, its policy”.¹³⁴

As Ahmetasevic also supports: ‘(...) Nevertheless, in BiH any organisation that wants to work with or about migrations, governmental or nongovernmental, it has to get permission from the IOM (...), they have to cooperate closely with the IOM and the government’.

While the EU’s support for NGOs in migration and asylum management is valuable, the reliance on intermediaries like IOM rather than direct collaboration with local NGOs presents some challenges. This indirect approach can limit local NGOs’ influence over project decisions, add bureaucratic layers, and potentially reduce responsiveness to local needs. By bypassing direct partnerships, the EU risks marginalizing the very organisations that are essential for addressing migration and human rights challenges on the ground.

3.1.1 Border management and Frontex cooperation with the Western Balkans

Effective border management remains at the core of the EU’s strategy for addressing irregular migration along the Western Balkans route. The deployment of Frontex, through status agreements with Western Balkan countries, has been a fundamental development in the EU’s border management policies. These agreements allow Frontex to operate alongside national authorities, providing expertise, resources, and personnel to manage migratory flows, conduct border checks, and ensure the registration of migrants.¹³⁵ Status agreements with Albania, Montenegro, Serbia, and North Macedonia have already been signed, with further negotiations underway to expand Frontex’s mandate in the region.¹³⁶

¹³⁴ EU Delegation Official (X1) interview with the author (online, 1 October 2024) [Questions: Appendix 2].

¹³⁵ Council of the European Union, 2022c.

¹³⁶ Council of the European Union, 2022b.

In November 2022, the EU Council authorized negotiations to enhance these status agreements, which would allow Frontex personnel to exercise executive powers such as performing border checks and detaining individuals involved in illegal crossings.¹³⁷ This development marks a significant step towards integrating Western Balkan countries into the EU's broader border management framework. By aligning their practices with EU standards, these countries are not only improving their capacity to manage migration but also laying the groundwork for closer ties with the EU. The enhanced cooperation with Frontex aims to address the evolving tactics of smuggling networks, which have increasingly used violence and sophisticated methods to exploit weaknesses in border controls.¹³⁸ In response, Frontex operations are designed to improve the detection and interception of irregular migrants while also preventing the trafficking of firearms and combating organized crime.

In addition to operational support, the EU provides financial backing for the procurement of border management infrastructure and surveillance technology in the region. Under the IPA III program, €40 million was allocated in 2023 to support border management in countries such as Bosnia and Herzegovina, Montenegro, Serbia, and Kosovo.¹³⁹ This funding is intended to boost surveillance capacities, equip border officials with modern tools for detection, and provide training to national authorities. By reinforcing the borders of the Western Balkans, the EU aims to reduce the irregular migration flows that strain the asylum systems of its MS and to secure the external borders of the EU.¹⁴⁰ The success of the Instrument for Pre-Accession Assistance (IPA) III program for the Western Balkans has shown mixed results so far. While it has been effective in supporting reforms and contributing to long-term goals like EU alignment, challenges remain. The migration management aspect of the IPA III program in the Western Balkans has been criticised for prioritising border security over the protection of migrant rights. Reports of pushbacks and violence, particularly at the borders of Hungary, Croatia, and Serbia, highlight physical abuse by authorities, including the use of batons

¹³⁷ Council of the European Union, 2022c.

¹³⁸ European Commission, 2022.

¹³⁹ Council of the European Union, 2022a.

¹⁴⁰ Council of the European Union, 2022b.

and rubber bullets.¹⁴¹ Migrants, including families and unaccompanied minors, face harsh conditions, and human rights organisations have documented these abuses. Critics argue that while IPA III has strengthened border control, it has failed to address the humanitarian needs of migrants and has limited civil society's involvement in monitoring migration management effectively.¹⁴²

3.1.2. Aligning asylum procedures and strengthening reception capacities

Beyond border management, the EU's efforts in the Western Balkans extend to the development of effective asylum procedures and improving reception capacities for migrants. As these countries are candidate member-states, aligning their asylum and reception systems with EU standards is a priority. The 2022 EU Action Plan emphasises the importance of swift asylum procedures, ensuring that migrants who require international protection can receive it, while those not eligible can be promptly returned to their countries of origin.¹⁴³ The European Asylum Support Office (EASO)¹⁴⁴ has been instrumental in assisting the Western Balkans in this process, working with national authorities to implement roadmaps for asylum system reform.¹⁴⁵

The region has also faced challenges related to the provision of adequate reception facilities for migrants. To address these issues, the EU has supported the construction and expansion of reception centres, such as the multi-purpose facility at Lipa in Bosnia and Herzegovina.¹⁴⁶ This facility serves as a model for future reception infrastructure, designed to accommodate both asylum seekers and irregular migrants awaiting return. The Action Plan calls for enhanced cooperation with national authorities to ensure that reception centres are well-prepared, especially during the winter months, and that they meet the needs of vulnerable groups, including unaccompanied minors and families.¹⁴⁷

¹⁴¹ 'Balkan Route: Commission Increases Support to Tighten Border Control in the Western Balkans Amid Increase in Violence and Pushbacks' *European Council on Refugees and Exiles (ECRE)* <<https://ecre.org/balkan-route-commission-increases-support-to-western-balkans-amid-increase-in-violence-and-pushbacks/>> accessed 3 October 2024.

¹⁴² *ibid.*

¹⁴³ European Commission, 2022.

¹⁴⁴ Today known as the "European Union Agency for Asylum" (EUAA), since 2022.

¹⁴⁵ Council of the European Union, 2022a.

¹⁴⁶ Council of the European Union, 2022b.

¹⁴⁷ European Commission, 2022.

The interview with the EU delegation official (X2) gave an insight into reception centre development as well as the shortcomings, addressing the fact that, “unfortunately we cannot provide or financially support staff, we can only support (financially) infrastructure and material goods, like beds, blankets etc. and I understand this creates issues”.¹⁴⁸

3.1.3. Combating smuggling and ensuring effective returns and readmission

Migrant smuggling has been a persistent issue along the Western Balkans route, with organised criminal networks exploiting vulnerable migrants and contributing to irregular migration flows. The EU Action Plan on the Western Balkans recognises the need to combat smuggling networks as a critical component of its migration management strategy. The European Multidisciplinary Platform Against Criminal Threats (EMPACT) has been a central tool in coordinating efforts between EU MS and Western Balkan partners to dismantle these networks. EMPACT facilitates joint investigations, the sharing of intelligence, and capacity building for law enforcement agencies in the region, focusing on the detection and prosecution of smuggling activities.¹⁴⁹

In 2022, the EU launched a regional Anti-Smuggling Operational Partnership with the Western Balkans, supported by €30 million under IPA III. This initiative seeks to increase the capacity of national authorities to detect and investigate smuggling networks, with a focus on the border areas between Serbia and Hungary, which have been hotspots for migrant smuggling.¹⁵⁰ Additionally, the EU supports training programmes for border officials in the Western Balkans to improve their ability to detect document fraud, conduct interviews with migrants and smugglers, and prevent human trafficking.¹⁵¹

In tandem with anti-smuggling efforts, the EU has worked to establish effective return and readmission mechanisms with the Western Balkans. All Western Balkans countries, except Kosovo, have concluded readmission agreements with the EU, which facilitate the return of irregular migrants who transit through the

¹⁴⁸ EU Delegation Official (X2), interview with author (online 1 October 2024) [Questions, Appendix 2].

¹⁴⁹ European Commission, 2022.

¹⁵⁰ Council of the European Union, 2022a.

¹⁵¹ European Commission, 2022.

region on their way to the EU. These agreements also include provisions for the return of third-country nationals, making it possible for Western Balkans countries to return migrants to their countries of origin in cooperation with Frontex and the International Organisation for Migration (IOM).¹⁵² The EU supports that the return policy is designed to be both humane and effective, ensuring that migrants who do not qualify for asylum are returned to their countries of origin in accordance with international law and EU standards.¹⁵³

Through these coordinated policies on border management, asylum, anti-smuggling, and return, the EU aims to address the complex migration challenges posed by the Western Balkans route. By supporting the region in aligning with EU standards, the EU supports that these cooperations not only strengthen its own borders but also foster stability and security in the Western Balkans, paving the way for deeper integration into the European Union.¹⁵⁴

3.2 The Balkan Route: “closure”?

Through the policies outlined above, one can easily understand that the Balkan Route gained significant international attention during the 2015-2016 migration influx, serving as a primary pathway for refugees and migrants traveling from Greece and Turkey to Western Europe via countries such as North Macedonia, Serbia, and Bosnia and Herzegovina. This influx of people, many fleeing conflicts in Syria, Afghanistan, and Iraq, revealed critical weaknesses in European migration management systems.¹⁵⁵ It also brought to light the strategic importance of the Western Balkans within broader European Union (EU) migration policies, as these countries became the last checkpoints before migrants reached the EU’s external borders.

¹⁵² Council of the European Union, 2022b.

¹⁵³ European Commission, 2022.

¹⁵⁴ Council of the European Union, 2022a.

¹⁵⁵ Sergio Carrera and Andrew Geddes, *The EU Pact on Migration and Asylum in Light of the United Nations Global Compact on Refugees* (Florence, Italy: European University Institute, 2021), 115–16.

Following a decline in irregular crossings after 2015, numbers began to rise again in 2019 and then 2024.¹⁵⁶ The EU's response to this challenge has focused on enhancing border management, aligning visa policies, and bolstering cooperation with Western Balkans partners to handle asylum procedures and returns. The European Commission's 2022 Action Plan on the Western Balkans identified key operational measures, such as deploying Frontex personnel, improving reception facilities, and combating migrant smuggling, with the aim of curbing irregular migration while supporting the region's future accession to the EU.

The closure of the Balkan Route, coupled with the EU-Turkey deal¹⁵⁷ in March 2016, marked a decisive shift toward even more securitised and deterrence-oriented approach to migration. This deal aimed to stem the flow of people entering the EU, point out the political prioritisation of border security over humanitarian considerations.¹⁵⁸ The resulting policies effectively transformed the Western Balkans into a buffer zone, where migrants were prevented from moving further into the EU. The Balkan Route, in its securitised form, became emblematic of how the EU externalizes its borders, pushing migration management responsibilities to its periphery, including countries that are not EU MS, such as Bosnia and Herzegovina.¹⁵⁹ These security-driven policies resulted in the development of a state-level narrative, suggesting that migration and border management should be addressed through a security-focused approach.

¹⁵⁶ 'Balkan Route: Increasing Numbers of Syrian Migrants Along the Balkan Route – Worrying Conditions in Bosnia and Herzegovina's Reception and Detention Centres – Frontex and European Commission Ignore Human Rights Violations Along Bulgarian-Turkish Border – Violent Pushbacks Continue on the Serbian-North Macedonian Border' *European Council on Refugees and Exiles (ECRE)* (blog) <<https://ecre.org/balkan-route-increasing-numbers-of-syrian-migrants-along-the-balkan-route-%e2%80%95-worrying-conditions-in-bosnia-and-herzegovinas-reception-and-detention-centres-%e2%80%95-frontex-and-europ/>> accessed 12 September 2024.

¹⁵⁷ "EU-Turkey Joint Statement, 18 March 2016."

¹⁵⁸ Sergio Carrera et al, 'The European Border and Coast Guard' (1 February 2017) *CEPS* (blog) 24–25. <www.ceps.eu/ceps-publications/european-border-and-coast-guard-addressing-migration-and-asylum-challenges/> accessed 6 September 2024.

¹⁵⁹ Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy' (2017) 5(1) *Journal on Migration and Human Security* 28–56.

This hypothesis of this extra-securitisation line from the countries of the Western Balkans is corroborated by Ministry official (X1), who pointed out the incongruence between the security-oriented approach of the Bosnian authorities and the humanitarian nature of migration management:

(...) the Ministry of Security of Bosnia and Herzegovina has the main responsibility when it comes to border control and migrant management. Why is that? ...this makes no sense to me. We have a Ministry of Human Rights and Refugees, and when it comes to dealing with people on the move, human rights, and not security, should come first...except of course if we are talking about their security [people on the move], which in that case we are again talking about human rights. This is also the case with the rest of the countries (meaning the Balkan region)... it's always Ministries of Security or even [Ministries of] Defence.¹⁶⁰

This statement captures the tension between migration as a humanitarian issue and the political realities that prioritize border security. In Bosnia and Herzegovina, as in many other Western Balkan countries, migration is predominantly framed as a security threat, rather than a question of human rights protection. The placement of migration management under the Ministry of Security, rather than the Ministry of Human Rights and Refugees, reflects this framing, where controlling borders and managing migrants are conflated with broader national security concerns. This will be further examined in the following chapter.

These securitised policies, the role of the Western Balkan countries, particularly Bosnia and Herzegovina, Serbia, and North Macedonia, was and remains crucial in the EU's externalised migration governance.¹⁶¹ These countries, positioned along key transit routes, were responsible for managing large-scale migration flows with limited resources and institutional capacities. EU funding and technical assistance allowed these countries to establish reception centres, enhance border surveillance, and gradually harmonise their migration policies with EU standards.¹⁶² Yet, the rap-

¹⁶⁰ Ministry official (X1), interview with author (online, 13 September 2024) [Appendix 1].

¹⁶¹ Milovan Trbojević, Dejan Jovanović, and Diona Durdević, 'Security Policies and Sustainable Development in the Western Balkan Region beyond 2022: Current Status, Challenges, and Prospects' (2024) 14(1) *Energy, Sustainability and Society* 55.

¹⁶² Guild, *Monitoring Border Violence in the EU*.

id pace of migrant arrivals exposed significant gaps in their ability to handle the complex dynamics of migration management, particularly when balancing security concerns with human rights obligations. As (X1) mentions:

They closed the route ten years ago believing that people will stop arriving. But migration flows are moving like water, if you block the flow, it will find another way (around). The result of this [policy] is that people trying to find the other way, are facing barbaric violence at the borders. (...) Just look what happened in Serbia half a year ago¹⁶³ (referring to footage published by *The Guardians* showing a group of men stripped down to their underwear in the process of being pushed back between Serbia-North Macedonia borders).¹⁶⁴

The limitations of the Western Balkans in addressing large-scale migration highlights the need for a more comprehensive and cooperative approach between the EU and these transit countries.¹⁶⁵ While the EU's assistance helped strengthen border controls and establish reception infrastructures, it often did so in a manner that reinforced the securitised management of migration, rather than addressing the underlying humanitarian needs of people on the move. This dynamic further complicated the already fragile socio-political context of the region, where tensions over migration policy frequently intersected with internal governance challenges and regional instability.

Considering these developments, it is evident that the Western Balkans have become not only a transit zone but also a testing ground for the EU's evolving migration and border management policies. The securitisation of the Balkan Route reflects broader trends within EU migration policy, where the emphasis on border control and deterrence often takes precedence over the protection of migrant rights, even in non-EU member states like Bosnia

¹⁶³ Ministry official (X1), interview with author (online 13 September 2024).

¹⁶⁴ Katy Fallon and Lorenzo Tondo, 'Videos Show Migrants Stripped of Clothing in Freezing Temperatures at Serbian Border' *The Guardian* (22 February 2024) Global Development.

¹⁶⁵ 'Balkan Route'.

and Herzegovina. The region's experience during the humanitarian crisis raises critical questions about the sustainability of externalizing migration management and its long-term impact on the Western Balkans and their relations with the EU.

3.2.1 The Europeanisation of migration governance

The Europeanisation of migration management in the Western Balkans represents not just a technical process but a reconfiguration of borders and governance through the adoption of EU norms. Since the 2015-2016 refugee crisis, the Western Balkans have increasingly aligned their migration policies with EU standards, reflecting a broader process of Europeanisation. This process involves not only harmonising asylum policies and border management but also embedding these practices into the political and cultural “imaginaries” associated with EU governance. Europeanisation here is understood as more than the simple transfer of policies; it is about creating a shared understanding of borders, security, and governance that integrates non-EU states into the EU's border regime.¹⁶⁶ As ministry official (X2) replied to the authors' question regarding their understanding of the Europeanisation of border and migration policies across the countries of the Western Balkans: ‘I really don't know or completely understand what the EU wants us to do. They (the EU) believe they can control whole countries [referring to the non-EU countries of WB] by controlling their borders (...) and I believe that is impossible’.¹⁶⁷

Of course, one of the key players driving this reconfiguration is the European Border and Coast Guard Agency (Frontex), which has expanded its presence in the region.¹⁶⁸ Frontex's activities - providing personnel, technical assistance, and training - illustrate how Europeanisation is not only about the top-down imposition of EU norms but also involves a dynamic process of “bordering,” where local practices and EU governance intersect. By engaging

¹⁶⁶ Hans-Joachim Bürkner, ‘Imaginaries: Post-Structuralist Readings of Bordering and Europeanisation’ nd

¹⁶⁷ Ministry official (X2), interview with author (online, 14 September 2024) [Appendix 1].

¹⁶⁸ Hameršak et al, ‘The Forging of the Balkan Route: Contextualizing the Border Regime in the EU Periphery’ (2020) *movements: Journal for Critical Migration and Border Regime Studies* 12–15.

Western Balkan countries in managing migration, the EU effectively extends its external borders, creating a “buffer zone” where EU security priorities dominate creating several times contradictions with national legislations.

Moreover, this Europeanisation process has included the signing of readmission agreements and the enhancement of national migration laws to reflect EU principles, such as those encapsulated in the Dublin System, which governs asylum procedures.¹⁶⁹ These legal frameworks are embedded within broader political and public discourses on security and migration, reinforcing specific “imaginaries” of Europe - and mainly Schengen - as a secure, regulated space. Western Balkan countries, therefore, do not just adopt EU migration policies - they become part of a wider EU project of securitisation and border control, acting as key intermediaries in maintaining the EU’s external border.¹⁷⁰

Thus, for the Western Balkans, Europeanisation is not solely about technical alignment with EU migration standards; it is about participating in a broader political and security framework. As they adopt these practices, they are increasingly integrated into the EU’s external border regime, illustrating how borders are socially and politically re-imagined in the context of Europeanisation.

3.2.2. “Rescue” the Schengen Area

The Schengen Area, guaranteeing free movement across much of the EU, faced existential threats during the migration crisis, particularly through the uncontrolled flow of migrants via the Balkan Route. The sudden influx of people led several EU MS to temporarily reintroduce border controls, undermining the core principles of the Schengen Zone. According to European Commission guidelines, these unilateral actions were permitted under Article 25 of the Schengen Borders Code, allowing MS to implement

¹⁶⁹ Marta Stojić-Mitrović et al, *The Dark Sides of Europeanisation: Serbia, Bosnia and Herzegovina and the European Border Regime* (Rosa Luxemburg Stiftung Southeast Europe 2020) 22 <https://rosalux.rs/wp-content/uploads/2022/04/169_the-dark-side-of-europeanisation- vladan_jeremic_and_wenke_christoph_ rls_and_ickz_2020.pdf> accessed 7 September 2024.

¹⁷⁰ *ibid* 17.

internal border controls for up to two months when immediate action was necessary.¹⁷¹ This measure was further extended as the crisis persisted, with states invoking Articles 23 and 24 to continue these controls, creating a ripple effect across the region.¹⁷²

In efforts to “rescue” the Schengen Zone, the EU pursued several controversial strategies, most notably the EU-Turkey deal in 2016. This agreement aimed to significantly reduce the flow of migrants from Turkey to Greece by enforcing stricter border controls and facilitating the return of new irregular migrants arriving in Greece back to Turkey.¹⁷³ Although this deal reduced migrant numbers in the short term, it sparked ethical concerns, particularly regarding the principle of non-refoulement and the designation of Turkey as a “safe third country,” which remains legally contested.¹⁷⁴ Eventually, migrant flows towards the Old Continent increased once again, because as documented above, migration flows are much like water.

In tandem with the EU-Turkey deal’s notion that EU’s external borders are shut, MS such as Hungary, Slovenia, and others erected fences along their borders, further complicating the free movement in the Schengen Area. Hungary, for example, constructed a razor-wire fence along its borders with Croatia and Serbia, signalling a growing trend towards the militarisation and securitisation of EU borders¹⁷⁵. These border fortifications resulted in migrants seeking alternative, often more dangerous, routes through the Western Balkans.¹⁷⁶

The **Mini Schengen Initiative** (an economic integration initiative proposed by Serbia and Albania) plays a significant role in the political geography of the Western Balkans. The initiative, while aimed at enhancing economic cooperation between Balkan

¹⁷¹ Sotiris Serbos and Zoran Ilievski, *Balkan Human Corridor: Essays on the Refugee and Migrant Crisis from Scholars and Opinion Leaders in Southeast Europe* (Institute for the Study of Human Rights (ISHR), Columbia University 2016) 150 <https://navarinonetwork.org/wp-content/uploads/2019/09/Balkan_Human_Corridor_e-book.pdf> accessed 30 May 2024.

¹⁷² Hameršak et al, “The Forging of the Balkan Route Contextualizing the Border Regime in the EU Periphery” 13.

¹⁷³ Serbos and Ilievski, *Balkan Human Corridor: Essays on the Refugee and Migrant Crisis from Scholars and Opinion Leaders in Southeast Europe* 152.

¹⁷⁴ *ibid* 153

¹⁷⁵ Vuk Tesija, ‘Slovenia Tightens Control of Border with Croatia Against Migrant Influx’ *Balkan Insight* (28 September 2023) <<https://balkaninsight.com/2023/09/28/slovenia-tightens-control-of-border-with-croatia-against-migrant-influx/>> accessed 5 September 2024.

¹⁷⁶ Serbos and Ilievski, *Balkan Human Corridor: Essays on the Refugee and Migrant Crisis from Scholars and Opinion Leaders in Southeast Europe* 158.

countries, has also transformed the region into a “waiting room” for EU membership, effectively making it a buffer zone.¹⁷⁷ This initiative, supported by the EU, reconfirms once again how Balkan countries are increasingly integrated into the EU’s external migration strategy, acting as a buffer against further migration into the core EU states.¹⁷⁸ It also affirms the relationship between border policies and dynamics of neoliberal globalisation which treats borders as spaces for open trade while restricting the movement of labourers, prioritising capital mobility over workers.¹⁷⁹ This reflects global inequalities, where the privileged have more migration opportunities, while those most in need remain constrained.

While these actions significantly curbed the number of irregular crossings, they also led to widespread human rights violations, including pushbacks and the inhumane treatment of migrants at various border points.¹⁸⁰ In many cases, the security measures implemented by Western Balkan countries under pressure from the EU raised concerns about the region becoming a de facto buffer zone, with human rights often sidelined in favour of border control.¹⁸¹

The long-term rescue of the Schengen Area thus came at a high cost, as the balance between security and humanitarian concerns shifted significantly. The securitisation of borders has left a lasting impact on the EU’s migration policies, leading to ongoing discussions about the ethical implications of such actions and the future of the Schengen Zone.¹⁸²

¹⁷⁷ Zuhail Karakoç Dora and Jurica Botić, ‘The Mini Schengen Initiative in the Western Balkans as a New Buffer Zone’ (2022) 77(2) Ankara Üniversitesi SBF Dergisi 291.

¹⁷⁸ *ibid* 299

¹⁷⁹ Dueck-Read, ‘Transnational Activism’ 21–22.

¹⁸⁰ Hameršak et al, ‘The Forging of the Balkan Route Contextualizing the Border Regime in the EU Periphery’ 16.

¹⁸¹ Serbos and Ilievski, *Balkan Human Corridor: Essays on the Refugee and Migrant Crisis from Scholars and Opinion Leaders in Southeast Europe* 160.

¹⁸² *ibid* 162

3.3. The impact of the New Pact on Migration and Asylum on the region

The EU's New Pact on Migration and Asylum, introduced in 2020 and adopted by the European Parliament in April 2024, represents a significant shift in the Union's approach to migration.¹⁸³ The pact aims to balance responsibility and solidarity among EU MS while enhancing cooperation with neighbouring countries, including the Western Balkans.¹⁸⁴ For the Western Balkans, the pact brings both opportunities and challenges. On the one hand, it promises more support for strengthening asylum systems and border controls. On the other hand, it places greater pressure on these countries to act as a buffer zone, preventing migrants from entering EU territory.¹⁸⁵

The New Pact includes provisions for closer cooperation between the EU and third countries, particularly in terms of readmission agreements and external border management. For countries like Bosnia and Herzegovina and Serbia, this means more financial and technical support from the EU, but it also raises concerns about the increasing externalisation of the EU's borders, where migration control is outsourced to non-EU states.¹⁸⁶ This externalisation has been criticised for creating a "fortress Europe" mentality, where migrants are kept in transit countries without adequate protection or access to asylum procedures.¹⁸⁷ According to Catherine Woodland, director of the European Council for Refugees and Exiles (ERCE):

The reforms of this New Pact create a legal regime that is more restrictive as it obliges MS at the EU's external borders to expedite border procedures for a large number of asylum applicants (...) countries of the Western Balkans may be the real targets (meaning that countries in the WB will probably have to take up the burden of management).¹⁸⁸

¹⁸³ European Commission, 'Pact on Migration and Asylum - European Commission' <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en> accessed 12 September 2024.

¹⁸⁴ Hameršak et al, 'The Forging of the Balkan Route Contextualizing the Border Regime in the EU Periphery' 21.

¹⁸⁵ *ibid* 23.

¹⁸⁶ *ibid* 29.

¹⁸⁷ Stojić-Mitrović et al, *The Dark Sides of Europeanisation. Serbia, Bosnia and Herzegovina and the European Border Regime*, 71–73.

¹⁸⁸ Siviero, 'EU Migration Reform "Bad News" for Refugees, and Western Balkans'.

Woodland’s critique emphasises the restrictive nature of the New Pact, which prioritizes expedited border procedures for asylum seekers at the EU’s external borders. This approach places significant pressure on Western Balkan countries, turning them into de facto holding areas for migrants and shifting the responsibility of migration management away from EU MS. With the Pact set to be fully implemented by June 2026, there is growing concern about the externalisation of EU border control, as well as the adequacy of protection and access to asylum procedures in these non-EU countries. Consequently, the Western Balkans may find themselves shouldering the bulk of the burden without sufficient safeguards, reinforcing the “fortress Europe” mentality.

3.3.1. Western Balkans as a single security space

The Western Balkans have been increasingly treated as a single security space by the EU, particularly in the context of migration management. As stated by ministry official (X2):

This approach is based on the recognition that the region’s stability and security are geographically linked to the EU’s own security. The region’s geographical proximity to EU borders and its role as a major transit route for migrants trying to enter the EU have placed it at the centre of the EU’s externalisation policies. The Western Balkans are seen as a crucial buffer zone, where migration must be managed before it reaches the EU. As a result, the EU has invested heavily in building the capacities of Western Balkan countries to manage migration flows and prevent irregular crossings (...) This has included strengthening border management, improving intelligence sharing, and providing technical assistance to national asylum systems.¹⁸⁹

The EU’s efforts include political and legal frameworks designed to align the Western Balkans’ migration policies with those of the EU. Agreements such as the EU-Western Balkans Action Plan on Migration reflect this coordinated approach, aiming to streamline asylum processes and combat irregular migration. However, these developments have led to the Western Balkans increasingly

serving as an extension of the EU’s external borders. Frontex, the European Border and Coast Guard Agency, has expanded its presence, particularly after the 2015-2016 migration crisis, supporting border surveillance, training, and return operations.¹⁹⁰

This shift has been both a challenge and an opportunity for the Western Balkans. It provides support from the EU but also means these countries are expected to act as gatekeepers for the Union, sometimes at the expense of their sovereignty.¹⁹¹ This “expense” happens in the backdrop of the candidate member’s ambitions to their full EU integration. The role of Frontex is crucial in this regard, turning the region into an integral part of the EU’s externalisation of border control.¹⁹² Countries like Serbia and Bosnia and Herzegovina have become key actors in managing migration flows into the Schengen Zone. This externalisation of border control has been criticised for creating a “Fortress Europe” mentality, where migrants are kept in transit countries without adequate protection or access to asylum procedures. Human rights organisations have documented abuses, including pushbacks and the detention of migrants in inhumane conditions.¹⁹³

3.3.2. Western Balkans as a big, externalized EU borderland

The externalisation of the EU’s migration policies has transformed the Western Balkans into a de facto huge external border for the Union long before the New Pact was adopted. This process, driven by the EU’s goal to prevent migrants from reaching its territory, involves outsourcing border control to third countries. As a result, countries like Bosnia and Herzegovina and Serbia are now primarily responsible for managing migrant flows, despite often lacking sufficient resources or infrastructure to handle these challenges effectively.¹⁹⁴

¹⁹⁰ Hameršak et al, ‘The Forging of the Balkan Route Contextualizing the Border Regime in the EU Periphery’ 19.

¹⁹¹ *ibid* 24.

¹⁹² Maribel Casas-Cortes, Sebastian Cobarrubias, and John Pickles, ‘“Good Neighbours Make Good Fences”: Seahorse Operations, Border Externalisation and Extra-Territoriality’ (2016) 23(3) *European Urban and Regional Studies* 231–51.

¹⁹³ ‘Violence Within Borders’ *BVMN* <<https://borderviolence.eu/databases/violence-within-borders/>> accessed 3 August 2024.

¹⁹⁴ Marta Stojić-Mitrović, ‘The Reception of Migrants in Serbia: Policies, Practices, and Concepts’ (2019) 4(1) *Journal of Human Rights and Social Work* 75 <<https://doi.org/10.1007/s41134-018-0077-0>>.

A significant recent development in this externalisation strategy is the creation of the Regional Return Mechanism, which was approved in February 2022. This mechanism aims to increase the deportation capacity of Western Balkan countries, with the support of EU entities, such as the International Organisation for Migration (IOM) and the International Centre for Migration Policy Development (ICMPD). The aim is to prevent the onward movement of migrants toward the EU's core by institutionalising returns to third countries.¹⁹⁵ Austria, under the leadership of then-Interior Minister Karl Nehammer, played a key role in promoting the plan, which was publicly acknowledged as early as September 2021.¹⁹⁶

The Joint Coordination Platform, established in 2020, plays a central role in managing these deportations. It has provided a political and strategic platform for migration control in the region, focusing on managing irregular migration and protecting the EU's external borders.¹⁹⁷ In January 2022, a Ministerial Return Conference further emphasised the importance of stepping up deportation cooperation. However, despite the political momentum, the mechanism's details, such as the Return Action Plan, remain opaque, leading to concerns about transparency and the potential for human rights violations.¹⁹⁸

The externalisation of border control has indeed raised serious human rights concerns. Reports of pushbacks, arbitrary detention, inadequate living conditions in migrant camps and deaths, have surfaced in recent years, highlighting the immense pressures placed on the Western Balkans because of EU migration policies. For example, Barbara Matejčić reports: 'Early in the cold morning of December 23, 2022, police found two bodies on the banks of the Sava, the river that separates Croatia from Bosnia and Herzegovina, the European Union from the rest of Europe?.'¹⁹⁹

¹⁹⁵ Chris Jones, Romain Lanneau, and Maccanico Yasha, *Access Denied: Secrecy and the Externalisation of EU Migration Control* (Heinrich Bthel Stiftung, Brussels Office - European Union) 26. <https://eu.boell.org/en/secrecy-externalisation-eu-migration> accessed 24 September 2024.

¹⁹⁶ *ibid* 26.

¹⁹⁷ *ibid* 26-27.

¹⁹⁸ *ibid* 27.

¹⁹⁹ Barbara Matejčić, 'Nomen Nescio: Dying En Route to Europe, Buried Without a Name' (8 December 2023) *Balkan Insight* (blog) <<https://balkaninsight.com/2023/12/08/nomen-nescio-dying-en-route-to-europe-buried-without-a-name/>> accessed 5 September 2024.

With the Bosnian activist Nihad Suljic adding: ‘(...) the river Drina did not kill migrants, but the EU border regime’.²⁰⁰ These concerns are further compounded by the introduction of new biometric databases and stricter Frontex controls, which raise significant issues related to the right to privacy and the protection of human dignity.²⁰¹

Despite EU funding and technical assistance—like the €355 million allocated to migration management in the Western Balkans—the burden of managing migration continues to fall disproportionately on these countries. The EU’s heavy emphasis on security, return, and border management underlines its securitisation agenda, which often overlooks the humanitarian aspects of migration. This has, in turn, exacerbated tensions between the EU and the Western Balkans, straining political relationships and leading to negative social impacts in the region.²⁰²

3.3.2.1 Albania and Italy deal

The Italy-Albania agreement, signed in November 2023 under the leadership of Italian Prime Minister Giorgia Meloni and Albanian Prime Minister Edi Rama, represents a significant expansion in the externalisation of migration control. This bilateral agreement allows Italy to establish and manage two detention centres for asylum seekers in Albania, specifically at Shëngjin and Gjadër, under Italian jurisdiction. The agreement is part of a broader trend within the EU to shift asylum processing and border control responsibilities to non-EU countries, thus reinforcing the “Fortress Europe” model.²⁰³

The agreement outlines that individuals intercepted by the Italian Coast Guard and Customs Police while attempting unauthorised sea crossings will be transported to these Albanian facilities. The reception centre near the port of Shëngjin will handle disembarkation and identification processes, with Frontex agents present to conduct biometric data collection and migrant

²⁰⁰ Barbara Matejčić, ‘Nomen Nescio: Dying En Route to Europe, Buried Without a Name’ (8 December 2023) Balkan Insight (blog) <<https://balkaninsight.com/2023/12/08/nomen-nescio-dying-en-route-to-europe-buried-without-a-name/>> accessed 5 September 2024.

²⁰¹ Jones, Lanneau, and Maccanico Yasha, *Access Denied*, 28.

²⁰² *ibid* 29-30.

²⁰³ Kristina Millona, ‘The Italy-Albania Agreement and the New Frontiers of Border Externalisation’, trans Nicoletta Alessio (16 May 2024) *Progetto Melting Pot Europa*. <www.meltingpot.org/en/2024/05/the-italy-albania-agreement-and-the-new-frontiers-of-border-externalisation/> accessed 26 September 2024.

identification. Those deemed not vulnerable in the initial assessment, as well as asylum seekers subject to accelerated border procedures, will be transferred to the Gjadër facility. Both centres will operate under strict security, with reports indicating the construction of high walls around the Shëngjin site to obscure activities inside.²⁰⁴

Concerns surrounding this agreement centre on the protection of migrants' rights. The Italian cooperative Medihospes, awarded the contract to manage these centres, has a controversial history, having been involved in cases of public fund abuse and mismanagement of migrant detention centres. The cooperative's involvement, along with the secrecy surrounding the construction of these facilities, raises questions about transparency and accountability.²⁰⁵

Human rights organisations, such as the Albanian Helsinki Committee, have voiced concerns regarding access to legal representation for asylum seekers. Detainees will only be able to communicate with legal counsel remotely, a practice that may hinder the effectiveness of their defence. According to Erida Skëndaj, head of the Albanian Helsinki Committee, this remote communication could lead to significant gaps in understanding asylum seekers' cases, further jeopardising their access to fair legal processes.²⁰⁶ Furthermore, the agreement remains vague on critical issues such as deportation procedures and the fate of rejected asylum seekers, raising concerns about potential violations of international human rights standards. For Italy, the deal provides a way to reduce migratory pressure on its borders by preventing irregular migrants from reaching Italian shores.²⁰⁷ This type of bilateral agreement is likely to become more common as the EU continues to externalise its migration policies, outsourcing border control to neighbouring countries like Albania

²⁰⁴ Kristina Millona, 'The Italy-Albania Agreement and the New Frontiers of Border Externalisation', trans Nicoletta Alessio (16 May 2024) Progetto Melting Pot Europa. <www.meltingpot.org/en/2024/05/the-italy-albania-agreement-and-the-new-frontiers-of-border-externalisation/> accessed 26 September 2024.

²⁰⁵ *ibid.*

²⁰⁶ *ibid.*

²⁰⁷ Giuseppe Campesi, 'The EU Pact on Migration and Asylum and the Dangerous Multiplication of "Anomalous Zones" for Migration Management' (ITA, 2021) 200.

It seems that externalisation is becoming a growing trend in EU countries for migration management; this model, where asylum seekers are held in third countries while their claims are processed, is now being eyed up by other EU MS, including Germany. Despite not being directly exposed to irregular asylum seekers through its external borders, Germany faces immense pressure as the country receiving the highest number of refugees from other MS. This influx has overwhelmed the Länder,²⁰⁸ responsible for managing refugees, and has fuelled the rise of far-right electoral popularity.²⁰⁹ Mainstream political parties are also hardening their positions on immigration as the reception system struggles to cope.²¹⁰

In light of these challenges, Germany's main opposition party, the CDU, has already announced that it intends to follow Italy's lead, proposing externalisation as a key solution.²¹¹ This would involve reaching agreements with non-EU countries, particularly southeastern nations that are candidates for EU accession, to hold asylum seekers during the processing of their claims. Should the claims be rejected, these individuals would be returned from those third countries. This strategy raises concerns regarding the EU's broader asylum policy and the potential impact on the accession processes of these countries, positioning them as external asylum-processing zones. The EU migration pact, when implemented, is likely to face significant political and legal challenges, compounded by the complexities of the international setting.

²⁰⁸ Name for (federal) states in two German-speaking countries.

²⁰⁹ González Enríquez, 'The EU Pact on Migration and Asylum'.

²¹⁰ Elsa Conesa and Philippe Jacqué, 'Germany's Toughening on Immigration Sparks Tense Debate in Europe' (15 September 2024) <www.lemonde.fr/en/international/article/2024/09/15/germany-s-toughening-on-immigration-sparks-tense-debate-in-europe_6726138_4.html> accessed 15 September 2024.

²¹¹ González Enríquez, 'The EU Pact on Migration and Asylum'.

4. The case of Bosnia and Herzegovina

In this final chapter, the complex dynamics surrounding Bosnia and Herzegovina (BiH) are explored through a case study within the broader context of EU border policies and migration management. The focus is on four key aspects, each providing a comprehensive understanding of the migration and border challenges faced by BiH today. The first part highlights BiH's dramatic transformation from being one of the largest producers of refugees in the Balkans to becoming a significant recipient of transit migrants. This shift underscores the evolving geopolitical and social landscape of the country as it navigates its place in the wider Balkan migration route. Next, the political framework governing migration and border management in BiH is examined, offering a critical view of how policies have developed, especially under external pressures from regional and EU partners.

Further analysis is dedicated to the impact of EU border and migration policies on BiH's migration regime, with particular attention to the re-bordering processes that have redefined how the country interacts with both its neighbouring states and the EU. Finally, a human rights perspective is adopted to evaluate the implications of migration management in BiH. This includes a focus on the violations and protections of human rights, providing a critical lens on the humanitarian impact of these policies on migrants and refugees. This chapter, therefore, presents a multi-faceted analysis of Bosnia and Herzegovina's migration context, highlighting its role as both a subject and an agent in the European migration landscape.

4.1 The migration profile of BiH

The profile of Bosnia and Herzegovina (BiH) as a country affected by migration has changed drastically in the past few decades. During the early 1990s, the dissolution of the former Socialist Federal Republic of Yugoslavia and the subsequent war led to BiH becoming one of the largest producers of refugees in the Balkans. The conflict displaced millions, both internally and externally, with over half of BiH's population forced to flee their homes. According to some estimates, 1.2 million Bosnians sought refuge abroad during the war, making BiH the country with the highest number of refugees per capita in Europe at the time.²¹² The political and social instability that characterized the post-war period further complicated the return of refugees and the reintegration of displaced persons, prolonging the displacement crisis. The 1995 Dayton Peace Agreement²¹³ provided a framework for returning refugees, but many Bosnian citizens settled permanently abroad, particularly in countries such as Germany and Austria.

In contrast to its historical role as a refugee-producing country, BiH has since altered into a predominately transition country for refugees and migrants, particularly during the 2015-2016 refugee crisis. With the escalation of conflicts in the Middle East, particularly in Syria, Afghanistan, and Iraq, a new wave of refugees sought to transit through the Western Balkans, with BiH emerging as an important stop along the route to Western Europe. This shift in the migration profile of BiH is reflective of broader regional dynamics, as post-Yugoslav countries, including Serbia, Croatia, and North Macedonia, transformed into transit zones for displaced populations moving towards more desirable destinations within the European Union.²¹⁴ Although many migrants did not

²¹² Khalid Koser and Richard Black, 'Limits to Harmonisation: The "Temporary Protection" of Refugees in the European Union' (2003) 37 *International Migration* 521-43.

²¹³ The Dayton Peace Agreement (DPA), formally signed in Paris on 14 December 1995, ended the Bosnian War and was negotiated at Wright-Patterson Air Force Base in Dayton, Ohio.

²¹⁴ Julija Sardelić, 'From Temporary Protection to Transit Migration: Responses to Refugee Crises Along the Western Balkan Route' (1 July 2017) SSRN Scholarly Paper, 10-19.

seek asylum in BiH itself, preferring to continue their journeys to countries like Germany and Austria, BiH faced significant challenges in managing this transient population. As ministry official (X1) shares:

When I talk with foreign people [*officers*] from international institutions, they always think that Bosnia accepted and handled more easily [*with more tolerance*] refugees because they are Muslims and most of us are too. The truth is that firstly we are a transit country and secondly, we too experienced this violent movement from our homes. So, we showed understanding to their situation.²¹⁵

The situation in BiH is further complicated by its geopolitical position and its external borders with EU MS such as Croatia but also Serbia, which have fortified their borders in response to the refugee flows. The presence of numerous border crossings, combined with BiH's own limited resources for processing asylum claims, has made it a hotspot for temporary migrant camps and border tensions. BiH's refugee management policies have been influenced by its reliance on international assistance and EU pressure to align its practices with European standards, particularly in the context of its aspirations for EU membership. This change in the profile of BiH as both a producer and partially receiver of refugees marks a significant transformation in its role within regional and international migration dynamics.²¹⁶

4.2 BiH policies on migration and borders

Bosnia and Herzegovina (BiH) holds a crucial position on the Western Balkan Route²¹⁷ towards the European Union (EU), making its policies on migration and borders a focal point in both national and international discourses. The country has faced significant challenges in handling migration, exacerbated by its unique semi-protectorate status established under the 1995 Dayton Peace Agreement. This status places BiH under the oversight of the international community, which exercises considerable influence over national governance, including migration and border

²¹⁵ Ministry official (X1), interview with author (online, 13 September 2024).

²¹⁶ Carrera and Stefan, *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union* 12–15.

²¹⁷ For Western Balkan Route see Chapter III.

security policies. The governance over migration and borders in BiH is complex, as it is shaped by external actors, particularly the EU and the International Organisation for Migration (IOM), which play a central role in migration governance across the country.²¹⁸

4.2.1 Political landscape and migration policies

BiH's migration policies have been shaped by the complex political landscape and its evolving role in managing migration flows. The Migration and Asylum Strategy 2021-2025, developed by the Ministry of Security, is the latest strategic policy document addressing migration and asylum challenges in BiH. It builds on earlier frameworks while incorporating more recent developments, including the migration-refugee crisis of 2018-2020, which highlighted gaps in BiH's capacity to manage large inflows of migrants and asylum seekers.²¹⁹

The strategy outlines several key objectives, including improving the overall migration and asylum management system, strengthening border controls, and supporting legal migrations. One of the most critical aspects of the strategy is its emphasis on regional cooperation, particularly with neighbouring countries like Serbia, Croatia, and Montenegro, to better manage cross-border movements. Furthermore, the strategy aims to ensure that BiH aligns its policies with European Union standards, reflecting the country's aspirations for EU membership.²²⁰

The institutionalisation of migration policies in BiH is primarily coordinated by the Ministry of Security, which oversees sectors for immigration, asylum, and the Service for Foreigners' Affairs. These entities work together with international actors like the IOM and the United Nations High Commissioner for Refugees (UNHCR) to manage migration flows, enhance border security, and provide shelter for migrants in Temporary Reception Centres

²¹⁸ Sanja Onešćuk-Tahirović (trans), 'Migration and Asylum Strategy 2021-2025' (Ministry of Security of Bosnia and Herzegovina, Sarajevo 2021) 4-7 <<http://www.msb.gov.ba/dokumenti/strateski/default.aspx?id=24251&langTag=en-US>> accessed 27 September 2024.

²¹⁹ Onešćuk-Tahirović, 'Migration and Asylum Strategy 2021-2025' 27.

²²⁰ *ibid* 15.

(TRCs).²²¹ However, despite substantial international support, the strategy acknowledges significant challenges in implementation, including insufficient resources, political instability, and a lack of effective coordination among different levels of government.²²²

The institutional framework for managing migration in BiH includes several key bodies, each responsible for different aspects of migration policy. The Ministry of Security plays a central role, working closely with the Border Police of BiH and the Service for Foreigners' Affairs (SFA) to ensure the effective control of state borders and oversee the reception and processing of migrants. Additionally, the Ministry of Human Rights and Refugees is involved in managing asylum claims and coordinating with international partners.²²³

One of the central elements of the strategy is to strengthen the institutional mechanisms responsible for border management and asylum processing. The Migration and Asylum Strategy 2021-2025 stresses the need for increased cooperation between national and international actors, emphasising the importance of coordinated responses to future migration crises.²²⁴ The strategy also includes provisions to improve infrastructure and capacity-building for border control agencies, with the aim of preventing irregular migration and enhancing the return of rejected asylum seekers.²²⁵

The policy direction outlined in the Migration and Asylum Strategy 2021-2025 correspond to a securitarian approach, prioritising state security and border management over humanitarian concerns. This shift is evident in the strategy's focus on strengthening border controls and reducing the number of irregular migrants entering the country.²²⁶ The strategy also calls for the closure of informal camps and the relocation of migrants to more centralised, state-managed facilities like the Lipa camp, which has been criticised for its remote location and inadequate conditions.²²⁷

²²¹ Gorana Mlinarević and Nidžara Ahmetašević, *People on the Move in BiH 2019–2021* (Heinrich-Böll-Stiftung – Offices Sarajevo and Thessaloniki, 2022) 46 <<https://ba.boell.org/en/2022/03/30/people-move-bih-2019-2021>> accessed 19 September 2024.

²²² Onešćuk-Tahirović, 'Migration and Asylum Strategy 2021-2025' 10.

²²³ *ibid.*

²²⁴ *ibid.*

²²⁵ *ibid.* 15-16.

²²⁶ *ibid.* 47.

²²⁷ Progetto Melting Pot Europa, 'Never Take a Game Too Far. Report from the Bosnian-Croatian Border' (26 August 2021) <www.meltingpot.org/en/2021/08/never-take-a-game-too-far-report-from-the-bosnian-croatian-border/> accessed 16 September 2024.

According to the People on the Move report, BiH's migration governance system has struggled with overcrowded reception centres, inadequate services, and growing tensions between migrants and local authorities. For instance, the Lipa camp has been a site of political contention and humanitarian concern, particularly following the 2020 fire that left hundreds of migrants without shelter. The reconstruction of Lipa, intended to house up to 1,500 migrants in containers, reflects a broader shift in BiH's policy, which increasingly views migration through a security lens, focusing on containment and deterrence.²²⁸

While the institutionalisation of migration policies in BiH has been supported by international organisations and theoretically aligned with EU standards²²⁹, it has also faced significant criticism. The securitisation of migration, as outlined in both the Migration and Asylum Strategy and the People on the Move report, has led to concerns about human rights violations and the inadequate treatment of migrants. The increased militarisation of border controls, coupled with frequent pushbacks at the Bosnian-Croatian border, has raised alarms among human rights organisations.²³⁰

Moreover, the progressive closure of informal camps and the centralisation of migrants in isolated reception centres like Lipa has been criticised for limiting freedom of movement and undermining the dignity of migrants.²³¹ According to the People on the Move report, many migrants have expressed dissatisfaction with the conditions in BiH, particularly the lack of access to essential

²²⁸ Gorana Mlinarević and Nidžara Ahmetašević, *People on the Move in BiH 2019–2021* (Heinrich-Böll-Stiftung – Offices Sarajevo and Thessaloniki, 2022) <<https://ba.boell.org/en/2022/03/30/people-move-bih-2019-2021>> accessed 19 September 2024

²²⁹ One of the most important keys for an EU accession of candidate members is to align their border policies with the *Acquis Communautaire*. For more, see: *European Neighborhood Policy and Enlargement Negotiations (DG NEAR)*

²³⁰ Progetto Melting Pot Europa, 'Never Take a Game Too Far. Report from the Bosnian-Croatian Border' (26 August 2021) <www.meltingpot.org/en/2021/08/never-take-a-game-too-far-report-from-the-bosnian-croatian-border/> accessed 16 September 2024.

²³¹ European Union, 'EU Statement – Transfer of Refugees and Migrants from Bira | Bosnia and Herzegovina' <<https://bih.iom.int/news/eu-statement-transfer-refugees-and-migrants-bira>> accessed 10 September 2024.

services like healthcare and legal aid. Despite efforts to improve the system, political instability and a lack of coordination between national and cantonal authorities have hindered the implementation of coherent migration policies.²³²

In conclusion, migration and asylum policies are shaped by its unique political context and the influence of international actors. While these policies aim to align BiH with European standards, they have also led to human rights concerns and a growing reliance on international intervention. The complex relationship between national and international actors continues to define BiH's approach to migration, raising important questions about sovereignty, accountability, and the future of migration management in the country.

4.2.2 International oversight and the role of the IOM

In 2018, migration and border security issues in BiH were placed under the direct control of the international community, led by the EU, which considered BiH incapable of managing these issues independently. This decision was driven by growing concerns over illegal migration flows and BiH's strategic position as a transit country on the Western Balkan route. The IOM was entrusted with the task of handling migration management, a role that it continues to play, receiving substantial funding from the EU and other donors to lead migration responses in the country.²³³ This intervention has probably made BiH a "migration policy laboratory" for the EU, where controversial policies—too difficult to implement within the EU itself—are tested and enforced as conditions for BiH's accession to the Union.

The IOM's management of migration issues, however, has been criticised for lacking transparency and accountability.²³⁴ Despite officially handing over control of facilities like the Lipa reception centre to BiH authorities, IOM employees continue to run day-to-day operations, raising concerns about the de facto

²³² Gorana Mlinarević and Nidžara Ahmetašević, *People on the Move in BiH 2019–2021* (Heinrich-Böll-Stiftung – Offices Sarajevo and Thessaloniki, 2022) <<https://ba.boell.org/en/2022/03/30/people-move-bih-2019-2021>> accessed 19 September 2024.

²³³ *ibid* 16–17.

²³⁴ *ibid* 14.

governance of migration in the country. Moreover, the IOM has faced allegations of poor living conditions and human rights violations in its reception centres, with migrants often subjected to overcrowded and unsafe environments.²³⁵

4.2.3 Border control and security policies

The border control policies in BiH have been heavily influenced by its geopolitical position and external pressures. As BiH shares borders with EU MS such as Croatia, the management of these borders has become a priority, particularly in light of increasing illegal migration. The country has focused on strengthening border security, particularly along its eastern and southeastern borders with Serbia and Montenegro, which are commonly used by migrants attempting to enter the EU. The strategy underlines that infrastructure limitations, a lack of personnel, and natural obstacles make controlling the “green borders”²³⁶ a significant challenge. As of 2021, only 25.30% of BiH’s border crossings met international standards for effective border control.²³⁷

Border control efforts in BiH have also been characterised by a heavy reliance on international assistance and cooperation with the EU. The EU’s New Pact on Migration and Asylum, which calls for stricter border management and enhanced cooperation with third countries, has further shaped BiH’s border policies. As a result, BiH has increasingly become a testing ground for EU border policies, with international actors taking the lead in implementing security measures at the borders. However, the militarisation²³⁸ of border control has sparked concerns about human rights violations, as migrants are often subjected to harsh treatment by border guards and law enforcement agencies.²³⁹

²³⁵ Stojić-Mitrović et al, *The Dark Sides of Europeanisation. Serbia, Bosnia and Herzegovina and the European Border Regime*, 18–21.

²³⁶ Or “green belt”.

²³⁷ Onešćuk-Tahirović, ‘Migration and Asylum Strategy 2021-2025’ 14–15.

²³⁸ See Chapter 2, Section 2.3.3.1 for a detailed discussion on *Militarisation of borders*.

²³⁹ Stojić-Mitrović et al, *The Dark Sides of Europeanisation. Serbia, Bosnia and Herzegovina and the European Border Regime*, 71–74.

4.3 The impact of EU migration policies on BiH

According to Ahmetasevic, the implementation of the New Pact on Migration and Asylum is expected to reinforce the proliferation of border barriers within the European Union, often referred to as the rise of “Fortress Europe.”²⁴⁰ This strategy emphasises securitisation, creating layers of physical and bureaucratic borders aimed at controlling migration flows. In the context of BiH, a country already grappling with migration challenges due to its geographical position on the Balkan Route, the pact will likely exacerbate the border regime dynamics in the Western Balkans.

The evolution of the Dublin System illustrates how the externalisation of border control has created a complex framework of responsibilities among EU MS, often shifting the burden onto neighbouring non-EU countries such as BiH. By reinforcing stricter border regimes, BiH may face increased pressure to function as a buffer zone, managing migrant inflows and externalising EU’s migration policies. As a result, the proliferation of border barriers could significantly affect the country’s humanitarian capacities and its broader relationship with EU migration policy.²⁴¹

4.3.1 Re-bordering processes

The re-bordering processes that have occurred in Europe because of the EU’s migration policies have had a direct impact on BiH. The Dublin system, which requires asylum seekers to register in the first EU country they enter, has effectively outsourced responsibility for migration management to countries on the EU’s periphery. This has led to the erection of border fences, increased militarisation, and heightened surveillance along EU borders, particularly in countries like Hungary, Slovenia, and Croatia, which neighbour BiH.²⁴²

²⁴⁰ Nidžara Ahmetašević, interview questions of author (29 September 2024).

²⁴¹ Desislava Todorova, ‘The Anatomy of the EU Pact on Migration and Asylum: Disconnecting from the Realities on the Ground and the Fundamental Human Rights – The Case of Bulgaria as an EU External Border’ (September 2024) *Center for Legal Aid – Voice in Bulgaria* (blog) 12 <<https://centerforlegalaid.com/wp-content/uploads/2024/09/The-Anatomy-of-the-EU-Pact-on-Migration-and-Asylum-D-Todorva-2024.pdf>> accessed 19 September 2024.

²⁴² Ashley Binetti Armstrong, ‘You Shall Not Pass! How the Dublin System Fueled Fortress Europe’ (2019) *SSRN Electronic Journal* 359-362.

As a result, BiH has found itself increasingly isolated, with migrants and refugees stranded within its borders due to the EU's restrictive policies resulting in (im)mobility.²⁴³ For example, the closure of the Croatian border and the construction of border walls in Hungary and Slovenia have forced migrants to remain in BiH for extended periods, unable to move forward or return home.²⁴⁴ Thus, the EU's externalisation policies, which encourage third countries to manage migration on the EU's behalf, have effectively turned BiH into a buffer zone, where migrants are trapped between the EU's fortified borders and their countries of origin.

Furthermore, the increased border securitisation in neighbouring countries has led to a rise in pushbacks and illegal returns, with Croatian authorities frequently denying migrants access to asylum and forcibly returning them to BiH.²⁴⁵ According to a report by Human Rights Watch, Croatian authorities consistently push back people on the move, including unaccompanied minors and families with young children, to Bosnia and Herzegovina (BiH), without evaluating their asylum claims or protection needs.²⁴⁶ These pushbacks violate international law, including the principle of non-refoulement, which prohibits returning individuals to a country where they may face harm. The impact of these policies on BiH has been profound, leading to overcrowded reception centres, inadequate access to basic services, and heightened tensions between local populations and migrant communities.

²⁴³ 'Forced Migration as a Fragmented Process: (Im)Mobility in Una-Sana Canton, Bosnia' (21 December 2022) *TRAFIG – Transnational Figurations of Displacement*. <<https://trafig.eu/blog/forced-migration-as-a-fragmented-process-im-mobility-in-una-sana-canton-bosnia>> accessed 7 September 2024.

²⁴⁴ David Brown, 'Storming the Fortress: The External Border Regime in an Enlarged Europe' in Ingham H, Ingham M eds, *EU Expansion to the East: Prospects and Problems* (Edward Elgar 2002) 25-32.

²⁴⁵ Azem Kurtic, Tommi Siviero, and Vuk Tesija, 'Bosnia Data Contradicts Croatian Claim about Migrant, Refugee "Readmissions"' (23 May 2023) *Balkan Insight* (blog) <<https://balkaninsight.com/2023/05/23/bosnia-data-contradicts-croatian-claim-about-migrant-refugee-readmissions/>> accessed 14 September 2024.

²⁴⁶ Balkan Route and Eastern Borders: Ongoing Violent Pushbacks from Croatia to Bosnia and Herzegovina, Pope Francis Urge Hungarians to Open Doors to Migrants, Latvia Criminalises Migrants Rights Defenders' *European Council on Refugees and Exiles (ECRE)* <<https://ecre.org/>> accessed 1 September 2024.

4.4.1 Violations of human rights

While human rights violations at the borders pre-existed the country's EU aspirations, it is well-documented that violations have occurred also because of the EU's migration policies. In BiH, migrants and refugees face harsh living conditions, limited access to basic services, and frequent instances of violence and abuse. The overcrowded reception centres, such as the Lipa camp, have been described as "inhospitable" and "unsafe," with migrants often subjected to inadequate shelter, food, and medical care.²⁴⁷ In some cases, migrants have been forcibly relocated to remote areas, such as minefields left over from the war, where they are exposed to extreme weather conditions and a lack of infrastructure.

The role of Croatian authorities in perpetrating pushbacks has been particularly concerning. Reports have documented instances of violent pushbacks, where migrants are beaten, robbed, and forced back into BiH without access to asylum procedures. These actions not only violate the principle of non-refoulement but also constitute a breach of the EU's own laws on the protection of refugees and asylum seekers.²⁴⁸ Furthermore, the lack of accountability for these abuses, coupled with the EU's reluctance to address the issue, has allowed these violations to continue unchecked.²⁴⁹

4.4.2 From securitisation to human rights: a call for change

Despite the significant challenges Bosnia and Herzegovina faces in managing migration, there remains a strong call to prioritise the protection of human rights for migrants and refugees. International bodies, civil society organisations, and human rights defenders emphasize the need for migration management policies to align with international human rights standards, such as those outlined in the Global Compact on Refugees and the Universal Declaration of Human Rights. However, the current approach, heavily influenced by the EU's externalisation of borders and focus

²⁴⁷ Gorana Mlinarević and Nidžara Ahmetašević, *People on the Move in BiH 2019–2021* (Heinrich-Böll-Stiftung – Offices Sarajevo and Thessaloniki, 2022) 10 <<https://ba.boell.org/en/2022/03/30/people-move-bih-2019-2021>> accessed 19 September 2024.

²⁴⁸ 'Joint Statement: The Future EU Must Uphold the Right to Asylum in Europe' *Amnesty International* (9 July 2024). <www.amnesty.org/en/latest/research/2024/07/joint-statement-the-future-eu-must-uphold-the-right-to-asylum-in-europe/> accessed 25 August 2024.

²⁴⁹ Julija Sardelić, 'From Temporary Protection to Transit Migration: Responses to Refugee Crises Along the Western Balkan Route' (1 July 2017) SSRN Scholarly Paper, 10–19.

on securitisation, has proven ineffective and harmful. It has exacerbated human rights violations, contributed to the proliferation of border barriers, and created a climate of fear and exclusion. During my conversation with the EU delegation official (X2), when I asked about the protection of the people on the move regarding the outsourcing of procedures from EU member-States to the Western Balkans due to securing the Schengen zone, his reply was “these are bedtime stories”. This reflected an underestimation of the gravity of the situation regarding the human rights of people on the move.

A human rights-based approach would ensure that migrants and refugees have access to asylum, protection, and essential services, regardless of their legal status. This would require a fundamental rethinking of the EU’s current policies, which have failed to address the root causes of migration and instead focused on deterring and containing migrants at the borders. As a worker from an international NGO in Tuzla noted: “This [violence]] is the official EU policy. They [the EU] can say whatever they want, that they protect human rights, non-refoulement, non-violence, and non-criminalisation, but saying is one thing, and doing exactly the opposite is another”.²⁵⁰

Efforts to protect migrant rights, particularly through advocacy and legal challenges to unlawful pushbacks and abuses, have gained traction, but these protections remain fragile in the face of increasing securitisation. A shift away from securitisation to a human rights-centred approach would require greater cooperation between the EU and transit countries like BiH. This would not only improve the protection of vulnerable individuals but also ensure that migration is managed in a way that respects international law.

In conclusion, transitioning from a securitisation-focused approach to one that prioritises human rights is both necessary and achievable. By focusing on the rights and dignity of people on the move, the EU and its partners can create a more humane and effective migration system, balancing security concerns with the imperative to protect the rights of individuals.

²⁵⁰ Marta Stojić-Mitrović et al, *The Dark Sides of Europeanisation. Serbia, Bosnia and Herzegovina and the European Border Regime*, 39-40.

Conclusion

In this research I tried to critically examine the European Union's border policies with the aim to understand firstly the logics behind the New Pact, and secondly, the ways its policies will impact the country of Bosnia and Herzegovina and the Western Balkans region. The study aimed to analyse how these policies intersect with human rights, securitisation, and migration governance. The findings revealed a complex interplay between these factors, raising significant concerns about the balance between security and human rights within the EU's external border regime.

One of the central research questions of this thesis focused on whether the New Pact's mechanisms for externalising migration management to non-EU countries like BiH serve to protect human rights or simply reinforce securitisation. The analysis demonstrated that, despite the New Pact's intention to streamline asylum processes and share the responsibility of managing migration more equitably, its policies largely contribute to a securitised approach to migration. By externalising border controls to countries on the EU's periphery, such as those in the Western Balkans, the EU effectively transforms these regions into buffer zones. This not only alleviates migration pressures on EU MS but also shifts the responsibility for upholding human rights to countries that often lack the necessary infrastructure or political will to manage migration in a rights-based manner. As demonstrated through the case study of BiH, the externalisation of borders leads to the marginalisation of migrants, exposing them to violence, inadequate living conditions, and arbitrary detentions.

A key takeaway from this research is that EU policies, particularly the externalisation of border controls, deepen the securitisation of migration in non-EU countries. This trend is reflected in the increasing presence of Frontex, and the militarisation

of border management in the WB. Although the EU aims to foster stability and secure its external borders, these policies often come at the expense of human rights. People on the move become trapped in a legal limbo, facing systemic human rights abuses with limited access to protection and justice. The findings reveal that, instead of promoting long-term solutions for managing migration, the current policies prioritise short-term security objectives, thereby exacerbating the vulnerabilities of people on the move.

Another significant research question addressed how the EU's border policies reshape the geopolitical landscape in the Western Balkans. The findings suggest that the region is increasingly treated as a security zone, with migration management taking precedence over integration and development policies. For BiH, this has meant navigating a challenging political landscape where domestic institutions are expected to align with EU standards without adequate support or capacity. The EU's reliance on third countries for migration control not only undermines local sovereignty but also strains the already fragile governance systems in the region. This raises important policy questions about the sustainability of such an approach and its implications for the future of EU-Western Balkans relations.

The primary policy lesson from this study is the urgent need for the EU to rethink its approach to externalising migration management. The New Pact, while offering technical reforms, fails to address the root causes of migration and instead reinforces a securitised paradigm that marginalises vulnerable populations. A more balanced approach that integrates human rights considerations into migration and border policies is essential for ensuring that non-EU countries like BiH can manage migration flows effectively without sacrificing the rights and dignity of those on the move. Additionally, direct cooperation with local non-governmental organisations (NGOs) and civil society, rather than relying on intermediaries like international organisations, could enhance the EU's ability to address human rights violations and improve conditions for migrants.

In conclusion, the research stresses that the EU's migration policies, particularly under the New Pact, face critical challenges in reconciling security and human rights. The lessons from BiH and the Western Balkans demonstrates that the externalisation of borders, without sufficient safeguards for human rights, risks

undermining both regional stability and the EU's commitment to upholding international protection standards. A reorientation of EU policies towards a more humane and sustainable migration framework is crucial for addressing these shortcomings. Unfortunately, the EU is quite far from understanding that it is not only compliance with non-refoulement it is also, The Right to Life.

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Appendix 1: Interview questions for ministry officials

01 — Human rights violations at borders, especially pushbacks from Croatia

With increasing reports of unlawful pushbacks from Croatia, an EU member state, how does the Ministry of *[removed Ministry's name for reasons of protecting the anonymity of the participants]* address these human rights violations? What measures are in place to ensure that the rights of migrants and people on the move are protected when crossing the BiH-Croatia border?

02 — Responsibility for people on the move

Despite the ministry's involvement in migration and human rights issues, in your opinion, why is it not the primary responsible body for managing people on the move in BiH, and it is the Ministry of Security instead?

03 — Collaboration with international organisations and NGOs

Does the ministry cooperate with International Organisations and NGOs? If yes, can you please state 2 International Organisations and 2 NGOs on the sector of protection of human rights. If not, why do you think the ministry does not collaborate with Int. Orgs/ NGOs?

04 — Impact of the New EU Pact on Migration and Human Rights

How does the ministry perceive the potential human rights implications of the New EU Pact on Migration and Asylum for BiH, especially considering that BiH is a non-EU country but directly affected by the policies of neighbouring EU states? What steps are being taken to prevent human rights violations as a result of these changes? If this thematic area does not fall under this ministry's responsibilities, do you believe this is correct, and if so, why?

05 — Challenges in ensuring human rights at borders

What are the key challenges that the ministry faces in ensuring that human rights are respected at BiH's borders, particularly for people on the move? How is the ministry addressing these challenges, especially in the context of increasing migration pressure and the use of pushbacks by neighbouring EU countries?

Appendix 2: Interview with EU delegation officials of BiH

01 — According to your knowledge as a [*the name of the work post has been omitted for privacy reasons*], which are the main human rights violations that asylum seekers are facing in the country or borders of BiH?

02 — How does the EU delegation collaborate with the government of BiH to address migration and asylum challenges, particularly regarding border management and the protection of fundamental human rights?

03 — Does the EU delegation work with local NGOs in BiH, and how are these partnerships contributing to the protection of migrant and refugee rights? If not collaborating, why is that so?

04 — Taking into consideration the geopolitical position of BiH, how will the implementation of the New Pact on Migration and Asylum, which is set to become effective from mid-2026, impact Bosnia as a non-EU country? Do you believe the pact will have a positive or negative effect on BiH's migration management?

05 — The New Pact allows for emergency measures that could lead to delays in asylum procedures, extended detentions, or border closures, which could result in people on the move becoming trapped in BiH and other non-EU countries who are bordering with the EU. What safeguards does the EU have in place to ensure that these emergency measures do not lead to human rights violations, and what monitoring mechanisms are in place to address potential abuses?

Appendix 3: Questions for activists who work in the humanitarian aid sector

01 — Role of activists and NGOs:

A — As an activist, what is your involvement in migration and human rights issues in BiH?

B — How do you see the role of NGOs in addressing these issues in BiH? Do you believe their role has changed in anticipation of the New Pact on Migration and Asylum?

02 — Collaboration between NGOs and institutions:

C — Are you aware of any collaborations between NGOs and state institutions in BiH regarding migration and asylum issues? If so, how effective are these partnerships?

03 — The role of the EU:

D — What role do you believe the EU is playing in shaping migration and border management policies in BiH and the Western Balkans?

04 — Border policies and human rights:

E — What are your thoughts on the current border management policies in BiH, especially regarding the treatment of migrants and asylum seekers?

F — Why do you believe it is the Ministry of Security and not the Ministry of Human Rights that is responsible for people on the move in BiH?

G — Have you observed any human rights violations at BiH borders, such as pushbacks or other forms of mistreatment? If yes, can you share any specific examples?

H – How do you think border policies could be improved to better protect the rights of people on the move in BiH?

05 – Impact of the New EU Pact:

I – Given that the New Pact is set to be applied to EU countries, what do you think will be its indirect impact on BiH and the Western Balkans?

J – Do you think the New Pact will encourage or discourage human rights protections for migrants in this region? What are the potential risks?

06 – Recommendations for improvement:

K – What changes or improvements do you believe are necessary to better address migration and asylum issues in BiH, particularly regarding human rights and border management?

L – How can the EU or international bodies play a more supportive role in ensuring that BiH upholds human rights standards for migrants and asylum seekers?

M – Any comments/ additions that you would like to share regarding any part of the research



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