

The Balkan Route of Illegal Migration and the Role of EU in Facing this Emergency: a Stimulus or a Brake for Enlargement?

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1. THE WESTERN BALKANS MIGRATION ROUTE AND ITS IMPACT ON THE EU

The refugee crisis which interested the Western Balkans' countries¹ since the end of 2014 until spring 2016 had as one of the most evident consequences the return of this sensitive European region back on the political agenda of EU governments and institutions after several years. This "revival" occurred when the Western Balkans seemed to be the periphery of Europe after the wars which unsettled the ex Yugoslavia in the Nineties and the struggle dedicated by the EU to better link this region to Europe and to foster a valuable and lasting recon-

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¹ Even if we will extensively use the wording Western Balkans in the course of this article, as it occurs in all major political documents and legal procedures of the EU related to this area of Europe, there is the need to underline that this definition has been coined in the Nineties of the past century by several EU officials as a sort of geopolitical neologism to indicate the former Yugoslav Republics plus Albania. It is a matter of fact that by a strict geographic point of view these words have no scientific basis. The institutions of the EU have defined the Western Balkans as the south-east European area that includes countries that are not members of the EU. The Western Balkans is a «neologism coined to describe the countries of ex-Yugoslavia (minus Slovenia) and Albania» (Pond 2006, 5). Thus, the region would include: Croatia (an EU member since 1 July 2013), Serbia, Bosnia and Herzegovina, Montenegro, Kosovo, former Yugoslav Republic of Macedonia and Albania.

struction and peace in these countries. The political interest represented by the migration issue underlined once more the fundamental strategic importance of this geographic area for the EU's stability and security, especially in the light of the still missing common asylum and migration policy declared in the Treaty of Lisbon including the big difficulties faced by the EU in taking out from the intergovernmental ground this aspect of the EU integration (Benedetti 2010; O'Nions 2014). The need to face the emergency represented by over 800,000 irregular crossings of migrants on the Western Balkan route in 2015² was a clear sign that EU institutions and member States had to review their legal and political approach in the area adopting new legal measures and strategies to preserve the European perspective and the integration process of these countries and to tackle in an appropriate way the refugees' crisis in the light of and respecting EU's basic principles and not sacrificing them on the altar of political stability.

As for the above we believe that it is important to briefly focus our attention on the migration policy as a whole first. The point is that the migration issue within the EU is more and more linked to global processes and tendencies. The starting paradox is that Europe needs migrants due to its actual labor market and demographic trends³, but European societies are still mainly unprepared to accept such flows of migrants, both on a cultural and legal grounds (Cherubini 2015).

Currently the international migrations flows are interesting Europe as a whole more than any other part of the world and are considered a severe challenge to the process of political integration of the EU member States (Cherubini 2015, 65). The evolution of a truly common EU migration and asylum policy is strictly linked to national policies in this sector, as it is clear that migration is a very sensitive issue both in electoral and social terms for European governments (Benedetti 2010, 175). The fact is that the approach of the EU member States to such a complex issue is very often largely inadequate and minimal in terms of resources and strategic vision. Each country is still mainly committed on bilateral approaches concerning the control of migration flows, while a real common policy in this field is still more a desire than a reality (Benedetti 2012). Besides this the different policies – restrictive or permissive – of each EU member State, due as said above to the electoral sensitivity of such an important and complicated issue, clashes with the need to pursue common approaches towards major transit and origin countries of migrants. The final result of such a confusion and inadequate approach is both the construction of a so called “fortress Europe” and the incapacity to elaborate constructive policies with third countries in this field. Moreover, the legislative tools enacted by the EU institutions are affected by this lack of clearness and determination, while the new provisions stated

² Accordingly to the data published by the European Border Agency Frontex it was just 43,000 in 2014. See http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q4_2015.pdf and <http://frontex.europa.eu/trends-and-routes/western-balkan-route>.

³ See http://ec.europa.eu/economy_finance/structural_reforms/ageing/demography/index_en.htm.

in the Chapter 2 of the Treaty of Lisbon (Hailbronner and Thym, 2016) seem to be in contradiction with precedent acts still in force as the Dublin Regulation, which main provisions (e.g. «the first country of entrance rules» which forces the country of first entrance of refugees to accept their asylum requests, causing a great imbalance in the geographical distribution of asylum seekers despite the principle of a shared burden enacted in art. 79 TFEU) should be reviewed and renegotiated as soon as possible (Grassi, Spertini, Parolari 2016). The future of a real common policy on migration is linked to the political will of each member country to share such a burden and to accept common responsibilities and opportunities given by migration processes. We are convinced that these general critics are self-evident also in the approach used by EU institutions and governments in facing the refugee crisis in the Western Balkans in spring 2016.

Once the Balkan route has been definitively closed on 8 March 2016 after the decision of the Austrian government to drastically limit the number of migrants entering its territory, the overall number of entries dropped to almost zero in the following months. Even if the refugee crisis was not solved at all: thousands of hundreds of refugees and migrants were and sometimes are still waiting to enter the EU from Turkey and Macedonia and many others are looking for alternative routes to reach EU (e.g. Libya). It is interesting to note that Austria's government decision to close the borders has been taken in agreement with the governments of the other countries located along the transit route.

The most evident and dramatic result of this approach was the sealing of Macedonia's border with Greece. Since March until end of July the UNHCR has not registered any arrival of refugees to Macedonia, Croatia, or Slovenia, and only a few hundred to Serbia via Bulgaria⁴. Another important step in the "new approach" of the EU towards the refugee crisis is represented by the entering in force on 20 March 2016 of the agreement between EU and Turkey⁵, strongly sponsored by the German government, which shifted the burden of the crisis from the Greek border to the Turkish one with obvious political consequences on the side of Erdogan's government policy towards the EU, moreover if we consider the failed coup d'état on 15 July 2016 and the suspension of most of the basic human rights in the country including the violation of most of the basic principles which should guide the enlargement process of EU to any third country. Since then the Turkish government had the obvious possibility to "blackmail" EU countries and institutions using the refugees leverage and threatening to unleash the borders if their requests would not have been considered by European elites. Anyhow it is a matter of fact that most of European countries (with the significant exception of Germany) and, what is most worrying, also EU institutions closed both eyes on the systematic violation of human rights committed

⁴ See the UNHCR official website for more detailed information, at <http://www.unhcr.org/registration.html>.

⁵ EU-Turkey Statement, 18 March 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

by the Turkish authorities in the process of reaction and punishment of the alleged responsible for the failed coup. In any case most of the critics moved to this joint statement have been pushed on the background as the EU has been able to present to the public that this agreement would have represent durable halt to the inflow of migrants via the Aegean Sea and this was the first political priority for EU countries, pushing on the background once more the Western Balkans' problems and also the respect of human rights and international conventions on refugees actually in force, systematically violated by Turkey and several EU countries as Hungary. Some commentators highlighted how the EU sacrificed its principles and guiding rules to the altar of stability and control of borders (Kerem 2016, 3).

Another aspect which cannot be disregarded in this analysis is the fact that the migrant crisis in Western Balkan has to be viewed also through the broader perspective of the EU's enlargement policy to these countries. The 2015-2016 refugee crisis showed that EU did little to develop more strategic thinking on how to lastingly stabilize the countries of the region, ensure their sustainable democratic transformation and assist their economic development as a fundamental basis to tackle the migration from this area to the EU too. Thus this analysis focuses over the two aspects of the migration crisis in the Balkans, the internal one (i.e. migrants escaping from Western Balkan countries to EU ones to solve their economic situation) and the external one (i.e. mainly refugees from Syria and Afghanistan escaping from wars and persecutions) arguing that in both cases the EU's response has been mostly dedicated on short term approach to face the emergency, rather than on developing more long-term solutions. The feeling that fundamental European values have been horse-traded for geopolitical interests and stability seems to be more and more a reality in this case. As a result EU's credibility as a normative power has been strongly affected and weakened, short term approaches are not dealing at all with the analysis and the resolving of the underlying causes of the migrant crisis (Stivatchis 2016, 45).

2. THE EXTERNAL DIMENSION OF THE REFUGEE CRISIS: THE WESTERN BALKANS AS A TRANSIT ROUTE

As stated above the snap explosion of the refugee crisis and the significant rise in the overall number of migrants trying to enter into the EU via the Aegean Sea brought the Western Balkan region back on the table of European politics after many years. We believe that at this stage of our analysis it could be useful to give some more precise numbers to depict the situation. It is a matter of fact that the Eurostat office reported a total of 1,255,000 first-time asylum applications over the course of 2015 in the 28 EU member States⁶. During the same period

⁶ See http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics for more details.

the UNHCR registered 856,000 arrivals by sea to Greece, almost four times more than the 219,000 arrivals registered in 2014⁷. The Balkan route became more and more popular in 2015 putting the European politics in front of the evidence that this often disregarded and forgotten region is located in the very heart of Europe. One of the main paradoxes of this crisis has been the fact that hundreds of thousands of refugees crossed an EU and Schengen country as Greece is in order to go through two non-EU countries – Macedonia and Serbia – to eventually reach Germany, Sweden or UK. The main result of this situation has been the complete failure of the Dublin system and of related regulations (Grassi, Spertini, Parolari 2016; Hailbronner and Thym 2016).

Due to both the extremely high number of refugees and the hard economic crisis faced by the country, it was soon clear that Greece was unable to manage such a massive inflow of refugees. But the worst result of this incapability has been the severe problems faced by EU in trying to relocate them in the name of the “shared burden” principle which should govern the common asylum policy of the EU accordingly to Arts 67(2) and 78 of the Treaty on the Functioning of the European Union, stopped at the stake in front of the national selfishness and the political and even electoral interests which prevailed in many member countries instead of the flagship principles of solidarity and mutual assistance. Besides the manifest weakness and incapability of the EU in facing the emergency with a clear and commonly accepted strategy, the idea to build walls and borders prevailed on other humanitarian considerations, in other words security issues became more important than the respect and defense of human rights of these refugees and migrants. This situation led the EU becoming a «net exporter of instability to the Balkan region» (de Borja Lasheras, Tcherneva, Wesslau 2016, 7).

This instability became evident when the initial transit route passing through Macedonia, Serbia and then Hungary (used since 2013) has been hermetically closed due to the decision taken by Austrian government to close its borders in March 2015 and the consequent decision taken by Budapest to erect a barrier on its border with Serbia (and later Croatia). The decision was taken by Orban’s government even if the European Commission initially criticized this option and despite the punctual accusations and reports on regular violation of basic human rights and refugees’ rights by Hungarian border police made by the most prominent NGOs dealing with the protection of human rights in Europe and worldwide (Amnesty International 2015). The result was that this fence diverted the migrants to Croatia and Slovenia as of mid-September 2015 with huge human tides under the sun and the mud of the Balkans. This situation clearly caused a worsening in bilateral relations between Belgrade and Budapest first, and then between Belgrade and Zagreb. Croatia accused Serbia of scarce cooperation and of bucking the problem without any attention to the human dimension of this tragedy when about 44,000 entered on Croatian soil in a single week. Nevertheless

⁷ UNHCR, *Refugees/Migrants Emergency Response: Mediterranean*, Geneva, 2016. The full document is available at <http://data.unhcr.org/mediterranean/country.php?id=83>.

German pressure thankfully allowed for a swift resolution of this issue, as it has been agreed the transit of up to 9,000 migrants daily without major problems even by a humanitarian point of view.

It is important to stress that during this stage of the refugee crisis which interested the Western Balkans the situation could get even worse without the fundamental involvement of civil society organisations operating in the region. In fact they have been able and quick to fill the gap left by the almost total absence of State support to the mass of refugees pushing at the borders of Serbia first and Hungary then, this was especially evident in Macedonia and in Serbia where many national and international non-governmental organisations provided for shelter, food, clothes and even legal services and advice to migrants transiting through Macedonia, Serbia and Croatia towards the Schengen area. As of mid-November 2015 also Serbia, Croatia and Macedonia started to put restrictive measures to the entrance of refugees from Syria, Iraq and Afghanistan on their territory as the perspective of accepting more permanent and maybe also reception camps and facilities was in conflict with their strictly emergency related approach, in other words the political elites of these countries started fearing that the short duration of the presence of these migrants on their territory was not foreseen as temporary anymore. The welcome and the treatment reserved to these migrants became more and more less efficient and even disrespectful of the fundamental rights of these migrants as in the case of Macedonia where thousands of migrants have been beaten, pushed back by police and welcomed with tear gas launches at the borders with Greece (Amnesty International 2015, 36).

Going back to the thesis of our analysis it is self evident that the EU recipe used to face this external dimension of the refugee crisis in the Western Balkans has mainly been focused on containment rather than on a long term perspective and on a comprehensive strategy how to tackle the problem at its origins. In fact, if we analyse the 17-point plan agreed during a special summit held in Vienna on 23-24 October 2015 between eight member States (Croatia, Slovenia, Greece, Hungary, Germany, Austria, Bulgaria and Romania – significantly Italy has not been invited) several Balkan States (Albania, Serbia and Macedonia) and the European Commission it is clear that the decisions taken were aiming to set out a series of concrete measures including an improved exchange of information, the adequate registration of migrants and the creation of temporary reception capacities for 100,000 migrants along the Balkans route, including Greece⁸. But unfortunately the results of this agreement has been the opposite. In fact very little has been done to tackle the mostly dysfunctional asylum systems in the Balkan countries, an issue that will likely turn into a problem once higher numbers of refugees will be forced to seek asylum there. Moreover, even if the EU planned to deploy additional financial and technical means to coordinate the response to the crisis with the Western Balkan countries, such as the Western Balkans Risk

⁸ For the complete list of taken decisions, see http://europa.eu/rapid/press-release_IP-15-5904_en.htm.

Analysis Network, the concluded working arrangements of Frontex⁹ with the countries in the region and the financial support of the European Commission, very little has been done so far if we look at the concrete results on the terrain and most of the Balkan countries involved have been left alone in facing the emergency, which has been solved only with the implementation bilateral agreement on readmission of the EC with Turkey (Benedetti 2008)¹⁰ and the new agreement between EU and Turkey signed in June 2016¹¹. The measures taken are not taking into account and cannot compensate for the impossibility to deploy Frontex in the region, as well as to make use of other existing security arrangements reserved for EU member states. As stated by several scholars, «the absurdity of the Western Balkans not being part of the EU» (Bieber 2015) has clearly demonstrated that the refugee crisis underlined once more the urgency of a serious step forward in the EU enlargement to Western Balkans. The enlargement of the EU to the Western Balkans can be considered as the only serious approach to ensure a lasting peace and stability in the region. Walls building and isolation of the Western Balkans on the geopolitical map will only brought additional conflicts and cleavages (Cremona 2003; Bieber 2015).

3. THE INTERNAL DIMENSION OF THE REFUGEE CRISIS: THE WESTERN BALKANS AS AN ORIGIN REGION

The external dimension of the refugee crisis in the Western Balkans put many challenges to the EU as for the first time in their recent history these countries became also an important transit route for migrants. We used the word “also” as it is well known that this region of Europe has been since the end of the wars which brought to the dismemberment of Yugoslavia in the Nineties of the past century a significant area of origins of refugees and migrants looking for a new life in Western Europe. This internal dimension of the migrant crisis in the region followed mild increases in mostly unwarranted asylum application from the region after the progressive introduction of visa liberalization to these countries since 2009. These numbers dramatically increased in 2015 and 2016 as many Western Balkans citizens saw the refugee crisis as an opportunity to present an asylum request as well. Not all countries have been interested by this phenomenon in the same manner, as the most striking numbers came mostly

⁹ See more at <http://frontex.europa.eu/partners/third-countries/>.

¹⁰ For a more detailed description of this agreement and its implementation in the last 6 months, see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementationpackage/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf.

¹¹ See <http://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal>.

from Albania and Kosovo¹². As for Albania from 16,000 Albanian asylum-seekers registered in 2014, the numbers raised up to almost 66,000 in 2015. On the other side the applications from Kosovo increased enormously from close to 17,000 in 2013, to 34,000 in 2014 and more than 66,000 in 2015. These numbers are striking both if we consider that Kosovo has less than 2,000,000 inhabitants and place the two countries among the top five countries of origin of asylum-seekers in the EU for 2015, just behind Syria, Afghanistan, and Iraq¹³.

Also in this case, the reaction by the EU and its member States has been rather inconsistent and not effective in the long period as the main concern has been to tackle the symptoms rather than the causes of this sudden increase. Initially the European Commission and some member States opted for a clear accusation of the Western Balkans countries for this situation. These countries in turn started profiling their citizens upon departure, impeding to certain groups of citizens (as the Roma) leaving towards Western Europe. However, «it was the gradual harmonisation of the list of safe countries and the resulting speed-up of the asylum decision process that led to a decline in applications coming from the region» (Wunsch 2016, 12). It is a matter of fact that recognition of the refugee status to Balkan citizens had already been an exception, in Germany in 2015 it was around 0.3% compared to 96% for Syrians, in Italy it was about 1.5% compared to 90% of Syrians¹⁴.

The fact that most of Balkan migrants were forced to return to their points of departure did not tackle at all the deep reasons beyond this exodus. On the first instance we can recall here the extremely difficult and poor socio-economic conditions which characterize the everyday life of citizens in the region, with very high rates of unemployment causing mainly economically motivated emigration (Henkel and Hoppe 2015). Another relevant aspect which is very often disregarded when an analysis of Balkan migration trends occurs is related with discrimination against Roma, in fact this group is one of the main groups of asylum applicants, which is largely ignored by regional governments (Ruggeri Laderchi and Savastano 2014, 51).

It must be highlighted that these migrants, who are coming from the Western Balkan countries and are leaving their homes mostly in search of a better and more stable life in EU, are very often characterized by an almost total lack of awareness of the rules governing asylum in Europe and are, even more often, convinced by false promises by profit-driven transport companies as well as by

¹² Kosovo is the only country in the region that has not yet been granted visa liberalisation for the Schengen area. This step was proposed in May 2016 by the European Commission, but remains to be endorsed by the Council.

¹³ Eurostat, *Countries of origin of (non-EU) asylum seekers in the EU-28 Member States*, available at http://ec.europa.eu/eurostat/statisticsexplained/index.php/File:Countries_of_origin_of_%28nonEU%29_asylum_seekers_in_the_EU28_Member_States,_2014_and_2015_%28thousands_of_first_time_applicants%29_YB16.png.

¹⁴ See http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report for all details.

the pull factors of free housing, schools, and decent health care. Also in this case these aspects should be seriously taken into account by both EU and Western Balkan governments as a worrying signal that something more concrete should be done to ensure this people a decent life in their origin country, at the end they are only looking for a better life and for basic “European standards” which could be granted in their countries of origin with a minimum effort, especially if we consider the fact that the former Yugoslav republics had in most of the cases standards which in 1989 were in full line with the EU ones (Ruggeri Laderchi and Savastano 2014, 36). The mass exodus of the local population, particularly the most marginalized as the Roma are, is a serious indicator of the widespread disillusion in the light of increasing poverty, growing long-term unemployment, and worrying inequality in «a region that still struggles to reach the GDP level of 1989, when Yugoslavia began to fall apart» (Relji 2015, 3). If we add also that most of Western Balkans citizens are more and more disillusioned with their political elites and governments in general as they declare to respect and to apply democratic principles and rule of law but in practice are keen to corruption and nepotism, it is even easier to understand why such a great number of people is willing to leave their countries of origin and seek for a better life in the EU States. Moreover, despite the official declaration made by the European Commission and member States that Western Balkans are priority to them, it seems more and more clear that both are applying in a pervasive way the stick and carrot strategy but with a growing evasive promise of EU membership in an indefinite future (Cremona 2003, 24).

4. THE ENLARGEMENT POLICY AS A TOOL TO SOLVE THE WESTERN BALKANS CUL-DE-SAC? SOME PROPOSALS

It is a matter of fact that the EU is currently living one of the most troubled moments in its history. The Brexit, economic crisis, terrorist threats and political instability in northern African countries and middle East are complicating its strategic views allowing more and more nationalist and populist movements to gain visibility and approval among less educated citizens across Europe. The response is very often inadequate and disregards some of the basic principles on which the EU and the idea of an unite Europe under the flags of rules of law and democracy has been conceived since its very origins almost 60 years ago. The striking attention to the economic stability dimension has its counterpart in the more and more astonishing laissez-faire and flexibility when the point is on the field of democracy and human rights protection in many associate and even member countries (Turkey, Hungary, Slovakia and Serbia are only some of the examples that can be made). The idea that the refugee crisis is a problem and not an opportunity and that the decision to build walls and barriers is somehow legitimate to protect European citizens has as its main consequence that the need for

stable partners allows the EU to close both eyes over the lowering of democratic standards in several candidate countries (Bieber 2015, 3). An interesting study drafted by Freedom House's Nations in Transit in 2016 shows that democracy in the Western Balkans has declined for six consecutive years, and is on average back at the levels of 2004¹⁵.

In the cases of Macedonia (Dimitrov et al. 2016) and Serbia (Cvijji 2016) it has been self-evident that the EU was ready to overshadow the growing violations of basic human rights of refugee seekers especially in Macedonia and the developing authoritarian tendencies showed by the political elites in both countries in the name of political stability. Significantly during his visit to Macedonia in January 2016, the current Commissioner for Enlargement Johannes Hahn said that «despite all the talk about new elections, we should not forget that there is a very serious migration crisis in Europe ... it is also about the European, Euro-Atlantic perspective, where I believe a strong, decisive government, which can take decisions, is important»¹⁶. Disregarding that the Prime Minister at that time, Nikola Gruevski, was indicted for a number of violations of human rights in the country and abroad, nepotism and widespread corruption at all levels of public administration in the country, with a huge popular movement against him and his policy. On a similar plan also the repression of media freedom in Serbia has not been tackled and condemned at all by the EU, the Serbian Prime Minister Vučić has been accused of systematically violating the rights of freedom of expression and the media freedom in general¹⁷. Moreover, it is significant to underline that the EU's unassertive position, in the context of the refugee crisis, allowed Vučić to claim that the way Serbia has dealt with the refugees «makes us more European than some member states» (Avramović and Jovanović 2015, 2) and the Macedonian President Ivanov to proudly affirm that Macedonia following the closure of its border in Autumn 2015 and the violence perpetrated by its police officers towards many asylum seekers and migrants «is defending Europe from itself by doing the dirty job»¹⁸.

The EU is making the big mistake to rely on corrupted and authoritarian leaders to contain the refugee crisis instead of using the strong political and economic leverage it still has in the Western Balkans – including also the tools of the EU enlargement policy – to seriously face both the internal and the external dimensions of the crisis in a concrete way. If in the next future the Balkan route will be

¹⁵ Available at <https://freedomhouse.org/report/nations-transit/nations-transit-2016>.

¹⁶ Video of the statement available at <https://youtu.be/JKLb56-P6rs>.

¹⁷ For more details, see the annual report of Freedom House, *Freedom of the Press 2016*, <https://freedomhouse.org/report/freedom-press/freedom-press-2016?gclid=CJTaaqVgs0CFZcy0wodWeoGCw>.

¹⁸ *Macedonia is defending Europe from itself*, The Telegraph. March 6, 2016, available at <http://www.telegraph.co.uk/news/worldnews/europe/macedonia/12185464/Macedonia-is-defending-Europe-from-itself.html>.

reactivated, very likely according to a number of concrete indicators¹⁹, EU will be able to tackle it only if the coordination mechanisms between EU and non EU members will function properly, with a specific focus and support on concrete registration and reception capabilities on the ground, investing resources and allowing Frontex to operate directly in these transit countries. As for the internal dimension, the emigration from the Western Balkans can be tackled and solved only if the EU concretely helps these countries to become decent places where to live – through a credible accession process, jobs-generating investments and overall economic modernization –, we are strongly convinced that only such an approach could grant a development and a lasting peace in the region, otherwise we to be acquainted with the matter of fact that the Western Balkans are still the “black hole” of Europe, the living representation of its worst nightmares and the powder keg of its recent and future history. Even if it could seem strange, also the recent EU-Turkey agreement could be used as a tool to better link the Balkans to Europe.

¹⁹ See <http://www.politico.eu/interactive/western-balkans-route-map-migration-refugees-crisis-europe-asylum/>.

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