# 3 The Expanding Significance of Borders for the European Migration Regime After 2015

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## Introduction

In 2015 nearly one million people on the move managed to cross the different layers of the EUropean border regime. The events culminating in Western Europe in the 'summer of migration' (Kasparek and Speer 2015) had, in fact, begun to surface already in the wake of the Arab Spring and the Syrian civil war in 2011. The result was mass arrivals in neighbouring countries like Turkey, Jordan, and Lebanon by 2013. Yet, while foreseeable and only shortly beforehand addressed through the European Agenda on Migration (European Commission 2015a; Hess and Kasparek 2017a), the migratory movements of 2015 were quickly constructed as a 'refugee' or 'migration crisis' by member state governments and the EU. The response of the EU and the respective national governments has been described as 'crisis' or 'emergency governance', ad hoc and spontaneous policy-making, often outside 'democratically approved processes' (Panizzon and Van Riemsdjik 2019: 1229. See, also, Fine and Thiollet 2020). Other scholars have emphasized how crisis frames have been repeatedly utilized in EU and European policy-making to steer policy developments (Fine and Thiollet 2020; Jeandesboz and Pallister-Wilkins 2014). The 'presentism' of the 'crisis' narratives since 2015 have thus obscured the utilization of crisis governance in the past—for example, to frame movements following the Arab Spring—as well as the 'crisis-prone' architecture of the European border regime itself (Hess and Kasparek 2017b). Framing the 2015 events as a 'crisis' further allowed for a 'politics of exception' (Fassin 2012. See also Fine and Thiollet 2020b; Jeandesboz and Pallister-Wilkins 2014) undermining access to protection and basic rights.

In this chapter, we explore shifts in the European border regime since 2015. Most measures taken since 2015 draw upon the existing legal and policy framework on border management. This framework had developed and solidified in previous decades along the two central logics widely described as 'securitization' and 'externalization'. Despite this, our research material

indicates some significant shifts. We draw on research conducted by the ten RESPOND teams on border and migration control policies in 11 EU and non-EU countries,[1] EU border management and migration control, and the European Border and Coast Guard Agency, commonly known as Frontex. These reports were based on legal and policy analysis, analysis of dominant narratives and interviews with informants from the policy domain, human rights organizations, and NGOs.

The research suggests certain evident changes in the governance of European borders since 2015. First, we observe a hardening of external border manifested through the expansion of border infrastructure such as walls and fences at the national level, but also the expansion of the mandate and capabilities of Frontex at the EU level, the adoption of the so-called 'hotspot' system containing migrants in Greece and Italy, as well as informal policy instruments such as the EU–Turkey statement. Reforms to the Common European Asylum System (CEAS) have so far been unsuccessful, and the future of the so-called 'New Pact on Migration and Asylum' announced by the EU Commission in 2020 is still highly uncertain (Heller and Kasparek 2020). Nevertheless, the reform of the mandate of Frontex—introducing the EU's first uniformed service of 10,000 border guards with executive powers—was quickly tabled and consensually agreed in 2019 (Karamanidou and Kasparek 2020b).

Secondly, internal borders have been reinforced by intensifying governance technologies such as detention, deportation, internal controls such as residence provisions, identity checks and employer checks, and the normalization of internal border controls. Thirdly, the hardening of the borders is accompanied by an overt 'spectacle' of border violence (de Genova 2015), including a systematic exercise of refusals of entry and pushbacks[2] as evidenced in multiple RESPOND country reports. All three dynamics enhance the 'logic of the border' as a central means of migration governance in the EU and increasingly colonizing the domain of asylum and protection.

Policy responses since the 'summer of migration' have been interpreted to a great extent by political science through the lens of Europeanization, focusing on the tensions between intergovernmental and supranational tendencies

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[1] Iraq, Turkey and Lebanon as transit and receiving countries, geographically followed by Greece and Italy as Southern European arrival countries, Hungary as a transit country, and Austria, Germany, Sweden, the UK, and Poland. The latter two countries were not at the centre of the refugee-migration movements in this period. Nevertheless, they passed several restrictive laws justified in terms of the 'crisis'.

[2] Pushbacks violate international refugee protection and human rights law such as the non-refoulment principle and the prohibition of collective expulsions enshrined in the European Convention for Human Rights and the EU Charter of Fundamental Rights.

within EU institutions and their implications for the EU governance of migration, and in particular undermining a Europeanized mode of governance. The RESPOND findings suggest a strong tendency towards renationalization and intensification of intergovernmental modes of governance, exemplified in new forms of unilateral control measures and forms of bilateral and trilateral cooperation. Nevertheless, we find that supranationalization tendencies are also present in the expansion of Frontex and its involvement in the Greek 'hotspots', as well as a transnational mode of governance involvement of international actors like the UNHCR or the International Organization for Migration (IOM), for example, in Greece or recently in Bosnia–Herzegovina.

However, rather than focusing on the supranationalism / intergovernmentalism dilemma, we draw on the concept of the European border regime and critical perspectives on 'crisis' governance to interrogate shifts in post-2015 governance. The RESPOND project findings, we argue, suggest that the 'logic of the border' has intensified and expanded at the EU and national levels. This logic has also seeped into the domains of asylum and reception governance, for example, through the expansion of asylum detention and the blurring of reception and border-control practices as in the Greek 'hotspots'. We further argue that this logic has been increasingly evident not just in the responses of the member states but also of European institutions, as evidenced in the proposals of the European Pact on Migration and Asylum (European Commission 2020a).

We first provide an overview of how EUropean responses to the 2015 movements have been conceptualized, focusing on the notion of the 'crisis' and critiques of its temporal and structural aspects, Europeanization-based approaches and critical migration and border studies. We then outline the fundamental shifts that the empirical research for the RESPOND project shows have emerged. Then, we explore the hardening of the external border, the parallel hardening of internal borders, and the occurrence of human rights violations within policies and practices of border management. Finally, we conclude with a discussion of the implications of the European border regime and expanding role of the border and bordering practices in EU asylum and migration policy.

## Conceptualizing the crisis response

Like other migratory movements towards Europe before them (such as those following the Arab Spring), the migrations of 2015 were quickly conceptualized as a 'crisis'. The national reports by the RESPOND teams show how a 'crisis narrative' became dominant in the national discourses (public and political) across many countries. On the one hand, the notion of 'crisis' was used to descriptively reflect the situation on the ground: the sheer number of

people meeting a non-sufficiently established reception infrastructure, but also moving across external as well as internal borders translated as yet another 'crisis of Schengen' (Ceccorulli 2019). At the same time, the crisis framing also reflected a perception of 'loss of state control' vis-à-vis migratory movements depicted as 'unprecedented' and endangering public order and societal peace (Hänsel et al. 2019). A further meaning of the 'crisis' concerned policy responses: perceptions that some member states were unable or unwilling to control the external birders according to EU policies and of an EU-level, collective inability to control migratory movements, resulting in unilateral renationalized responses departing from Europeanized modes of governance.

Such narratives have not only been present in national and European policy and political discourses but also *in migration scholarship*. Scholars have also conceptualized the 2015 migratory movement triggering 'crisis'—sometimes in inverted commas, sometimes not, sometimes qualified as a 'refugee' or 'migration' crisis—in European migration policy (Ceccorulli 2019; Fine and Thiollet 2020; Hampshire 2016; Rizcallah 2019). Hence, even though a critical approach to member state and EU narratives of crisis was often adopted, even researchers see 2015 as a significant temporal point for the governance of migration in the EU and its member states.

The interpretation of 2015 as a temporal 'crisis' has been challenged on several grounds. First, as we noted above, narratives of crisis are frequently adopted to frame migratory movements (such as the Arab Spring) as well as the effects of the European border regime, such as loss of lives in the Mediterranean (Fine and Thiollet 2020; Jeandesboz and Pallister-Wilkins 2014; Vaughn Williams 2013). Secondly, discourses of crisis call for new, exceptional responses and justify more securitized, restrictive and violent border policies. In this respect, it is not the actual events per se that drive change but how they are perceived and framed and acted upon by EU institutions and member states (Trauner and Ripoll Servent 2016).

Further, even when framed as a 'crisis' that demands 'new' policies, responses draw on 'pre-existing modes of governance and routines of control' (Jeandesboz and Pallister-Wilkins 2016: 318. See also Fine and Thiollet 2020) as we can observe since 2015. EU and member state responses since 2015 have to a great extent reproduced existing policies and discourses such as the reinforcement of external borders, the externalization of borders controls, the illegalization of migratory movements, and the curtailment of secondary movements. The combination of securitized policies and discourses with humanitarian narratives observed in many RESPOND country reports was also an established mode of governance before 2015.

From another perspective, responses to the 2015 events have been theorized as a 'crisis' of policy or governance, rooted in the existing architecture of EU migration governance. The EU border and asylum governance arrange-

ments can be conceptualized, as in the RESPOND project, as a multilevel governance system, involving complex arrangements at *multiple levels* (supranational, intergovernmental, national) and implicating *multiple actors* (national governments, EU institutions and agencies, and international organizations) (Panizzon and Van Riemsdjik 2019). These levels increasingly get fuzzy, and border and migration policies are enacted by a 'complex, fluid patchwork of innumerable overlapping jurisdictions' (Panizzon and Van Riemsdjik 2019: 1231), producing a 'complex regime of "Europeanization"' (ibid.: 1232).

However, the existing regime is characterized by dysfunction and conflicts among actors due to incomplete integration and harmonization in the domain of border and migration management (Nieman and Speyer 2018; Niemann and Zaun 2018; Trauner and Ripoll Servent 2016). Thus, responses to 2015 have been interpreted, as we will explore further in the following section, as reflecting conflictual tendencies towards supranationalization and intergovernmentalism, influenced by the diverse interests and values of the actors involved and existing institutional arrangements (Bonjour, Servent and Thielemann 2018; Börzel and Risse 2018; Schimmelfennig 2018; Niemann and Speyer 2018).

The multiplication of conflicts suggests that the 'border and migration regime' approach, as developed in sociology and cultural anthropology (Sciortino 2004; Tsianos, Hess and Karakayalı 2009; Hess 2018), can offer critical insight vis-à-vis the notion of 'crisis'. Similar to multilevel governance approaches, the 'border and migration regime' approach foregrounds the multiplication of actors and fuzziness of levels and hence prioritizes the metaphor of a network instead of levels to present the theoretical insight (Walters and Haahr 2005). This approach draws on international regime theory (Krasner 1983), insights from critical theories of the state (Trouillot 2001), and a Foucauldian notion of power to conceptualize crisis and instability as a common feature of capitalist societies in an uneven global world order, an element often missing from multilevel governance approaches (Fine and Thiollet 2020). Crises are not the exception but the structural norm in such a configuration. This points to the *systematic dimension of contention* and the continuing need for *conflictual negotiations* that produce only temporary configurations of stability.

Hess and Kasparek (2017b) further argue that migration movements themselves constantly challenge existing policies, introducing structural uncertainty to the border regime. Crises are, therefore, at the core of its foundation, urging constant 'repair work', as Sciortino has outlined vis-à-vis this central feature of the EU migration and border regime (Sciortino 2004). Including migratory movements themselves as decisive forces in the theoretical picture—as the 'border and migration regime' approach does—introduces a further instability factor reconceptualizing migration and border

politics as structurally crisis-ridden and in steady need of re-adjustment due to the agency and tactics of migratory movements.

### *Against either-or approaches*

Scholarship on EU responses to the events of 2015 oscillates between *diagnosing renationalization and strong intergovernmental tendencies* on the one hand and the observation of *robust supranationalizing efforts* on the other. There is little disagreement that responses to the migratory movements of 2015 are indicative of strong(er) intergovernmental tendencies (Hampshire 2016; Niemann and Zaun 2018) and intensified processes of renationalization, as we will detail further on. Hampshire (2016) and Börzel and Risse (2018) point to the right-wing populist politicization of migration as an explanation for the responses of many member states to tighten the borders and restrict access to the asylum and protection regime. The RESPOND reports also clearly indicate a state-led call across the respective countries for law-and-order policies and robust nation-state responses, all of which has undermined the legitimacy of more humanitarian approaches (Hänsel et al. 2019).

In contrast, Niemann and Speyer (2018) have argued that the 2015 'crisis' provided the impetus for greater supranationalization, exemplified by the establishment of Frontex and the increase of supranational competencies in the field of border control. In this case, member states did not resist the European Commission's initiative. Several factors lay behind this reticence, including the economic and political costs of obstacles to free movement within Schengen, the functional legacies of cooperation within forums like the Council of Ministers, and the Commission's rationale for the 'necessity' of strengthening external border controls. Beyond the Commission's role as an initiator of policy change, supranational institutions are assumed to have more 'liberal' policy preferences, to curtail the restrictive tendencies of member states and to steer policy changes towards further harmonization—albeit often in the form of adopting minimum standards (Bonjour, Ripoll Servent and Thielemann 2018).

As indicated above, we are somewhat sceptical of interpretations that either emphasize supranationalization dynamics or herald 'de-Europeanization' in the form of increasing reassertions of national state sovereignty. Instead, we interpret policy developments since 2015 as a *complex interplay between renationalization and further supranationalization*. While an intergovernmental tendency may be dominant in post-2015 governance, exemplified by the unilateral actions by member states and informal modes of governance outside the scope of EU law—such as bilateral cooperation agreements and the EU–Turkey statement—developments such as the expansion of Frontex suggest that member states are not entirely opposed to further Europeanization insofar as it pertains to reinforcing the external border or externalizing

migration controls. This interpretation challenges the linear and teleological approach of most Europeanization studies, which assume a steady progression in Europeanization. As such, these studies tend to treat the recent renationalization processes as a 'backlash' and an 'exit of Europe' (Panizzon and Van Riemsdjik 2019) and point to the instrumental 'use' or 'non-use' of EU governance architecture (Slominski and Trauner 2018).

Rather than analysing developments through the lens of Europeanization, we argue that the post-2015 restabilization of the European border regime has reinforced the already securitized, racialized and violent logics of EU migration governance. The 'crisis' mode of governance and the persistent securitization of migratory movements calling for exceptional measures in response to the crisis has legitimated policies that have further reinforced both external border and internal borders of the EU and further eroded the self-proclaimed commitment of the European Union to human rights norms.

While these trends are manifested in all policy domains concerning border and migration, we focus on three prominent areas in all national reports: the *hardening of the external border*, the *tightening of internal borders*, and the *intensification of border violence*, in particular in the form of pushbacks. Contrary to views that construct the Commission and other EU institutions as curtailing the excessive securitarian tendencies of member states due to a preference for more 'liberal' policies and commitment to EU fundamental values regarding human rights and the rule of law (Bonjour, Ripoll Servent and Thielemann 2018), we observe that they equally reinforce the securitizing and violent modes of the European border regime. This was evident before 2015 and has been since then, but particularly in the proposals of the New Pact on Migration and Asylum in 2020.

## Hardening the external border

Hardening the external border has been a core element of responses to the 2015 migration wave. It has manifested in a host of policy developments that we will briefly sketch in the following paragraphs. These include two reforms to the mandate of Frontex (the first in 2016; the second in 2019), the associated tightening of border controls, intensified militarization through increased involvement of the armed forces and deployment of military technologies such as drones, and, finally, construction of new border infrastructure (fences and walls), such as those erected along the Hungarian–Serbian and Greek–Turkish borders.

### *Frontex: The European Border and Coast Guard Agency*

Already at the height of the 'summer of migration', the Commission presented a proposal to substantially reform the mandate of the European border

agency Frontex (European Commission 2015b), which was adopted in late 2016 (European Parliament and Council 2016). Previously known as the 'European Agency for the Management of Operational Cooperation at the External Borders', Frontex was transformed into the 'European Border and Coast Guard Agency' with a reinforced mandate and expanded capacities (Karamanidou and Kasparek 2020b).

This reorganization of the institutional structure of border management in the EU also introduced the new concept of 'European Integrated Border Management' (EIBM). While there had been a mode of integrated border management functioning at the EU level for some time, the new Frontex regulation expanded on this concept and made it legally binding. Furthermore, Frontex was tasked with running periodic evaluations of member states' border-control systems to assess their compliance with EIBM rules (see Kasparek 2021 for a genealogy of the agency). The second reform of the agency in 2019 stipulated the creation of a 'standing corps of border guards' and an accompanying budget expansion. The agency was tasked with recruiting 10,000 border guards up to 2027, who would then be deployed at the external borders of the European Union. This step clearly signalled the EU's aim to step up border control and border surveillance.

## Tightening border controls

Hungary constitutes the most clear-cut example of the securitization of borders and the tightening of border controls. Supported by a political discourse 'overwhelmed by security-focused narratives' (Gyollai and Korkut 2019: 8), the border-control regime has been significantly expanded since 2015 through legislative changes coupled with the creation of new border units and extensive deployment of police and military personnel that sought to restrict entry into Hungarian territory (Gyollai and Korkut 2019).

Policies aimed at tightening border controls and hindering access can also be observed in other EU member states, albeit not as drastic as in the Hungarian case. The reintroduction of border controls by Germany, Austria, and Sweden—which we will revisit in a later section—certainly falls into this category. Austria also introduced harsher punishment for acts of irregular entry, as well as for facilitating irregular entry, while Germany sought to prevent the entry of asylum seekers with a very specific interpretation of the Dublin Regulation (Hänsel et al. 2019). In Italy, securitization has always been central to border management and migration control efforts, which translate into an extensive externalization effort to limit the cross-border movements of migrants (Terlizzi 2019). This strategy was extended to limit opportunities even to reach Italian territory, leaving NGOs to facilitate access to persons in distress at sea, and even severely criminalizing such humanitarian efforts.

The migrations of 2015 did not have a direct impact on Poland. Nevertheless, they 'became the point of reference for its law proposals and changes in practices aimed at restricting border control' while new anti-terrorism legislation introduced in 2016 also contained provisions concerning non-citizens (Szulecka 2019: 15). Similarly, although the UK was geographically distant from the 2015 migrations, discourses of crisis and threat were used to justify the further strengthening of an already expansive border regime (Karamanidou 2019).

### *Militarization of border control*

After 2015, the military began to play a more important role in border control. While operation EU NAVFOR Med/Sophia in the Central Mediterranean technically predates the 'summer of migration', it is nevertheless indicative of a larger trend that has accelerated since 2015. The NATO operation in the Aegean Sea, initiated in spring 2016, similarly constitutes an unprecedented inclusion not only of military actors but a global military alliance into the EU's border regime.

However, due to the lack of an independent European-level military force, the shift towards militarization is more pronounced at the level of its member states, at times reversing attempts to de-militarize border control. For example, the Hungarian Border Guard Force was rebadged as the Border Police in 2008, thus shedding its 'militarist identity'. This was, however, reversed with the creation of the 'border hunter' units in 2016, whose name carries military connotations in the Hungarian context, specifically of soldiers and military organizations who defended the 'borders of Hungary against the advancing Soviet troops during World War II' (Gyollai and Korkut 2019: 19f). Further, not only can the army be mobilized in 'crisis situations caused by mass migration' but may even be called upon to aid in the registration of asylum seekers. Austria also deployed military units to assist border controls in 2015 at the Brenner border-crossing point directly adjacent to Italy (Josipovic and Reeger 2019).

Intensifying militarization is particularly evident in Greece. The army played an important initial role in setting up refugee camps (called 'hotspot' centres), as well as running the logistical processes connected with this infrastructure (Ilias et al. 2019). Additionally, the Greek army is strongly involved in border-control activities at the Greek–Turkish land border, particularly since tensions erupted between Greece and Turkey in March 2020 (HumanRights360 2020). Since then, this border has become even more militarized by constructing new walls and observation posts, the deployment of sound cannons, more thermovision cameras and armoured vehicles (Stavris 2021).

## Border infrastructure

RESPOND research findings also point to multiple expansions of border infrastructure. Under this term, we not only include the installation of fences accompanied by new laws but surveillance technologies and the creation of new kinds of detention and reception facilities in the proximity of the border.

Already in 2011, Greece constructed a fence along its northeastern land border with Turkey, also featuring technological equipment such as thermovision cameras. Following the 'border spectacle' of March 2020, the Greek government announced the construction of three more walls in south Evros due to be completed at the time of writing (Stavris 2021). Hungary has constructed 175 km of fencing along its border with Serbia, as well as another 116 km along its border with Croatia, while legislative changes criminalized damage to this infrastructure. Initiatives to add such fencing to the border with Romania and Slovenia did not come to fruition. However, a law made causing damage or obstructing the construction of the fence, actions relating to the materiality of the fence, a criminal offence. Austria also constructed a fence at the border crossing point Spielfeld-Sentilj with Slovenia and introduced systematic border controls at the Brenner Pass with additional barbed wire fences kept in containers in 2016.

A variety of camp infrastructure measures have been implemented throughout Europe. The most exemplary of the shifts in border management since 2015 have been the mixed identification, registration and detention infrastructures of the 'hotspot' centres in Greece and Italy (Ilias et al. 2019; Terlizzi 2019). Hungary introduced so-called transit zones at its border with Serbia, constituting the only site where asylum applications may be lodged (Gyollai and Korkut 2019). However, these transit zones were abandoned following a judgement by the Court of Justice for the European Union (CJEU) that they did not comply with the CEAS (Court of Justice for the European Union 2020). In Austria, former reception centres were repurposed as 'return centres', which—although not detention centres—impose restrictions of movement both legally and through their placement in remote locations of the country. Germany introduced so-called 'first reception' centres and AnKER centres—namely, integrated facilities that combine functions of reception, asylum processing and deportation facilitation (Hänsel et al. 2019).

## Hardening the internal borders

### *Repeated introductions of temporary Schengen internal border controls*

The reintroduction of internal border controls in the Schengen Area since autumn 2015 has been interpreted as one of the most evident signs of re-nationalization and persistent intergovernmentalism (Karamanidou and Kasparek 2020a). While in total, nine Schengen states have made use of the provisions in the Schengen Borders Code or SBC (Austria, Belgium, Denmark, France, Germany, Malta, Norway, Slovenia, and Sweden), we focus on the three countries—Sweden, Germany, and Austria—which are included in the scope of the RESPOND project.

These three countries with largely Schengen-internal borders opted to reintroduce border controls in autumn 2015 in response to migratory movements and have since then extended them repeatedly. Germany introduced temporary border controls at three highway border-crossing points (BCP) from Austria into Bavaria in September 2015 and reinforced previously existing checks on international trains from Austria and in areas near the border. However, the introduction of border controls at only three sites left the vast majority of border-crossing from Austria unpoliced (Hänsel, Hess and Kasparek 2019).

The Austrian government introduced internal border controls in September 2015 at two border-crossing points—one with Slovenia (BCP Spielfeld) and the other with Hungary (BCP Nickelsdorf)—which were at the time extensively transited by asylum seekers using the Balkan route (Josipovic and Reeger 2019). In November 2015, Sweden introduced border controls at its territorial border with Denmark under Article 25 of the SBC. The article provides for 'special measures in the event of serious danger to public order or internal security' (Borevi and Shakra 2019). Notably, these measures were combined with national legislation to allow for and mandate comprehensive ID checks in these border controls.

The rationales for extending temporary internal border controls have shifted over time, with member states finding new reasons to continue to reintroduce checks aimed at controlling migratory movements. Initial reintroductions in 2015 cited the impact of migratory movements on public policy and security, according to Article 25 of the SBC (Borevi and Shakra 2019; Karamanidou and Kasparek 2020a). Following the exhaustion of Article 25 grounds, the Commission proposed the extension of internal border controls on the grounds of Article 29 failures of border control at the external borders. When this possibility was exhausted, the reasons cited were to prevent secondary movements and the risk of terrorism (Karamanidou and Kasparek

2020a). Then, they were reintroduced again in March 2020 due to the COVID-19 pandemic.

Contrary to crisis narratives of the 'death of Schengen', the selective nature of these border controls does not signify a desire to abolish Schengen free movement but instead the use of the SBC to control secondary migratory movements. Further, despite much research treating the reintroduction of temporary internal border controls as an example of persistent intergovernmentalism, the Commission's interpretation of Article 25 in September 2017—which allowed for the extension of temporary border controls to six months—and their proposal for legislative reform point to the same end (Karamanidou and Kasparek 2020a).

### *Return, detention and internal control measures*

Controls within the territory of the member states have been significantly strengthened since 2015, as have returns and deportations. Internal controls include a wide range of measures such as ID and employment checks, time limitations to protection status, practices of detention—applying both in the processing of asylum applications and during deportation procedures—and deportation regimes. Such policies often work in a continuum: identifying people without legal status, containing them, and enabling their deportation. It should be noted that they have been indispensable technologies of border regimes in both EU and non-EU contexts well before 2015, but the RESPOND findings suggest they have been reinforced significantly since then.

In Sweden, permanent residence permits issued with protection status were changed to a three-year duration and introduced stricter workplace controls (Borevi and Shakra 2019). The introduction of the 8km-rule in Hungary in 2016 and its extension to the whole country in 2017 provided for the 'escort' of migrants without status and asylum seekers back to the transit zone at the border (Gyollai and Korkut 2019). Austria adopted stricter provisions for establishing a person's identity and allowed mandates for asylum seekers to remain in designated accommodation centres if they had committed criminal offences, on public order grounds or for accelerating the processing of applications (Josipovic and Reeger 2019). Accommodation and residency obligations, such as remaining in first reception centres for a time and terminating asylum procedures in cases where applicants had violated residency obligations—were also tightened in Germany. At the same time, other measures included enhanced reporting obligation, the replacement of cash social benefits with in-kind benefits, and limiting the granting of residency permits (Hänsel et al. 2019).

Provisions for detention during the asylum process were also expanded in several countries. Austria, for example, introduced new grounds for detaining asylum seekers, including on the basis of endangering public order. In

Hungary, since 2017, asylum seekers have been detained in transit zones near the border. In Greece (and to a lesser extent Italy), practices of detention and limitation on residence were shaped by the hotspot regime. In 2016, Greece introduced a law that allowed a 3-day restriction of liberty within hotspots to complete registration and screening procedures, which could be extended to 25 days if the procedures were not completed. Further, the geographical limitation imposed on hotspots obliges applicants for international protection to stay on the island where the hotspot is located. Migrants seeking international protection can be detained in hotspots in Italy, but questions were raised regarding the legal basis for detention (Terlizzi 2019; AIDA 2020).

Detention for the purpose of return was also enhanced in several countries, in conjunction with policies enhancing capacities for return and deportation since 2015. Austria extended the time limit of detention from six to the maximum allowed limit in EU law of 18 months in 2017, extended periods of repulsion, and established return centres for rejected asylum seekers. Germany introduced further grounds for detention for the purpose of return, expanded provisions for pre-removal detention both in custody facilities and accommodation centres, reduced the time limit for suspension of deportation and prohibited its notification, tightened provisions for the expulsion of migrants with a criminal record, and limited the grounds for suspending a removal due to health concerns (Hänsel et al. 2019). Italy extended time limits for pre-return detention from three to six months in 2018 and introduced a law allowing for readmission agreements with third countries for the purpose of return (European Migration Network 2017). Sweden expanded police powers on deciding the detention and return of minors. In Hungary, returns—in essence, pushbacks—were facilitated by the introduction of the 8km-rule and new grounds for deportation, such as entering through the border closure or damaging the border fence.

Return was also identified as a policy priority in the 2015 European Agenda on Migration and subsequent policy proposals, which included increasing the number of returns and increasing the use of EU and bilateral agreements with non-EU countries (Karamanidou and Kasparek 2018). Informal arrangements, such as the 'Joint Way Forward with Afghanistan' and the 2016 EU–Turkey statement, which, although not a legal instrument, allowed for returns from Greece to Turkey, were examples of the policy emphasis on return. Furthermore, in the New Pact on Migration, return was designated as a key priority, an aim reiterated by Commission officials along with the willingness to reinforce the role of Frontex in returns (European Commission 2020; Euronews 2021). This again suggests both the continuity of a preference for a securitized mode of migration governance and the interconnections between national and supranational levels.

## *Border violence and violations of human rights*

Like much recent research by academics, human rights organizations, and activists, the research done in the 11 countries of the RESPOND project highlights that human rights violations are a regular occurrence within the border regime. While such violations are evident in every aspect of the border regime, we focus on two practices—pushbacks and refusals of entry. These violations occur in multiple national contexts and are particularly significant in terms of preventing access to EU territory and protection.

Refusing entry is not illegal within national and EU law. However, the SBC provides for exceptions from the refusal of entry provisions for people seeking international protection. Yet, the practice of refusing entry even to those who appear to have legitimate asylum claims seems to have intensified in several countries. In Poland, refusals of entry have been a long-standing practice at the Brest/Terespol crossing point on the Polish–Belarussian border and the Medyka BCP with Ukraine (Szulecka 2019). Refusals of entry and the Polish border guards' practice of impeding submission of asylum applications were deemed by the European Court of Human Rights (ECtHR) judgement *M.K. v Poland* to violate human rights law covering non-refoulement, collective expulsions, and the right to asylum (Brandl and Czech 2020). Refusals of entry within the EU increased at the German and Austrian internal borders (Hänsel et al. 2019; Josipovic and Reeger 2019). Similarly, the Dublin administrative arrangements that Germany has entered into with Greece, Italy, and Spain purport to form a legal basis that in practice pre-empts the lodging of an asylum application in specific cases.

Pushbacks were a particularly salient feature of border regimes in four national contexts: Greece, Italy, and Hungary[3] (see also Hess and Petrogiannis 2020). While a long-standing practice in Greece (Pro Asyl 2013), since 2015, pushback practices have intensified at both maritime and land borders. They have been extensively documented at the Greek–Turkish land border since 2018 (ARSIS et al. 2018; Mobile Info Team 2019; Human Rights Watch 2020; Barker and Zajović 2020a, 2020b), while dramatically escalated at the Greek–Turkish maritime border since 2020 (Legal Centre Lesvos 2021; Refugee Support Aegean 2020).

Unlike refusals of entry, where the described practices are carried out in the open, in the Greek case, the authorities involved seem to act in a more clandestine manner, which has complicated the adjudication of violations of

[3] In 'Border Experience and Practices of Refugees' and based on 560 interviews with refugee-migrants in the 11 RESPOND countries, Hess and Petrogiannis (2020) show that pushbacks were experienced along the routes also before 2015 but mostly not as a systematic practice.

fundamental rights in national and international courts (Ilias et al. 2019). In Hungary, pushback practices were, in essence, legalized through the introduction of the 8km-rule and its extension to the entire national territory. This constitutes a prime example of a 'legal device' to legitimize pushbacks by allowing immediate return without access to asylum (Gyollai and Korkut 2019; Hungarian Helsinki Committee 2020). In December 2020, a judgement by the CJEU following infringement procedures initiated by the Commission found that these practices violated EU law (Court of Justice for the European Union 2020), later triggering the suspension of Frontex operations in the country.

Pushbacks have also been documented in Italy (Terlizzi 2019; ASGI 2020). One pattern concerns pushbacks across the land border to Slovenia. While an Italian minister justified them as informal readmissions based on a 1996 bilateral agreement with Slovenia, an Italian court ruled this practice unlawful and in violation of EU and national law (Statewatch 2021). Similarly, pushbacks have been recorded from the Adriatic ports of Italy to Greece (ASGI 2020). Even more controversial are the multifarious and long-standing practices of non-assistance instead of rescue in the Mediterranean. Italy has cooperated with Libya based on bilateral agreements, the most recent in 2017. While presented as having a humanitarian logic of rescue, cooperation on maritime surveillance has resulted in systematic pushbacks—or, more accurately, 'pullbacks'—to Libya following interceptions in international waters. More significantly, these pushbacks occur in the context of cooperation between the EU and the Libyan authorities, including the training of the Libyan coast guard and practices of notifying the Libyan coast guard of detected ships that are intercepted returned to Libya (Amnesty International 2021). The Italian and EU practices in the Mediterranean have been controversial not only because of refoulement to a territory where widespread violations of human rights have been recorded—including torture, arbitrary detention in degrading conditions and multiple forms of violence—but also because of the resulting high death toll (Amnesty International 2021; Heller and Pécoud 2020; Hess and Petrogiannis 2020).

It should be noted that pushbacks are not limited to the countries studied within the RESPOND project. Indeed, pushbacks have been documented extensively across the external borders of the EU (for example, in Spain, Croatia, and Bulgaria) as well as along the Balkan route. Moreover, their adoption by multiple EU member states and associated countries such as Albania, North Macedonia, and Bosnia–Herzegovina—and mounting evidence of the involvement of the European Border and Coast Guard Agency in them—suggest that pushbacks have become an indispensable technology for the European border regime. Yet, as extensively documented by NGOs and becoming the focus of investigations into the practices of Frontex, the European Commission has remained largely inactive on the issue. It has, for instance, turned a blind eye to the actions of the Greek authorities (for ex-

ample, by not initiating infringement proceedings) and has pulled back its initial support for inquiries into the activities of Frontex, swinging its full support behind the agency (Euronews 2021).

## Conclusion

Throughout our contribution, we have highlighted the many developments that have contributed to a profound reconfiguration of the European border regime. We see a complex interplay between renationalizing tendencies and appeals to supranational harmonization—also exemplified by the New Pact proposals—which will not necessarily result in a clear separation of levels, but instead forms of authority that cut across levels and arrange their respective actors in networks, and networks of networks. The most striking example is the construction of the European Border and Coast Guard as a network of member state institutions. To further analyse these emergent hybrid forms of border management and migration control, a methodological departure from a pure multilevel governance approach is required.

More fundamentally, our findings have showcased that borders—and thus sovereign forms of the governance of exception—have been strengthened since 2015. To all appearances, induced by multiple crises, the European project has entered a new phase, which challenges established European integration theories and calls for adjustments. We see a heterogeneous interplay of renationalizing as well as supranationalizing tendencies, which are not necessarily in contradiction. This particularly applies to the continuum of modes of governance which currently exhibit a unidirectional move towards intensified violence, human rights abuses, and securitization at the EU's borders.

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