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External Differentiated Integration in Justice and Home Affairs: Participation of the Western Balkan Countries in EU Agencies

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Abstract

Justice and Home Affairs (JHA) policies, and especially migration and border management, have been on the forefront of deepening relations between the European Union and the countries of the Western Balkans. The recent events caused by the migration and asylum governance crisis in 2015/16 have clearly shown that EU problem-solving outputs in migration management have become increasingly reliant on cooperation with the Western Balkan countries. The resulting gradual inclusion of the relevant law enforcement authorities from the Western Balkans into the operational activities of the JHA agencies has directed them towards a governance-type, day-to-day interaction that has enabled them to take part in implementation of EU policies that could go beyond borders and jurisdictions. This policy paper aims towards a preliminary mapping of the modalities of participation of the Western Balkan countries in EU JHA agencies in the context of differentiation. With a particular emphasis on cross-border cooperation in migration management, asylum and fight against organised crime, the paper focuses on analysis of participation of the Western Balkan countries in three key JHA agencies: the European Agency for Law Enforcement Cooperation (Europol), the European Border and Coast Guard Agency (Frontex) and the European Asylum Support Office (EASO).

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Executive summary

Justice and Home Affairs (JHA) policies, and especially migration and border management, have been on the forefront of deepening relations between the European Union and the countries of the Western Balkans. EU's JHA agencies have been among the most active in the implementation of the external dimension of the Area of Freedom, Security and Justice (AFSJ). The recent events caused by the migration and asylum governance crisis in 2015/16 have clearly shown that the EU problem-solving outputs in migration management have become increasingly reliant on cooperation with the Western Balkan countries. Conversely, the JHA agencies have been among the first EU agencies to significantly integrate the Western Balkan countries into their scope of work.

This policy paper aims towards a preliminary mapping of the modalities of participation of the Western Balkan countries in EU JHA agencies in the context of differentiation. With a particular emphasis on cross-border cooperation in migration management, asylum and fight against organised crime, the paper focuses on analysis of participation of the Western Balkan countries in three key JHA agencies: the European Agency for Law Enforcement Cooperation (Europol), the European Border and Coast Guard Agency (Frontex) and the European Asylum Support Office (EASO). The paper, therefore, explores the legal, organisational and policy venues of participation of the Western Balkan countries in the work of these three agencies.

The emphasis has been placed on these EU agencies since within their mandates they have been granted operational powers. Besides the complementary regulatory competences that they share with other agencies, their operational tasks ranging from coordinating to executing joint operations on the ground raise their importance in the JHA institutional network. When it comes to the Western Balkans, this is of particular importance as it opens a new governance layer of interaction which, as this paper indicates, can have significant consequences for the external differentiation effects of the policies at stake.

Based on findings and data obtained through the analysis of primary and secondary sources as well as interviews with experts, officials from the relevant EU agencies and national authorities in the Western Balkans, the paper provides a number of policy recommendations on how to gradually expand the venues for participation of these countries in the work of the EU's JHA agencies. More specifically, we recommend to further expand the access of the Western Balkan law enforcement authorities to Europol's information exchange mechanisms and the operational activities under EMPACT; to further develop venues of establishing Frontex as an institutional bridge for fair data- and information-sharing on asylum applicants and irregular migrants between the EU and the Western Balkans countries; and to establish a solid framework for cooperation between the EU Agency for Asylum and the countries from the Western Balkans by signing working arrangements developed in a participatory manner within the limits of the new Regulation.

Introduction


Ever since its establishment in 1993 with the Treaty of Maastricht, European Union's Justice and Home Affairs (JHA) domain has been perceived as a typical case of differentiation and flexibility in the context of European integration. Despite being associated with "core powers" of the member states directly attached to their sovereignty, the prominence of JHA policy in general and the growing importance of the fight against organised crime and migration management in the past 30 years in particular, have transformed JHA "from a peripheral aspect to a focal point of European integration" (Lavenex 2020: 343).

Thus, from a set of largely intergovernmental arrangements, over the years JHA policies have been gradually "communitarised". On the other hand, member states' sovereignty concerns have spurred flexible cooperation and differentiated institutional arrangements that have allowed integration to move forward.

The evolution of the institutional arrangements of JHA has been a central aspect of this process. The Area of Freedom, Security and Justice (AFSJ) has been operationalised through the establishment of a network of EU agencies tasked to facilitate and streamline cross-border cooperation between the relevant authorities of the member states. The past decade has witnessed a process of gradual strengthening of the competences of these institutional actors, which function as decentralised agencies with their own legal personality. They all serve as venues for flexible cooperation ranging from information exchange to fully fledged operational activities. In this sense, EU's JHA agencies in many ways can be portrayed as hubs for differentiated integration, defined as "as any modality of integration or cooperation that allows states (members and non-members) and sub-state entities to work together in non-homogeneous, flexible ways" (Lavenex and Križić 2019: 3). While most of the member states fully participate in the working of these agencies, others have opt-outs to accommodate their sovereignty concerns, thus allowing for a multi-speed approach in policy making and implementation within the AFSJ.

Even more, this arrangement also has a serious component of external differentiation, as the JHA agencies allow for membership and participation of third countries in their work. Having in mind the importance of cross-border cooperation with third countries for the effectiveness of the problem-solving capacities of the JHA agencies, they have been progressively geared towards expansion of their mandates to legally engage in cooperation with third parties, instrumentalised through the signing of cooperation and operational agreements between the agencies and non-member states. In this context, the participation of the countries from the Western Balkans region in the domains of migration and fight against organised crime has been at the forefront of these developments.

There are two principal factors that contribute towards an increased interest in cooperation between the EU's JHA agencies and the Western Balkan states. First, the Western Balkans region is attached to the EU's JHA policies through its association status. All countries from the Western Balkans are part of the Stabilisation and



Association Process and are part of the EU's enlargement policy. They have a status of candidate or potential candidate for EU membership and as such are on track towards approximation of EU's JHA rules into their own legal systems. Their exposure to EU conditionality should (at least in theory) also generate socialisation effects (Schimmelfennig and Sedelmeier 2005). Through the opening of their doors for participation of the candidate countries, the agencies are expected to contribute towards a better understanding within the candidate countries of the policy mandate of the respective agency, as well as enhanced capacity-building outputs of officials from the candidates (for example through the EU's technical assistance instruments) before their full integration once they become EU members. However, this logic hasn't been able to produce significant outcomes as the candidate countries have been largely excluded from the decision-making venues within the agency structures. However, in terms of operational activity, the participation of the Western Balkans in JHA agencies has become more prominent in the past decade. These developments have opened a number of venues for differentiation, from initial modes of information exchange, to joint on-field actions.

Second, this increased interest in inclusion of the Western Balkan countries in the operational work of EU agencies has been to a large extent induced by the migrant and asylum management crisis that occurred in 2015/2016. The large influx of refugees and migrants into the EU in the wake of the war in Syria has put migration policy at the top of the EU's priorities. The migrant and asylum management crisis has, on one hand, propelled the EU to significantly strengthen several key JHA agencies involved in migration management such as Europol, Frontex and EASO through expanding their mandate and conferring more operational powers. On the other hand, the migrant and asylum management crisis also propelled the EU to further engage in intergovernmental and transnational cooperation with third countries. The Western Balkan region has particularly gained importance in this approach, as due to its geo-political location it has become a focal point of the migrant transitory route, in addition to being the main entry route for trafficking of heroin (Europol 2021a: 51). These developments have to an extent increased the asymmetrical interdependence in favour of the Western Balkan countries as the EU problem-solving outputs in migration management have become increasingly reliant on cooperation with them.

Having this in mind, this paper aims towards a preliminary mapping of the modalities of participation of the Western Balkan countries in EU JHA agencies in the context of differentiation. With a particular emphasis on cross-border cooperation in migration management, asylum and fight against organised crime, the paper focuses on analysis of participation of the Western Balkan countries in three key JHA agencies: the European Agency for Law Enforcement Cooperation (Europol), the European Border and Coast Guard Agency (Frontex) and the European Asylum Support Office (EASO). All three agencies have witnessed a significant expansion of their legal mandate in the past decade, which has also resulted in more intensified cooperation with the countries from the Western Balkans. In this respect, the JHA agencies have been among the first EU agencies to significantly start to integrate the Western Balkan countries into their scope of work, albeit to a different degree. Europol has been the first JHA agency to negotiate a legal framework of inclusion of the Western Balkan countries in their information-sharing platforms and operational activities and is

considered to be a model example of differentiation (Mortera-Martínez et al. 2021). Furthermore, the latest developments in the cooperation with Frontex can have far-reaching consequences for differentiation, as the Western Balkan countries became the first where Frontex is implementing (joint) actions on territories outside the EU. On the other hand, cooperation with EASO is only starting to gain ground and is expected to follow in the footsteps of Europol and Frontex. In addition, these agencies are distinguished from other JHA agencies since within their mandates they have been granted operational powers. Thus, apart from the complementary regulatory competences which they share with other agencies, their operational tasks which include coordinating, organising, launching and monitoring joint operations on the ground raise their importance in the JHA institutional network (Fernández-Rojo 2021: 3). This is particularly important for the analysis of the Western Balkan participation in their work as besides the legal/regulatory level, it opens a new governance layer of interaction which, as this paper indicates, can have significant consequences for the external differentiation effects of the policies at stake. The gradual inclusion of the relevant authorities from the Western Balkans into the operational activities of the JHA agencies has directed them towards a governance-type, day-to-day interaction that has enabled them to take part in implementation of EU policies that could go beyond borders and jurisdictions. In this sense, these developments are also very relevant for the latest trends in the study of differentiated integration which have been emphasising the significance of the organisational dimension of differentiation (Pirozzi and Bonomi 2022) focusing on the modalities of participation of state and sub-state actors in different sites of governance (primary and secondary EU bodies) “in which differentiation plays out on an operational level” (Lavenex and Križić 2019: 7).

Consequently, the paper explores the legal, organisational and policy venues of participation of the Western Balkan countries in the work of Europol, Frontex and EASO. The findings and policy recommendations are based on data obtained through analysis of primary and secondary sources as well as interviews with experts, officials from the relevant EU agencies and officials from the national authorities in the Western Balkans.

1. Europol

Since its establishment, Europol has served as the principal institutional venue of the EU for police cooperation in the fight against organised crime. Originally established in 1999 following the adoption of the Europol convention (1995), the agency has witnessed a gradual expansion of its mandate through the 2009 Europol Council decision (Council of the European Union 2009), the Lisbon Treaty and the 2016 Europol regulation (European Parliament and Council of the European Union 2016a). The Regulation solidified Europol's position as a decentralised agency as it strengthened its information-sharing properties and expanded the proactive scope of its operational activities. Having in mind the cross-border implications of Europol's mandate in fighting organised crime, the agency was logically steered towards cooperation with third countries since the very beginning. As such, it has

been gradually shaped as a hub of differentiated integration as its operation is convened through flexible cooperation of EU member states that fully participate in the AFSJ, EU members that have opted out of the AFSJ and non-member states that have varied access points to its information exchange mechanisms and uneven participation in its operational activities (Mortera-Martínez et al. 2021).

In the context of external differentiation, the participation of third countries within Europol has been operationalised through the conclusion of strategic and operational agreements. While the strategic agreements are frameworks based on looser modalities of cooperation predominantly channelled through exchange of general information, the operational agreements are more coherent and provide for a streamlined information exchange that also encompasses personal data. The cooperation between Europol and the Western Balkans has been legally framed through the signing of operational agreements. The first agreement was signed with North Macedonia in 2011 and was followed by Albania (2013), Serbia (2014), Montenegro (2014) and Bosnia and Herzegovina (2016).¹ The only exception is Kosovo which currently has a working arrangement establishing cooperative relations between its law enforcement authorities and Europol, which was signed in 2020 (Europol-Kosovo 2020). The establishment of this cooperation framework has been driven by a clear regional approach,² which can vividly be detected in the homogenous outlook of the cooperation agreements. Barring some minor modifications, the cooperation agreements with all Western Balkan partners follow an almost identical pattern of provisions across all individual countries.

In an institutional context, the participation of the Western Balkan countries in the work of Europol has been envisaged through the establishment of National Contact Points and National Liaison Bureaus in Europol's headquarters in the Hague. Apart from Bosnia and Herzegovina and Kosovo, all Western Balkans partners have their own Liaison Bureaus which are accompanied by seconded Liaison Officers. Reversely, the operational agreements also provide the opportunity for Europol (at its own discretion) to consider the secondment of liaison officers in the Western Balkan countries.³ Thus, in 2019 Europol opened a Liaison Bureau in Tirana, the first of this kind in the Western Balkans. Opening of two other Liaison offices in the Western Balkans have been planned, one in Serbia and one in Bosnia and Herzegovina (Europol 2019). However, these plans haven't been materialised and the Tirana office remains the only one in operation.

The strategic cooperation with the Western Balkan partners within Europol is realised through various channels, including exchange of specialised knowledge, reporting, strategic analysis, information on criminal procedures and methods of crime prevention as well as participation in operational activities.⁴ In this context, exchange

1 Europol-North Macedonia (2011), Europol-Albania (2013), Europol-Serbia (2014), Europol-Montenegro (2014), Europol-Bosnia and Herzegovina (2016).

2 Interview with a former Europol official.

3 This opportunity has been provisioned in Article 9 in the agreements on operational and strategic cooperation with Albania, Bosnia and Herzegovina, Serbia and Montenegro and in Article 15 in the corresponding agreement with North Macedonia.

4 Interview with former Europol Liaison Officer.

of information (which includes personal data) has been the most prominent level of interaction.⁵ The Western Balkan countries have access to Europol's instruments for information exchange which enable them to communicate with the law enforcement agencies in the EU member states and the other third countries which are contractually associated with Europol. Principally, this is done through Europol's Secure Information Network Application (SIENA) which is the principal communication platform for law enforcement, and the Europol Information System (EIS) as the primary database for criminal intelligence. As part of this concept of information management exchanged through and/or submitted to Europol, the Western Balkan partners are using so-called codes for handling and evaluation of information, which determine the reliability of the exchanged information and how it can be used, with whom and how to share it. However, their access to information within this system is limited to the extent that they cannot get direct information from the member states and must use Europol as a broker. In addition, if EU member states for various reasons object to sharing data, the operational partners are unable to obtain access to the desired information.⁶

The operational cooperation is implemented through participation in joint operations, joint action days and joint investigations.⁷ What is more, since 2018 the countries from the Western Balkans have been gradually involved in some aspects of the EU's Policy Cycle to tackle Organised and Serious International Crime. Also known as European Multidisciplinary Platform against Criminal Threats (EMPACT) (Council of the European Union 2021a), the policy cycle is a four-year methodology plan for multidisciplinary operational cooperation in the fight against organised and international crime. It consists of four steps (Council of the European Union 2018): policy development through the European Union Serious and Organised Crime Threat Assessment (EU SOCTA); policy setting through Multi Annual Strategic Plans (MASPS); implementation through Operational Action Plans (OAPs); and evaluation. The Western Balkan partners have been enabled to partially participate in the policy development and implementation phases within the work of Europol. First, they contribute to SOCTA through sharing of data on organised criminal groups. Second, as operational partners they participate in the development of Operational Action Plans related to criminal activities that are relevant for them and are a point of joint interest with the EU. This is a notable development as prior to 2018, the Western Balkan partners didn't have a say in the agenda-setting phase and were engaged only in the realisation of these plans within the framework of Joint Action Days.⁸ Further, in 2019 three Western Balkan countries (Albania, Serbia and Montenegro) were

5 Information exchange is covered through general provisions under Chapter III in the agreements on operational and strategic cooperation with Albania, Bosnia and Herzegovina, Serbia and Montenegro and in Articles 7–11 in the corresponding agreement with North Macedonia. The more specific aspects of exchange of information such as access to Europol's platforms are not mentioned in the agreements. They are further operationalised through memoranda of understanding and bilateral agreements between Europol and the contracting country.

6 Interview with former Europol Liaison Officer.

7 This level of cooperation is vaguely covered by the legal framework with short references in Articles 17–18 in the agreements on operational and strategic cooperation with Albania, Bosnia and Herzegovina, Serbia and Montenegro and in Article 12 in the corresponding agreement with North Macedonia.

8 Interview with former Europol Liaison Officer.

designated as leaders of certain operational activities contained in the operational action plans.

In sum, the past two decades have witnessed a process of increased integration of the Western Balkan countries into the work of Europol on different levels. Both the regulatory level of interaction and the mechanisms of operational participation in the activities of Europol relate to a flexible institutionalised framework of police cooperation and networking that can be seen as a model example of external differentiated integration.

2. Frontex

Migration and border management have been on the forefront of deepening relations between the EU and the Western Balkan countries. Although propelled in light of the recent migration and refugee crisis, the cooperation between Frontex and the region dates since the late 2000s when most of the countries signed working arrangements which have effectively established operational cooperation. Namely, North Macedonia, Serbia, Montenegro, Albania⁹ and Bosnia and Herzegovina signed these working arrangements in 2009 with the then European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The Agency was established with the Regulation (EC) 2007/2004 (Council of the European Union 2004). Most of these activities were intertwined with the process of pursuing visa liberalisation for the citizens of these countries. Kosovo managed to sign such an agreement in 2016.

With the amended Regulation from 2011 (European Parliament and Council of the European Union 2011) the EU expanded the competences of Frontex when it comes to third countries, allowing the Agency, among other things, to “launch and finance projects of technical assistance”, “deploy liaison officers” and “on a reciprocal basis”, to “receive liaison officers posted by those third countries” and “invite observers from third countries to participate in its activities” (ibid., points 22, 3, 6). Thus, the Agency has become an agent of change and EU policy transfer in the Western Balkans (Nechev and Trauner 2019). Frontex was replaced in 2016 (European Parliament and Council of the European Union 2016b) with the European Border and Coast Guard Agency, although it kept its originally abbreviated name. Its competences have been further strengthened and expended in relation to cooperation with third countries. One of the novelties is that Frontex has the possibility to carry out actions on a third-country territory, in a situation in which that country has a joint border with a member state of the EU and with prior approval of the specific country (Article 54, para. 3). In cases of Frontex deployment to third countries with teams holding executive powers, the EU needs to sign a *status agreement* with the respective country. These agreements encompass all aspects of the operation – “scope of the operation, civil and criminal liability and the tasks and powers of the members of the team” while

⁹ Albania has signed a new working arrangement on operational cooperation with Frontex in 2021, replacing the working arrangement signed in 2009.

ensuring protection of fundamental rights (Article 54, para. 4). It is the Commission that negotiates and drafts the model status agreement. The template was produced in 2016 and the Council adopted it with a Decision in early 2017, thus paving the way for the Commission to open negotiations with the affected countries on the Balkan route.

Albania and Montenegro were the first countries with which the EU signed a status agreement. The agreement with Albania was signed in October 2018 and entered into force on 1 May 2019 (Frontex-Albania 2018). In October 2019, the EU signed an agreement with Montenegro which then became operational on 2 July 2020 (Frontex-Montenegro 2019). Serbia signed the status agreement in November 2019. It entered into force on 1 May 2021 (Frontex-Serbia 2019). The Commission is negotiating, or the agreements are pending finalisation, with North Macedonia¹⁰ and Bosnia and Herzegovina. The processes with these countries were initiated in 2018 and 2019 respectively.

According to the status agreement, Frontex can carry out joint operations, deploy teams and return operations. Although returns are part of the agreement, having in mind that Frontex may only conduct return operations from the EU to third countries and this has already been happening for some time with the countries from the region, in accordance with the existing readmission agreements as part of the visa liberalisation process, it is obvious that the emphasis is placed on conducting joint operations and dispatching rapid border interventions in the Western Balkan country-in-need.

Based on the Regulation and the signed status agreement, Frontex launched its first fully fledged joint operation outside the EU in Albania. In May 2019, the Agency deployed 50 officers with 16 patrol cars and one thermo-vision van from 12 EU member states on the Albanian-Greek border to conduct control and tackle cross-border crime (Frontex 2019). The second operation in the Western Balkans was to support Montenegro at the border with Croatia with the deployment of a number of officers tasked to detect and tackle cross-border crime including migrant smuggling, trafficking in human beings and smuggling of drugs (Frontex 2020b). These activities were supplemented with the Frontex third deployment that provided aerial support to help Montenegro patrol its sea borders and provide technical and operational assistance in carrying out coast guard functions in the international waters (Frontex 2020a). In June 2021 the Agency initiated its latest operation, this time in Serbia with 44 standing corps officers from 14 countries helping to detect criminal activities. The number of officers is expected to rise to up to 87 (Frontex 2021b). This is in addition to nearly 150 standing corps officers and staff taking part in operations in both Albania and Montenegro (Stanicek 2021).

The standing corps were established with the latest Frontex Regulation 2019/1896 of 13 November 2019 (European Parliament and Council of the European Union 2019b). This is one of the major novelties whereby the Agency creates its own permanent pool of up to 10,000 border guards/operational staff (Article 5). Their deployment as

10 Bulgaria is objecting to signing the document due to mention of the Macedonian language.

“members of the border management teams, migration management support teams and return teams in joint operations, rapid border interventions, return interventions or any other relevant operational activities” is made possible in both EU member states or in third countries. The latest deployment of these Agency operational staff is in Serbia. The “Joint Operation Serbia – Land 2021” was launched on 16 June 2021 with a mandate until 26 January 2022 (Leggeri 2021). It should also be noted that according to this 2019 regulation, there is an opportunity for the member states to cooperate at an operational level with third countries at the external borders, even in regard to military operations with a law enforcement purpose. Since 2021, there are Frontex liaison officers based not only in Belgrade covering Bosnia and Herzegovina and Montenegro, but also in Tirana covering the remaining three Western Balkan countries (Frontex 2021a). Based on a status agreement with the third country, Frontex can also establish *antenna offices* in that specific country with a mandate to “facilitate and improve coordination of operational activities [...] and in order to ensure the effective management of the human and technical resources of the Agency” (2019 Regulation: Article 60, para. 1).

Given its JHA nature and geographical priority areas, Frontex has signed multiple documents establishing cooperation with the other two agencies. Thus, the Agency cooperates on issues related to migration and border management with EASO based on a working arrangement (EASO and Frontex 2012) and in the area of organised crime with Europol through a strategic cooperation agreement (Frontex and Europol 2008).

In sum, the recent developments in the cooperation dynamics between Frontex and the Western Balkan countries have led towards a significant level of integration. They indicate a new scale of complexity in the differentiated integration arrangements, especially in regard to the organisational/operational dimension. The leap from cooperation based primarily on information exchange to deployment of joint border control teams composed of officials from Frontex and respective Western Balkan countries represents the most substantive venue of collaboration in the JHA domain.

3. EASO

The European Asylum Support Office (the Support Office – EASO) was established with Regulation (EU) No 439 of the European Parliament and of the Council in 2010 (European Parliament and Council of the European Union 2010). EASO became operational in June 2011. At the time, its main tasks were to assist EU member states to pursue a more just, consistent and common asylum policy by increasing convergence among the asylum systems within the EU, to ensure the quality of their own decision-making procedures and to further strengthen cooperation among the member states. In terms of providing effective operational support, in a situation of serious asylum pressure EASO might, on a request by the concerned state, also deploy asylum support teams.

EASO sought to cooperate with third and associate countries from the outset. Thus, since the beginning it was open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers (Article 49, paragraph 1). Besides the support provided to EU member states (internal dimension) in the implementation of the Common European Asylum System (CEAS), EASO is fully engaged in assisting EU+ and third countries in relation to the external dimension of the CEAS. For those activities that fall under its competence, in agreement with the European Commission, the 2010 Regulation provides EASO the opportunity to “facilitate operational cooperation between Member States and third countries” and seek cooperation with their authorities for issues covered by the Regulation (Article 49, para. 2).

The migration and asylum governance crisis that occurred in 2015/2016 triggered the European Commission to propose a package to reform and strengthen the role of Europol, Frontex and EASO (Fernández-Rojo 2021). Thus, the Commission drafted a proposal for a regulation in 2016 that would transform EASO into a European Union Asylum Agency (EUAA) with extended competences. In December 2021, the Council adopted the EU asylum agency regulation and turned the EU asylum agency into a fully-fledged agency, thus strengthening the existing EASO mandate. When it comes to the support provided to third countries, the new Regulation envisages extending the existing cooperation (European Parliament and Council of the European Union 2021). According to Article 35(1), the Agency “shall facilitate and encourage operational cooperation between member states and third countries” also with emphasis on protection of fundamental rights. In doing so, the EUAA will rely on third countries’ authorities as well as on the European External Action Service and the EU’s representation in the third country. The new Regulation provides for the EUAA to promote the Union’s norms and standards on asylum thereby offering “expertise and capacity building for [third countries] asylum and reception systems” (Article 35, para. 2). Support in coordination and implementation of resettlement schemes is envisaged as a competence in relation to third countries’ cooperation. The Agency may implement these kinds of cooperation by concluding working arrangements and/or by providing support to a member state under an existing agreement with a third country. Based on an approval by the European Commission, and information notice to the European Parliament and the Council, the Management Board of EUAA decides in concluding such an arrangement (Article 35, para. 2). The procedure for deployment is similar to concluding a working arrangement. Namely, prior to reaching the final decision, the management board of the Agency needs to request an opinion by the Commission. It can only send liaison officers to third countries which respect human rights standards and constitute “countries of origin or transit regarding asylum-related migration” (Article 36, para. 2). According to the Regulation, the EUAA can be a beneficiary of EU financial and technical assistance programmes in fulfilling its tasks related to third countries, such as the example of the instrument for pre-accession funds in regard to the Western Balkans and Turkey.

When it comes to the Western Balkans, security-related issues have become central in the political discussions and relations between the region’s candidate countries for accession and the EU. Migration and asylum rank high on the strategic agenda in this part of Europe. When it comes to asylum and the implementation of the CEAS, the EU is completely aware that without effectively engaging and assisting

third countries to align (to the extent possible) their own asylum systems with the European one for international protection, it could not reach its own goals in the asylum area.

To further operationalise the competences specified in the Regulations covering the external dimension of CEAS, EASO developed its first External Action Strategy in 2013 (EASO 2013). To reflect the new circumstances in Europe especially after the migrant and asylum governance crisis in 2015/2016, a new External Cooperation Strategy was drafted in 2019 (EASO 2019). According to both strategies, the Western Balkan countries fall under the geographical priority for the Agency, alongside Turkey and the Middle East and North African (MENA) countries. EASO engages and undertakes activities in the Balkans based on its priorities and objectives set out in its multi-annual programming and goals determined by the European Commission's existing strategies for these countries. Furthermore, subject to prior approval based on compatibility with EASO's scope of work determined in the Regulation, an action/activity in a third country can also be triggered either by an ad hoc request by the recipient country itself or by the Commission.

EASO can implement any of the three foreseen modalities of activities: 1) Coordination and exchange of information; 2) Capacity and knowledge building; and 3) Operational cooperation. In the case of the Western Balkans, it employs a combination of all of these activities. Among other things, it organises capacity building and thematic workshops and study visits to member states thereby facilitating sharing of know-how, and provides on-the-job and train-the-trainers coaching sessions targeted at asylum-engaged individuals in state institutions as well as NGOs and courts. In addition to this, the support provides development of practical skills in identification of persons with special needs, contingency planning, registration and examination procedures for applications for international protection, and country of origin information.¹¹

In its spectrum of cooperation instruments, EASO can employ targeted interventions, implement projects, or engage in devising national and/or regional roadmaps. Again, as in the case of the implementation of activities in the region, EASO employs a mix of instruments to deliver external support to third countries similar to those it provides to member states with the aim of strengthening the protection space for asylum seekers and refugees in the Western Balkans in line with the CEAS and member states' best practices.¹²

Cooperation between EASO and the countries of the Western Balkans has been underway since 2014, however it intensified in 2016 with the implementation of the EU-funded regional project on the "Regional Support to Protection-Sensitive Migration Management in the Western Balkans and Turkey". Two phases of this project have already been implemented involving Frontex, EASO, the International Organization

11 More information on EUAA website: *External Dimension*, <https://euaa.europa.eu/external-dimension>.

12 Interview with an official from the Ministry of Internal Affairs of North Macedonia.

for Migration and the UNHCR.¹³ With the support provided through this project, the asylum and reception systems have been further enhanced in the Western Balkan countries, identification and registration mechanisms of mixed migration flows have been further strengthened, certain asylum practices have been harmonised and national legislation has been additionally harmonised with EU standards.

In addition to implementing projects, EASO is engaged in the Western Balkans in developing national roadmaps jointly with the countries' authorities. Currently, roadmaps for cooperation are being implemented with Albania, Bosnia and Herzegovina, North Macedonia and Serbia, based on country-specific needs assessment reports. For North Macedonia and Serbia, the countries mostly affected on the Western Balkan route, these are the second roadmaps (2020–2022) being implemented (European Commission 2021a). The first roadmaps covered the period 2017–2019. Serbia has observer status in the reception network organised by EASO, and Belgrade is hosting the European migration liaison office which covers the entire Western Balkan region (European Commission 2021c). The most recent roadmap was signed with Montenegro at the margins of the EU-Western Balkans Ministerial Forum on Justice and Home Affairs in December 2021 (Montenegro Government 2021). The only country in the Western Balkans without a national roadmap for cooperation remains Kosovo.

EASO has the opportunity to establish working arrangements with third countries. However, this kind of cooperation is reserved for those countries with which the Agency already has established a long-term relationship, that fall under the priority list of third countries and that will release new potential and add value to the existing cooperation. For the time being, EASO has working arrangements of this sort with four associate countries: Norway, Switzerland, Liechtenstein and Iceland. Besides these countries, EASO has established working arrangements with various EU institutions, Justice and Home Affairs agencies and other relevant stakeholders that can assist the Agency in implementing the external dimension of its work.

Compared to Europol and Frontex, the cooperation between the Western Balkan countries with EASO is more limited. Unlike in the previous two cases where we detect far-reaching elements of differentiation, the cooperation with EASO is confined to capacity building rather than operational cooperation on the ground. However, although the organisational dimension of cooperation is still in an embryonic phase, the recent transformation of EASO into a fully-fledged agency is expected to facilitate a qualitative advancement in cooperation with the Western Balkan countries based on previous experiences with the other JHA agencies.

13 For more information about the project, see *Regional Support to Protection-Sensitive Migration Management in the Western Balkans and Turkey – Phase II. Grant Application Form*, <https://privacyinternational.org/sites/default/files/2020-11/PAD-2020-00027-%20documents%202.pdf>.

Concluding remarks and recommendations

The past decade has witnessed a gradual strengthening of trans-governmental cooperation between the EU and the law enforcement authorities in the Western Balkans in the field of Justice and Home Affairs. These developments have been predominantly taking place in an institutionalised setting with the EU's Justice and Home Affairs agencies as the principal venues of transaction. As our study has shown, the EU's JHA agencies have become an important agent of external differentiation with the Western Balkan candidates. On one hand, the Western Balkan partners do not fully participate in the work of the JHA agencies. They do not have decision-making powers and have limited access to the information exchange mechanisms of these agencies. The principal venues for cooperation are centred around operational activities. However, the increased intensity of operational interaction within the EU agencies has produced outputs that go beyond the typical socialisation effects and capacity building of the bureaucracies of the candidate countries. In some aspects, the participation of the law enforcement authorities from the Western Balkans in operational activities has put them on a more equal footing with their EU counterparts. The example of Frontex is quite remarkable in this sense, especially if one looks at how cooperation with the Western Balkan countries has transitioned from information sharing to sharing of executive powers in controlling their borders (Okuy et al. 2020: 9).

The increased interest in gradual expansion of the venues for participation of the Western Balkan candidates in the work of the EU's JHA agencies is clearly correlated with the rising prominence of JHA policies in general and migration management in particular within the EU domain. This process was triggered by the migrant and asylum governance crisis in 2015/2016 that put the Western Balkan region in the hotspot since it serves as one of the main transit corridors for migrants and refugees. This situation, according to Frontex documents, remained the same or similar in the post-crisis period, although the number of illegal border crossings has significantly decreased since 2016. However, in comparison with other migratory routes, migratory pressure on the Balkan route remains high. The data from 2021 show that the number of arrivals is above pre-pandemic levels (the highest number since 2017) and in January 2022 the "most significant increase could be observed on the Western Balkans route with 5,826 arrivals, 148% more than a year ago" (Frontex 2022). In the efforts of the EU to outsource migration management, the Balkan countries are the priority consumers because of the extensive and direct border sharing with EU member states. Furthermore, as these countries have an EU membership perspective, the EU has the leverage to undertake novel external approaches that can be replicated elsewhere in the world, such as is the case for Frontex engagement in Africa.

These developments have induced a new approach towards transnational cooperation with the Western Balkans, producing a complex arrangement of differentiated integration that varies across agencies. In the case of Europol, the early introduction of the Western Balkan partners in Europol structures has resulted in a more structured and extensive arrangement of interaction. Cooperation within Frontex is a more recent development, which, however, could have far-reaching

consequences for trans-governmental integration. In contrast, the cooperation with EASO is still in an initial stage which is reflected both in the scope and content of participation of the Western Balkan countries in the work of this agency.

Looking forward, we could expect a more streamlined regional approach and higher levels of interaction between the JHA agencies and the Western Balkans. Based on the deepened cooperation in migration management in regard to the institutional interaction between law enforcement authorities in the Western Balkans and the EU, there seems to be a consensus among all relevant stakeholders vis-à-vis the prospects of expanding the modalities of participation in JHA agencies. For example, in its latest EU Strategy to Tackle Organised Crime, the European Commission (2021a) has highlighted the task of promoting increased association of third countries to EMPACT activities, including the development of the EMPACT methodology outside the EU. It has also stressed the urgency “to further develop serious and organised crime intelligence at Europol and enhance information exchange and investigative actions with third countries and regions” (ibid.: 9). In addition, during the last EU-Western Balkans Ministerial Forum on Justice and Home Affairs which was held in December 2021, the ministers prioritised information exchange and border management, and affirmed their intention of enhanced cooperation with the JHA agencies (Council of the European Union 2021b). A similar encouragement for more cooperation has also been expressed by the European Parliament (2021).

Having this in mind, we propose the following policy recommendations:

Expand access to Europol's information exchange mechanisms and operational activities under EMPACT. – Europol's prioritisation of cooperation with the Western Balkan region has resulted in the signing of a number of operational agreements and successful strategic and operational outputs. Among law enforcement officials in the region, Europol is viewed as a centre of excellence which has enhanced the capacities of local police authorities through transfer of knowledge, introduction of EU standards and practices and sharing of a number of innovative tools aimed at assisting investigations on cross-border organised crime. In this context, further implementation of the operational agreements and utilisation of the existing mechanisms of participation are of particular importance. However, both EU and Western Balkan authorities should also prioritise gradual expansion of operational cooperation and extension of access to the information exchange mechanisms within Europol. The policy makers should aim towards enabling a more direct access to Europol's databases. A more proactive approach towards the participation of the Western Balkan countries in operational activities under EMPACT is also needed. Although the inclusion of the Western Balkan partners in some aspects of the policy cycle is commendable, their participation in the agenda-setting process is restricted by the condition of collaboration with at least two member states in order to propose activities. In this sense, Europol should work towards enabling more visibility and a sense of ownership for the Western Balkan countries by granting them equal status in their participation under EMPACT. Such gradual expansion of the existing modalities of operational cooperation is in line with Europol's (2021b: 149) priorities in regard to the region, and will undoubtedly enhance the problem-solving capacities of law enforcement authorities in the fight against organised crime and migrant smuggling.

Finalise the process of signing status agreements between Frontex and the remaining countries in the Western Balkans by preserving uniformity with those already concluded, including accountability measures and fundamental rights safeguards, while preserving the necessary level of transparency. – The European Commission has identified the Western Balkans as top-priority geographical area to implement its expanded competences, according to Frontex 2016 and 2019 Regulations. This is a clear-cut lesson learned from the migration and asylum governance crisis in 2015/2016 to prevent significant migratory movements through the region that has become the main land artery to the EU. Status agreements have been signed and are operational with Albania, Montenegro and Serbia, whereas uncertainty still clouds the signing of the status agreement with Bosnia and Herzegovina, where the document is still not ratified by the government. When it comes to North Macedonia, a status agreement has already been negotiated and agreed with the Commission; however, due to Bulgaria's opposition it has not yet been signed. From a functional perspective, the reasons for Bulgaria's veto have nothing to do with the working arrangement per se. Kosovo has signed a working arrangement.

Although developed based on a template provided by the European Commission, there are differences between the status agreements. For example, the one with Albania does not envisage clear competence for who can propose launching an action, whereas there is explicit mention of this competence in the status agreement with Montenegro. There are several such differences (Kilpatrick 2021) that need to be addressed to obtain uniformity, especially as Frontex has already conducted a number of executive operations in the region. These operations have already evoked allegations against Frontex for potential abuses of fundamental rights; therefore, it is necessary to establish a certain level of transparency that will ensure the enhanced scrutiny –and thus accountability – of Frontex actions in the region including its complaint process.

Explore venues for establishing Frontex as an institutional bridge for fair data and information sharing on asylum applicants and irregular migrants between the EU and the Western Balkans countries. – Implementation of Regulation (EU) 2019/818 (European Parliament and Council of the European Union 2019a) gives Frontex access to a number of EU information systems in the field of police and judicial cooperation, asylum and migration. With the signing of status agreements with the countries of the Western Balkans, Frontex has also been given the opportunity to consult these countries' national databases for implementing executive actions. Furthermore, the EU is currently aiding the Western Balkans countries to establish national fingerprint databases as well as a biometric base for fingerprints of asylum seekers and irregular migrants that is fully compatible with Eurodac, and to build national human and technical capacities for exchange of data with the Eurodac system. Through the EU IPA-funded project "Regional Support to Protection-Sensitive Migration Management in the Western Balkans and Turkey", Frontex provides support in the establishment of EU-like National Coordination Centres for migration management in the Western Balkans. These actions are also in line with the EU report presented at the informal JHA Ministerial Meeting held in Zagreb on 24 January 2020 during the Croatian presidency, and the EU-Western Balkans JHA

Ministerial videoconference on 22 October 2020 (Council of the European Union 2020a, 2020b). Therefore, Frontex can serve as an institutional bridge for exchange of data and information on asylum applicants and irregular migrants between the Western Balkans and the European Union.

Establish a solid framework for cooperation between the EU Agency for Asylum and the countries of the Western Balkans by signing working arrangements developed in a participatory manner within the limits of the new Regulation. – Compared to other JHA agencies, the activities of EASO in the Western Balkans as its geographical priority area are still not on a satisfactory level. However, the Regulation establishing the EU Agency for Asylum enhances the previous EASO mandate and provides more opportunities for the Agency to increase its engagement in the region. In line with the increased activities of other JHA agencies, the EUAA should advance cooperation within the framework of working arrangements with the region's countries and set up a more solid basis for implementation of these arrangements. The existing participatory approach should remain in the development and implementation of activities. In addition to this, the Agency should coordinate and avoid overlaps with the activities of other JHA agencies that already have a significant footprint in the Western Balkans, such as Europol and Frontex. In addition to this, the deployment of liaison officers should continue. This is important both for the continuous improvement of the asylum systems in the Western Balkan countries as well as for further alignment with the EU acquis in this policy area as part of the EU accession process.

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EU Integration and Differentiation
for Effectiveness and Accountability

Differentiation has become the new normal in the European Union (EU) and one of the most crucial matters in defining its future. A certain degree of differentiation has always been part of the European integration project since its early days. The Eurozone and the Schengen area have further consolidated this trend into long-term projects of differentiated integration among EU Member States.

A number of unprecedented internal and external challenges to the EU, however, including the financial and economic crisis, the migration phenomenon, renewed geopolitical tensions and Brexit, have reinforced today the belief that **more flexibility is needed within the complex EU machinery**. A Permanent Structured Cooperation, for example, has been launched in the field of defence, enabling groups of willing and able Member States to join forces through new, flexible arrangements. Differentiation could offer a way forward also in many other key policy fields within the Union, where uniformity is undesirable or unattainable, as well as in the design of EU external action within an increasingly unstable global environment, offering manifold models of cooperation between the EU and candidate countries, potential accession countries and associated third countries.

EU IDEA's key goal is to address **whether, how much and what form of differentiation is not only compatible with, but is also conducive to a more effective, cohesive and democratic EU**. The basic claim of the project is that differentiation is not only necessary to address current challenges more effectively, by making the Union more resilient and responsive to citizens. Differentiation is also desirable as long as such flexibility is compatible with the core principles of the EU's constitutionalism and identity, sustainable in terms of governance, and acceptable to EU citizens, Member States and affected third partners.



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