Analysis: The new European Pact on Migration and Asylum as a mechanism of marginalization and exclusion

Reflections a few months before its entry into force

The new European Pact on Migration and Asylum is scheduled to enter into force on 12 June 2026. The package, adopted by the Parliament and the Council on 14 May 2024, consists of 10 new legislative acts, including 9 regulations and 1 directive, which overall seem aimed at further hindering the chances of those arriving in Europe to access asylum and gain the right to stay.
This brief contribution offers some reflections on these changes and their potential impact, a few months before their entry into force.

While on the one hand the Pact stands in continuity with the path set out in the 2015 EU Agenda on Migration and the “hotspot approach”, on the other hand it attempts to radically intervene in the current European legislative framework, introducing new mechanisms for rendering invisible, marginalizing and excluding people on the move.

Against those who manage to escape/overcome externalisation policies

The issue of managing the EU's external borders through the redefinition of migration and asylum policies has been at the centre of political debate for years. The climate of discussion appears increasingly hostile to people on the move, and calls for the containment of mobility, with a view to “defending” the EU's external borders, are unequivocally dominant. Over the years, externalisation policies have become increasingly structured, with a view to preventing departures by sea, increasing the level of border surveillance and violence, to the detriment of the human rights of those attempting to cross them.

In this context, the new EU Pact on Migration and Asylum represents yet another tool for control and exclusion, as well as a potential violation of the fundamental rights of those who risk their lives to exercise the freedom of movement that governments would like to structurally preclude.

The provisions that the Pact introduces – covering a wide range of issues, from screening procedures at the border to access to asylum, from reception policies to return ones – represent the other side of the coin of increasingly harsh border externalisation policies. In other words, they concern those who manage to escape the illegitimate, violent and potentially lethal external border surveillance infrastructures – with a view to preventing departures.

In this project, the European Union plays a key role, not only in terms of planning hostile scenarios for those arriving in Europe informally, but also in terms of implementing the new provisions. The pact chooses to adopt nine regulations, which are more binding instruments for States, leaving them less discretion. The only “directive”, which is less binding than regulations, is that on “reception”, which is therefore dedicated to those already considered “worthy” of remaining in the territory.

The main goals of the Pact seem to be those of radically weakening the right to asylum, as the only – and last – resort to obtain the right to remain for those informally reaching the EU,

and facilitating the expulsion of those who are not considered worthy of any kind of international protection. Among the many instruments introduced by the Pact to undermine the right to asylum there is the redefinition and strategic use of the notion of "safety" – applicable to countries of origin and transit. While people coming from Safe Countries of Origin (SCOs) would be hindered in their asylum applications, those who do manage to apply would go through accelerated border procedures that are exceptional and drastically reduce legal guarantees for a fair trial: against the multiplication of reasons to channel asylum seekers into border, accelerated and exceptional procedures, ordinary access pathways to asylum would become a residual opportunity.

Furthermore, through the definition of Safe Third Countries (STCs) and "return hubs", the Pact seeks to expand the possibilities of "getting rid" of as many asylum seekers as possible, considering their applications "manifestly unfounded" and allowing for their "forced transfer" to these hubs, which are considered competent to examine applications for international protection.

Those who arrive by sea, for example, first face a screening process, followed by border checks, and certainly situations of detention – de facto or de jure – as far as possible, from the point of view of the States, aimed at repatriation or forced transfer to third countries.

On the invisibility and marginalisation of those arriving in Europe: border procedures and the fiction of non-entry

One of the central elements of the Pact is a radical shift to the border of procedures concerning those arriving in Italy by sea.

Some of the instruments introduced are fully in line with the Hotspot Approach and with all those informal and illegitimate practices that civil society has observed over the years in Sicily and in the landing regions. The new "screening regulation" formalises the practice of the "information sheet" (foglio notizie) – as a tool for collecting summary information on arriving persons as part of identification procedures. Although renamed the "screening form" (modulo consuntivo), the regulation provides nothing more than a tool for categorising and selecting arriving persons, based on the collection of personal details, nationality and the reasons that led the person to come to Europe informally, risking their life. Over the years, civil society has repeatedly highlighted the injustice underlying this tool, which collected information obtained in lack of sufficient legal information provision, aggravated by the conditions of *de facto* detention, in which people's contact with the outside world was severely limited. The lack of knowledge of their rights on the part of people who had just arrived in Italy often led to their unfair channeling into detention procedures aimed at repatriation, based on their nationality.

To the frontierisation of "screening" procedures, which still tends to marginalise those arriving in Europe and render them invisible, the pact adds further administrative procedures, in which the power relationship between migrants and the authorities appears increasingly unbalanced. While, on the one hand, the reform of databases means that police authorities can access all sources of data on foreign nationals, regardless of any specific interest or mandate, on the other hand, the person concerned does not seem to have the right to know all the information that states have about them. This places them in a subordinate position and risks undermining their right to defence, in a scenario of increased surveillance and hyper-control.

Finally, while on the one hand the Pact takes a further step towards moving screening, asylum access and detention procedures aimed at repatriation "to the border", on the other hand it formalises one of the most controversial institutions we have seen in Italy in recent years, namely "the fiction of non-entry". In practice, despite their physical presence on the territory, States have the power to deny them the "right of access" to it, pretending that the person is not present. This "denial" of presence on the territory – as a scenario in which screening procedures, access to asylum and detention for the purpose of return are implemented – only further "blurs" the boundaries of the law, restricting the guarantees due to those who cross EU borders informally.

The "missing" discourse on deprivation of personal liberty: what guarantees?

A combined reading of the various rules introduced by the pact shows that the formal detention of persons who have arrived in Europe informally should be – at least on paper – considered a last resort, reserved for specific categories of persons considered "dangerous" to public order and national security or "at risk of absconding". Yet the provisions contained in the screening regulation and the procedures regulation are based on the assumption that the person concerned must be anytime "available" to the public authorities. While it is difficult to imagine what measures states will put in place to ensure this "immobility" without formal detention orders validated by judicial authorities – as for those detained in preremoval centres (CPRs) - Italian experience teaches us that there are many possible forms of "de facto detention", that people can experience: these forms of confinement have often taken place on border islands, such as Lampedusa or Pantelleria, due to the impossibility for people arriving by sea to leave them independently, without interacting with the police.

In the above mentioned hotspots, the denial of contact between people who had just arrived in Europe and the outside world, coupled with the tight deadlines of the accelerated border procedures for examining asylum applications, were capable of seriously undermining not only the right to asylum, but also access to the right to defence.

Furthermore, according to the new Pact, even "persons with specific needs", so-called vulnerable persons, including unaccompanied minors, may be deprived of their personal liberty. This is despite the fact that the procedure for determining vulnerability is poorly defined in the substance – especially with regard to who should carry it out and how – but hyper-defined in terms of timing – and therefore possibly "not to be reassessed" after a specific period of time, unless the doctor deems it necessary. This is despite the well-known structural complexity of identifying the special needs of people arriving by sea and the need for potentially long periods of time for certain categories to emerge, such as victims of trafficking and labour exploitation, people with mental health issues, or survivors of torture and intentional violence, as well as sexual and gender-based violence.

Beyond the geographical characteristics and the type of infrastructure that will be used for this purpose – for example, the Italian state should make 8,010 places available for border procedures – an essential element of "deterrence" from escape or secondary mobility seems to be the "threat" entailed by some of the provisions included in the Pact. On the one hand, it places heavy responsibilities and duties on asylum seekers – such as "remaining at the disposal of the authorities", being cooperative, "answering the questions asked by the Territorial Commission in a 'satisfactory' manner"; on the other hand, "non-compliance" is considered a "punishment" for the person: for example, in the case of asylum seekers, failure to comply with their duties would result in an "implicit rejection" of their asylum application. If the person then wished to reapply, this would be categorised as a "reiterated

application", which would not be examined on its merits, implying a drastic reduction of legal guarantees for the applicants.

On the presumed 'safety' of countries of origin and transit as a tool of exclusion

The most worrying element introduced by the Pact is perhaps the re-definition of "safety" notion, through a restrictive approach. The new procedure Regulation states the possibility of considering countries to be safe even though there are exceptions in terms of groups of people or parts of the territory. In other words, the Pact attempts to overcome the notion of safe countries of origin (SCO) as reiterated by the Court of Justice of the European Union (ECJ) in several decisions, most recently in the Alace and Canpelli joined cases (see the text in Echoes No. 19), as a condition to be verified constantly and generally in each territory, without exceptions. This would allow many more countries to be considered safe than in the past, in a scenario in which, coming from a country considered safe is a criterion for channeling asylum seekers into accelerated procedures at the border, which are significantly less protective than ordinary procedures. A further criterion for channeling into such procedures is whether the asylum seeker comes from a country for which the rate of recognition of international protection is less than or equal to 20%. While this threshold must be calculated based on Eurostat data, it is unclear whether reference should be made to first-instance decisions – i.e. those taken by the territorial commissions for the recognition of status – or second-instance decisions, i.e. those taken by the courts on appeal.

The purpose of these instruments seems clear: limiting as much as possible access to forms of international protection and therefore the right to remain in the EU. This would be achieved through the increasingly widespread use of exceptional asylum procedures and the reconfiguration of ordinary asylum procedures in residual terms.

The question of "safety" determination of a non-European country is at the heart of another important issue, namely the possibility for States receiving asylum applications to declare them "inadmissible" or "manifestly unfounded" when there is a possibility of transferring the person to a country considered to be a "country of first asylum" or a safe third country. These novelties seem inspired by the procedures introduced by the EU-Turkey deal, and allowing the transfer of asylum seekers reaching Greece back to Turkey, as well as to the (temporarily failed) Italy-Albania deal.

How to still support those who exercise the right to leave/claim freedom of movement?

If the legal battle that began in Italy in 2023 over the accelerated border procedures introduced by the controversial "Cutro Decree" led to the emptying of detention facilities for asylum seekers in Sicily and the failure of the Italy-Albania agreement, the introduction of the new pact risks reversing these outcomes. It attempts to bypass the legal progress made both by the jurisprudence in Italy and at the European Court of Justice.

Less than six months before the Pact entry into force, Europe seems eager to implement some of its main new features. On 10 February 2026, the Parliament voted by a large majority on a list of "safe countries" - applicable to both countries of origin and third countries - and adopted changes to the EU asylum procedure regulations, to enable faster processing of asylum requests. While these agreements still need to be formally adopted by the EU council, Italy issued yet another "security decree", aimed at fostering their implementation.

Until now, European law has been the basis for strategic litigation aimed at guaranteeing asylum seekers a set of rights and respect for the principle of non-refoulement, but with the entry into force of the pact, some of these rights will cease to exist. Conversely, the changes introduced risk providing fertile ground for the implementation of measures proposed by states in violation of European law, with the aim of hindering departures and managing arrivals in a restrictive manner.

For this reason, it appears necessary and urgent for civil society to reflect on what tools can still be used to combat a political agenda aimed at making those who arrive in Europe informally invisible, marginalised and excluded. While, on the one hand, it is appropriate to identify new possible references for strategic litigation, including the EU Charter of Fundamental Rights or constitutional law, on the other hand, it seems important to identify the tools available to solidarity networks to counter the new violations that the Pact would make possible. Today more than ever, building relationships with people who are formally or informally detained, with a view to providing them necessary information and facilitating their access to legal assistance, but also making them visible and amplifying their voices, seems an essential tool in challenging border regimes and the new procedures envisaged in the Pact, which are based, in any case, on the invisibility, marginalisation, isolation and silencing of people arriving by sea.

Reflecting on the tools to combat the legal and political drift that the Pact represents is now an essential precondition for destabilising border regimes. Communicating, across walls, with people who are de facto and de jure detained, are necessary practices today, with a view to supporting infrastructures for freedom of movement.

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