anafé
Association nationale
d'assistance aux frontières
pour les étrangers

Screen, detain, deport

Analysis of the provisions applicable to borders in the New European Pact on Migration and Asylum

February 2022

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In this analysis, the term *zone d'attente* (*zones d'attente* in its plural form) has been kept in French, as it is a specific concept defined by France's 6 July 1992 law[1]. A *zone d'attente* is a physical space where foreign persons can be detained when arriving at the Schengen area's external borders. They can be found in airports, ports and international train stations and are operated by the border police. Foreigners can be detained there, for a maximum of 20 days in principle, when they do not meet the necessary requirements to enter the French territory (that is, accommodation for their whole stay, subscription to a health insurance policy, a return ticket, etc.), if the border police suspect them of being a 'migration risk', or if they apply for asylum at the border[2].

[1] See insert p. 7.
[2] See p. 9 to 11.

Acronyms

ANAFE	National Association for Border Assistance to Foreigners *(Association nationale d'assistance aux frontières pour les étrangers)*
ECHR	European Court of Human Rights
CESEDA	Code governing the Entry and Residence of Foreigners and the Right of Asylum in France *(Code de l'entrée et du séjour des étrangers et du droit d'asile)*
CFDA	French Coalition for Asylum Rights *(Coordination française pour le droit d'asile*)
CNCDH	French National Consultative Commission on Human Rights *(Commission nationale consultative des droits de l'Homme)*
CRA	Administrative detention centre for migrants awaiting deportation (*Centre de rétention administrative*)
INTERPOL	International Criminal Police Organisation
ITF	Judicial order banning from French territory *(Interdiction de territoire français*)
ODSE	French Observatory on migrants' right to health *(Observatoire du droit à la santé des étrangers)*
OEE	French Observatory on Detention of Foreigners *(Observatoire de l'enfermement des étrangers*)
OFPRA	The French Office for Refugees (*Office français de protection des réfugiés et apatrides*)
UN	United Nations
PAF	French border police (*Police aux frontières*)
SAR	Search And Rescue
EU	European Union
UNHCR	United Nations High Commissioner for Refugees
ATV	Airport Transit Visa
ZA	*Zone d'attente* (see insert above)
ZAPI	Detention facilities of the Paris Roissy *zone d'attente (Zone d'attente pour les personnes en instance)*

Databases

CIR	Common Identity Repository
ECRIS-TCN	European Criminal Records Information System for third country nationals
EES	Entry/Exit System
ETIAS	European Travel Information and Authorisation System
EURODAC	European system for the comparison of fingerprints of asylum applicants
EUROPOL	Europol's central criminal information and intelligence database
FAED	Automated fingerprint database
FPR	Wanted persons file
RMV2	French worldwide visa requests management system (*Réseau Mondial Visas 2*)
SIS II	Schengen Information System
STIC	Criminal Information Processing System
TAJ	Criminal records database
TDAWN	Travel Documents Associated With Notices (INTERPOL's database)
VIS	Visa Information System
VISABIO	French Government system for tracking applicants to its national visa system

Introduction: What future migration policies at the European Union (EU) borders?

Since the so-called 'refugee crisis' in 2015, European leaders have repeatedly drafted reforms to the legal framework of the EU's migration policy. In this line, the European Commission presented on 23 September 2020 the main guidelines of the next stages to the casting of its migration policy in the form of a New Pact on Migration and Asylum (hereinafter: 'the Pact').

The Pact encompasses the following new legislative files:

- A new Asylum and Migration Management Regulation;
- A new Screening Regulation;
- A new Crisis and Force Majeure Regulation;
- An amended proposal revising the Asylum Procedures Regulation;
- An amended proposal revising the Eurodac Regulation.

Other legal proposals accompany these regulations: a recommendation on Migration Preparedness and Crisis Blueprint, a recommendation on Resettlement and Complementary pathways, a recommendation on Search and Rescue Operations by Private Vessels, and guidance on the Facilitators Directive.

The files and their legislative process can be followed on the website of the European Union as part of the European Commission's fifth work priority — 'Promoting our European Way of Life'.

By early 2022, these proposals had yet to be adopted, while each could be adopted independently and according to the European Commission's defined priorities. Although the Pact is not legally binding, it nevertheless reflects the European Union's will to foster increasingly restrictive management of the rights of migrants by the Member States without having learned the lessons of all the violations and errors of European migration policies.

Its content sets the tone of the European Commission's priorities for the coming term:

- To normalise the emergency measures during crisis management: to reinforce rescue operations carried out by Frontex, to fight against the 'smugglers and traffickers' through cooperation with third countries, to receive some people via relocalization or resettlement mechanisms,
- To reinforce the fight against the so-called 'irregular' migration, and controls at its internal and external borders.

The Pact was presented as a tool for restoring trust and cohesion between the Member States. Although some States strongly criticised it for being too flexible, it is already reinforcing practices regarding fast-tracking procedures, screening of migrants, detention, and externalisation of migration policies.

While it encourages States to promote the fast-tracking of family reunification, to take into consideration the best interests of the child, or to assume their responsibility for search and rescue, the Pact does not address questions of integration, fight against discrimination, violence, and violations of fundamental rights at the borders. Nor does it address the development of possible safe migration routes to prevent more deaths at Europe's internal and external borders.

On the contrary, the Pact recommends a policy based primarily on:

- The recasting of the Dublin Regulation;
- A new solidarity mechanism between the Member States, 'who could choose between the relocation of newly-arrived persons, the return 'sponsorship' of persons whose asylum applications have been dismissed, or to materially, logistically or politically contribute to the external dimension of the European migration policy'[3];
- A screening mechanism at the borders and a subsequent procedure consisting of an expeditious asylum procedure at the borders, or a return procedure.

A screening procedure inspired by the French border controls mechanism?

By reinforcing screening and border controls, through an asylum procedure taking place at the borders and increasingly repressive practices of detention and refoulement, the Pact appears to sustain the 'Fortress Europe' and its external borders through a triptych already applied at the French border: to screen, to detain, to deport.

> If the goal is indeed to screen, detain, and deport, then the French practice of refusing entry on its territory and the subsequent detention in *zones d'attente* is unquestionably effective. In 2020, 30,794 people were refused entry to the French territory at its border crossing points[4] (23,072 in 2001), and 5,064 were detained in *zones d'attente* (on all grounds, mainland and overseas territories). 892 persons filed an admission application to seek asylum on the territory (10,364 in 2001). Moreover, the procedures implemented at the borders are incredibly brief: in 2020, the average detention period was 2.5 days in Paris Charles de Gaulle Airport and even less in other *zones d'attente*[5]. The number of immediate returns is also very significant: 25,730 persons (including potential asylum seekers) were returned immediately without detention in a *zone d'attente*. At last, the rate of deportation was 63% in Paris Charles de Gaulle (data are not available for other *zones d'attente*).
>
> We observe a clear decrease between 2001 and 2020 in the number of people who could apply to seek international protection at France's external borders[6]. Moreover, the number of immediate returns shows that the procedure consisting of refusing entry is effective in expelling people directly. It leads to the corollary question of the information provided to the persons about the applicable procedure and its attached rights. Many people met by Anafé via its legal aid services testify that they were not informed of their rights. In addition, they did not understand the applicable procedure and were sometimes subjected to pressures to return the most quickly possible to their original destination[7].

[3] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[4] *'Border crossing point: shall mean any crossing point authorised by the competent authorities for crossing external borders.'* (Article 1 of The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders).

[5] Sources: Ministry of the Interior and OFPRA.

[6] Anafé, *Le contrôle des frontières et l'enfermement en zone d'attente - Support de formation pour la défense des personnes privées de liberté en zone d'attente*, November 2021, p. 25 and 26.

[7] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 9.

> The French authorities often portray the *zone d'attente* as an effective system to manage its borders, to sort out and repel undesirable persons from its territory.

With its extensive thirty-year experience in assisting foreigners stranded at the French borders (see insert below), Anafé decided to take the opposite approach to the analysis and discourses of the French political leaders by bringing new light to the reality of administrative detention at the external borders of the Schengen area. Its analysis of the Pact is based on a thorough knowledge of the screening mechanism implemented in the French *zones d'attente.*

This analysis, which intends to deconstruct the menacing political discourse of 'crisis,' 'invasion,' 'mass arrival,' 'great replacement,' etc. has three objectives:

- to raise awareness among the political leaders of the consequences of their decisions on people in migration: treatments that are often inhuman, renewed violations of rights, and, eventually, more institutional violence. The time has come to change the direction of European migration policies. The answer to the difficulties faced by the European Union and its Member States — which they created by unsuccessfully trying to curb migration — should not lead to a renunciation of our humanity;

- to provide guidance to organisations and associations working for the defence of the rights of people in migration at the external borders of Europe on what the French government, which assumed the presidency of the European Union Council in the first semester of 2022, aims to do at the borders of Europe and on the upcoming European migration policies;

- to open the civil society's eyes to the reality of the migration policies decided by the political leaders they elect. As the number of deaths at the external and internal borders is steadily increasing and racist discourses are proliferating, civil society can and must reclaim its role and reassert to political leaders that it is time to stop the deaths of human beings at the borders of Europe — which proclaims itself to be an inclusive and humanist land of refuge.

The EU borders must stop becoming graveyards and Europe must not lose its soul by disavowing all the principles upon which it based its creation and cohesion. The European Union's New Pact on Migration and Asylum must be rescinded before becoming binding. Other policies focusing on hospitality and integration are possible: everything depends on the choices that will be made in terms of human and financial resources.

This analysis focuses on deciphering some of the measures of the following three regulation proposals: the Screening Regulation, the Asylum and Migration Management Regulation, and the Crisis and Force Majeure Regulation. Since these regulations are yet to be adopted, the term used by Anafé in its analysis will be: 'proposal for a Regulation.'

First, through this analysis of the Pact, Anafé criticises the mechanisms of the proposal for a Regulation on screening and its consequences. Then, it deciphers the logic of administrative detention at the borders, which strives to enhance the effectiveness of deportation. The analysis continues by focusing on the measures of the Pact regulations concerning particularly vulnerable persons, especially asylum seekers and minors. At last, the

analysis ends by evaluating the insufficient safeguards regarding judiciary scrutiny of screening practices, asylum procedures at the borders, and administrative detention.

Insert: Anafé opposes administrative detention of foreigners at the borders

Since 1989, Anafé has fought to defend the rights of the people facing difficulties at the borders or detained in *zones d'attente*.

A *zone d'attente* is a physical space created and defined by the 6 July 1992 Law. It goes from 'the boarding and disembarkation areas to the areas where people are controlled. It is determined by the competent administrative authority. It can include, on-site, or at a nearby location of the railway station, the port, or the airport, or near the disembarkation area, one or several lodging facilities offering hotel-type services to the foreigners'[8]. In concrete terms, this space consists of the customs area, to which access is restricted (also called the 'international' zone or the 'customs security area'). It can comprise lodging facilities 'offering hotel-type services', like the one at Paris Charles de Gaulle airport[9]. In other *zones d'attente*, people can be detained in rooms within the police stations or nearby hotels[10].

The only reason for this deprivation of liberty is the non-respect (whether justified or not) of rules related to border crossings and/or residency status. These detention facilities are, above all, used to punish and dissuade. The logics operating are generally the same: rejection and alienation, concealed and opaque practices, ever-increasing personal data registration and screening, and violations of fundamental rights.

For 30 years, Anafé has observed and denounced the rights violations against people detained in *zones d'attente*. With its experience, Anafé recently published a note on the necessity to end the detention of foreign persons[11].

It is illusory to think that it would be possible to lock people up with respect for their dignity and rights. According to findings confirmed by the conclusions of all the investigations and field observations carried out by NGOs and fundamental rights protection bodies, illegal practices, abuses of procedures, and violations of fundamental rights arise from the deprivation of liberty itself (the right to asylum, the right to respect for private and family life, protection of children, freedom of movement, the right not to be subjected to inhuman or degrading treatment).

To denounce the very principle of the detention of foreigners at the borders appeared to be the logical consequence of Anafé's work, allowing it to align its objectives with its practices and give more perspective to its everyday action. In 2016, Anafé took a stand against the administrative detention of foreigners[12]. Therefore, Anafé refuses the idea that the *zones d'attente* (and the administrative detention in general) are a necessary evil, and that its own intervention would only aim at preventing ill effects without questioning the very foundations of administrative detention.

[8] Article L. 341-6 of the CESEDA.
[9] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 178 and following.
[10] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, '*Tour de France des zones d'attente*' part, p. 110 and following.
[11] Anafé, *S'opposer à l'enfermement administratif des personnes étrangères*, Analysis, March 2020.
[12] *L'Anafé contre l'enfermement administratif des étrangers aux frontières*, July 2017.

The intensification of personal data collection: a tool to sort out foreigners

The proposal for a Regulation of the European Parliament and the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, of 23 September 2020, (hereinafter 'Proposal for a Regulation on screening'), lays down the procedures intending to reinforce the screening of people in migration at the external borders of Europe. The screening is divided into several successive phases: identification, health and security checks, and registration of personal information.

These successive and complementary phases aim to 'better' control arrivals on European territory to determine more quickly who can enter the territory and who can be turned away. During the screening procedure, people are under the constraints of the authority in charge of the procedure (border police, customs, or any authority responsible for border controls). They are therefore deprived of their liberty from the start of the screening procedure.

The real purpose of screening: control

The Pact intends to reinforce this control phase by imposing a special and generalised pre-entry screening at all external borders of the European Union. Indeed, the Commission proposes the introduction of a screening phase prior to entry into the territory of an EU Member State, applicable:

- to all third-country nationals crossing external borders outside of the border crossing points of the Schengen area[13],
- to third-country nationals who are disembarked after a search and rescue operation,
- to third-country nationals presenting themselves at border crossing points without fulfilling the entry conditions,
- to third-country nationals applying for international protection[14].

The identification of persons during this screening phase applies mainly to cases of disembarkment, which are the cases where identification of persons could not be processed through usual entry control procedures on the Schengen territory (in France, at control booths). It can apply to disembarkment from vessels after a search and rescue operation (SAR), as well as to arrivals of persons outside of the border crossing points.

To conduct this control, the authorities search every national database and consult the Common Identity Repository (CIR) established by the Interoperability Regulation (EU) 2019/817.
National authorities use the person's travel or identity documents, data or information provided or obtained from the person, and biometric data.

[13] 'External borders: shall mean the Contracting Parties' land and sea borders and their airports and sea ports, provided that they are not internal borders' (Article 1 of The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders).

[14] Article 3 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

The proposal for a Regulation on screening provides that security checks *'should be carried out, to the extent possible, on the basis of biometric data, in order to minimise the risk of false identification, and the results of the searches should be restricted to reliable data only*[15].'
A particular emphasis is placed on biometric data: using biometrics appears as a guarantee of truth, an unshakeable proof of the person's identity.

Although biometrics is presented as infallible, there are significant error rates due to the extreme precision required to capture, process, and read body data[16]. The risks of excessive security measures to the detriment of the rights of people on the move are conspicuous from the identification stage of individuals. Without considering the margins of error that biometric tools can present, their use can automate the processing of personal data, removing any discussion and appreciation of singular human situations.

The will to sort the persons admitted into the Schengen area from those deemed ineligible by the authorities at the external borders was already at play since the Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code). The Pact intends to reinforce and systematise that practice.

This screening phase allows the Commission to harmonise the control and screening carried out by national authorities at all external borders.

Thus, in line with previous reforms, the proposal for a Regulation on screening seeks to strengthen security and health checks and the collection of biometric data. It also tends to legalise practices that take place mainly in hotspots and French *zones d'attente*.

> Currently, under French law, all travellers, whether subject to a visa requirement or not, are controlled by border police upon arrival at an external border of the Schengen area. The controls take place at three levels in the terminal to check the conditions of entry of foreigners into French territory.
>
> The first occurs upon getting off the plane on the passageway leading to the arrival hall. Police officers are stationed directly at the exit of the aircraft (at the end of the bridge or at the airport entrance when people arrive directly on the tarmac) and check the documents of all travellers. The police officers in charge of these controls, often belonging to a specialised border management mobile unit, are specifically trained to detect document fraud (other border police officers receive less specialised training on this subject). A control called 'at the aircraft door' takes place between the aircraft door and the booth, regardless of the distance between the two locations. It is carried out randomly but usually organised as part of the search for a person or upon arrival of flights considered as presenting a migration risk. This type of control is discriminatory because it targets people according to their country of origin, their nationality, or sometimes their gender[17].

[15] Article 12 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).
[16] Pierre Piazza, '*L'extension des fichiers de sécurité publique*', Hermès, *La Revue*, 2009/1, nº 53.
[17] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 43.

The second type of control is systematically implemented when leaving the international zone[18]. To leave this area and enter the territory, all persons must pass through the booth for a 'first line' identity and travel documents check, the verification of their guarantees of residency and departure (that is accommodation for their whole stay, subscription to a health insurance policy, a return ticket, etc.), and possible registration in various databases[19]. As long as they have not passed these first checkpoints, the persons are not known nor identified by the police, and they can circulate in this space. Fingerprints can be taken to consult various national, European, or international information systems: the Schengen database (VISABIO), Interpol information systems, the wanted persons file (FPR) that contains the judicial orders banning from French territory (ITF), and the Criminal Information Processing System (STIC) which lists any offences committed on French territory[20].

When further verifications are necessary (after control at the aircraft door or the booth in the arrival hall), people can be subjected to a more thorough control, known as a 'second line' control, in the police station of the airport terminal. There, the border police check the conditions of entry and can consult additional databases.

In application of the Code on the Entry and Residence of Foreigners and the Right of Asylum (CESEDA) and per the recommendations of the Schengen Borders Code, the admission procedure to the national territory must be based on objective criteria:

- Valid and authentic travel document (passport), which is scanned into the QUOVADIS box that displays on the computer information about the person, enlarges their photograph and alerts the police officer if the person is registered in the VISABIO, SIS II[21], TAJ, RMV2, FPR, Interpol, or FAED databases, the latter being the automated file of fingerprints of persons implicated in criminal or misdemeanour proceedings to facilitate their prosecution, investigation, and trial[22];
- Valid visa if nationality subject to this requirement;
- Requirements for accommodation, subsistence, health insurance, and any documents related to repatriation guarantees (return ticket)[23].

In addition to these criteria, there is the condition of not representing a 'migration risk': prejudices, generalisations, and 'detection' of signs of stress or nervousness: these practices lead to differentiated control methods targeting certain travellers and resulting in discriminatory practices. At the heart of French border controls, this concept gives a wide margin of appreciation to police officers, often leading to arbitrary decisions[24].

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[18] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 46.

[19] *Conditions d'entrée en France et dans l'espace Schengen*, Anafé, May 2019.

[20] Fore more details on the screening of foreign persons, see:
Anafé, *Le fichage - Un outil sans limites au service du contrôle des frontières ? - Note d'analyse*, September 2019 ;
Anafé, *La Boîte à fichiers*, Work tool, April 2019.

[21] Schengen Information System where persons subjected to an entry ban to the Schengen area by one of the Member states are registered.

[22] Anafé, *Le fichage - Un outil sans limites au service du contrôle des frontières ? - Note d'analyse*, September 2019 ;
Anafé, *La Boîte à fichiers*, Work tool, April 2019.

[23] See Anafé's website at the section *Conditions d'entrée en France et dans l'espace Schengen* and the document '*Conditions d'entrée dans l'espace Schengen en fonction du pays de destination*'.

[24] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 42 and following.

> According to the testimonies collected by Anafé, the 'migration risk' allows the border police officers to apply their own, often discriminatory and racist, criteria to screen people. For example, it is common for women from Central America who meet all the entry requirements for a tourist stay to be refused entry because they represent a 'migration risk'. The police frequently suspect them of wanting to enter Europe, particularly Spain, to stay and work. People visiting their relatives also report being tricked, threatened, or assaulted to 'make them confess' that they were coming to stay and work[25].
>
> If one of these conditions is not satisfied, the persons are considered as not admitted to the French territory, and a decision of refusal of entry and placement in a *zone d'attente* is notified to them. The CESEDA also provides for the possibility to directly repel the person without placing them in the *zone d'attente* (article L. 333-1). In this case, only a refusal of entry can be issued. If they apply for admission to seek asylum, they are notified of the decision of placement in the *zone d'attente* and a record of the registration of the asylum application[26].

Health controls: a genuine health protection or a pretext for increased control?

The Pact provides for a common framework for health checks[27]. It aims to harmonise the controls taking place since the beginning of the Covid-19 crisis and the practices that have not only emerged during disembarkation in ports following search and rescue operations, particularly in the Mediterranean Sea[28], but also at arrivals of travellers in ports and airports. Member States should entrust this health check to qualified medical personnel.

Authorities may waive the health check if they are convinced that it is not necessary. While earlier drafts of the proposed screening regulation did not specify the 'competent authorities', the 3 December 2021 version clarifies that they should be medical/health authorities[29].

The health control provisions appear to be a direct consequence of the Covid-19 health crisis. Undoubtedly, health controls were developed in the New Pact to limit the risks of transmission of a highly contagious virus. Indeed, it is an element developed in the introduction to the proposed regulation on screening, as public health issues have become particularly important since March 2020 in Europe.

Beyond preventing a new health crisis, this control has another objective: identifying people needing immediate care. While the objective is commendable, the practice observed in French *zones d'attente* reveals a different reality in terms of medical care.

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[25] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 84 and following.

[26] Another category of people can be held in the *zone d'attente*: people controlled and blocked during flight connections.

[27] Article 9 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

[28] See for example the Italian practice of creating 'floating hotspots' (quarantine on board ships): 'Italy: Quarantines on board ships are 'discriminatory towards migrants', Infomigrants, 6 October 2020.

[29] Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

In France, since 2015, Anafé has denounced throughout its reports the lack of consideration given to health protection for people detained in *zones d'attente*, especially in the light of the failure to respect the right to health (and the right to life). In the section '*Un 'Tour de France' des zones d'attente*' in its report *'Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente*', Anafé describes the challenges to accessing healthcare and doctors in fifteen or so *zones d'attente*[30]. Similarly, in its note *'S'opposer à l'enfermement administratif des personnes étrangères'*, Anafé exposes the harsh reality of accessing healthcare at the borders[31].

Since the beginning of the health crisis due to the Covid-19 outbreak, Anafé has been alerting the authorities and the public about the risks of the virus propagation in such confined places[32]. The management of the health crisis in the *zones d'attente* and at the borders (an analysis of which will be available by the end of 2022) does not conform with the health recommendations of the authorities. This situation forced Anafé to suspend its activities in the Paris Charles de Gaulle *zone d'attente* in April 2021 — although this *zone d'attente* is the only one with a medical service[33]. Above all, the practice has led to the deportation of people infected with Covid-19[34]. In addition, the health status of the detainees was not taken into account in many cases. It was the case of a young HIV-positive woman locked up in the *zone d'attente* without treatment, even though the French government categorises people with uncontrolled HIV infections as among the most vulnerable, i.e., at risk of developing a severe form of coronavirus infection[35].

Independently of the Covid-19 health crisis, Anafé has long been pointing out the shortcomings of health controls at the French borders. In Mayotte, people have been attempting to reach the island with '*kwassa*' (small fishing boats) for years. As soon as they reach land and before being taken to the administrative detention centre (CRA), they are subjected to a summary medical examination carried out by the authorities in conjunction with the Mayotte hospital.

In its report, '*976 : Au-delà des frontières de la légalité*', Anafé noted: 'If a medical problem emerged, the person would not be placed in the administrative detention centre but rather transferred to the hospital. Nevertheless, transfers to the hospital are rare and reserved for women about to give birth (the others are put in the CRA and sent back within 24 hours), or for very sick or injured people'[36].

Whether in the Overseas Territories, the Paris Charles de Gaulle *zone d'attente*, or other *zones d'attente*, whether in the middle of a worldwide health crisis or during 'normal' periods, all the examples show that the arrangements for medical care for people arriving at borders are generally

[30] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, '*Tour de France des zones d'attente*' part, p. 110 and following.
[31] Anafé, *S'opposer à l'enfermement administratif des personnes étrangères*, Analysis, March 2020, p. 10 et following.
[32] '*Lettre ouverte - Demande de libération des personnes maintenues dans les zones d'attente dans les aéroports*', Anafé open letter, 20 March 2020.
'*Enfermement illégal et refoulement toujours d'actualité dans la zone d'attente de Roissy*', OEE press release, 23 April 2020.
[33] '*Les conditions sanitaires ne sont pas respectées en ZAPI : l'Anafé suspend sa mission d'accompagnement juridique à Roissy*', Anafé press release, 26 April 2021.
[34] '*Renvoi au Maroc d'une personne atteinte de la Covid 19 depuis la zone d'attente de Roissy*', Anafé press release, 12 October 2020.
[35] '*Le ministère de l'intérieur refuse de libérer une demandeuse d'asile séropositive au VIH enfermée en zone d'attente depuis 10 jours et privée d'accès à un traitement !*', Anafé/ODSE press release, 8 December 2020.
[36] Anafé, *976 : Au-delà des frontières de la légalité, Rapport de mission à Mayotte/La Réunion*, March 2017, p. 24.

> very basic, far from the requirements that would be necessary to ensure their right to health, or even their right to life.
>
> Furthermore, the risk (which has been demonstrated in Mayotte and in *zones d'attente*) is that the purpose of health checks becomes the faster deportation of people rather than to provide genuine medical care for those in need. Far from being concerned with the health of people at the border, the New Pact could thus serve to reinforce a policy aimed at deporting as quickly as possible any person considered undesirable by the French authorities — and other Member States — regardless of their medical condition.

When reading the Pact, this impression is reinforced by the fact that the Commission provides, where appropriate, for the isolation of persons on public health grounds, following a medical examination. Indeed, Article 9 of the proposal for a Regulation on screening provides the possibility of isolating persons subject to health checks 'for public health grounds'[37]. This possibility is a direct consequence of the Covid-19 health crisis, as the Commission specifies in the 'background' section of the proposed regulation.

No indication is given as to the legal framework for such isolation, despite constituting a case of deprivation of liberty.

> Some French *zones d'attente* have rooms for solitary confinement, like in Paris Charles de Gaulle or Marseille Le Canet. They are very similar to prison cells or police custody rooms. In Marseille, they are small rooms without windows where all the furniture is hung on the walls and/or nailed to the floor to prevent people from damaging them or using them to hurt themselves. The toilet is inside the cell, separated from the entrance door by a simple low wall. There is a camera in the room. These rooms for solitary confinement typically serve in case of fights, desperate acts, or self-harm for some psychologically ill people, or when people are 'too agitated' or violent; according to the border police, they are rarely used. In April 2021, during a visit to the Paris Charles de Gaulle *zone d'attente*, Anafé observed that the room for solitary confinement was diverted from its regular use to serve as a place to isolate people who tested positive for Covid-19.

The possibility given by the Pact to isolate sick people could reinforce and generalise an already existing practice in French *zones d'attente*, namely the isolation in appalling conditions of people who need care (physically or psychologically). Anafé's observations show that these people need real medical care more than ever stricter confinement, with irrefutable consequences on their health.

[37] Article 9 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

Security checks as a justification for intensifying the collection of personal data on migrants

Improving the interoperability[38] of information systems

The security check, as mentioned in the New Pact, is intended to verify that the person does not represent 'a threat to internal security' and applies to the person and the objects in their possession[39].

Regarding potential body searches, the Commission leaves its implementation to the national law of each State, without even referring to the European framework for the protection of fundamental rights.

The proposal for a Regulation on screening aims to improve the interoperability of information systems and their use at borders. In 2019, two European regulations (2019/399 and 2019/818) established interoperability between Eurodac, SIS II, and VIS databases to create a European search portal, a shared biometric matching service, a common repository of data, and a multiple identity detector.

This reinforced interoperability of information systems validates the provisional agreement reached in February 2019 between the Presidency of the European Council and the European Parliament on the interoperability of information systems to improve border controls in the EU[40]. For security checks, Article 11 of the proposal for a Regulation on screening requires authorities (border police, customs, or any authority responsible for border controls) to consult the EES[41], ETIAS[42], VIS[43], ECRIS-TCN[44] information systems, specific data processed by Europol and the Interpol database on travel documents associated with notices (TDAWN).

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[38] Interoperability is the ability of information systems to exchange data and to enable the sharing of information.(Definition of the European Commission, COM/2016/0205 final). One can distinguish four dimensions of interoperability:
- a single search interface to query several information systems simultaneously and to produce combined results on one single screen;
- the interconnectivity of information systems where data registered in one system will automatically be consulted by another system;
- the establishment of a shared biometric matching service in support of various information systems;
- a common repository of data for different information systems (core module).

[39] Article 11 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

[40] '*Interoperability between EU information systems: Council Presidency and European Parliament reach provisional agreement*', Press release, European Council, 25 February 2019.

[41] *Entry Exit System* established by the Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011.

[42] European Travel Information and Authorisation System, including the ETIAS watchlist with the purpose *'of identifying connections between data in an application file and information related to persons who are suspected of having committed or having taken part in a terrorist offence or other serious criminal offence or regarding whom there are factual indications or reasonable grounds, based on an overall assessment of a person, to believe that they will commit a terrorist offence or other serious criminal offences'*. Regulation (EU) 2018/1240 of the European Parliament and of the Council of September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, §28.

[43] Visa Information System. Regulation (EC) No 767/2008 Of The European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation).

[44] European Criminal Records Information System for third country nationals, a centralised system for identifying Member States with information on convictions for terrorist offences and other forms of serious criminal offences. Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the

When a query (search in the databases) generates a match with one of the European information systems, the national authority is allowed to consult the file.

The data protection safeguards for individuals are thus very weak. By increasing interoperability, national authorities controlling arrivals can search for people by name, fingerprint, facial recognition, and, above all, cross-reference the information available in the various databases.

If the query generates a match with a Europol or Interpol information system, then the controlling authority must inform the competent authorities within the Member State in order to take any appropriate action.

Since 20 July 2015, Europol can already request the comparison of fingerprint data contained in Eurodac for law enforcement purposes. It also has access to the SIS II and VIS databases within the scope of its missions[45].

The logic is reinforced by the proposal for a Regulation on screening, which reverses the question-and-answer system. Whereas in 2015, consultation and access to European border control databases were allowed upon request by Europol, the proposal for a Regulation transforms border control officers into the first controllers of the registration of persons in repressive databases.

The intensive use of files intends to identify, categorise, control, exclude and expel. The technical and digital possibilities for their development seem limitless. There is a plethora of information systems, the complexity of which lies not only in their number but also in their overlapping. This opaque network creates legal uncertainty for the individuals concerned because of the risks of infringement of fundamental rights and civil liberties. The justification often given is to 'protect European citizens from international terrorism'. However, there is no actual data or studies confirming how biometric data records and their interconnection can contribute to this objective.

> At all levels, personal data collection has become a tool for border control. In 2019, Anafé identified 21 national, European, and international information systems used in border control, concerning foreigners[46] (prior to their journey and on arrival in Europe) but also Europeans.
>
> As Anafé already pointed out in its note *'Le fichage - Un outil sans limites au service du contrôle des frontières?'*[47], this amounts to putting border control authorities and repressive authorities on the same level. The reinforcement of the interoperability of information systems and the systematic control of Europol and Interpol databases contributes to the constant confusion between the fight against crime and the fight against illegal migration.
>
> Foreigners have long been subjected to control and surveillance measures. However, there has been a shift towards the increasing criminalisation of these people, along with the steady development of

identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726.

[45] Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, Official Journal of the European Union L 218/129, 13 August 2008.

[46] Anafé, *La Boîte à fichiers*, Work tool, April 2019.

[47] Anafé, *Le fichage - Un outil sans limites au service du contrôle des frontières ? - Note d'analyse*, September 2019.

> new technologies. Databases are a blatant example of this. Information systems and their interoperability are being multiplied under the pretext of making them more efficient. Moreover, these files are applied exclusively to foreigners, which has the effect of marginalising them from the rest of society. Furthermore, in the collective unconscious, personal data collection is linked to a form of delinquency.

By reinforcing the interconnection and interoperability of the various databases with the stated aim of combating 'illegal' migration, the New European Pact on Migration and Asylum fuels the confusion between migration control and the repression of offences, but also between delinquents and migrants.

The systematisation of fingerprinting and facial recognition with photographs

The proposal for a Regulation on screening systematises the use of information systems as well as their reinforcement by collecting data, particularly biometric data.

This policy is not new and is part of a broader process of digitalisation and the increasing use of technology at European borders, often referred to as 'smart borders'. Already, in 2017, the regulation creating the Entry Exit System (EES) provided for the obligation for the Member States to collect fingerprints and facial images of third-country nationals subject or not to the visa requirement. The same obligation is also provided for in the regulation creating the ETIAS.

These information systems are the tools for significant changes in European migration policies. For example, the SIS II database was created by the Convention of 19 June 1990, implementing the Schengen Agreement and the Eurodac database in order to enforce the European system for determining the State responsible for examining an asylum application established by the so-called Dublin Convention. The VIS supports the development of a common European visa policy.

> As Anafé noted in 2019, a foreigner's journey is now 'marked by databases'[48]. This control of people's movements is directly linked to the idea that migration represents a risk. People are categorised as 'foreigners' through personal data recording, reinforcing the permeability between the notion of a foreigner and that of a person representing a risk to public order. The same applies to fingerprinting and facial recognition. The consequences of massive and ever-increasing registration of migrants lead to the belief that they are dangerous, a risk, or a threat, which encourages hate speech and racism.

Screening, a procedure hindering fundamental rights

In its notes to explain its choices regarding the Pact, the Commission asserts that *'as the screening as such is a mere information-gathering stage which prolongs or complements the checks at the external border crossing point and which does not entail any decision affecting the rights of the person concerned, no judicial review is foreseen regarding the outcome of the screening'*[49].

[48] M. Merzouki, '*Le fichier des étrangers*', *in Mouvements*, n° 62, 2010.

[49] Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021), p. 14.

However, there are grounds for concern that the fundamental rights of foreigners are being infringed through this mechanism, particularly the lack of judicial review.

Screening is not 'mere data collection'

The objective of this 'screening' phase is to determine the procedure applicable to the third-country national. Thus, after the collection of their information during the screening phase, persons who have been refused entry are directed either to the procedure of non-admission (re-routing) or to the procedure for asylum at the border (which may or may not be fast-tracked).

Contrary to what the Commission claims, this screening phase, therefore, directly impacts the migratory path of these people and the rights applicable to them.

More importantly, it is during this screening that asylum seekers will be able to formulate and register their application for international protection. However, no specific measures are provided in this matter, even though they should be given certain safeguards, mainly with regard to the examination of their application from this first phase. People will not be referred to the authorities in charge of their application nor to counsel that is crucial in preparing an asylum application. As the Conseil National des Barreaux points out, this constitutes a violation of the right to rapid access to the protection procedure[50].

A protection on the fringes of human rights

The rights of foreigners are barely protected in the proposal for a Regulation on screening. Indeed, the Commission makes only passing reference to the fact that fundamental rights must be respected by the Member States, which suggests that the issue of respect for human rights and the prevention and punishment of rights violations are not among its priority concerns. This is a reminder of the objectives of the Pact: to strengthen controls and screening at Europe's borders.

Nevertheless, Article 7 of the proposal for a Regulation provides for the implementation of an independent monitoring mechanism for fundamental rights within each Member State. However, it does not specify the minimum prerogatives of the body that is supposed to exercise this supervision. Is it an ombudsperson or a judge? An institution with powers of sanction and injunction? Or a body with a mere power of recommendation? Nothing is mentioned at this stage by the Commission in terms of the protection of fundamental rights.

The Commission merely provides for the implementation of investigations into 'allegations of the breach of the fundamental rights during the screening', which is entrusted to the Member States. Foreigners are thus excluded from the protection of the law, as the Commission is not eager to impose common protective measures in the event of rights violations at the borders. In its version of 3 December 2021, the proposal for a Regulation on screening has reduced the number of legal safeguards. In particular, the rules relating to the detention of foreigners, as well as those relating to allegations of human rights violations in connection with the screening procedure, were removed. The only right that remains mentioned at this stage is the right to asylum

[50] Conseil national des barreaux, '*Nouveau Pacte sur la migration et l'asile*', Liberties and Human Rights commission, General assembly, 7 May 2021.

and the principle of non-refoulement. However, the fundamental rights of persons at the borders are not limited to those provided in the Geneva Convention[51].

Compliance with international and European law on the protection of the individual is therefore marginal and insufficient to deal with the threats posed by this screening phase, starting with the deprivation of freedom and the collection and processing of particularly sensitive personal data.

The disparity between the Member States in terms of migration policies and the implementation of procedures that are more or less protective of rights is also questionable. The number of arrivals at the borders also varies greatly from one EU country to another, which is at the heart of the problems in the European management of arrivals[52]. However, this Pact ignores this undeniable reality and does not make any significant proposals regarding respect for rights in light of these disparities between the Member States.

> The control and screening of foreigners by the French authorities has been constantly denounced by Anafé, given the rights violations observed. In its report *'Refuser l'enfermement'*, Anafé denounces arbitrary decisions during controls, discriminatory controls, incriminating hearings during which foreigners are subjected to pressure or even violence by the police, refusals to register asylum applications, attempts to deport people or expulsions without respect for peoples' rights[53].

Although fundamental rights are mentioned, they are not really taken into account in the procedure and even less in the implementation proposal made in the New Pact. It does not provide actual guarantees to compel the Member States to respect the fundamental rights of the people they control and screen at their borders.

A blatant disregard for vulnerabilities

The Commission remains vague on the definition of persons in a *'vulnerable situation, victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive'*[54].

The proposal for a Regulation on screening does not provide, in case of identification of a situation of vulnerability, for the end of the detention provided for this screening phase, but only for 'adequate support in view of their physical and mental health', which, for minors, shall be 'given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities'[55].

[51] Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

[52] For more details, consult the data available on the Eurostat website on Third country nationals refused entry at the external borders - annual data and Third country nationals returned following an order to leave - annual data.

[53] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020.

[54] Article 9 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

[55] Article 9 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).

In its version of 3 December 2021, the proposal for a Regulation further restricts the consideration of vulnerability, with some of the references provided in Article 9 being deleted altogether[56].

In addition, it does not appear to enhance the conditions and means for considering vulnerabilities provided for in Directive 2013/33 which lays down standards for the reception of applicants for international protection.

This 'support' falls far short of the needs of these people and does not take into account the extrinsic vulnerability generated by confinement nor the *'vulnerability inherent in his situation as an asylum seeker'*[57].

> While the reference to minors being accompanied by qualified persons in the proposal for a Regulation on registration is commendable, the practice in French *zones d'attente* is often quite different[58].
>
> The necessity to take into consideration specific vulnerabilities has already been transposed in France by the 2015 'Asylum' reform[59], which was supposed to allow for the implementation of 'dedicated procedural safeguards' for 'vulnerable' applicants. This reform was criticised for the hierarchy it created of vulnerabilities suffered by foreigners, but it nevertheless had some positive aspects.
>
> Indeed, the acknowledgment of vulnerabilities provided the possibility for the Ofpra to terminate detention in the *zone d'attente* for a person whose situation 'due to his or her minority or the fact that he or she has been the victim of torture, rape or another serious form of psychological, physical or sexual violence, requires procedural guarantees that are not compatible with detention in *zone d'attente*'[60].
>
> In its report titled '*Aux frontières des vulnérabilités*', Anafé makes a harsh assessment of the implementation of this system. Not only are particular vulnerabilities (minority, illness, need for international protection, victim of trafficking or violence) not taken into account in practice, but the authorities ignore the intrinsic vulnerability linked to detention[61]. The existence of a particular vulnerability is rarely, if ever, taken into account by Ofpra at external borders. In its 2016 activity report, Ofpra stated that it had only terminated detention in *zone d'attente* on five occasions[62], and in its 2019 report, there is no mention of this possibility[63].
>
> Similarly, since 2015[64], unaccompanied minors seeking asylum at the border should no longer be kept in a *zone d'attente*, with some exceptions. Nevertheless, the exceptions are interpreted in a very broad sense, as they concern:
> - All unaccompanied minor asylum seekers originating from so-called 'safe countries of origin';
> - All those whom the administration considers to be a threat to public order;
> - All unaccompanied minors who have 'presented fraudulent identity or travel documents, provided false information or concealed information or documents concerning [their] identity'.

[56] Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020 (version amended on 3 December 2021).
[57] ECHR, M.S.S. v Belgium and Greece [GC], Application No. 30696/09, 21 January 2011.
[58] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 56 and following.
[59] Law n° 2015-925 of 29 July 2015 relating to the right to asylum reform (France).
[60] Article L. 351-3 of the CESEDA.
[61] Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018.
[62] Ofpra, Activity report 2016, April 2017, p. 28 and 42.
[63] Ofpra, Activity report 2019, 2020.
[64] Law n° 2015-925 of 29 July 2015 relating to the right to asylum reform (France).

> In reality, this provision has never been applied because neither Ofpra nor the Ministry of the Interior's asylum service (responsible for making decisions on asylum at the border) has used it. In practice, they do not check whether the minor falls into one of the three above-mentioned categories before examining the asylum application at the border. Anafé has inquired about this on several occasions to the competent services, during annual meetings on the functioning of the *zones d'attente*[65], without obtaining any answer, as some officials had 'forgotten' that this regulation even exists. At Anafé's initiative, this text was enforced for the first time in November 2021, allowing the release of an unaccompanied minor seeking asylum. The non-implementation of this mechanism since 2015 suggests that unaccompanied minor asylum seekers who do not fall under the three categories of exception have been held in *zones d'attente* or even turned back.
>
> In 2018, the law provided an additional safeguard for people detained in *zone d'attente*. Article L. 332-2 of the CESEDA, which was thus amended, provides that 'special attention shall be provided to vulnerable persons, in particular minors, whether or not accompanied by an adult'. However, here again, the recommended 'special attention' has remained a formal provision without any particular impact; there has been no change when considering the vulnerability, particularly the minority, of people in exile when their entry to the territory is refused. Moreover, nothing is planned for the concrete implementation of this provision.
>
> Anafé regularly refers to the authorities (Ofpra, Ministry of the Interior, Border Police Directorate) cases that it deems particularly vulnerable, most often demanding an end to the detention and for the person to be admitted to the country on humanitarian grounds or for health reasons. Since 2015, out of 57 referrals made by Anafé, only one has resulted in the release of the person concerned.
>
> The procedure applicable to people held in Greek hotspots also provides for specific measures in cases where a vulnerability is identified, supposedly allowing for the release of people and their treatment as asylum seekers under the so-called 'normal procedure'. However, in practice, the treatment reserved for people held in hotspots does not allow for an actual assessment of vulnerability (overcrowding, no access to healthcare, excessively long procedures)[66].

Given what is happening in French *zones d'attente* and Greek hotspots, one may wonder about the reality of the vulnerability check proposed by the Commission. Its reference in the proposal for a Regulation on screening only appears as a pretence of taking into consideration the fundamental rights of the persons who will be detained. In the absence of any binding mechanism for the authorities responsible for its assessment, it is clear that the reference to vulnerability is a cloak of principle, which could even be used against migrants to justify extended periods of detention.

More detention for more deportation: the systematisation of the logic of border camps

One of the objectives of the Pact is to make it easier to expel people whom the EU and its Member States consider 'undesirable'. To this end, the new Article 35a of the proposal for a Regulation establishing a common procedure for international protection invites the Member States to issue a return decision at the same time as

[65] In accordance with CESEDA dictates, the Ministry of the Interior organises each year an annual meeting on the functioning of *zones d'attente* in the presence of all the competent services.
[66] C. Rodier, '*Le faux semblant des hotspots*', in *La revue des droits de l'Homme*, 2018, n° 13, § 37.
Gisti/Migreurop, *Détention des migrant·es à Malte : le chantage au débarquement*, Mission report, January 2020.

the refusal of the application for international protection, i.e., in the same act or, if in separate acts, at the same time and together[67].

Two mechanisms are reinforced: the extension of the duration of deprivation of liberty at the borders and the extraterritoriality of procedures and detention at the external borders (in the *zones d'attente* in the case of France).

The entry ban: a legal construct to keep foreigners out of Europe

The proposal for a Regulation on screening specifies that *'during the screening, third-country nationals submitted to the screening at an external border are not authorised to enter the territory'*[68]. The proposal for a Regulation establishing a common procedure for international protection provides that *'during the examination of applications subject to a border procedure, the applicants shall be kept at or in proximity to the external border or transit zones.*' It is specified that the control may be *'applied at locations at or in proximity of the external border'*[69].

In its analysis, the NGO PICUM calls for sufficient safeguards to be put in place to ensure that the screening phase does not automatically result in detention. The same remark can be made for international protection application procedures[70].

Again, the French *zone d'attente* seems to have served, at least in part, as a model for the proposed scheme[71].

In concrete terms, the 'locations at or in proximity of the external border' correspond to the customs area to which access is restricted (also known as the 'international' zone or 'customs security area'). In France, it can consist of lodging facilities 'offering hotel-type services,' like the one at Paris Charles de Gaulle airport. In other *zones d'attente*, people can be detained in rooms within the police stations or nearby hotels[72]. As of November 2021, the French Ministry of the Interior has identified 98 *zones d'attente* in airports, ports, and railway stations serving international destinations. The conditions of detention in these *zones d'attente* vary widely[73].

This area creates a legal fiction that allows people to be held virtually outside the Schengen territory, resulting in a *de jure* deprivation of liberty.

The influence of the French 'model' of *zones d'attente* is demonstrated by the Commission's provision that 'the tasks related to the screening may be carried out in hotspot areas as referred to in point (23) of Article 2 of

[67] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.
[68] Article 4 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020.
[69] Article 6 of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.
[70] PICUM, *Recommendations on the amended proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing directive 2013/32/EU (screening regulation)*, January 2021.
[71] The ZA is defined in French law as an area extending 'from the boarding and disembarkation areas to the areas where people are controlled. It can include, on-site, or at a nearby location, of the railway station, the port or the airport or near the disembarkation area, one or several lodging facilities offering hotel-type services to the foreign persons' (Article L. 341-6 of the CESEDA).
[72] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020.
[73] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, '*Tour de France des zones d'attente*' part, p. 110 and following.

Regulation (EU) 2019/1896 of the European Parliament and of the Council'[74]. These areas are 'created at the request of the host Member State in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders'.

The system described is very similar to that of the temporary *zone d'attente* provided in French law: '[...] In the event that a group of at least ten foreign nationals has arrived in France outside a border crossing point, as provided for in the third paragraph of Article L. 341-1, the *zone d'attente* extends, for a maximum period of twenty-six days, from the place or places where the persons concerned were found to the nearest border crossing point'[75].

It also brings to mind the Greek hotspots, now well known for their inhumane detention conditions, where violations of fundamental rights, particularly the right to asylum, are regularly documented[76]. Thus, the Commission legitimises the hotspot approach without considering the numerous violations of fundamental rights it generates.

> In '*Refuser l'enfermement*', Anafé reported that:
> 'In 30 years of practice, Anafé has observed that people deprived of their liberty at the borders regularly have to face difficulties such as the absence of information on their situation, the procedure, and their rights, the absence of an interpreter, the absence of a lawyer, the absence of access to a telephone, the absence of access to a doctor or medical care, insufficient food, insufficient or degraded hygiene and sanitary conditions, conditions of detention in unhealthy premises, seclusion from the outside world, lack of information on the right to asylum, refusal to register an asylum application, refoulement without examination of the asylum application, deprivation of liberty of unaccompanied or accompanied children, stigmatisation and racist or sexist comments, pressure, intimidation or violence by the police...
> [...]
> As part of its field activities, Anafé follows up on people who have been detained in police custody, deported after being held in a *zone d'attente*, or who have been able to access French territory after spending several days in detention.
>
> Whatever their situation and the reasons for their detention in *zone d'attente*, it is often blatant from discussions with these people that they wish to 'forget' this traumatic episode in their lives, 'to stop thinking about it,' and 'to move on'. Their relatives and family are also affected by the suffering and the moral, physical, or psychological violence experienced by those around them.

Lastly, it is stated that the national authorities may call on experts, liaison officers and teams from the European Border and Coast Guard Agency (Frontex) and the European Union Asylum Agency to carry out the screening. This clarification confirms a well-known policy of collaboration in the hotspots[77].

By generalising a system of encampment at the borders of Europe, the New Pact adopts a policy of segregation of migrants that is already well established, the physical and psychological consequences of which have been denounced repeatedly.

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[74] Point 20 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020.
[75] Article L. 341-6 of the CESEDA.
[76] Migreurop, *Des hotpspots au cœur de l'archipel des camps*, *Les notes de Migreurop*, October 2016, n° 4.
C. Rodier, '*Le faux semblant des hotspots*', in *La revue des droits de l'Homme*, 2018, n° 13.
[77] La Cimade, *L'approche hostpots : l'Europe en faillite sur les îles grecques*, 24 October 2018.

A concerning increase in the duration of border detention

A duration of five days - increased to ten if an exceptional situation is declared - is provided for the screening phase[78].

In the case of an application for international protection, detention is possible for up to 12 weeks - the time to examine the application and decide whether or not to admit the person to the territory[79]. In case of rejection of the asylum application, the detention can be extended for an additional 12 weeks to carry out the deportation[80].

Cumulatively, these periods of deprivation of liberty can thus reach six months.

To this must be added the possibilities of extension provided for by the proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum. In these situations, the duration of the asylum procedure can be prolonged for eight weeks, as well as that of the return procedure, i.e., a total of four additional months of detention[81].

However, the definition of 'crisis situation' is particularly vague: *'the situation of crisis covers exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system non-functional, or an imminent risk of such exceptional situations of mass influx'*[82].

'Mass influx' is a vague concept left to the administration's discretionary appreciation. It is a poorly defined and regulated notion that the European Union and its Member States use regularly to define and implement increasingly restrictive migration policies that infringe on people's rights[83].

For example, the notion of 'mass influx' is used to determine which countries should be subject to Airport Transit Visas (ATV). The French government's way of adding countries to the list of those requiring ATV is particularly illustrative of how it violates the right to asylum. France removed India from the ATV list in 2018, but in the face of the arrival of asylum seekers of Indian nationality - considered a mass influx by the French administration (a few dozen in a few days) - the ATV requirement was reinstated in April 2021[84].

The increasing use of this ill-defined concept contributes to the fear of a drift and a circumvention of the rules for an even more drastic hardening of the measures against the migrants who arrive at the gates of Europe, especially in times of crisis.

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[78] Article 4 of the Proposal for a Regulation of the European Parliament and the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020.

[79] Article 41(11) of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[80] Article 41a of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[81] Articles 4 and 5 of the proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, 23 September 2020.

[82] Article 1 of the proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, 23 September 2020.

[83] E. Blanchard and C. Rodier, '*« Crise migratoire » : ce que cachent les mots*', in *Plein droit « Quelle « crise migratoire » ?*, n° 111, December 2016.

[84] Anafé, *Le contrôle des frontières et l'enfermement en zone d'attente - Support de formation pour la défense des personnes privées de liberté en zone d'attente*, November 2021, p. 9 and following.

In light of the French situation, where the duration of detention in an administrative detention centre (CRA) is 90 days, and the duration of detention in the *zone d'attente* is 26 days, the increase in the duration of detention provided for by the New Pact is considerable, even if the Return Directive already provided for more extended periods.

It should be noted that the detention periods stipulated in the New Pact are maximum periods. As people can be deported at any time (apart from the suspensive appeal periods in asylum cases), there is nothing to prevent States from providing shorter detention periods. However, there is a concern that if faster return procedures are implemented, this may be at the expense of the person's rights.

For the French administration, one of the benefits of the procedure applicable in the *zone d'attente* is its extraordinary efficiency in terms of average holding time and deportation rate.

In the Paris Charles de Gaulle *zone d'attente*, the average duration of detention in 2020 was 2.5 days for adults and accompanied minors and around five days for unaccompanied minors[85], with a deportation rate of 63%. In the first half of 2021, the deportation rate was 67%[86].

The New Pact fails to take into account the problems caused by the various existing systems of administrative detention and the violations of fundamental rights documented by independent organisations for many years. On the contrary, it recreates procedures and places of detention whose consequences on the health and lives of the people are already foreseeable.

[85] Sources: Ministry of the Interior.
[86] Sources: Ministry of the Interior.

Categorising people to increase deportation rates: derogation procedures at the border

The amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union of 23 September 2020 aims to standardise the procedures related to asylum. Some of its provisions create an expeditious and derogatory asylum border procedure. Thus, persons seeking international protection should not be subject to refoulement before a preliminary examination of their asylum application at the border. Children under the age of 12 falling into this category should no longer be detained at the borders.

These provisions allow for the Member States to further sort out people (after screening) based on their age, the reason for arrival in the European territory, and their status. Categorising persons at the border ensures that those who do not fit into the categories defined by the asylum border procedure can be deported directly. However, this procedure does not allow people to apply for international protection in safe conditions — as they are detained and risk refoulement if the procedure fails. There is also the question of determining or contesting the minority of children at external borders. Categorising people serves mainly to deport as many people as possible under the pretext of respecting international conventions.

The 'asylum border procedure': a procedure infringing the principle of non-refoulement

Article 41 of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection systematises the use of an 'asylum border procedure' in all cases where the person seeking asylum is not allowed to enter the territory of the Member State.

The border procedure may take place:
'a) following an application made at an external border crossing point or in a transit zone;
b) following apprehension in connection with an unauthorised crossing of the external border;
c) following disembarkation in the territory of a Member State after a search and rescue operation;
d) following relocation'.

In addition, this procedure will now be mandatory in three cases:

- The applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity or nationality that could have had a negative impact on the decision;
- The applicant poses a risk to national security or public order;
- The applicant is of nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower[87].

In the context of 'crisis situations', the Commission proposes that States should be able to extend the scope of application of the border procedure to persons of a nationality, or, in the case of stateless persons, former habitual residents of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 75% or lower[88].

[87] Article 41a of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.
[88] Article 4 of the proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, 23 September 2020.

This multiplication of the criteria makes it increasingly difficult to apply for asylum in Europe. It also constantly raises the suspicion that the foreigner is committing fraud or is a danger to the security of European borders. As mentioned above, having already endured dangerous and costly journeys, most asylum seekers who reach European borders will be deprived of their freedom.

> These measures will only worsen the already deplorable conditions of reception and treatment of asylum seekers, even though we know the dramatic consequences in all detention facilities at the borders, particularly with regard to access to the most fundamental rights. This is also the case in *zones d'attente*, where the difficulties of exercing their right to asylum at the border have been denounced by Anafé for many years[89] — to say nothing of the inhuman and degrading conditions that have been repeatedly reported in hotspots[90].

The risk of criminalisation and systematic detention of asylum seekers is to be feared. However, Article 31 of the 1951 Convention relating to the Status of Refugees — the international legal instrument of reference in this area — provides that '*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence*'.

Under these provisions, no State should oblige an asylum seeker to present valid documents. The logic of border control thus reverses the logic of asylum. However, politicians often invoke the fight against irregular immigration at the border without taking into consideration the people who might seek international protection at the border.

As for categorising persons from a safe country of origin, a notion already controversial and contested by NGOs, it violates the examination of the individual nature of applications for protection[91].

Article 40(1)(i) of the proposal for a Regulation establishing a common procedure for international protection attempts to specify this notion while providing an exception for asylum applicants belonging to categories of persons for whom 'the proportion of 20% or lower cannot be considered as representative for their protection needs'[92]. Nevertheless, it remains unclear and allows States a wide margin of discretion. The logic is, therefore, that a country listed as a safe country of origin will be removed from the list if the rate of asylum applications of its nationals decreases. The risk is that the agencies responsible for issuing protection measures, such as Ofpra in France, will be 'encouraged' to grant less protection to certain nationalities, which will inevitably result in the

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[89] Anafé, *Dédale de l'asile à la frontière – comment la France ferme ses portes aux exilés, rapport d'observations 2013*, January 2014.
Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 21 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 49 and following.
Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 8 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 66 and following, and in the '*Tour de France des zones d'attente*' part, p. 110 and following.

[90] Gisti/Migreurop, *Hotspot de Samos : l'enfer à la frontière gréco-turque*, 2019 Missions report, 28 avril 2020.
For more information on the conditions of detention and the violations of rights in the Lesvos hotspot, see: *http://legalcentrelesvos.org/*
For more information on the conditions of detention and the violations of rights in the Chios hotspot, see: *http://www.gisti.org/spip.php?article5856*

[91] '*Droit d'asile : Appel à révision de la liste des pays d'origine « sûrs »*', CFDA appeal, 30 January 2008.
Gisti, *Recours contre la décision de l'OFPRA fixant la liste des pays d'origine sûrs*.
'*Aucun pays n'est sûr ! Le Conseil d'État exclut de la liste des pays d'origine dits « sûrs » le Bénin, le Ghana et le Sénégal*', Collective action, 5 July 2021.

[92] Article 40 of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

country being delisted under this article. Such practices could be disastrous for some people in need of international protection.

> With regard to the main objectives of the Pact, the consequence of the asylum border procedure could be identical to what Anafé has observed for years in the context of the registration of the asylum application in the French *zones d'attente*. As priority is given to deportation, Anafé has for many years noted violations of the right to asylum at the registration stage.
>
> In its report '*Refuser l'enfermement*', Anafé denounces the lack of information given to people about the possibility of seeking asylum protection at the border, even though this is a legal obligation. Similarly, it reports that the border police regularly refuse people who wish to exercise this right to register an asylum application. In 2018 and 2019, Anafé followed 101 persons who reported difficulties registering their asylum applications[93].

The main risk of the asylum border procedure provided for by the New Pact is, therefore, a violation of the principle of non-refoulement.

The proposal for a Regulation establishing a common procedure for international protection in the Union is based on the main outlines of Directive 2013/32/EU - which it should abrogate - with the same objective: to simplify deportation procedures when asylum applications are rejected. It seems to be inspired mainly by French law.

> In France, since a law created the *zones d'attente* in 1992, a procedure derogating from common law has been established at the border to examine asylum applications. On the one hand, it does not aim to grant refugee status or subsidiary protection (it only allows the person to enter the country so that they can then apply for asylum). On the other hand, it is the Ministry of the Interior that decides, based on a recommendation issued by Ofpra, whether or not the application is 'clearly founded'[94].
>
> French law defines a 'manifestly unfounded' asylum application as 'an application which, in the light of the statements made by the foreigner and the documents, if any, produced, is manifestly irrelevant with regard to the conditions for granting asylum or manifestly lacking in any credibility with regard to the risk of persecution or serious harm'[95].
>
> The examination of the 'manifestly unfounded' character must be limited to a summary review of whether the reasons given by the applicant correspond to a need for protection. The French National Consultative Commission on Human Rights (CNCDH) stresses that 'the assessment of the admissibility of applications at the border must not go beyond the evaluation of the simple ''manifestly unfounded'' nature of the application and cannot under any circumstances involve an examination of the substance of the fear of persecution invoked by the person concerned'[96].
>
> However, practice is far from this theory and case law[97]. The grounds for many of the recommendations issued by Ofpra and decisions of the Ministry of the Interior show that the

[93] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 66 and following.
[94] Article L. 351-1 of the CESEDA.
[95] Article L. 352-1 of the CESEDA.
[96] CNCDH, *Les conditions d'exercice du droit d'asile en France*, *La documentation française*, November 2006.
[97] Anafé, *Dédale de l'asile à la frontière – comment la France ferme ses portes aux exilés, rapport d'observations 2013*, January 2014.
Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 21 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 49 and following.

> examination of asylum border applications frequently amounts to a predetermination of refugee status. Although an examination of the substance of the claim is carried out at the border as if the asylum seekers were in the country, the administration does not carry out this logic to the end. Indeed, it applies an inconsistent preliminary filter. The officers of the Ofpra asylum border mission and then the Ministry of the Interior often limit themselves to examining the application solely with regard to the provisions of the 1951 Convention, whereas the CESEDA also provides for the possibility of granting subsidiary protection.
>
> Ofpra officers also frequently deem that the story is not credible, thus questioning the reality of the alleged threats, persecution or discrimination. However, the material and psychological conditions of the interview, the directive nature of the questioning by certain officers and interpreting errors hinder the plausibility of what people say. Unlike an asylum seeker on the territory, who is free and has time to gather arguments, or even evidence, to prepare their interview, the situation of an asylum seeker at the border is quite different. In *zones d'attente*, everything happens very quickly for the detained people who have just arrived and who are, for many, still in shock from what they have fled.
>
> The speediness of asylum border procedures is also an obstacle to the proper preparation of people for their interviews. According to Ofpra, in 2020, the average time to process applications for admission to the territory on asylum grounds was 3.1 calendar days[98].

The principle set out in Article 40a of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection validates the French practices: 'The purpose of the border procedure for asylum and return should be to quickly assess at the external borders whether applications are unfounded or inadmissible and to swiftly return those with no right to stay while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection'. The new Article 41 specifies that decisions taken in an asylum border application are about the admissibility and the well-foundedness of the claim[99].

> For Anafé, which has long observed the non-protective nature of this procedure, its generalisation is worrisome. In its 2013 observation report '*Le dédale de l'asile à la frontière*', Anafé already denounced the dangers of the asylum border procedure[100]. It has been reiterating the same concerns ever since[101].
>
> The registered application is forwarded to the Ofpra asylum border mission officers. These officers are responsible for interviewing asylum seekers who arrive at the borders. This interview aims to examine the grounds for the applicant's claim and determine whether or not it is manifestly unfounded.

Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 8 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 66 and following, and in the '*Tour de France des zones d'attente*' part, p. 110 and following.

[98] Ofpra, *A l'écoute du monde, Rapport d'activité 2020*, 2021, p. 20.

[99] Articles 40a et 41 of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[100] *Dédale de l'asile à la frontière – comment la France ferme ses portes aux exilés, rapport d'observations 2013*, January 2014.

[101] Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 21 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 49 and following.
Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 8 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 66 and following, and in the '*Tour de France des zones d'attente*' part, p. 110 and following.

At Paris Charles de Gaulle airport, the interviews occur on-site, in the facility named 'ZAPI 3'. In the other *zones d'attente*, the interview is conducted by videoconference[102]. On 27 November 2020, the Conseil d'Etat ruled to ban telephone interviews. Since then, the Director General of Ofpra has accredited several *zones d'attente* for videoconferencing without considering the specific physical characteristics of each *zone d'attente* and ensuring that measures have been implemented to guarantee the confidentiality of the accredited premises[103].

The risks linked to telecommunication means, whether telephone or audiovisual, are manifold: breach of confidentiality, physical and emotional distance, failure to take into account non-verbal communication, technical problems (interruptions, translation difficulties, especially when the translation is also done by a telecommunication means...), etc. It is to be feared that such procedures will become the rule at all of Europe's borders, even though this goes against the interest of the asylum seeker and excludes an interview under satisfactory conditions in terms of confidentiality and trust.

Anafé has observed the abusive administrative practices towards asylum seekers at the border and a dramatic margin of error in examining their applications[104]. Indeed, it is not uncommon for people whose application to enter the country on the basis of asylum has been rejected and who have finally entered the country at the end of the 20 (or even 26) days detention limit in *zone d'attente*, to be granted refugee status or subsidiary protection through the procedure in the country.

Thus, an applicant whose story has been deemed manifestly unfounded by the Ministry of the Interior and the administrative court in the context of an asylum border procedure can obtain refugee status once on the territory[105] or in an administrative detention centre. For example, according to data collected by Anafé, this happened to at least 135 people who applied for asylum in French administrative detention centres (CRA) in 2018, 9 of whom obtained refugee status (8 in Mesnil-Amelot and 1 in Palaiseau[106]). These figures clearly show the shortcomings of the asylum procedure at the border.

This institutional violence can lead to asylum seekers being deported at the border. When a person's application for asylum is rejected, they may be deported at any time. However, without a substantive examination of the application, has the person's situation properly been reviewed without violating the principle of non-refoulement?

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[102] In decision n° 428178 of 27 November 2020, the Conseil d'État ruled to put an end to the use of telephone to conduct Ofpra interviews — which was the rule in most *zones d'attente* (apart from Paris Charles de Gaulles, Paris Orly and Marseille).

[103] In a decision of 11 May 2021, l'Ofpra authorises the EuroAirport Basel-Mulhouse-Freiburg *zone d'attente* the use of videoconferencing. The Basel-Mulhouse-Freiburg, Lyon-Bron, Lyon Saint-Exupéry, Marseille Le Canet, Nantes-Atlantique, Nice Côte d'Azur, Orly, Toulouse-Blagnac, Réunion Roland-Garros *zones d'attente* are now authorised to use videoconferencing.

[104] Anafé, *Dédale de l'asile à la frontière – comment la France ferme ses portes aux exilés, rapport d'observations 2013*, January 2014.
Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 21 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 49 and following.
Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 8 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 66 and following, and in the '*Tour de France des zones d'attente*' part, p. 110 and following.

[105] For examples, see: *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 76 and p. 103.

[106] *Centres et locaux de rétention administrative, Rapport 2018*, La Cimade, Forum Réfugiés-Cosi, France Terre d'Asile, Ordre de Malte France, Solidarité Mayotte, ASSFAM-Groupe SOS, Coalition report, June 2019.

With this generalisation, questions remain: what means will the EU or the Member States give to prevent the already identified pitfalls of asylum border procedures? Where will the interviews take place? Under what conditions? Who will train the agents to sort out the applications? What role will NGOs and lawyers play in these procedures?

The risks pointed out by Anafé over the past 30 years regarding the implementation and consequences of asylum at the border are likely to be reproduced at all of Europe's external borders in the context of the implementation of the asylum border procedure as defined in the New European Pact on Migration and Asylum.

Minors seeking asylum at the border: a scant progress

The New Pact provides that unaccompanied minors and accompanied minors under the age of 12 and their families will not be subject to the asylum border procedure. They will no longer be detained, they will be granted entry, and their asylum claims will be examined in the Member State's territory[107].

However, it does not end the detention of children at borders and still allows the Member States to continue to violate international law (including the International Convention on the Rights of the Child of 20 November 1989).

On the one hand, with regard to asylum seekers, it provides for two exceptions that undermine this progress: if the minor comes from a safe country of origin or a safe third country and/or if they are considered to be a danger to the national security or public order of a Member State, or if the applicant has been the subject of a forced deportation decision on serious grounds of national security or public order under national law.

These exceptions mirror those applicable under French law, which has provided exceptions to the detention of unaccompanied minor asylum seekers in three cases[108]. As is the case in practice in French *zones d'attente*, it is likely that these two exceptions will, in practice, affect a large proportion of children presenting themselves at borders. This would reduce to nothing the so-called safeguard introduced by the New Pact to end the detention of child asylum seekers.

On the other hand, this protection against detention does not apply to accompanied minors seeking asylum age 12 and older. However, there seems to be no reason why children between the ages of 12 and 18 should not be considered as such and enjoy the same rights as those under the age of 12[109].

Finally, the principle of prohibiting the detention of unaccompanied minors and accompanied minors under the age of 12 only applies to minors seeking asylum.

Therefore, those who have been subject to the screening procedure and handed a return order may be detained until it is executed.

However, the United Nations Committee against Torture, the Committee on the Rights of the Child, the UN Human Rights Committee, and the UNHCR[110] have all expressed serious concerns about the deprivation of liberty of minors, especially when the detention of children is the result of their often traumatic experience of

[107] Article 41(5) of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.
[108] See *A blatant disregard for vulnerabilities*, p. 18.
[109] International convention on the rights of the child, 20 November 1989, Art. 1: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.'
[110] UNHCR's position regarding the detention of refugee and migrant children in the migration context, UNHCR, January 2017.

exile. The conditions of detention, procedural safeguards, and the consequences of detention on health are the concerns of the many human rights bodies that have spoken out against the detention of children at borders[111].

> Currently, under French law, the detention of separated or accompanied children is possible in *zones d'attente*. In its report '*Refuser l'enfermement*', Anafé stated that:
> 'In reality, the detention of separated children in *zones d'attente* is the result of a simple and cold calculation by the Ministry of the Interior, which refuses to respect the International Convention on the Rights of the Child, which France has ratified.
>
> At the border, claiming minority is declarative. Thus, as soon as a person declares themselves to be a minor, they must be considered as such (unless it can be proved that they are not).
>
> According to the Ministry of the Interior, putting an end to the detention of children at the borders would lead to encouraging minors in migration to present themselves at the French borders and certain adults to declare themselves minors. Hence the incessant refusals for nearly 30 years to ban their detention.
>
> For the Ministry of the Interior, ending the detention of children in *zones d'attente* would 'open the floodgates to uncontrolled migration'[112].

If the principle of the exception from detention for unaccompanied minors and accompanied minors under the age of 12 were to be maintained in the New Pact, this would undoubtedly be a step forward for these children.

Nevertheless, as we have seen, this would not put an end to the detention of all children at borders.

> An important question, therefore, arises at this stage concerning the determination of the child's age. Currently, in France, the inter-ministerial memorandum of 14 April 2005 states that when a minor presents themselves at the border, the border police services must carry out all 'necessary investigations to establish their minority clearly'[113]. It specifies that proof of age can be provided by 'the possession of a civil status document that appears to be regular unless other elements (external or from the document itself) establish that it is irregular, falsified or does not correspond to reality'[114].
>
> If there is any doubt about the minor's statements, at the request of the public prosecutor, the medico-legal services are responsible for carrying out clinical examinations to determine whether the person is a minor or not. The result is communicated to the public prosecutor, who assesses whether they should be considered an adult or a minor. To do this, the prosecutor assesses 'the probative value of the medical examination, taking into account the margin of imprecision acknowledged in this technique'.
> The bone expertise used in France is an approximate tool that is contested by a large number of hospital practitioners because it does not take into account the history, origin and environment of the minor.
>
> While the National Consultative Ethics Committee and the National Academy of Medicine both issued negative opinions respectively in 2005 and 2007, the French authorities continue to rely on such examinations to determine the age of children presenting themselves at borders. Practice shows that

[111] These considerations are also shared on a national level by independent administrative agencies such as the Défenseur des droits. See: Défenseur des droits, *Les droits fondamentaux des étrangers en France*, Report, May 2016.
[112] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 56 and following.
[113] Circ. CIV/01/05, 14 April 2005.
[114] *Ibid.* article 47, al. 1.

> border police almost systematically consider minors to be fraudulent, thus questioning their minority[115].
>
> Anafé regularly reports that the border police ignore the principle, although regularly emphasised by the United Nations Committee on the Rights of the Child, according to which the benefit of the doubt must be given to a person who declares themself to be a minor as long as irrefutable proof of their majority has not been provided[116].

In light of the French experience, it is deplorable that the proposal for a Regulation establishing a common procedure in the field of international protection does not provide any precision concerning the modalities for assessing the age of children. The discretion left to the States in this area is likely to lead to the precariousness of their rights[117].

[115] On this note: Commissaire aux droits de l'homme, Conseil de l'Europe, *Rapport sur le respect effectif des droits de l'homme en France*, 15 February 2006.

[116] Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 27 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 58 and following.
Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 19 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 60 and following, and in the '*Tour de France des zones d'attente*' part, p. 110 and following.

[117] Further details: E. Bouwer and R. Lanneau, 'Age assessment and the protection of minor asylum seekers : time for a harmonised approach in the EU', 10 August 2020.

A crippled right to an effective remedy

In the context of the work on the New Pact, the Commission has repeatedly pointed out that the Pact, and its implementation by the Member States, must respect fundamental rights. However, beyond the few statements of principle scattered throughout its 300 or so pages, nothing is expressly provided to ensure that the fundamental rights of migrants are respected. The Commission merely devolves this matter to the Member States.

It is especially the case regarding the right to an effective remedy before a court or tribunal.

Yet, the right to an effective remedy is provided by article 47 of the EU Charter of Fundamental Rights:

> '*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*
> *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*
> *Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*'[118]

This right is also enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms of the European Council[119].

The sheer absence of a right to an effective remedy in the screening procedure

The only references to respect for fundamental rights in the context of the screening procedure are provided in Article 7 of the proposal for a Regulation on screening:
'*Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.*

Each Member State shall establish an independent monitoring mechanism

- *to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening;*
- *where applicable, to ensure compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention;*
- *to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and noncompliance with the principle of non-refoulement, are dealt with effectively and without undue delay.*

Member States shall put in place adequate safeguards to guarantee the independence of the mechanism.'[120]

Therefore, the proposal for a Regulation on screening does not mention the need to ensure a right of appeal for persons subject to a screening and detention procedure at the border.

A wide margin of appreciation is left to the Member States to guarantee the respect of fundamental rights.

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[118] European Union Charter of Fundamental Rights.
[119] Article 13 of the European Convention for the Protection of Human Rights and Fundamental Right: 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity'.
[120] Article 7 of the proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 23 September 2020.

The New Pact refers to national legislation regarding detention at the border in connection with the screening procedure.

> Under French law, a notification of refusal of entry results in an initial four-day detention in *zone d'attente*. At the end of this period, the judicial judge reviews the validity of continuing the detention. The judge can then decide to release the person or keep them in *zone d'attente* for an additional eight days.
>
> At the same time, the administrative judge can rule on the legality of decisions to refuse entry and to maintain the person in *zone d'attente*. However, the appeal to the administrative judge is a non-suspensive procedure that must be introduced within two months of the decision, which is a long way from the detention time limit allowed in a *zone d'attente* (20 days maximum, with some exceptions).
>
> For many years, Anafé has been denouncing the deliberate disregard of jurisdictional control in matters of the legality of control and detention[121].
>
> In its report *'Refuser l'enfermement'*, Anafé pointed out that:
> 'The law does not allow for systematic control of the respect for people's rights and the legality of the refusal of entry and of the detention in *zone d'attente*. Yet, violations of rights and arbitrary decisions occur daily. When control is possible, the conditions under which decisions are made, and the attitude of judges during hearings raise questions about the effective role of the 'guardian of individual liberties'[122].
>
> Most people cannot exercise their right to appeal and may be turned away without being able to defend their case before a judge[123]. The procedure currently applicable does not allow for an accurate assessment of the situation of those detained and real control by the judge.
>
> Both French and European law leaves the administration's decisions and actions immune from genuine judicial review of fundamental rights and freedoms, which is very worrying given the recurrent use of stereotypical or discriminatory grounds by border control officers'.

It is, therefore, deplorable that the New Pact does not provide for a mandatory effective remedy during screening and sorting procedures. This situation is all the more objectionable as the person checked at the border is confronted with a very high degree of police discretion.

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[121] Anafé, *Le contrôle des frontières et l'enfermement en zone d'attente - Support de formation pour la défense des personnes privées de liberté en zone d'attente*, November 2021, p. 54 and following.

[122] Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, September 2020, p. 89 and following.

[123] Anafé, *Des avocats aux frontières ! Bilan de la « permanence d'avocats » organisée dans la zone d'attente de Roissy - 26 septembre au 2 octobre 2011*, Report, December 2011.
Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 54 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 58 and following.
Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 43 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 92 and following, and in the '*Tour de France des zones d'attente*' part, p. 110 and following.

An asylum border procedure undermined by a limited right to an effective remedy

Article 53(1) of the proposal for a Regulation establishing a common procedure for international protection provides for the right to an effective remedy:

- '*a decision rejecting an application as inadmissible;*
- *a decision rejecting an application as unfounded in relation to both refugee and subsidiary protection status;*
- *a decision rejecting an application as implicitly withdrawn;*
- *a decision withdrawing international protection;*
- *a return decision.*'[124]

Article 53 also provides that the procedures for appeals in asylum and return cases are, in both cases, brought before the same courts within the same time limits. These rules guarantee for States that return procedures will not be delayed.

The Commission adds that:

'*Member States shall lay down the following time-limits in their national law for applicants to lodge appeals against the decisions referred to in paragraph 1:*

(a) at least one week in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;

(b) between a minimum of two weeks and a maximum of two months in all other cases.

8. The time-limits referred to in paragraph 7 shall start to run from the date when the decision of the determining authority is notified to the applicant or his or her representative or legal adviser. The procedure for notification shall be laid down in national law.

9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.'[125]

> This provision should lead to an extension of the time limit for appeal under French law in the case of refusal of admission for asylum, which would give persons seeking international protection at the border the opportunity to present additional arguments in the event of an appeal. Above all, it should enable more people to appeal. Currently, asylum seekers have 48 hours (from hour to hour and not extendable on weekends and public holidays) to submit an appeal against the refusal of admission to the territory on the basis of asylum.
>
> The request must be 'reasoned' and in French. However, to date, there is no legal counsel permanently present, and the State refuses to set up regular legal counsel sessions by lawyers in *zone d'attente*. As things stand, no one is in a position to help the people concerned in such a short time. There are no on-duty lawyers in *zone d'attente*, and Anafé works with volunteers who cannot provide on-call services (at Paris Charles de Gaulle airport or by telephone) every day.
>
> In this respect, it should be noted that an additional difficulty may arise with regard to the information available to the applicant to challenge the decision taken against them. Firstly, they do not have an interpreter available to translate the rejection decision and the records of the Ofpra interview, both of which are in French. In addition, the notes taken during the interview are not systematically given to the applicants, while they are an essential element for drafting an appeal. As a result, many people have not been able to exercise their right to an effective appeal, which is determined both in law and in fact.

While the proposal for a Regulation establishing a common procedure in the field of international protection provides for free legal advice and representation at all stages of the procedure, this can be waived when

[124] Article 53(1) of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[125] Article 53(7) to (9) of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

applications or appeals are considered to have 'no tangible prospect of success, when the application is a request for review or when the appeal is at a second level of appeal or higher'[126]. This exception is all the more objectionable as it gives the authorities a particularly wide margin of discretion to dismiss the right of appeal.

Moreover, extending the time limit has no positive effect on people's right to an effective remedy if it is not accompanied by a suspensive character which protects them from expulsion.

Article 54 provides that the suspensive nature of the appeal may be set aside, inter alia, in the following situations:

- 'a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [including safe country of origin] or in the cases subject to the border procedure;
- a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements]'[127]

The definition of effective remedy has however been recalled by the ECHR, which condemned France for its border asylum procedure on the grounds that 'it was a requirement of Article 13 that (...) the person concerned must have access to a remedy with automatic suspensive effect.'[128]

> In 2007, following the condemnation of France by the ECHR, the French legislator provided for a suspensive appeal (under the conditions set out above). However, the implementation of this appeal is too restrictive for most foreigners held in *zone d'attente*, who should, in principle, be entitled to a real and effective appeal. With regard to the criteria set by the ECHR, Anafé considers, in the light of its practice corroborating the analysis of the legislation in force, that the appeal as offered to applicants wishing to challenge a refusal of entry on the grounds of asylum does not meet the conditions required by the ECHR to be considered effective[129].

For the European Court, the effectiveness of remedies is assessed in law and in fact[130]. The characteristics of the effectiveness of a remedy are: its accessibility and reality, i.e. its availability in law and in practice, its quality, i.e. the extent of the review and finally, its speed, i.e. the celerity of the review thus carried out. Lastly, the effectiveness of a remedy is also assessed in terms of its automatic suspensory effect.

Article 54 of the proposal for a Regulation establishing a common procedure in the field of international protection, which provides for restrictions on the right to appeal, therefore, seems to conflict with the case law of the European Court and, in the same spirit as the whole of the Pact, disregards the fundamental rights of individuals.

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[126] Article 15 of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[127] Article 54 of the proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 23 September 2020.

[128] ECHR, 26 April 2007, *Gebremedhin v France*, n° 25389/05.

[129] Anafé, *Dédale de l'asile à la frontière – comment la France ferme ses portes aux exilés, rapport d'observations 2013*, January 2014.
Anafé, *Des zones d'atteintes aux droits - Rapport d'observations dans les zones d'attente et Rapport d'activité, Rapport annuel 2014*, November 2015, p. 46 and following.
Anafé, *Voyage au centre des zones d'attente – Rapport d'observations dans les zones d'attente et rapport d'activité*, Annual report, November 2016, p. 66 and following.
Anafé, *Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017*, February 2018, p. 44 and following.
Anafé, *Refuser l'enfermement - Critique des logiques et pratiques dans les zones d'attente, Rapport d'observations 2018-2019*, Septembre 2020, p. 75 and following.

[130] ECHR, 14 December 2010, *I.M contre France*, n° 9152/09; ECHR, 20 September 2007, *Sultani contre France*, n° 45223/05.

Conclusion & recommendation: changing the way we look at migration is THE only option

Far from protecting people, this Pact reinforces the practices that have been at work for nearly 30 years at European borders: screen, detain, deport. The violation of human rights is the corollary of this logic. It is, in any case, Anafé's observation in the light of its experience in the French *zones d'attente* since 1992. The New Pact intends to generalise and develop the practices of screening, sorting, and filing and to reinforce the controls and practices of detention of foreigners at the borders; all of this without ensuring that fundamental rights are respected. The meagre part reserved for human rights in the New Pact clearly shows that priority is given to the alienation and deportation of foreigners, to the detriment of the respect for international conventions.

The security-oriented approach to migration that the European Union and its Member States have been developing for several decades only results in more violence, death and circumvention of the rules. The cost of these migration policies (and, in particular, the cost of detention and deportation) is colossal, both in financial and human terms. Billions of euros are invested each year in a quasi-military arsenal to detect, sort, file, detain and push back exiled persons. This money could be invested in another way, for example, to allow the integration of people who arrive on French territory.

It is, therefore, a question of political will and a demagogic posture on the part of the European Union and its Member States, which persist in refusing to appreciate the value of migration, which is inherent in human relations and in our contemporary world.

Detaining people at the borders means perpetrating suffering and violence. The New Pact, inspired mainly by French border practices, will increase the violations of people's rights and the physical, moral and institutional violence to which they are already subjected.

The New European Pact on Migration and Asylum cannot be THE answer of the European Union and its Member States to the need for protection and the indispensable reception of migrants who present themselves at Europe's borders. It is time for a change of perspective, and more broadly a change of policy, on migration and asylum. It is time to put the reception, the legal protection, and the health of foreigners arriving at Europe's borders at the centre of our concerns.