

Border controls and detention: tools of an openly racist policy Summary

In May 2024, the European Union (EU) adopted a set of texts presented as fundamentally changing European migration policy, known as the European Pact on Migration and Asylum (hereinafter referred to as the "Pact")¹.

The Pact is presented, by the European Commission, as a whole that should restore trust and solidarity between Member States. However, two states have already announced that they will not implement it. By the end of spring, the others must adapt their national law to comply with all the measures in the Pact². At the same time, the reform of the Schengen Borders Code (SBC), applicable since summer 2024, strengthens external border controls, establishes a new transfer procedure to facilitate returns between Member States, and facilitates the reintroduction of internal border controls.

Implicitly, stigmatisation and criminalisation of migrations are reinforced: migrants are portrayed as potentially dangerous, a threat to internal security or public health, and even as a terrorist threat. Anything goes to prevent as many people as possible from accessing European territory or to expel them from it. At no point does the Pact question previous policies on access to territory, visas and other permits, or provide for a rescue policy. The right to asylum is reduced to a bare minimum: an additional blow is dealt to the 1951 Geneva Convention relating to the Status of Refugees.

Fundamental rights, whose violations have already been widely documented and even condemned, are now nothing more than references. Some rights are even excluded, such as the right to a suspensive appeal.

On this basis, Fortress Europe is being strengthened by various means: easier controls, more efficient screening procedures, increased collection of personal data - including under duress and from children as young as 6, widespread detention - particularly at borders, etc.

Anafé's analysis note published in 2022³ already drew a parallel between the logic of the Pact's provisions and the French model of *zones d'attente* (in English: "holding centres" - detention centres at the French borders) or Greek hotspots, the dramatic consequences of which are well known.

This document is a summary of a more detailed analysis document where Anafé draws on its experience in the field in France to shed light on the new management of European borders by detailing the provisions applicable to external borders of the Pact⁴ and the reform of the provisions of the CFS⁵.

¹ Published in the Official Journal of the European Union on May 22 2024, with entry into force scheduled between June 12 and July 1 2026, according to regulations.

² Prime Minister, General Secretariat for European Affairs, [National Implementation Plan for the Pact on Migration and Asylum](#), December 2024.

³ Anafé, [Trier, enfermer, refouler – Analyse des dispositions applicables aux frontières du Pacte européen sur la migration et l'asile](#), February 2022, p. 8 to 19.

⁴ See Analysis, p. 9 and following.

⁵ See Analysis, p. 57 and following

The strengthening of external border controls at the heart of the Pact

The Pact creates three inseparable procedures to sort and “return” as many people as possible arriving at its external borders and seeking protection (screening, asylum at the border, “return” to the border) by creating the illusion that they did not enter the territory, via the fiction of non-entry. People are forced to “*remain at the disposal*” of the authorities and are placed under a coercive regime that varies according to procedures and circumstances.

The non-entry into the territory: a central fiction of the Pact

The Pact generalizes the fiction of non-entry that has been used for almost forty years in France to legitimize the control of foreign nationals through detention at the borders. This fiction allows for derogations from international law and fundamental rights. It is on this fiction that the new procedures for screening, asylum, and “return” at the border are based.

However, like the holding centres regime, detention at the border institutionally creates violence for migrants and exacerbates people's vulnerabilities when it does not create new ones.

Sorting for better control

The Screening Regulation is the central element of the Pact on procedures at land, sea, and air borders⁶. It implements a control and sorting procedure at external borders, known as “screening,” lasting a maximum of seven days, which includes:

- A preliminary health check;
- A preliminary vulnerability check;
- Identification or identity verification;
- Biometric data collection;
- A security check.

Anafé's experience in holding centres leads it to fear that problems relating in particular to the right of access to healthcare in holding centres and the failure to take into account the specific needs of vulnerable persons will be exacerbated⁷.

The scope of persons concerned is extended in particular to children from the age of 6⁸ as is the collection of biometric data with cross-referencing between numerous files⁹ such as the Schengen Information System (SIS), the Entry and Exit System (EES), the European Travel Information and Authorization System (ETIAS), etc. This is compounded by the “interoperability” or the exchange of information between these different types of files (data related to migration or falling within the judicial sphere), which raises ethical issues. The Pact thus reforms Eurodac, which aims to support and justify the screening procedure by extending the use of this data for “return” purposes¹⁰.

Following these checks, the authorities are required to fill out a form containing, among other things, information “regarding whether or not an application for international protection has been submitted.” This wording is vague, with the risk that those responsible for screening may conduct extensive questioning contrary to the right to asylum or refuse to register asylum applications, which Anafé has been denouncing for many years in holding centres¹¹.

Any possibility of appealing against the screening form is excluded on the grounds that it would not be an administrative decision, even though such a decision necessarily causes prejudice. Only a right of rectification in the event of incomplete information is provided for.

⁶ For the sake of clarity, the outermost regions seem to be excluded under the Schengen acquis.

⁷ See Focus 2: *Identifying vulnerable situations during the screening procedure*, p. 23.

⁸ Until 2024, only children over the age of 14 had their fingerprints recorded.

⁹ For more information on these files and how they are interconnected, see: Anafé, *Boîte à fichiers* 2025, September 2025.

¹⁰ See Analysis, p. 20 and following.

¹¹ See the various Anafé observation reports.

The procedure must be completed within seven days of the arrest of the person who risks being denied entry into the country and placed in a holding centre, in accordance with the French implementation plan. Detention may be used to prevent absconding¹².

However, today, French holding centres - like any other place of detention - cannot under any circumstances be considered as "suitable facilities": people's rights are repeatedly, even systematically, violated there, and the opacity of these places often hides degrading detention conditions¹³.

Anafé is concerned about the generalisation, even the systematisation in the Pact, of the detention of foreign nationals considered undesirable.

Focus 4: False guarantees for minors (excerpt)¹⁴

All unaccompanied minors must be assigned a legal representative, as it is currently the case in holding centres (in France, it is generally an ad hoc administrator), but the representative may be "replaced" by "a person trained in safeguarding the best interests and general well-being of minors." This turn of phrase is worrisome: experience has shown that ad hoc administrators do not always fulfil the role assigned to them.

As for accompanied minors, the text refers to "an adult member of their family" without any mandatory reference to parental authority, which is contrary to the European Convention on Human Rights¹⁵.

The requirement for the mandatory collection of biometric data from minors aged six and over is not excluded, only conditional, while the detention of children is simply limited.

Controls should be carried out by an independent authority that can conduct unannounced and random checks, have "access to all relevant locations," and make annual recommendations. As part of France's implementation of the Pact, two bodies are mentioned as being responsible for monitoring the border screening procedure. These are the Ombudsperson (*Défenseur des droits*) and the Controller General of Places of Deprivation of Liberty. The question of the human resources available to these bodies and the independence of their funding remains unclear.

Procedures following screening

Once screening is complete, the person is referred to asylum or "return" procedures. If the person does not intend to seek asylum, they are notified of a denial of entry and the authorities initiate an immediate return procedure. If the person requests international protection, they are referred to the competent authorities for the registration of their asylum application.

The asylum procedure at the border

Regulation No. 2024/1348 aims to establish a common asylum system within the EU and to harmonize all national asylum systems. The same asylum procedure at the border will therefore be applied at external borders, in transit zones, and in territorial waters. Certain criteria make this procedure mandatory in some cases¹⁶.

There is little scope for in-depth, individualized processing of applications, as the criterion of nationality takes precedence over individual reasons for departure (this accelerated procedure at borders applies when the person is a national of a country for which positive decisions on international protection are taken with a European average of 20% or less). The use of a European average based on Eurostat figures will therefore be highly disadvantageous for certain individuals and may lead to discriminatory practices that contravene the Geneva Convention, with the risk of pushing back people despite their need for protection.

¹² See Analysis, p. 27 and following.

¹³ See the various Anafé observation reports.

¹⁴ See Analysis, *Focus 4: Les fausses garanties pour les mineurs*, p. 30 and following.

¹⁵ CEDH, 5^e section, 25 June 2020, [Moustahi c. France](#), n° 9347/14.

¹⁶ See Analysis, p. 33 and following.

Except in mandatory cases, applicants should have access to ordinary law unless Member States decide to examine the merits of applications at the border for all persons who have passed through the screening process.

Special safeguards will apply to persons considered vulnerable (torture, rape, or serious violence). For unaccompanied minors, the asylum procedure at the border should only be applied if there is a “risk that the applicant poses a threat to national security or public order.” However, authorities questioning minority statuses may significantly reduce the scope of this advance.

The limitations of border asylum procedures already documented by Anafé in France and numerous organisations in Greece — countries where this procedure is already in place — highlight the risks of this new generalised procedure, which involves profiling by nationality, accelerated examination of applications, insufficient interview time, lack of legal assistance, and the risk of undermining the unconditional nature of the right to asylum. In France, the asylum procedure at the border— which has been in place for several decades — was limited to examining whether the application was “manifestly unfounded.” The Pact enshrines the substantive examination of applications.

If the person being checked has applied for asylum during the screening process, the competent authorities will register their application, after which three procedures may apply: asylum at the border without the possibility of entering the territory, normal asylum with the issuance of an entry permit, or relocation to another Member State¹⁷.

The French national implementation plan does not specify the changes to be made to national law, but confirms that the asylum application will be examined in detail at the border. The draft finance bill for 2026 specifies that “the new procedure will require the recruitment of additional staff” (48 positions for OFPRA - the French Asylum Office - in 2026). A “system complementary to the current holding centre is planned. Certain individuals may be placed in an appropriate space, specially adapted to their needs, after an assessment of their vulnerability”. The French administration is thus showing that its objective is not to use detention as a last resort, as recommended in the Pact, but rather to ensure that the persons concerned will be deprived of their liberty throughout the procedures, including during the asylum procedure.

The rights of individuals whose asylum applications are examined at the border remain largely the same as those currently provided for in French holding centres, but Anafé's findings and reports over the years show that these rights are not respected and that the individuals concerned are unable to effectively exercise them¹⁸. Given the current state of France's implementation of the Pact, there are no plans to improve the conditions under which these rights are exercised, even though the length of detention is set to increase.

The text focuses mainly on people's obligations, in particular the obligation to “cooperate fully with the authorities” (identification, collection of biometric data for Eurodac, remaining available to the authorities, not leaving the country where the application was made, providing information on one's place of residence, complying with the administration's choice of residence, and even having to report regularly to a police station). Freedom of movement is therefore greatly restricted, especially as the possibility for Member States to resort to detention is extended. Failure to comply with these obligations may be considered as an implicit withdrawal of the application, with a significant risk of violating the principle of non-refoulement. Access to international protection may be severely limited and the stigmatisation and criminalisation of asylum seekers would therefore be exacerbated.

"Return" procedures

The aim of the Pact is to not completely separate the asylum procedure from the “return” procedure, a continuum that is all the more evident given that individuals remain “at the disposal” of the authorities throughout the procedures.

¹⁷ The note only deals with the asylum procedure at the border.

¹⁸ See the various Anafé observation reports.

The “return to the border” regulation provides for the possibility of adopting a decision to refuse entry after rejecting an asylum application at the border. Upon request, the persons concerned should be granted a period of 15 days for voluntary departure.

During this procedure, persons still considered not to have entered the territory must “reside in places located at or near the external border or in transit zones” or in “other places within the territory.” Deprivation of liberty is still possible as a “last resort,” particularly if there is a “risk of absconding”. Beyond the 12-week time limit for the “return” procedure at the border, the 2008 procedure applies, which includes the possibility of a total period of deprivation of liberty of 24 months.

France plans to continue applying the legal regime of the *zone d’attente* (holding centre) while modifying the time limits for deprivation of liberty and the intervention of the judicial judge accordingly.

The right to appeal in “border” procedures

It is difficult to consider the right to appeal against a decision to refuse an asylum application at the border without considering the appeal relating to the desire to remain on EU territory¹⁹.

The right to a suspensive appeal has been recognised in holding centres for asylum seekers whose application to enter the territory on asylum grounds has been rejected, since France was condemned by the European Court of Human Rights in 2007²⁰. However, on this point, the Pact represents a clear step backwards as it does not provide for this appeal to be suspensive, except for unaccompanied minors.

Far from simplifying the administrative procedure, the Pact multiplies and complicates the steps involved, with individuals also being required to lodge appeals before separate courts: the French Court for Asylum for the rejection of the application by the OFPRA, and the administrative judge for the request to remain in the country and to challenge the “return” decision.

Situations of crisis and force majeure²¹

The regulation on situations of crisis and force majeure in the field of migration and asylum establishes temporary measures for exceptional situations such as mass arrivals of nationals from countries outside the EU, force majeure situations, or situations where migrants are being instrumentalised by a third country, which could lead to a significant increase in the number of applications for international protection at the external borders. No numerical threshold is specified, and Member States will therefore be able to interpret the text in a rigid and restrictive manner. The concept of “mass arrivals” is also not clearly defined.

In these circumstances, the Member State concerned may request the implementation of solidarity measures and derogations for the registration of applications for international protection and the extension of relocation deadlines. These exceptional measures are authorized for a period of three months, renewable three times, for a maximum of 12 months.

The regulation has a major impact as the scope of application of the border procedure is widened to non-EU country nationals for whom the proportion of decisions granting international protection at the EU level amounts to, or is under 50 %.

The legislation may also result from the instrumentalisation of a non-state actor, including a humanitarian aid organization, if a “destabilisation objective” is found to exist. This opens up a dangerous path to the possibility of prosecuting non-governmental organizations.

Longer detention periods at borders: both endangering and criminalising foreigners

¹⁹ As a reminder, the screening form appears to exclude the possibility of an individual appeal — the only option being to challenge it through the resulting proceedings (asylum or return): see Analysis p. 49 and following.

²⁰ ECHR, July 26, 2007, *Gebremedhin c. France*, n° 25389/05.

²¹ See Analysis, p. 51 and following.

Although the various texts stipulate at each stage that deprivation of liberty should be a last resort, exceptions apply to the majority of people arriving at external borders, starting with the screening procedure. These procedures largely establish a continuum of detention for persons arriving at external borders, whether or not they are seeking protection.

However, under the deprivation of liberty system currently in force in France, Anafé notes each year that people face numerous difficulties and violations of their rights. Deprivation of liberty exacerbates their vulnerabilities, even though detention lasts 20 days (with a maximum of 26). What will happen when detention lasts for months? Anafé fears an increase in self-harm (self-mutilation, suicide attempts, suicides) but also in trauma related to detention and the worsening of pre-existing trauma. The same applies to acts of violence already observed with the increase in the length of detention in French administrative detention centres and the increase in carceral properties of Greek hotspots.

Ultimately, the implementation of the Pact will have disastrous consequences for the rights and dignity of migrants at external borders, and the few safeguards provided for in the Pact (control mechanisms, access for non-governmental organizations to sorting centres at the borders, legal assistance and representation) are clearly not sufficient to guarantee the fundamental rights of the people concerned.

The reform of the Schengen Borders Code, or the illusion of restoring an area of free movement

The decision to modify the framework of the Schengen area was based on an assessment of its 40 years of existence. The reform of the Schengen Borders Code (SBC) is driven by security and health imperatives (following the COVID-19 health crisis) and the fight against “irregular” immigration, in particular to limit “secondary movements”, which are considered as one of the flaws in freedom of movement within the Schengen area.

On the one hand, changes have been made to the provisions relating to external borders²². The reform strengthens surveillance at external borders, at checkpoints and outside checkpoints, with the aim of strengthening removal procedures. It also creates temporary restrictions on travel to the EU in the event of a “*major public health emergency*” or the arrival of a “*large number of migrants*” with reference to the preservation of security and public order, thus creating a new link between migration and danger. The concept of exploitation is also introduced into the code.

On the other hand, with regard to internal borders, the reform of the SBC strengthens the means available to States to circumvent the principle of freedom of movement, even though numerous breaches of this principle have already been observed in recent years with the increasing use of procedures for the reintroduction of internal border controls. The coexistence of free movement, which has become a privilege of European citizens, and migration control is leading to an intensification of discriminatory practices.

The reintroduction of internal border controls: an exception that has become the rule

The SBC articulates the dual requirement of respecting the principle of free movement of persons and recognising the competence of Member States to maintain public order and safeguard internal security.

According to the SBC, each State, “*in the event of a serious threat to public order or internal security [...] may exceptionally reintroduce border controls at all or certain sections of its internal borders.*” This is a “*last resort measure*”; its scope and duration must “*not exceed what is strictly necessary to respond to the serious threat identified.*”

²² These provisions are not discussed in detail in the analysis.

The maximum duration of these controls is set at 30 days, and if the serious threat persists beyond that, the State may extend internal border controls for the same reasons for renewable periods not exceeding 30 days, without the total duration exceeding six months. Some criteria enable the State concerned to assess whether the threat is sufficiently serious to justify restrictions on free movement.

The two exceptional procedures for reintroducing internal border controls ("*serious threat to public order or internal security requiring immediate action*" or "*exceptional circumstances jeopardizing the overall functioning of the Schengen area*") are only possible if the reintroduction of controls is limited in time and space. But in reality, this framework is vague and not very binding on Member States.

Since 2015, France has continuously reintroduced border controls — targeting mainly non-European nationals, especially those who are racialised — despite the limitations imposed by European legislation and the case law of the Court of Justice of the European Union (CJEU).

Border controls have been systematically reinstated for periods of six months, 23 times in total, making the reinstatement of controls the rule rather than the exception.

However, the case law of the CJEU was clear, reaffirming the strict interpretation of Articles 25 and 27 of the SBC, both with regard to the total duration of the reinstatement and with regard to their justification²³.

The successive reintroduction of internal border controls violates European law, dealing a fatal blow to one of the major achievements of European integration: freedom of movement within the Schengen area.

Despite the European Commission's supposed hope that the reform of the SBC will enable a return to the original spirit of Schengen, France, which has never been sanctioned for its practices, is unlikely to restore freedom of movement, as the reform endorses some of its abuses.

States can thus extend the reintroduction of internal border controls (RIBC) for up to three years (in six-month periods) and beyond if the same serious threat persists. These provisions neutralise the case law of the CJEU²⁴. Furthermore, Member States are given considerable discretion in assessing the necessity and risks of reintroducing controls.

While it is true that the Commission encourages Member States to use other measures to mitigate the consequences of reintroducing controls, this is to ensure the smooth functioning of the single market and limit the negative impact on the cross-border economy. No measures are planned in the reform to enforce the fundamental rights of foreign nationals.

Reform of the SBC: placing migration control outside the reintroduction of internal border controls

In addition to the specific RIBC procedure, the SBC allows States to carry out certain types of controls under normal circumstances. While free movement is the rule within the Schengen area, certain controls may be put in place at an internal border provided that they are not equivalent to external border controls²⁵ and are not intended to systematically check individuals.

Border checks: a misleading alternative to controls

National legislation may provide for internal border controls, provided that they are regulated so that they are not systematic in nature and do not resemble a border control system. Over the years, France has expanded the possibilities for using so-called Schengen controls, thereby contributing to redefining the border by extending its spatial reach (from lines to crossing points to strips of territory).

²³ CJEU, Grand Chamber, April 26, 2022, [NW](#), joined cases C-368/20 and C-369/20.

²⁴ See Analysis, p. 73 and 74.

²⁵ On the misuse of procedures for refusing entry into France, see Analysis, *Focus 9: La procédure de refus d'entrée détournée par les autorités françaises aux frontières intérieures pendant 9 ans*, p. 88.

One of the important changes brought about by the new SBC is to officially place migration control at borders outside the RIBC procedure by redefining “verification” and emphasising the notion of “proportionate” checks at internal borders.

The SBC provides that Member States *“should be able to take additional measures to combat irregular movements between Member States.”* Thus, it incorporates into the normal functioning of internal borders the police measures specific to each State aimed at restricting immigration. Unlike the RIBC, these “checks” are not limited by the temporary nature of an exceptional procedure.

The principle of non-systematicity is one of the main criteria used in the SBC to distinguish between these internal border checks and the reintroduction of controls. However, it seems to directly contradict the obligation not to carry out discriminatory checks. In other words, if not everyone is to be checked, then checks must be targeted. The SBC repeatedly emphasizes that border “checks” must be based on “general police information” concerning threats to public security and order.

The redefinition of “checks” at internal borders encourages States to strengthen surveillance measures established in larger areas rather than controls at border lines or authorised crossing points. Indeed, checks are supposed to be targeted (i.e., non-systematic) measures based on police information and *“risk assessment.”* The SBC therefore seems to be moving towards a proactive approach based on the mass collection of intelligence on migratory movements inside and outside the Schengen area, rather than simply blocking passage at borders, thanks in particular to massive investment in “modern” control technologies.

Simplified control and return procedures at internal borders

Whether or not we are in a period of RIBC, the SBC provides for the possibility of using simplified control mechanisms and procedures to facilitate the sorting and return of migrants arriving at internal borders through bilateral agreements or the new transfer procedure.

Member States may conclude cross-border and customs cooperation agreements on the arrangements for controlling their common borders, which France has been doing for several decades with most of them²⁶. Furthermore, as members of the Schengen area, they may also be involved through bilateral readmission agreements²⁷.

Focus 8: Challenge to the system applied at internal borders (excerpt)²⁸

The CJEU reiterated that EU Member States that decide to reintroduce controls at their internal borders are not authorized to automatically “return” people to the other side of the border and must grant foreigners intercepted on their territory the procedural guarantees provided for in the 2008 directive. The Court also reiterated that Member States may only impose deprivation of liberty pending the enforcement of a removal measure within the framework of detention as provided for in the Return Directive²⁹. The *Conseil d'Etat* (The French Council of State) drew conclusions from this ruling³⁰. Denial of entry (used by the French authorities between 2015 and 2024 at internal borders) can therefore only be notified with a view to implementing a procedure for handing over the person to the competent authorities of the neighbouring state, provided that a bilateral agreement provides for this³¹. Despite this decision, foreigners continue to be subjected to discriminatory checks, detention practices outside the legal framework and pushbacks without any effective means of appeal.

The SBC reform also created a new transfer procedure to facilitate removal procedures between Member States, despite the existence of numerous bilateral agreements. This applies to non-EU nationals apprehended during *“checks involving the competent authorities of both Member States in the context of bilateral cooperation”* or those arriving directly from another Member State without the right to stay

²⁶ Gisti, [Accords bilatéraux](#).

²⁷ See the Chambéry Agreement (between France and Italy) and the Malaga Agreement (between France and Spain).

²⁸ See Analysis, *Focus 8 : Contestation du régime appliqué aux frontières intérieures – les accords bilatéraux pour « sauver la face »*, p. 83 and following.

²⁹ CJEU, September 21, 2023, [ADDE et al. v. France](#), No. C-143/22.

³⁰ CE, February 2, 2024, application No. [450285](#), recital 14.

³¹ For precision, see the analysis: Anafé-Gisti, [Contrôles aux frontières intérieures terrestres – Note de décryptage des arrêts de la CJUE et du Conseil d'État et leurs conséquences pratiques](#), April 2024.

in the Member State of arrival. This does not apply to persons who are in the process of applying for international protection or who are beneficiaries of such protection.

With the exception of a right of appeal that is virtually impossible to exercise, there are no procedural guarantees during the screening, the procedure, or the “return” to the other State. The transfer procedure can therefore be seen as the solution to practices that contravene international, European, and national legislation, as denounced for years by NGOs and independent administrative authorities. However, the lack of clarity surrounding the terms of its implementation raises doubts as to whether the rights of migrants subject to these procedures will be respected.

Public health: a recognised justification for controls at the external and internal borders of the Schengen area

Anafé has observed a transformation of the border into a public health tool since 2020, when the COVID-19 pandemic emerged, which provided a *“window of opportunity to justify illegal behaviour and violations of fundamental rights by law enforcement agencies”*³².

The double conflation of “health control and migration control” and “health hazard and exiled persons as vectors of this hazard” permeates the entire SBC reform, mobilising public health as an instrument of migration control with the possibility of travel restrictions in the event of a large-scale public health emergency and checks within the territory.

Above all, based on the notion of infectious diseases with epidemic potential, the Council of the EU can declare the *“implementation of the Schengen safeguard mechanism”*, allowing for *“the adoption of coordinated solutions to protect the interests of individuals [...] by maximizing the effectiveness of the measures taken while minimizing their negative side effects.”* In other words, authorizing the reintroduction of internal border controls.

A new measure is also planned, further distorting the principle of free movement within the Schengen area. The implementing regulation adopted by the European Commission should make it possible to harmonise and standardise Member States' responses to health emergencies and to regain control over decisions on movement restrictions. Guarantees against possible abuses are minimal.

These provisions should be considered in conjunction with the provisions of the Pact on health risks, in particular health checks during the screening procedure.

A combined reading of the texts of the Pact and the Schengen Borders Code clearly shows that the objective of the European Union and its Member States has been to strengthen border controls, both internal and external. Screening, detention, and pushback procedures will intensify at external borders, to the detriment of international and European conventions, and national laws enshrining fundamental rights.

The erosion of migrants' rights, both within and outside the Schengen area, will undoubtedly make migration routes more dangerous, mirroring the migration policies that have been in place in the EU for decades. In the fight against so-called irregular immigration, with its deadly consequences, migrants, victims of the fear of otherness that lies behind these policies, are increasingly stigmatized and exposed to ever-growing dangers.

Conclusion: The Pact, the Schengen Borders Code, and the 2002 Directive: three reforms with the same objective—to further criminalize migration

With every new shipwreck or accident on migration routes, European governments boast about making the fight against “smugglers” a priority, claiming that they want to save lives and ensure that the rights of migrants are respected. In reality, the measures designed to combat migrant smuggling are primarily

³² Anafé, *Les droits humains en quarantaine : les frontières françaises à l'épreuve du covid-19, Note d'analyse*, December 2024.

used against migrants themselves, often to the detriment of their right to seek asylum. This policy is also accompanied by the criminalisation of acts of solidarity towards migrants.

The European Pact on Migration and Asylum, whose objective is to sort, detain, and “return” migrants, is part of this trend. It does not contain a clear definition of migrant smuggling and does not clearly exempt migrants themselves.

The introduction of the concept of “*instrumentalisation of migrants*” makes it possible to minimise border traffic by temporarily closing certain border crossing points and waiving the asylum procedure for a large number of migrants. The possibility of extending this “instrumentalisation” to non-state actors whose “*objective [would be] to destabilize the Union*” is also worrying. Civil society actors fear that this mechanism will be triggered against organizations that defend migrants’ rights, especially since the text does not include any real prohibition on Member States using this concept against humanitarian aid. This therefore increases the risk of criminalisation of such aid.

However, the criminalisation of migrants and those who defend their rights has been on the rise since 2015 at various borders of the European Union³³. In 2020, the European Commission identified 60 investigations and prosecutions in 10 Member States between 2015 and 2019. These cases mainly involved volunteers, human rights defenders, crews of ships participating in search and rescue operations at sea, but also members of the general public, family members of the persons concerned, journalists, mayors, and religious leaders³⁴. The Commission has called on Member States to exempt activities carried out for humanitarian purposes from criminal sanctions, but they do not appear to have followed this recommendation³⁵. At the same time, migrants are the first victims of these criminalisation policies³⁶.

A sword of Damocles thus hangs over migrants and the organisations that defend their rights, raising questions in the European political context of the rise of the far right and the normalisation of xenophobia.

Far from countering this trend, the Pact and the reform of the SBC once again stigmatise migrants and restrict their fundamental rights, while further criminalising their migration journeys.

It would undoubtedly have been wiser to question the deadly European policies that have been in place for decades in order to highlight the institutional and systemic violence against migrants that these policies cause. In this respect, the Pact and the reform of the SBC are nothing new.

³³ For more information, see the [dedicated page on the Gisti website](#).

³⁴ European Commission, « [Orientations sur la mise en œuvre des règles de l’Union européenne relatives à la définition et à la prévention de l’aide à l’entrée, au transit et au séjour irréguliers](#) », communication, 2020/C 323/01.

³⁵ For the year 2023, PICUM has recorded 117 cases of individuals subject to criminal or administrative proceedings for acting in solidarity with migrants within the EU, see PICUM, [Cases of criminalisation of migration and solidarity in the EU in 2023](#), 2024.

³⁶ The NGO Borderline Europe recorded 1,374 people arrested for assisting entry into Greek territory in 2022 alone, and in February 2023, 2,154 people were incarcerated in Greek prisons for this reason ; see Borderline Europe, [A legal vacuum. The systematic criminalization of migrants for driving a boat or car to Greece](#), July 2023.