



Access to Asylum in Melilla

Analysing ‘What’s the problem represented to be’ in the Screening Proposal of the EU Pact on Migration and Asylum

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Abstract

This thesis deals with the ways in which the Screening Proposal in the new EU Pact on Migration and Asylum might affect the access to asylum at the EU's external border in Melilla. To this end, the analysis is divided into two main parts. Firstly, as a general framework, the thesis starts by mapping out the Screening Proposal presented by the European Commission in 2020, and how this can be understood as an extension of the hotspots system presented by the European Commission in 2015. Bacchi's problematisation approach will then be used to investigate hidden silences and make visible taken-for-granted truths in the EU asylum policies. Secondly and most particularly, attention is directed at how the proposed screening regulations may impact the access to the asylum system in Melilla. For this specific purpose, the thesis draws on the experiences and knowledge of experts working to assist asylum seekers along the border between the Spanish enclave of Melilla and the city of Nador in Morocco, collected through semi-structured qualitative interviews. The thesis explains that the aim of the Screening Proposal in the Pact is not to strengthen the protection mechanism for asylum seekers, but to maintain the securitisation of the EU's borders and control arrivals to the EU through a legally binding agreement. In this sense, Melilla is a clear example, where security and migration control prevail over access to asylum, and the proposed screening regulations may affect access to asylum even further.

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Key words

Asylum, migration, asylum seekers, securitisation, Melilla, EU Pact, screenings, hotspots

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Abbreviations

Abbreviation	Definition
CEAS	Common European Asylum System
EC	European Commission
EASO	European Asylum Support Office (Former EUAA; formally transformed into the EUAA in 2022)
Eurojust	EU Judicial Cooperation Agency
Europol	EU Police Cooperation Agency
Eurosur	the European external border surveillance system
FRA	EU Agency for Fundamental Rights
Frontex	the EU border and coastguard agency, the full name is European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
OAR	Office of Asylum and Refuge
SAR	search and rescue
SIVE	Sistema Integrado de Vigilancia Exterior en el estrecho y en alta mar/Integrated System for External Surveillance in the Strait and in the High Seas
UNHCR	United Nations High Commissioner for Refugees
WPR	What's the problem represented to be? (an analytical framework to analyse policy, developed by Bacchi)

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1. Introduction

On June 24, 2022, a deadly incident took place in Melilla, one of Spain's two autonomous cities located in northern Morocco. At least 37 people were crushed to death in a stampede as migrants and asylum seekers tried to climb the high wired fences to access EU territory (BBC, 2022). Several human rights violations against refugees and migrants in connection to the incident have been reported. Amnesty International (2022) reports that excessive force was used by both Spanish and Moroccan security forces, and that people were left lying injured on the floor inside of the fences for hours without medical attention. This is not the first time that human rights violations have been reported from the border in Melilla—spaces to claim asylum have been continuously blocked, and people on the move are subjected to violence from security forces (Amnesty International, 2022). The attempts of jumping the fence to access Spanish territory to seek asylum must be understood from the securitisation of the Melilla border. Regular ways of entering the city are largely unavailable, and asylum seekers are left with no other option than to climb the high fences or try to swim (SJM, 2022). When we hear or read about asylum seekers who seek to enter Europe, it is often through dramatic portrayals of tragic events that take place at the EU's external borders—just like the one in Melilla. However, these episodes take place within well organised practices of securitisation that control who is allowed to enter the EU's territory, and who will be returned.

In September 2020, the European Commission (hereafter called EC) presented the EU Pact on Migration and Asylum, a legally binding policy that proposes mechanisms to bring together the areas of migration, asylum and the management of borders. The Pact sets out to create: “faster, seamless migration processes and stronger governance of migration and borders policies”¹. The EU Pact is currently under negotiations. It needs to be adopted before the end of the political period and the EU elections of 2024, and negotiations should be finished in February 2024 (European Parliament, 2022). A key challenge in the Pact's development is that Southern European States call for a higher degree of solidarity—a central part of the Pact against which EU member states have shown resistance as they will be obliged to share the responsibility of migration (Reuters, 2021). This thesis will focus on the EC's proposed pre-entry screening regulation, which aims to swiftly identify and establish the

¹ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum COM(2020) 609 final

status of all third-country nationals who have entered the EU's borders without permission, or who have been captured in a SAR operation². The Screening Proposal shares similarities with the hotspot approach that the EC introduced with the Agenda on Migration in 2015³, which was an emergency measure to respond to the increasing number of arrivals of migrants and refugees at the EU's external borders. At this time, the EU intervened with a policy to ensure that identification and registration were carried out in designated hotspot areas.

This thesis has a dual, but nevertheless closely connected, focus of investigation. The thesis is divided into two parts, where the first analyses the EU Pact's Screening Proposal, and makes comparisons with the hotspot approach. These will be analysed and problematised from the lens of Bacchi's analytical tool 'What's the problem represented to be' (WPR), which aims to bring forward hidden silences and taken-for-granted truths in politics (Bacchi, 2012a). The second part of the thesis investigates how people on the move can access the asylum system in Melilla. This part draws on the experience of experts from organisations working to assist asylum seekers in Melilla and in the neighbouring city of Nador in northern Morocco. Finally, the second part contains an analysis of how the EU Pact's proposed pre-screening regulations may impact access to the asylum system in Melilla.

The structure of the thesis includes a first chapter to introduce the topic, research aims and questions, and a justification for the selected topic. Then, chapter 2 presents previous research and the theoretical framework to guide the analysis. Chapter 3 follows with a presentation of the methodology used for data collection. Chapter 4 and 5 give an in-depth analysis where the research questions will be answered, and finally, chapter 6 lays out some concluding remarks and recommendations for further research.

1.1 Problem formulation and justification

The topic of asylum and migration in the EU has received increasing attention during the last years. In 2015, hundreds of thousands of people crossed the Mediterranean Sea after having fled war and persecution, the majority from Syria, Afghanistan and Iraq. Thousands of people tragically lost their lives during these dangerous sea crossings (UNHCR, 2015). Both

² 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 COM/2020/612 final

³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN AGENDA ON MIGRATION COM(2015) 240 final

the EU and its member states responded to the new developments—although in different ways. While some countries first answered by keeping their borders open and calling for the right of refugees not to be returned, others closed their borders, built fences and increased border controls. At the EU level, the Agenda on Migration was introduced—a plan to handle the ‘crisis’ in the Mediterranean (ICMPD, 2015). In the light of the 2015 migration ‘crisis’, the EU has addressed the need to reform the Common European Asylum System (CEAS), and in 2020, the EC proposed the new Pact on Migration and Asylum (European Council, 2023), which presents the Screening Proposal studied in this thesis.

When considering the importance of studying the development of asylum policy in the EU, it is especially significant to look at how it will affect peoples’ chances of seeking protection in the EU. As will be discussed, practices of securitisation are visible at the external borders of the EU, and the effects they have on how people can access asylum is evident already today. The proposed screening regulations will possibly further impact people’s chances of seeking protection in the EU. If the Pact is adopted, the Screening Proposal will be legally binding for every EU member state to follow, and will therefore significantly influence how asylum in the EU is handled in the future. For this reason, it is both relevant and necessary to analyse and problematise the Screening Proposal. Moreover, as will be seen in chapter 4, the Screening Proposal is not a new policy, but it must rather be understood as an extension of the hotspot approach that the EC introduced with the Agenda on Migration in 2015. With this in mind, introducing pre-screenings is especially significant, as they can be understood as a legal space to implement the hotspots permanently.

Finally, the topic of EU asylum policy deals directly with the human right of seeking asylum and the protection mechanism of people on the move. The right to asylum is firmly stated in both the Refugee Convention of 1951 (OHCHR, n.d.) and in Art 14 of the Universal Declaration of Human Rights (United Nations, n.d.). It will be clear in this thesis that the human right to seek asylum is not always accessible due to practices of securitisation and border controls—and the topic of accessing asylum is therefore relevant to research from a human rights perspective. The geographical choice of Melilla is based on the particularity of the border, as it is a door to the EU where these securitisation practices are highly visible.

1.2 Research questions and aims

To better understand the development and the ‘truths’ that underpin the screening procedures proposed in the EU Pact, a good approach is to look at how ‘problems’ are represented in policies. According to Bacchi, ‘problems’ do not exist in reality, but are constructed through policy-making. Bacchi's analytical WPR-tool allows the researcher to look at hidden assumptions and taken-for-granted truths in policies, and analyse it from the pre-existing political landscape and developments (Bacchi, 2012a). Thus, it is also a suitable model for making connections between the hotspot approach and the Screening Proposal. To this end, the following research question is asked: *What’s the problem represented to be in the Pact’s Screening Proposal—and how can it be understood as an extension of the hotspot approach?*

The focus will then be directed to the second part of the thesis. The research question asked is: *How can people on the move access the asylum system in Melilla today—and how may the Pact’s Screening Proposal affect access to asylum in Melilla?* To answer this question, semi-structured qualitative interviews have been conducted with experts working to assist asylum seekers in Melilla and the nearby city of Nador in Morocco.

The aim of this thesis is to gain better understanding how the Screening Proposal in the EU Pact may affect access to asylum in the EU and how it can be understood in the light of the hotspot approach. Furthermore, it seeks to understand how ‘problems’ are represented and identify hidden silences and assumptions in the Screening Proposal. Finally, by investigating how people on the move can access the asylum system in Melilla, the aim is to reach an enhanced understanding regarding the current challenges, which will in turn contribute to a better understanding of the possible outcomes of the pre-screenings.

2. Methodology

To answer a research question, it is often necessary to use more than one data collecting strategy. By relying on solely one technique, there is an overall risk that the data turns out to be too homogenous and insufficient to answer the research questions (Richards and Morse, 2013: p. 78). To this end, multiple methodologies will be used. Firstly, the thesis builds on secondary data from previous research. The secondary sources, as well as theories on securitisation, will provide a useful base to better understand the EC’s Screening Proposal, and how people on the move can access asylum in Melilla. Secondly, the Screening Proposal

will then be analysed from the lens of Bacchi's WPR approach—an analytical tool that brings forward hidden silences and taken-for-granted truths in politics (Bacchi, 2012a). Specifically, the analysis will problematise the Screening Proposal as a possible development of the hotspot approach, as the latter may be understood as a forerunner of the first. For this reason, the hotspot approach will also be brought into the analysis. Thirdly, semi-structured qualitative interviews have been conducted with experts working for organisations who provide assistance to asylum seekers in Melilla and in Nador in Morocco.

When designing a qualitative research project, it is important to turn to the *scope* of the project, which concerns the area of investigation for the research. Here, it is necessary to consider the setting and sample that is needed to collect data (Richards and Morse, 2013). The authors emphasise that the setting of the research and sample selection should be based on two main principles: 1) the geographical setting and sampling should be made purposefully; and 2) the sampling should be based on the emerging analysis, when the researcher has started to grasp the area of investigation (Richards and Morse, 2013: p. 74-76). To this end, the area of investigation was purposefully *geographically* limited to Melilla—the reasons for which will be accounted for more in detail under 'Sampling'. To respond to the second part of the principle, having a clear geographical focus was a good entry point to start sampling participants.

2.1 Semi-structured interviews

In order to understand how asylum seekers can access the asylum system in Melilla today, semi-structured qualitative interviews were conducted with experts from organisations in Melilla and Nador who work to provide assistance to asylum seekers. The interviews were conducted on-site during a field trip together with the University of Deusto, which aimed to provide in-depth knowledge of the situation for people on the move and in transit. During the trip, meetings were held with organisations working both to provide legal, social, legal-social and psychosocial support to asylum seekers. This provided an opportunity to connect with different organisations and conduct interviews.

The choice of using on-site semi-structured interviews was based on the flexible nature of the approach. As Robson (2002) explains, the researcher has the security of consulting a list of questions, while at the same having the freedom of redirecting the focus. Moreover, conducting interviews in person tend to give more in-depth responses (Robson,

2002). This method made it possible to stay longer on topics that generate particularly interesting answers, and add new questions as needed. Moreover, the on-site interviews generated useful comprehensive data with in-depth responses.

The interviews also seek to connect the analysis of the Screening Proposal to the context of Melilla, as they involve themes that are central to the policy of screenings. By first gathering primary data to investigate the question of asylum in Melilla, the thesis has the advantage of: 1) reaching a deeper understanding of the challenges of accessing asylum in Melilla; and 2) better understanding the possible outcomes of the EC's proposal of pre-screenings on the access to asylum.

2.2 Sampling

Firstly, it is important to account for the choice of interviewing experts with knowledge of the situation—rather than asylum seekers themselves. The scope of the research has guided the sampling from the beginning. Since the thesis is interested in how people can access the asylum system in Melilla today, it became clear that the most suitable way of collecting data would be to talk to experts with experience of working in this particular setting. By interviewing experts who are in contact with asylum seekers on a daily basis, and who meet people from different places, with different backgrounds and with different needs—the data is likely to become more nuanced and representative to a larger group of people. If the choice would have been to talk to asylum seekers about their experiences, it may have been necessary to interview a larger group of people to reach the same understanding. According to Harrell-Bond and Voutira (2007), it is also complicated to access spaces such as reception centres, due to the necessity of having permission to enter. Most importantly, however, interviewing asylum seekers would have added ethical implications, which will be discussed later in this chapter.

As has been mentioned, semi-structured interviews were conducted during a field trip to Nador and Melilla. In total, five interviews were conducted—each interview lasted between 45 minutes and 1,5 hours. However, the first interview had been conducted over video call before the trip, as this participant was identified beforehand as relevant for the research question of access to asylum in Melilla. After the first interview, they recommended a participant from another organisation who would be suitable to talk to. In this way, a snowball sampling proceeded, which is a method where participants are selected based on

recommendations from other participants (Richard and Morse, 2013). The three remaining interviews were conducted after meeting and connecting with the experts during the field visit.

2.3 Participants

The experts selected work in close contact with asylum seekers by providing legal, social and psycho-social support. The interviews will be named and referenced '*Expert 1-5*'.

- *Expert 1* represents an organisation that operates in Melilla and provides legal services and protection to people in transit. They also carry out awareness raising and advocacy to shape policy. The interview was conducted through a video call before the field trip.
- *Expert 2* represents an organisation in Nador that provides training, legal counselling, and medical, social and psychosocial support to people on the move.
- *Expert 3* represents an organisation in Melilla that supports people on the move. The organisation provides training and workshops, such as trainings to prepare for interviews with asylum authorities.
- *Expert 4* represents an organisation that works in Melilla to provide legal, psycho-social and medical support, as well as to report human rights violations along the border between Morocco and Spain.
- *Expert 5* represents the same organisation as *Expert 3*.

2.4 The process of analysing the data

Qualitative analysis is often carried out based on grounded theory, where the process of analysing data is dynamic. Here, the researcher identifies *indicators*, which can be understood to be concrete data found in the material, such as patterns of behaviours. Similar indicators are divided into a coded category and compared between each other, and thus, concepts can be created (Sarantakos, 2005). In this thesis, grounded analysis is the practice used to analyse the data collected through semi-structured interviews. The recorded interviews were listened to and transcribed, and during the analysing process, indicators were

then identified and labelled into coded categories. This method of analysing was based on the interest of identifying common features and themes from all the data collected, as they would be central to analysing the research question of how people on the move can access the asylum system in Melilla.

The analysis was conducted both during and after the data collection. As Sarantakos (2005) explains, to conduct an analysis *during* the data collection is a common practice in qualitative research, and means that the data collection and the data analysis is a joint process. Thus, the process of collecting new data is influenced by the conclusions drawn during the process. To leave the data analysis until *after* the data collection, however, is another useful practice which is facilitated by audio and video recordings (Sarantakos, 2005). For this thesis, a combination of the two practices has been used. As mentioned, the first interview was conducted *before* the field trip, which made it possible to do an initial analysis while the data collection was ongoing. This resulted in new ideas and a growing understanding of the research topic, which helped guide the focus for the following interviews. The last four interviews were conducted during only three days, and the time available for analysing the collected data was very limited. For this reason, the majority of the analysis was conducted *after* the data collection. According to Sarantakos (2005), a combination of the two practices is frequently used, and it can lead to a more effective entry point to the topic researched. All the interviews were audiotaped, which allows the researcher to focus fully on the interview (Robson, 2002). The use of audio recordings, together with the notes taken during the interviews, have facilitated the transcription part of the process as well as the analysis.

2.5 Ethical discussion

Social research involves ethical aspects for the researcher to consider: participation must be free and voluntary; confidentiality and anonymity must be respected; autonomy and freedom must be respected; and harm must always be avoided (Hammersley and Traianou, 2012). These elements will be covered in this ethical discussion, together with an ethical discussion about sampling.

In the methodology for this thesis, aspects of privacy, confidentiality and anonymity have been central. Confidentiality is a principle that ensures that the data is not shared with

others, which in social research, is often directly promised to participants. Offering confidentiality as well as anonymity is essential to protect privacy, and reduce the risk of harm. However, confidentiality does not only concern the protection of individual participants, but also organisations that may figure in the data (Hammersley and Traianou, 2012). Thus, a priority has been to not reveal the identity of the individual participants nor the organisations they represent.

To maintain confidentiality, anonymisation is a key strategy, as well as to keep the collected data private. This includes not sharing notes, recorded audio or video material, and ensuring that the data is stored securely. Moreover, one of the main ways to ensure confidentiality is to use pseudonyms throughout the process, and keep any key to the pseudonyms used separate from the data (Hammersley and Traianou, 2012). All these aspects of confidentiality and anonymisation have been carefully considered and used throughout the process. As was explained, the names of the participants were anonymised as “*Expert 1-5*”.

Moreover, respect for participants’ autonomy is central when conducting research, which is closely related to the data collection process and obtaining informed consent. As Hammersley and Traianou (2012) explain, what is generally requested from the participants is the right to collect the data, to record it, and then use it for the purpose of the research. The participants must be aware of the possibility of withdrawing their consent, and the consent must always be voluntary. Consent for conducting interviews should also include necessary information about the interviews, such as the length and setting, and the type of questions that will be asked (Hammersley and Traianou, 2012). For this thesis, informed consent was obtained through a written consent form, where the participants received the information described above.

The risk of harm is often regarded as the most important principle in research ethics. As Hammersley and Traianou (2012) point out, there is no method to predict the potential harm that may be caused, but some kinds of research topics are generally regarded as more sensitive and likely to lead to harmful outcomes. The same is true for specifically vulnerable participants (Hammersley and Traianou, 2012), a logic which has impacted the sampling of participants for this thesis. Harrell-Bond and Voutira (2007) explain that it is sensible to avoid treating refugees as informants in research due to their vulnerability. Moreover, the authors emphasise under what premises engaging with refugees as informants could be considered appropriate:

The only way we can recommend engaging with refugees, that is, getting their full cooperation, is to convince them that the research is in their own best interest either because it addresses urgent conditions of survival or because it acknowledges their presence and historicity or both". (Harrell-Bond and Voutira, 2007: p. 290).

This statement leads into the ethical issue of doing research on behalf of refugees, understanding what the best interest collectively for refugees is, and then being able to understand the refugee narratives and transfer the data into theoretical concepts (Harrell-Bond and Voutira, 2007). With all this in mind, a decision was made not to engage with refugees or migrants as informants.

3. Theoretical framework: securitisation, border exceptionality and WPR

3.1 Previous research on the securitisation of migration and asylum

Migration management continues to be a central issue for wealthier States. States want to control their borders to limit migratory flows, but without breaching refugee law. In Europe, the priority has been to prevent arrivals, and since the 1990s, European countries have introduced visas and increased securitisation practices to hold back migratory arrivals. This includes constructing high fences around Melilla, and introducing the Eurosurveillance system that aims to detect irregular migration in the Mediterranean sea (Schuster, 2016). Gammeltoft-Hansen and Hathaway (2014) describe these measures as the politics of non-entrée. Practices of non-entrée can be regarded as ‘successful’ from the perspective of the States that are aiming to curb the number of arrivals, since an overwhelming majority of the world’s refugee population is hosted in developing countries (Gammeltoft-Hansen and Hathaway, 2014).

However, States’ efforts to secure migration go beyond practices that prevent crossings of Europe’s external borders. Menjivar (2014) explains how borders are also expanded *internally*, for instance through detention and deportation. Internal and external

securitisation of borders are simultaneously linked to the securitisation of migration (Menjívar, 2014). While pushbacks—a practice of a State to force people to return from their territory which is illegal according to both international and European law—have often been discussed in research on securitisation of migration, the concept of *pullbacks* are less known. Barnes (2022) describes how States, through cooperation with third-countries, prevent migrants from reaching their territory. This has been seen between Italy and Libya, where Libya has intercepted vessels in the Mediterranean to stop them reaching Italy. By not pushing boats back themselves, Italy does not breach their legal obligations. However, the effect can be understood to be the same, since people are not given the right to seek international protections in either scenario (Barnes, 2022). Thus, practices of cooperation and strengthened internal controls must also be understood as important aspects of securitisation.

A concept closely connected to securitisation of migration is that of criminalisation of migration, also called ‘crimmigration’. Criminal law has increasingly merged into refugee law as connections have been made between asylum seekers and threats to national security (Bhatia, 2015). Scholars of crimmigration criticise that fundamental aspects in criminal law that protects individual rights have not taken place in refugee law. Indeed, if strategies of immigration control are to share traits with criminal law, then the results of such processes should be treated equally to criminal punishments (Dauvergne, 2013; Stumpf, 2013). According to Dauvergne (2013), the entry of criminal law into refugee law is inherently problematic because the logic of the two legal doctrines are so fundamentally different. The protection of individual rights in criminal law is justified by the risk of the accused losing their freedom, but as Dauvergne points out, the consequences for asylum seekers are similarly serious as they risk being returned to a state which is unwilling or unable to protect them. Thus, the merging of the two doctrines harms the rights of asylum seekers who risk being denied protection (Dauvergne, 2013). Drawing on the issue of ‘crimmigration’, a central challenge is connected to the irregular means of entry that tend to connect migrants and asylum seekers to criminality rather than asylum. Indeed, asylum seekers must often take clandestine routes to be able to reach a destination where it is possible to seek asylum, and those who are detected during an irregular migratory route may become linked to criminality instead of asylum (Mountz, 2011).

A central issue within the research of securitisation of migration is the topic of mixed migration flows, and the separation made between migrants and refugees. According to Schuster (2016), the distinction between the two groups, which is based on the understanding of ‘voluntary’ compared to ‘forced’ migration, is ambiguous due to two reasons. Firstly,

people on the move often travel together in mixed movements, and secondly, there are often multiple motivations behind the decision to move. People who are forced to flee conflict may also want to leave poverty—a push-factor usually associated with 'voluntary' migration. Moreover, refugees fleeing conflict or persecution are often forced to leave for multiple reasons, and in order to avoid obstacles such as migration controls, they may travel the same routes as those who migrate 'voluntarily' (Schuster, 2016).

The issue of mixed migration flows has also been discussed in regard to how asylum seekers may be securitised by *association*. Kaunert and Léonard (2019) differentiate between securitisation of migration and securitisation of asylum in the EU, and emphasise that development of EU asylum policy has not been characterised by security concerns. In fact, the technocratic nature of the EU makes it unlikely that it would deal with refugees and asylum seekers as a security threat. Instead, the EU has focused on highly technical matters around the legal standards of asylum. The minimal standards set by the EU have given refugees and asylum seekers strengthened rights, since some member states have been forced to adapt to higher EU regulations and standards (Kaunert and Léonard, 2019). Nevertheless, the securitisation of migration may securitise asylum by association. Kaunert and Léonard (2019) further explain how this takes shape in Melilla, where migration has clearly been made into a security issue. High fences have been built around the city, and the border has been strengthened by increasing surveillance technology with the SIVE system. Although these securitisation practices mainly aim to control irregular migration, they have an indirect impact on asylum seekers—given the necessity of reaching the territory of a EU member state to apply for asylum. Thus, this shows that the securitisation in the adjacent policy venue of irregular migration and borders has had a spill-over effect on the asylum policy venue (Kaunert and Léonard, 2019).

The representation of migration and asylum as a 'crisis' has played a central part in shaping migration into an issue of security (Bousiou and Papada, 2020), and since the perceived 'crisis' associated with the migratory flows to Europe in 2015, the EU has taken several steps to control the area of asylum and migration. In 2015, the EC introduced the European Agenda on Migration⁴ as a response to the increased arrival of refugees and migrants in Europe. A central aim of the agenda was to establish hotspots—first reception facilities—where screening of asylum seekers and migrants would take place. According to the EC, the introduction of hotspots was a necessary intervention to support frontline member

⁴ Communication from the Commission, A European Agenda on Migration 2015, op. cit.

states that faced heavy pressure from increased migratory flows. With this approach, the EC has aimed to improve standards of the asylum procedure and provide EU member states quality indicators, and thus strengthening the rights of asylum seekers. Tazzioli and Garelli (2020) point out that the hotspot system can also be understood as a measure taken by the EC to enforce EU member states to comply with the EU identification policies, and ensuring that fingerprints of arriving migrants and asylum seekers were shared in the EURODAC database (Tazzioli and Garelli, 2020).

The hotspots are largely formulated in procedural terms, but they can also be understood as geographical spaces of confinement that aim to control asylum seekers' movements (Campesi, 2020). At the EU's external borders, island outposts are used to control migrants and diminish their chances of accessing the territory of the state (Mountz, 2011). However, hotspots are not just limited to external outposts where identification procedures take place, but are in fact spread across territories, and disrupt migrants movements in other locations and border areas. Thus, the hotspots function as chokepoints that do not only regulate and label migrants upon landing, but they also disrupt mobility and take control over secondary movements (Tazzioli and Garelli, 2020). In the end, a hotspot can essentially be understood to be a zone where a situation of irregularity requires an intervention, just as with the EU's borders facing an increased migratory pressure (Campesi, 2020).

The effectiveness that the EC aims to achieve with the hotspot approach is not connected to the right to asylum, but rather to an increased control of who is permitted to enter the EU and how frontline member states handle asylum cases. In an analysis of hotspot policy documents, Bousiou and Papada (2020) explain that the framing of the hotspots is essentially a crisis response tool to help frontline member states, rather than a tool to assist people in need of protection. In the EC's Agenda on Migration, the hotspots are explained to be an urgent measure to "swiftly identify, register and fingerprint incoming migrants"⁵. To achieve this, the Agenda gave the European Asylum Support Office (EASO), Frontex, the EU Police Cooperation Agency (EUROPOL) and the EU Judicial Cooperation Agency (Eurojust) the mandate to work on the ground to identify, register and screen migrants, as well as coordinating their return. EASO has the responsibility to process asylum claims "as quickly as possible", and Frontex the responsibility for coordinating the return of irregular migrants, and Europol and Eurojust the task to assist member states with investigations to combat smuggling and trafficking networks. This delegation of authority to EU agencies can be

⁵ Communication from the Commission, A European Agenda on Migration 2015, p. 6

understood from the EC's aim to swiftly register and handle incoming asylum claims (Bousiou and Papada, 2020). Thus, the hotspots' aim seems to be centred around speeding up the border procedures and facilitating the coordinated returns—not to strengthen the rights of asylum seekers as stated in the 2015 Agenda on Migration⁶.

The hotspots have been criticised for violating the rights of migrants and asylum seekers—due to pushbacks, lacking access to effective asylum procedures and the use of containment practices such as detention and forced relocation. A report from the European Parliament draws attention to how quick identification processes can lead to that individual asylum claims are not handled according to legal standards, which risks having the effect that people are returned to unsafe places (Neville et al., 2016). Moreover, scholars have pointed out how the decision of whether or not a person qualifies for international protection is often based on nationality, which excludes many asylum seekers from the asylum procedures (Tazzioli & Garelli, 2020). According to FRA (2016), to assess asylum claims solely based on nationality does not meet the requirements of an objective examination of each asylum seeker's claim. Before a decision of expulsion is taken, each asylum seeker has the right to have their claim individually tested. Sending people back on the sole basis of their origin risks violating the principle of non-refoulement and the prohibition of collective expulsion (FRA, 2016). Attention has also been paid to the lack of thoroughness in asylum procedures under the hotspot system. In her research, Pinelli (2018) draws attention to how testimonies told by asylum seekers, which provides crucial information for the asylum application to be handled correctly, have been poorly translated and transcribed. Moreover, arbitrary hierarchies and treatments of asylum seekers and their individual cases—depending on circumstantial factors such as the facilities provided in different locations and the personnel working—have been reported. Apart from leaving asylum seekers with a sense of abandonment, anxiety and neglect, the lack of assistance and properly executed asylum procedures risks having a direct impact on their asylum claims and chances to be offered protection in Europe (Pinelli, 2018).

Securitisation Schools

There are generally two schools of securitisation that investigate the topic of securitisation of migration. The Copenhagen School of Securitisation examines how

⁶ Communication from the Commission, A European Agenda on Migration 2015, op. cit.

migration has been constructed as a security threat through speech acts, and how actors have contributed to this discourse. The Paris School of Securitisation is less concerned with the discourses of securitisation and focuses instead on the *practices* of securitisation (Balzacq et al., 2016). This thesis will build on the theoretical framework of the Paris School, which is the most appropriate lens to analyse the securitisation practices of the asylum system in Melilla, as well as the proposed practices of the EU Pact.

However, as the Paris School is largely an extended theoretical framework of the Copenhagen School's focus on securitisation through discourse, a brief introduction will follow to present the main elements of the Copenhagen School. The Copenhagen School was the first security theory to go beyond military aspects of security, and focus on how an issue can be made into a security concern through speech acts. The framework introduces five sectors which can influence security: the military, the economic, the political, the societal and the environmental (Huysmans, 1998). However, to *present* something as a security threat is only a securitising move, but not enough for the issue to become *securitised*. A key aspect of the framework is the role of the audience, which has to accept the presented issue as a security threat for it to become successfully securitised. No actor holds a definite authority for making speech acts of security. However, some actors, such as political leaders, are more likely to be successful in their attempts to do so.

3.2 The Paris School: the most appropriate lens to analyse the EU's securitisation trends

While the Paris School of securitisation builds on the Copenhagen School's framework, it has extended the understanding of the concept of securitisation by focusing on 'practices' rather than speech acts, for instance the practices used by governments. The practice oriented approach of securitisation is different from the linguistic one of the Copenhagen School, since the practices do not have to be accepted by an audience in order to be successfully securitised (Balzacq et al., 2016). The main criticism against the discursive part of the Copenhagen framework is that it is unsuccessful in explaining how tools and practices play an important part in the securitisation process (Balzacq, 2008).

The Paris School explains that securitisation takes place in the professional security field, and is linked to practices such as risk profiling, visa policies and the remote controlling of borders. Similar to the Copenhagen framework, there is not a specific actor that has the

mandate to determine what is a threat and how to respond to it. However, professionals in the field benefit from their position of authority and do not have to ‘prove’ their security claims, and can generalise on the basis of one case to create an understanding of a security threat (Bigo, 2002: 73-74).

An additionally important aspect of the Paris School’s securitisation approach is the merging between internal and external security, which can be explained by how the internal security of states has expanded beyond national borders and into larger transnational areas. Through a web of transnational networks, security has become increasingly influenced by remote controlling and policing, and less by internal security forces. At the EU level, institutions and agencies (for instance customs and border guards) have come to play a more dominant role in the security realm. With this shift, an increasing number of actors compete over determining what constitutes a security threat, and how that should be tackled (Bigo, 2006).

The data collected for this thesis reveals how asylum and migration are currently affected by securitisation practices in Melilla, which makes the Paris School a useful theoretical framework to guide the analysis. The Paris School will also be applied to the analysis of the securitisation practices visible in the Screening Proposal presented in the EU Pact. However, to better understand the EC’s aims of introducing the pre-screening regulations, the WPR-approach will first and foremost guide the analysis forward.

3.3 WPR - What’s the problem represented to be?

As stated in the introduction, the Screening Proposal can largely be understood to be an extension of the hotspot approach. The analysis of the evolution from the hotspot approach to the new pre-screening procedures proposed in the EU Pact will be guided by Bacchi’s problematisation approach ‘What’s the problem represented to be’, which is a tool to analyse policies. By problematising an issue or a question, we can disrupt, question and dismantle taken-for-granted truths in politics, and understand how this ‘truth’ has come to be represented in this way. The tool is intended to promote critical interrogations of policies, which starts from the premise that the solution proposed in a policy does in fact reveal what is thought to be a problem (Bacchi, 2012a). In Bacchi’s own words:

The WPR approach rests on a basic premise—that what we say we want to do about something indicates what we think needs to change and hence how we constitute the “problem”. (Bacchi, 2012b, p. 4)

Thus, when a State or a government proposes a policy, we can assume that there is an issue at play that ‘needs’ to be fixed. The approach is inspired by Foucauldian post-structural analysis, which illustrates how represented ‘problems’ are not based in realities, but rather shaped through policy making (Bacchi, 2012b). Through the lens of Bacchi’s ‘WPR’ approach, the thesis seeks to understand what the ‘problem’ is presented to be in the Screening Proposal (or is still represented to be if we look at the Screening Proposal as an extension of the hotspot approach).

Bacchi’s WPR-approach introduces a methodical way of conducting policy analysis, and presents six key questions that will be applied to the analysis of the Screening Proposal and its connection to the hotspot approach:

1. *What’s the ‘problem’ represented to be in a specific policy or policy proposal?* The question thus seeks to explain the implied problem representation in the policy piece.
2. *What presuppositions or assumptions underpin this representation of the ‘problem’?*
3. *How has this representation of the ‘problem’ come about?* This question intends for the researcher to consider how the ‘problem’ representation has emerged.
4. *What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?* By looking at aspects that are left unproblematised, it is possible to bring forward gaps in the representation.
5. *What effects are produced by this representation of the ‘problem’?* The question opens up for analysis of the consequences of the ‘problem’ representation. It encourages the researcher to assess how the ‘problem’ representation affects the narrative of the topic through analysing the limitations of what can be brought forward in the conversation. Moreover, it steers the conversation to the effects the representation has on people’s lives.
6. *How/where has this representation of the ‘problem’ been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced?* Further attention is paid to how the ‘problem’ has come to be represented.

(Bacchi, 2012a: p. 21).

The WPR-approach leaves room for an in-depth problematisation of policies, and it therefore makes a good basis for analysing different elements of the Screening Proposal. The analysis will also be structured around similar practices found within the hotspot approach, analyse how these two policies correlate and what the problem (still) is represented to be in the Screening Proposal presented in the EU Pact. The next chapter explores the contents of the Screening Proposal in closer detail, and aims to make clear how the practices proposed by the EC are connected to the hotspot approach, and how they may affect the access to the asylum system.

4 Asylum: Right or Threat? Securitising International Protection in EU Pact

In September 2020, the EC presented the New Pact on Migration and Asylum, which sets out to create seamless and faster asylum procedures⁷. The focus of this part of the thesis is on one particular legislative proposal in the EU Pact: the Screening Proposal. The pre-entry screenings include a health and vulnerability check-up; an identity check against information in European databases; registration of biometric data; a security check to ensure that the person does not constitute a threat to internal security⁸.

4.1 Pre-screening proposal

The EC justifies the introduction of new screening regulations at the EU's external borders with the argument that the arrival of people in need of international protection has been replaced by mixed migration flows⁹. In the Communication document on the New Pact on Migration and Asylum¹⁰, the EC explains further that this shift has increased the complexity of migration in Europe, and the EU thus needs to take on a new approach that will

⁷ European Commission, Communication on a New Pact on Migration and Asylum, op. cit.

⁸ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

⁹ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

¹⁰ European Commission, Communication on a New Pact on Migration and Asylum, op. cit.

create more effective procedures. In order to handle the mixed migration flows, the Screening Proposal explains the necessity to swiftly identify and establish the status of all third-country nationals who have entered the EU's borders without permission, or having been seized after a SAR operation, which will be done through a new regulation to quickly identify arrivals "who are unlikely to receive protection in the EU"¹¹.

The authorities responsible for the screening should finalise the procedure by writing a de-briefing form which contains data such as date of birth, sex, nationality, reasons for unauthorised entry, and the migratory routes taken¹². According to Art 14(2) in the Proposal¹³, the authorities should then highlight information that appears to be relevant "at first sight" when determining to which asylum procedure the applicant should be channelled, in case they are not returned. Apart from the data presented above for the de-briefings, the Screening Proposal does not give any further instructions as to what information is relevant to include. After the screening is completed, the applicant will either be directed to a procedure of return or one of the two following asylum procedures: the accelerated asylum procedure or the border asylum procedure. According to article 6(3)¹⁴, the screening should be completed within five days time, and can after that be extended up to an additional five days. All in all, together with the Asylum Procedure Proposal¹⁵, the Screening Proposal aims to create a seamless link in the asylum procedure from when a person enters EU territory to the outcome of an asylum application.

We can understand the screening practices proposed in the EU Pact from the Paris School of Securitisation. According to this theory, securitisation takes place through practices, such as the external controlling of borders and risk profiling. The profile of the EU is also relevant, as the position of authority benefits actors who make security claims (Bigo, 2002). In other words, the proposed pre-screenings clearly exemplify new securitisation efforts by the EU, and the authority that the EC is relevant to understand how the claims of security can be made.

¹¹ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 1

¹² European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 34-35

¹³ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

¹⁴ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

¹⁵ 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 COM(2020) 611 final

4.2 Screening outcomes

To understand the effective border procedures that the EC aims to achieve with the EU Pact, one needs to look closer at the possible outcomes of the pre-screenings and how they correlate with the following procedures proposed in the EU Pact. According to Art 14(1) in the Screening Proposal, when the pre-screening procedure has been completed, it is first determined if the asylum seeker will be referred to a procedure of asylum or return. If the screening reveals that a person has not applied for international protection, or does not fulfil the entry conditions, a procedure of return will follow¹⁶. If the application is considered admissible, however, the applicant will be channelled into an asylum procedure, and it is decided if the application should be assessed through a normal asylum procedure or an accelerated border procedure¹⁷. The ‘normal’ procedure will apply to those who have well-founded claims¹⁸, which the Asylum Procedure Proposal explains refers to: unaccompanied children and children under the age of 12 who have arrived with their families, except in cases of security concerns¹⁹. Moreover, Art 41 (c and d) of the Asylum Procedure Proposal explains that, in cases where there is a medical concern or where an applicant is held in detention where guarantees can not be met, the accelerated border procedure should not be applied. However, Art 41(3) of the Asylum Procedure Proposal sets out several conditions under which it will be *mandatory* to apply the accelerated border procedure instead of the normal asylum procedure. The receiving member state is obliged to carry out the border procedure if either of the following three premises apply: 1) the applicant poses a risk to national security or public order; 2) an applicant has presented false information to the authorities, not presented relevant information with regard to their identity or nationality that impact the decision negatively, or; 3) the applicant origins from a third country from where the acceptance rate of asylum applications is below 20 percent²⁰. Art 41a(1) of the same proposal then explains that in the case that a person receives a rejection on their application in the border procedure, they will be refused entry to the territory and will be subjected to return. Thus, in theory, there are three possible outcomes of the pre-screening

¹⁶ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

¹⁷ European Commission, Proposal for establishing a common procedure for international protection in the Union, p. 4

¹⁸ European Commission, Communication on a New Pact on Migration and Asylum, op. cit. p. 4

¹⁹ European Commission, Proposal for establishing a common procedure for international protection in the Union, p. 17

²⁰ European Commission, Proposal for establishing a common procedure for international protection in the Union, p. 14

procedure: the return border procedure, the border asylum procedure and the normal asylum procedure. *Table 1* below gives a clear explanation of the different possible outcomes of the screenings, as well as the time frame for each procedure.

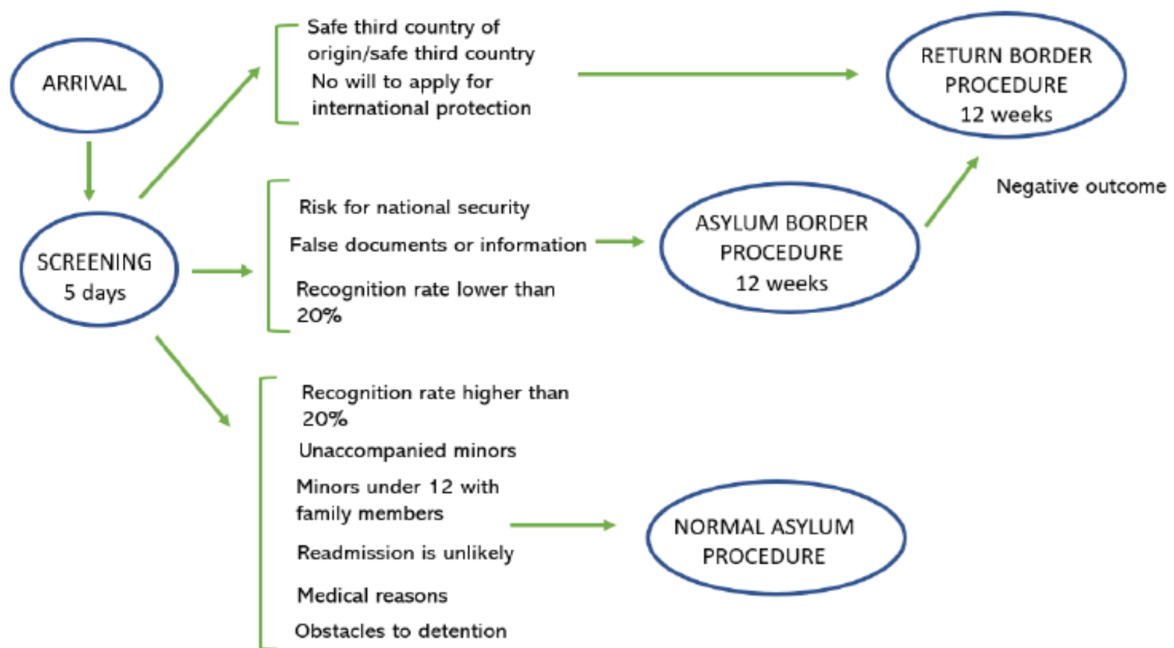


Table 1: The new set of border procedures in the EU Pact.²¹

In practice, however, the screenings do not seem to refer applicants to the normal asylum procedure, which the EU Pact nevertheless claims should be available to those with well-founded claims²². In fact, Art 14 of the Screening Proposal, which refers to the outcome of the screenings, does not mention the available option of referring applicants to the normal asylum procedure at all. This has been brought to attention by Vedsted-Hansen (2021), who claims that ensuring that applicants with protection needs are channelled into the normal procedure does not appear to be the objective of the pre-screenings (Vedsted-Hansen, 2021). As can be seen, the border procedure is directly linked to both asylum and return procedures, which according to the Asylum Procedure Proposal is a way “to quickly assess abusive asylum requests or asylum requests made at the external border by applicants coming from third countries with a low recognition rate in order to swiftly return those without a right to

²¹ EuroMed Rights (2021). *The New Pact on Migration and Asylum*
<https://euomedrights.org/publication/eu-pact-on-migration-and-asylum-cannot-work/>

²² European Commission, Communication on a New Pact on Migration and Asylum, p. 4

stay in the Union”²³. Indeed, the same proposal says that the chances of returning applicants directly from the border increases “thanks to the swifter procedure for return and the stronger links between asylum and return”²⁴. As has been brought to attention in the theoretical framework, accelerated asylum procedure directly influences asylum seekers’ chances of being granted international protection. To sum up, there seems to be a clear aim to evade the normal asylum procedure as far as it is possible and instead make it mandatory for the EU member states to apply accelerated procedures or returns.

4.3 Issues of accelerated border procedures

Numerous shortcomings have been highlighted in regard to using accelerated border procedures. In a research report, the European Parliament (2020) explains that accelerated asylum procedures may have negative effects on asylum seekers’ chances of being granted international protection. When the time is too short, it often becomes difficult for applicants to gather the necessary information to support their claim, particularly when the evidence from the country of origin is required. As the facts and evidence presented can influence the assessment on international protection, it is crucial that the applicant is given sufficient time to prove the facts in their claim (European Parliament, 2020: p. 101-102). Moreover, the report highlights how the accelerated border procedures prevent authorities from properly examining the applications. The limited time frame may put pressure on authorities to quickly finish key steps of the border procedure, such as the asylum interviews. Thus, the report expresses concern over the quality of the decisions made in some accelerated border procedures (European Parliament, 2020: p. 125). What can be said therefore is that accelerated border procedures, which is a central part of the Screening Proposal, do not constitute a good basis for an adequate and fair asylum system. Those who go through border procedures when seeking international protection are subjected to the potentially harmful effects of inadequate asylum assessments.

The fact that the EC is enforcing mandatory border procedures in the new Pact, while not providing an evaluation of border procedures already in place, is an issue that has been brought to attention by Cornelisse and Reneman (2022). As has been seen in the data

²³ European Commission, Proposal for establishing a common procedure for international protection in the Union, p. 4

²⁴ European Commission, Proposal for establishing a common procedure for international protection in the Union, p. 9

presented in the report from the European Parliament, asylum seekers' fundamental rights are already at stake due to the use of border procedures. However, the EC's aim to accelerate and quickly assess decisions on asylum and return clearly seems to be prioritised over the interest of ensuring everyone's access to a fair asylum procedure—a right guaranteed by the directives of the CEAS (European Commission, n.d.).

4.4 The Screening Proposal—an extension of the hotspot approach?

The hotspots were, as explained, introduced as a measure of emergency to quickly be able to identify arrivals at the EU's borders²⁵. In the Screening Proposal²⁶, the swift identification procedures are once again presented as necessary measures to introduce. Thus, the necessity to introduce an approach to swiftly classify third-country arrivals is presented in both policies. As has been seen, in both policies, a return directive is presented as a central outcome in both regulations. In the hotspot approach, this can be understood from how the EU delegates authority to EU agencies to handle asylum claims and coordinate returns of applicants who are not eligible for protection (Bousiou and Papada, 2020). In this way, we can understand that the aims of the hotspots and the proposed pre-screenings are similar.

Moreover, the legally binding nature of the new EU Pact means that the hotspot approach—although in a new adaptation of pre-screenings—can be understood to be legalised. What is significant is that the hotspots were introduced in 2015, as an emergency measure taken by the EC to help EU member states who faced a specifically high migratory pressure. Today, the situation looks very different. According to UNHCR data, arrivals to the EU have steadily dropped since 2016 (UNHCR, n.d.). In this way, it is possible to argue that the proposed pre-screening regulations are not in fact a new phenomenon, but a legal space to implement the hotspots permanently.

Finally, if we look at the hotspot as chokepoints, which Tazzioli and Garelli (2020) suggest, the similarities between them become even clearer. The authors emphasise that hotspots are not solely outposts, but practices to label and regulate migrants upon landing, and control the next steps for people on the move. Considering this, both the hotspots and the

²⁵ Communication from the Commission, A European Agenda on Migration 2015, op. cit.

²⁶ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

proposed screenings can be understood as chokepoints, where the objective is to make a 'swift' identification and facilitate the coordinated returns. All in all, the asylum seekers' protection needs do not appear to be the goal of the proposed pre-screenings, but they can rather be understood as a legal extension of the hotspots that aim to control migration.

The next part of the chapter will proceed with an analysis of what the problem is represented to be in the Pact's Screening Proposal, as well as in the hotspot approach presented in the Agenda on Migration. The WPR-approach will be used to bring several ambiguities, assumptions and silent elements from the policies to attention, with the aim to put light on aspects that may have direct implications on the access to the asylum system in the EU.

4.6 'What's the Problem (still) Represented to be'? Answering Bacchi's six questions

4.6.1 Question 1: What's the problem (still) represented to be?

What firstly needs to be addressed when answering Bacchi's first question is that the Screening Proposal contains several aims and ideas. Therefore, more than one 'problem' has been identified. Moreover, the Screening Proposal is closely connected to the Asylum Procedure Proposal, in the sense that the following border procedures represent the *outcomes* of the screenings. Therefore, the Asylum Procedure Proposal will also be briefly included in the discussion. Finally, represented problems will also be discussed in relation to the hotspot approach, presented by the EC in the Agenda on Migration in 2015, as this can largely be understood as a forerunner to the proposed pre-screening regulations.

As Bacchi explains, a useful starting point to identify represented 'problems' in policy is to look at the 'solutions' that aim to solve them (Bacchi, 2012a: p. 23). However, as will be seen, the represented 'problems' are often directly expressed in the policy documents, and the first question will therefore scrutinise the 'solutions' as well as the EC's own direct description of the represented 'problems'. When analysing the proposed 'solutions' as well as the expressed 'problems' in the Screening Regulation, expressions such as: "threat to internal security"; "illegal migration"; "speeding up"; "earliest stage possible"; "accelerated"; "mixed flows"; "try to avoid border checks"; "unauthorised manner"; "unlikely to receive protection"

and; “facilitate returns” are used²⁷. Thus, considering these terms, the EC represents the ‘problem’ that needs to be solved in the Screening Proposal to be: 1) a security issue; 2) *how* people arrive in the EU, by the means of unauthorised entry; 3) *who* is arriving at the EU’s borders; 4) the difficulties of carrying out returns; and 5) the asylum procedures are inefficient. Following now is a description of each of the represented ‘problems’:

A threat to internal security: The first problem represented is the potential threat that arrivals pose to the internal security of the EU. The Screening Proposal explains that by introducing pre-screenings arrivals who pose a “threat to internal security” will be detected²⁸. By emphasising how the screenings will help ‘detect’ these threats, the represented ‘problem’ can arguably be understood to be that with the arrival of migrants and refugees to the EU comes a potential security threat. The need for introducing the screenings as a ‘solution’ to the potential security issue can in itself be understood as a justification. Moreover, the threat to internal security refers to the internal space of the EU, which means that there is a potential threat to *all* EU member states. This further justifies the introduction of screenings as a joint ‘solution’ that protects the Union as a whole. The Paris School of Securitisation puts light on the trend that shows how the internal security of the State has grown into larger geographical areas: from the national border into transnational areas (Bigo, 2006). In the light of this, the introduction of screenings to ‘protect’ the security of the EU as a larger transnational area can be understood as securitisation practice that takes place within this new trend. As has been highlighted earlier in this chapter, the Paris School also emphasises the importance of authority (Bigo, 2002). The authority that the EC holds must be taken into account when analysing the securitisation claim about internal security. The EC has the mandate to shape new EU policies, after first consulting experts, and sets out to protect the interest of the EU by handling issues that individual member states cannot manage themselves (European Union, n.d.). Thus, the EC has clear authority when it comes to identifying areas where the EU must act jointly, and where new policies need to be developed.

The problem of the way people enter: Considering the expressions such as “unauthorised manner”²⁹ and “try to avoid border checks”³⁰ used in the Screening Proposal, we can see that irregular border crossings are considered a ‘problem’.

²⁷ European Commission, Proposal introducing a screening of third country nationals at the external borders, op. cit.

²⁸ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 11

²⁹ European Commission, Proposal introducing a screening of third country nationals at the external borders, Art 1

³⁰ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 11

The arrival of the ‘wrong’ person: Another represented ‘problem’ can be understood to be that people who apply for asylum in the EU are not in need of international protection. As has been noted earlier in this chapter, the Screening Proposal sets out to identify those people who should be referred into an asylum procedure, and those who should be returned. This ‘solution’ clearly suggests that there is a ‘problem’ where people without protection needs seek to enter the EU. However, this is not a ‘problem’ which is ambiguously hidden in the text. As was explained in the previous chapter, the EU Pact directly justifies the necessity of pre-screenings with the argument that migratory flows that previously consisted of people in need of international protection have been replaced with a mixed flow of people. This can be identified by the use of expressions such as “unlikely to receive protection” and “mixed flows”. This becomes even more evident in the Asylum Border Proposal, where the EC uses the expression “abusive asylum requests” to describe the asylum applications from people from third countries with low recognition rates, who have low chances of being granted protection³¹. In this sense, the asylum seekers are not only considered to be unlikely to be granted protection in the EU, their fruitless attempts to seek protection are also considered to be offensive. This indicates that people who apply for asylum in the EU are generally not worthy of protection and should not be present at the EU’s borders in the first place. The EC’s statement of mixed migration flows and the lack of actual protection needs has been brought forward. Furthermore, it is also mentioned in the Screening Proposal that the challenges of migration largely relate to the importance of identifying those who do have protection needs³². A ‘problem’ represented here can arguably be understood to be that the arrival of applicants *without* protection needs reduces the access to protection for those *with* protection needs. In other words, the ‘problem’ is represented to be that the ‘worthy’ asylum seekers can not sufficiently access asylum in the EU under current conditions.

It is too complicated to carry out returns: The fourth represented problem draws on the previous ‘problem’, and refers to how the EC expresses a need to be able to return arrivals without protection needs. As was mentioned earlier in this chapter, the EC explains that integrating asylum and returns in the border procedures will increase chances of returning applicants on the spot from the border³³. The terminology of ‘facilitating’ returns is used in the Screening Proposal, and the EC describes that a majority of EU member states have made

³¹ European Commission, Proposal for establishing a common procedure for international protection in the Union, op. cit.

³² European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 1

³³ European Commission, Proposal for establishing a common procedure for international protection in the Union, p. 9

it clear that they see a need for this to happen³⁴. In the Agenda on Migration from 2015, the EC specifies that the hotspot system includes the coordinated response of EU agencies when it comes to referring asylum seekers to relevant procedures and enforcing returns of those who lack protection needs. Under this system, Frontex is given the role to carry out returns³⁵. In both policies, thus, there are solutions presented connected to facilitating returns of those who are regarded to lack protection needs. Thus, a represented ‘problem’ (still) seems to be that there is a need to facilitate returns from the borders. The Screening Proposal then seems to extend the ‘problem’ by highlighting that there is now an overall discontent among member states who want to see more returns to be carried out. All in all, the procedures that facilitate swifter returns are presented as solutions to the previously represented ‘problem’ regarding the lack of ‘real’ protection needs among those who arrive in the EU.

Current border procedures are inefficient: The fifth represented problem can be understood in relation to the references made to *speed* in the proposal. Indeed, the proposal clearly suggests that people identified and channelled into the appropriate procedure in a swift manner. For instance, the objective of the screening is to ensure that the identity of arrivals are quickly concluded, and that the referral to the next step is then carried out swiftly³⁶. The same aim to accelerate border procedures can be identified in the preceding hotspot approach. The Communication from the EC in 2015, that presents the hotspot approach in the Agenda on Migration, explains the hotspot system to be an approach to: “swiftly identify, register and fingerprint incoming migrants”; and to: “process asylum cases as quickly as possible”³⁷. Thus, one of the key problems in both the hotspot approach and in the Screening Proposal is that the border procedures are not quick enough, and by accelerating the first screening step, they both aim to become more efficient.

4.6.2 Question 2: What assumptions underpin this representation of the ‘problem’?

A first assumption in the Screening Proposal is that the represented ‘problem’ of mixed flows of arrivals is a permanent situation that is unlikely to change. As was explained,

³⁴ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 7

³⁵ Communication from the Commission, A European Agenda on Migration 2015, p. 6

³⁶ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 2

³⁷ Communication from the Commission, A European Agenda on Migration 2015, p. 6

the ‘issue’ of mixed migratory flows are used as a justification for the screenings to be introduced, as it is explained as necessary to identify those who have protection needs from those who: “are unlikely to receive protection in the EU”³⁸, linked to the represented ‘problem’ of the arrival of the ‘wrong’ person. This can be understood by looking at the developments in the number of arrivals to the EU since the migration ‘crisis’. As data from UNHCR reveals, arrivals to the EU—both on sea and land—have decreased steadily since 2016 (UNHCR, n.d.). More than just being an indication of how the EU’s efforts to stem migrations have been successful, the data also shows that situations of migration are not fixed or permanent. Just like the number of arrivals are continuously changing, the same is true for where people migrate or flee from. Factors such as political and economic stability (or lack of), climate change and conflicts continue to set the conditions for when people flee or migrate. The UNHCR’s latest data over refugee population trends shows that, after Syria, the majority of people forced to flee today originate from Ukraine (UNHCR, 2022). All in all, an assumption can be understood to be the presumed fixed situation of migration, and that the introduction of screenings are needed to stem migration permanently.

A second assumption is again related to the represented ‘problem’ of the arrival of the ‘wrong’ person, and that third-country nationals present at the EU’s external borders are not in need of international protection. This assumption can be clearly understood by again looking at the context of the proposal, which states that: “it is important to create a tool allowing for the identification, at the earliest stage possible, of persons who are unlikely to receive protection in the EU”³⁹. Thus, even before an individual assessment is made, people present at the EU’s external borders are assumed not to be in need of international protection.

The third assumption is related to the represented ‘problem’ of *the way* in which people enter. An assumption in the problem representation is that there are asylum seekers and migrants present at the EU’s external borders from third countries who *have* permission to enter. As described in the theoretical framework, the politics of non-entré has made it increasingly difficult for migrants and asylum seekers to reach Europe and claim asylum (Gammeltoft-Hansen and Hathaway, 2014). Securitisation practices, such as high fences and surveillance systems around the external borders of the EU, directly stop people from accessing the territory (Schuster, 2016), and even though such practices mainly aim to curb irregular migration, this has a spill-over effect on asylum seekers who find it increasingly

³⁸ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 1

³⁹ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 1

difficult to access EU territory to make a claim for protection (Kaunert and Léonard, 2019). Thus, it is essential to point out that the Screening Proposal leaves out the fact that people often have no other option than to avoid border controls to the EU, due to the practices of securitisation.

A fourth assumption is that all third-country nationals who seek to enter the EU are part of the same group, and therefore unlikely to receive protection. In the pre-screening proposal, no differentiation is made between those who enter the EU irregularly to seek international protection and other migrants. The proposal refers clearly to *all* third country nationals who have crossed the EU's external border irregularly outside the official crossing points, as well those who do not fulfil the conditions for entry at the official border crossing⁴⁰. The underlying assumption is that asylum seekers and other migrants are part of the same group, and should therefore undergo the same border procedure. As Jakuleviciene (2022) points out, the differentiation that is made in EU law between migrants and those who seek international protection is erased in the Screening Proposal. When all third-country nationals are channelled into the same border procedures, this may result in faulty practices at the border where the protection needs of some people are not taken into account. What also needs to be addressed here is that people on the move tend to move together in mixed migration flows (Schuster, 2016) and the distinction between the two groups is not visible.

4.6.3 Question 3: How has this representation of the ‘problem’ come about?

As has been explained in chapter 4.4, the idea to introduce pre-screening regulations is in fact not a novelty. Considering the many similarities between the Screening Proposal and the hotspot approach presented, the pre-entry screenings of the EU Pact can to a large extent be understood to be an extension of the hotspots. Since a genealogical tracing between the two policies has already been done, no more attention will be paid to this question. However, what is important to point out, by looking at the represented ‘problems’ in question 1, it is evident that many of the same issues are still represented by the EC. Thus, it is perhaps necessary to think about ‘What the problem is *still* represented to be’.

⁴⁰ European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 1

4.6.4 Question 4: Where are the silences, and what is left unproblematic in this problem representation?

As discussed, one of the identified ‘problems’ represented is the arrival of the ‘wrong’ person, and the second question further reveals the assumption that people who are present at the EU’s borders are not in need of protection. Here, it is necessary to consider the de-briefing form, which has been described in the previous chapter. To clarify, article 14 (2) of the proposal states that the screening authorities: “shall point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure”⁴¹. This means that already at the pre-screening stage, authorities should put emphasis on elements that ‘at first sight’ appear to be relevant to decide whether or not to refer a person to the border procedure. A silent aspect here is *what* information can be understood as “relevant at first sight”. As has been explained, the information asked for in the de-briefing form refers to country of origin, way of entry, and the itinerary of the applicant⁴². Considering that none of the questions included in the form seem to address the applicants’ protection needs, a relevant question to ask is if the pre-screenings do not actually aim to refer the applicant to one of the available procedures as quickly as possible, rather than to identify those in need of international protection. As Vedsted-Hansen (2021) draws attention to, the grounds for applying the accelerated procedure suggests to be an assumption that many applicants “neither deserve nor need to undergo substantive examination in normal asylum procedures with the full scope of guarantees” (Vedsted-Hansen, 2021: p. 176-177). As was explained in the theoretical framework, to base an assessment of asylum on an applicant’s nationality may exclude people from accessing an asylum procedure, and they risk being subjected to collective expulsions (FRA, 2016; Tazzioli & Garelli, 2020).

To problematise the represented ‘problem’ of *how* people enter, the silent aspect of non-entrée which forces people to take irregular routes must again be brought forward. As Gammeltoft-Hansen and Hathaway (2014) explain, politics of non-entrée makes it difficult for people on the move to cross a border to seek protection. Moreover, as Mountz (2011) explains, this does indeed lead to people becoming connected to criminality rather than asylum.

⁴¹ European Commission, Proposal introducing a screening of third country nationals at the external borders, Art 14(2)

⁴² European Commission, Proposal introducing a screening of third country nationals at the external borders, p. 34-35

4.6.5 Question 5: What effects are produced by this representation of the ‘problem’?

Question 5 steers the conversation to the *effects* that the represented ‘problems’ will result in. By representing ‘problems’ of security, irregular way of entries, people without security needs seeking access to the EU, difficulties of carrying out returns—as well as the arrival of people on the move in general—it creates an understanding that the EU and its member states are not able to cope with the current pressure of migration. By creating an understanding of these matters as ‘problems’, the EC gains more space and opportunities to advocate for their ‘solutions’, which is to impose stricter rules and controls around migration and asylum. The ‘solutions’ may in turn facilitate future steps to be taken in this direction, and new similar policies to be adopted.

For this thesis, however, it is specifically interesting to look at this question from how the represented ‘problems’ may affect people on the move. The represented ‘problems’ may have directly harmful effects on migrants and asylum seekers, as they risk becoming associated with security threats. According to studies of ‘crimmigration’, asylum seekers have more and more been constructed as a security issue (Bhatia, 2015), which as Stumpf (2013) points out, has led to more deportations being executed based on criminal grounds. In the long run, migrants and asylum seekers who have entered EU territory in an irregular way may be associated with criminality rather than asylum (Mountz, 2011).

4.6.6 Question 6: How has the representation of the ‘problem’ been (or could be) questioned and disrupted?

As can be seen in chapter 3.3, the first part of this question relates directly back to question 3, and for this reason, the aim here is to answer the second part of the question.

An apparent way to disrupt the represented ‘problem’ of *how* people enter EU territory, is again to look at the current difficulties of entering the EU. Firstly, the politics of non-entré has made it increasingly difficult for all migratory groups to reach Europe (Gammeltoft-Hansen & Hathaway, 2014), and as Mountz (2011) points out, it is common that asylum seekers have to take irregular routes to seek asylum. Secondly, mixed migration flows is a fact, which means that asylum seekers may take the same migratory routes as migrants (Schuster, 2016). The difficulties that people on the move face in accessing the asylum

system in a regular way will be a central topic in the next chapter, which focuses on the case of Melilla from the experience of the five experts interviewed for this thesis: *Experts 1-5*.

5 The case of Melilla

Until the early 1990s, the Spanish terrestrial borders with Morocco, around Ceuta and Melilla, were marked with only patches of barbed wire. As Spain entered the EU and became part of the Schengen area, however, higher fences were built around the Spanish enclaves. The fact that a part of the Schengen area is located in Africa has made the Spanish enclaves key locations for migrants and asylum seekers attempting to enter the EU (Kaunert and Léonard, 2019: p. 112). As the number of migrants increased, higher fences funded by the EU were constructed and surveillance equipment such as sensors and cameras were put up to strengthen the borders, and it became increasingly difficult to cross. In 2005, violent clashes broke out between migrants and Spanish and Moroccan security forces at the borders of Melilla and Ceuta. When hundreds of migrants attempted to cross the fences to enter EU territory, Moroccan or Spanish police fired into the crowds of people, and at least fourteen people lost their lives (Andersson, 2014: p. 155). This event was soon followed by more attempts of mass crossings, which ended in several deaths and many more people injured. As a result, Spanish authorities strengthened their borders further, deployed security forces to control the situation, and increased the height of the fences (Kaunert and Léonard, 2019: p. 114). In the last years, the EU has managed to decrease arrivals on the Western Mediterranean route, partly due to its increased efforts to fight irregular migration and the deepened cooperation between Morocco, Spain and the EU (European Council, n.d.). The EU's successful efforts to stem migratory flows are nevertheless coupled with the continuing efforts of migrants and asylum-seekers to enter the EU. On June 24, 2022, another tragedy took place at the Melilla border, when at least 23 people were crushed to death in a stampede as people tried to climb the fences to access Spanish territory (BBC, 2022).

To fully understand the securitisation of the Melilla border, it is necessary to look closer at the diplomatic relationship, and cooperation, between Spain and Morocco. When the two countries are on good terms, practices of securitisation at the border increases and fewer

people enter Spanish territory. When there is a conflict or disagreement, on the other hand, there is a greater passivity from the Moroccan security authorities and more people can cross over the border (SJM, 2022). The significance of the relationship between the two countries, and how this takes form in the border securitisation, is emphasised by *Expert 4 and 1*:

Whenever they give money to Morocco there is a big change in the migration flows and how accessible it is to arrive in the city. (...) When the relations between Morocco and Spain are better, the lives of the migrants are in more danger. (Expert 4)

This good relationship is mainly due to the neutrality of Spain in the Sahara area. Since last year, Spain recognised the sovereignty of Morocco in the Sahara, that is why Morocco is happy with the relationship with Spain, and that is why the securitisation process is mainly enforced in Morocco these days. (Expert 1)

Moreover, how the current securitisation trends are connected to the cooperation between the countries can be better understood by looking at the financial support given from Spain and the EU to Morocco. A report from El Confidencial (2022) makes visible how funds given to Morocco are directly connected to acts of securitisation. For example, in October 2019, the EU and Spain announced giving €140 million to the Moroccan authorities. The very same month, Morocco enhanced their securitisation efforts in the areas around Ceuta and Melilla by installing new wires to increase the security of the fence, and restricting transport companies from selling tickets to Sub Saharan migrants (El Confidencial, 2022).

To conclude, there is currently a situation of strong border securitisation and externalisation in Melilla, which has increased for many years. This must partly be understood from its geographical location which makes it an important location for those who seek to enter the EU, but also from Spain and the EU's attempts to stem migration, as well as the cooperation with Morocco.

5.1 How can people on the move access asylum in Melilla today?

According to Spanish asylum law 12/2009⁴³, there are two different types of asylum procedures available to handle asylum claims in Spain: asylum at border controls or asylum in the territory. If a person applies for asylum at the border, the Office of Asylum and Refuge (OAR) follows the directives of an urgent procedure, and must decide if the application is applicable within four days. In the asylum procedure of the territory, the OAR has a month to consider the application. If the application is considered admissible within the two procedures, the OAR has three respectively six months to either grant refugee status, grant subsidiary protection, grant residence permit on humanitarian grounds, or deny protection (Asylum Information Database, n.d.). Thus, the two procedures constitute different time frames, and the OAR is given considerably more time to handle asylum procedures in the regular way.

However, to access the asylum system at all is difficult to begin with. In theory, there are two *regular* ways of accessing the asylum system in Melilla today. Firstly, a person can go to a Spanish consulate or embassy and claim asylum outside of Spain. In 2020, the Supreme Court of Spain passed the sentence 1327/2020⁴⁴ that established that this right is available to third country nationals. However, this option seems to be ineffective in practice. *Expert 4* explains that the Spanish government points to data to show that people have managed to seek asylum in an embassy. However, at a closer glance, this refers to people who have applied for family reunification:

All those numbers that appear in the embassies of Morocco or different countries, all of them are cases of family reunions. Which means that no one, absolutely no case, has been recorded of a person that directly through the embassy has been able to ask for asylum.

This is confirmed by the organisation SJM that points out that the Spanish embassies do not accept applications for asylum from third-country nationals, despite what the law says (SJM, 2022).

⁴³ Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. «BOE» núm. 263, de 31/10/2009.

⁴⁴ STS 3445/2020, Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Quinta, de 15 de octubre de 2020, FJ 3. ECLI:ES:TS:2020:3445

The second option is to enter Melilla using the checkpoint in Beni Enzar, which is the official point of entry between Morocco and the city of Melilla. However, according to *Expert 5* and *4*, it is impossible to enter through the checkpoint, particularly for Sub Saharan people.

If there was a way, they would not have to jump the fence. The Office of Asylum is on the inside of Spain, and to get there, Sub Saharan people and Moroccans have to walk through Morocco's controls and then enter Spain to ask for asylum. This is impossible, they are forced to jump the fence. (Expert 5)

In Beni Enzar, the people who do not look Moroccan, mainly black people, are absolutely banned and prohibited from this area. That is why black people enter the city through jumping in big groups, because it is the only way they can. (Expert 4)

Thus, in practice, there are no regular ways of entry available, only those who have managed to enter Melilla in an *irregular* way have a chance to seek international protection. *Expert 4* emphasises that regular ways of entries—such as jumping the fence or swimming—is the only option many are left with:

The reality is that the only way to ask for asylum in Melilla is by crossing through illegal and irregular entrances—not only illegal and irregular but also dangerous. We have seen this not only with the fence on the 24th of June, but also in the sea. At least once every two months we have a case of a Moroccan kid that has died on the sea.

This clearly shows that people on the move are forced to take dangerous routes to access the territory of Melilla to seek asylum, and lives are continuously at risk because of the politics of non-entrée.

All in all, in theory there are regular ways of entering Melilla and gaining access to the asylum system: 1) to claim asylum at an embassy or a consulate; or 2) to enter Melilla through the official border crossing in Beni Enzar. As has been explained, however, none of these options are available in practice, and only irregular entries, such as jumping the fence or

swimming, are available. The politics of non-entrée as Gammeltoft-Hansen and Hathaway (2014) describe, has indeed made it increasingly difficult for asylum seekers to access Melilla to seek asylum. The fact that so few people manage to enter today can be understood as a ‘successful’ outcome from the perspective of Spain and the EU that are aiming to stem the number of arrivals. In a way, it is possible to argue that the securitisation efforts described in this chapter have succeeded in Melilla. Sub-Saharan people in particular face many obstacles as they are not able to move close to the crossing point in Beni Enzar, and they are therefore forced to jump the fence in groups. This, as we have seen, has resulted in tragic incidents where people have lost their lives and suffered injuries.

5.1.1 Pushbacks and pullbacks

As has been stated, pushbacks of asylum seekers are illegal according to international and European law, but experts point out that pushbacks are still carried out in Melilla—both at the fence and in the sea. *Expert 4* explains:

In 2022, we recorded three pushbacks in the fence. Three young men were stuck up in the fence and the police took a stair, they forced them to go down and then they opened the door and they returned them, they pushed them back. And we recorded it, so it is more visible. But then we have also been documenting through interviews with all the Moroccan kids that have explained that they suffer pushbacks in the water.

In 2020, the case of *N.D. and N.T. v Spain*⁴⁵ gained attention regarding asylum in Melilla. The European Court of Human Rights dismissed a complaint of two asylum seekers from Sub-Saharan Africa who were captured at the border fence and returned to Morocco by the Guardia Civil and Moroccan security forces, without being given the chance to access an individual asylum assessment. According to the European Convention on Human Rights protocol No 4 Art 4, which Spain has ratified, the expulsion of people from the territory of the State is prohibited (European Court of Human Rights, n.d.). Nevertheless, the court ruled against the complaint saying that Spain had not failed to provide access to legal entries, and *N.D.* and *N.T.* should have applied for international protection at the official border crossing

⁴⁵ European Court of Human Rights, Grand Chamber, Judgment of 13 February 2020, *N.D. and N.T. v. Spain*, applications 8675/15 y 8697/15. ECLI:CE:ECHR:2020:0213JUD0008675155.

point. However, as has been explained, in practice there are no regular ways for asylum seekers to access the asylum system in Melilla, and the entry point in Beni Enzar is inaccessible. *Expert 2* emphasises that the case of *N.D. and N.T. v Spain* has contributed to the legitimisation of pushbacks at the border:

The problem is when people cross in a massive flow, they are immediately pushed back by the Spanish police. The situation is much worse after the ruling of the European Court of Human Rights. The judgement legitimises the refoulement of massive flows of people in the fence. (Expert 2)

Moreover, *attempts* to return asylum seekers are visible in how authorities try to apply the different asylum procedures. As has been explained, there are two different time frames available to the OAR within the two respective asylum procedures. *Expert 3* and *Expert 1* explain that, since border procedure is shorter, there are continuing attempts in Melilla to apply the shorter border procedure even in cases when people have entered into Spanish territory, and should be channelled into the regular procedure:

Here they have tried several times, mostly when larger groups enter, to do the border procedure instead of the territory procedure. Because the idea is to return them. (Expert 3)

The Spanish ministry in Melilla tries every time to apply the procedure of the borders, because it is an accelerated procedure. (Expert 1)

Beyond the pushbacks, asylum seekers are also directly hindered from accessing the border area to enter Melilla, which can be understood as practices of *pullbacks*. As has been explained, the institutionalised racism against black people makes it impossible for many people to move around in the Moroccan border areas, and people who come from Sub Saharan Africa for instance have very small chances of getting close to the border to ask for asylum. *Expert 4* explains how this takes place at the Moroccan side of the checkpoint in Beni Enzar:

We were in Morocco, we took a taxi, and there were some controls, like police controls when we were arriving at Beni Enzar, we were like: 'what is this?' They were checking if the taxis were taking black people.

This can be understood as a clear case of *pullbacks*, which was discussed in the theoretical framework. Instead of pushing people back from Spanish territory, Morocco stops people from entering Spanish territory. As Barnes (2022) explains, pullbacks are carried out through the cooperation between States, where the State secures their border by supporting third-countries to stop migratory flows. The cooperation taking place between the EU and Spain and Morocco, which has been explained involves financial support for Morocco to curb migratory flows, is central to the securitisation of the Melilla border. As Barnes (2022) points out, although Spain does not in practice breach international law, the pullbacks in Morocco stop people from seeking international protection. We can thus understand that practices of pullbacks are extensively used in Melilla, which directly stops people from seeking asylum.

To conclude, both pushbacks and pullbacks are carried out in Melilla. People are stopped from entering, both by Spanish and Moroccan security forces, which—given the necessity of being in the territory of Spain to seek asylum—directly impacts how people on the move can access the asylum system.

5.1.2 Shortcomings in the asylum border procedures

However, those who *do* manage to enter Melilla without facing pushbacks or pullbacks are able to seek international protection, but the experts draw attention to multiple weaknesses and shortcomings in the way that the asylum procedures are carried out.

In an asylum procedure, asylum seekers have the right to a personal interview. The interview should take into consideration the positions of trauma, fear and uncertainty, and therefore ensure that a person can share their story with an attentive and supportive decision maker. That the applicant receives necessary information, and is allowed to present their facts as comprehensively as possible, is crucial to any asylum procedure (European Parliament, 2020: p. 103). However, *Expert 4* points out that the interviews are often complicated and may not be done with the rights of the asylum seeker as a top priority:

The asylum interview is a very specific type of interview. You have to be prepared, because the questions that they pose are very specific. Also, if

you're nervous or if you come from a situation of trauma, it is very difficult. We have also seen many times that with Moroccan people for example, the police authorities that are doing the interviews automatically assume "Oh he is Moroccan he is just here because of economic reasons". They will do an interview in five minutes, and then he goes. So the procedure is very fast and without the guarantees that they should have.

According to *Expert 4* above, the interviews are often carried out very quickly. As has been mentioned in the theoretical framework, when asylum seekers have insufficient time to prepare for the crucial moment of bringing their individual case forward, or do not have an opportunity to meet with their lawyer beforehand, this risks having negative impacts on the decision (European Parliament, 2020).

Moreover, another worrying shortcoming, closely connected to the interviews, is the scarcity of legal assistance available to the asylum seekers and the general lack of training of authorities. *Expert 1* and *Expert 2* explain:

There is no special training in international protection, for example of all those agents that are managing the international protection procedures, such as the police but also the interpreter, the translators—they do not have any special training in international protection or vulnerability of asylum seekers. This is a big gap in the protection system. (Expert 1)

The practices are so bad, there are few lawyers and they do the interviews very fast. It is lacking more funding and more training. (Expert 2)

Moreover, the public lawyer assigned to asylum seekers is rarely involved in an applicant's case until the moment that the interview begins. The sensitiveness of both the situation and the questions brings the lack of preparation and contact with the public lawyer into question. *Expert 3* explains how their organisation help people to prepare for the interview, to give people the best possible chance of bringing forward their individual claims:

The details in the interview are very important. So we ask 'when they entered the town, how many were there, how were they dressed, what did they wear, what did they shout, where were you, what did the people do from there?' All

those kinds of details. The difficulty is that they've known the lawyer for a few days, they haven't done a process with them yet and they have to tell everything to a person they don't know.

Expert 4 further explains that there sometimes is a *complete* lack of assistance:

We have been seeing cases of lawyers that sign the papers like they have been there, but they have not been there, which is an absolute corrupt and illegal thing to do. Because when they sign the papers, it is like 600 euros for each procedure.

To have sufficient time to prepare for the interview is central to its outcome. *Expert 3* gives an example of a successful case where the expert's organisation offered interview training to asylum seekers from Mali who entered Melilla in a collective jump in 2022. All the asylum seekers were granted asylum, which shows the importance of having time to prepare:

Of course there have been good interviews too. Of those 500 first who jumped the fence in March (2022) were all from Mali, and all were given asylum. The boys had a very good idea already because the previous people who were already in the peninsula had been explaining to them how the procedure of the interview was, and the interviews were well done. To help prepare their histories is very important for the boys.

Moreover, an additional issue in the asylum procedures is the conditions in which the interviews take place. *Expert 3* makes a clear example about a man who had to flee his country due to persecution from his family after they discovered that he is gay. In the interview, he did not present this information, due to lack of privacy and confidentiality:

I asked: 'why did you not say this in the interview?', and he told me: 'look, I was sitting there with the lawyer, the door was still open, and all the others were outside, and I could not say this'.

As was discussed in chapter 4, the European Parliament emphasises that when interviews are carried out in a space with other people present, it may harm the applicant's ability to present

their claim (European Parliament, 2020: p. 105). Thus, the *conditions* for the interview, which has been explained as a key part of the asylum procedure, is a central part of the asylum system—which seems to be lacking in Melilla. What is more, faulty asylum procedures both leave asylum seekers with a sense of abandonment and neglect, and have a negative impact on their chances to be offered protection (Pinelli, 2018).

To sum up, there are currently several shortcomings in the asylum border procedures that directly impact asylum seekers' chances of being granted protection.

5.2 In what ways might the pre-screening regulations proposed in the EU Pact impact access to asylum in Melilla?

As has been explained in chapter 4, there are several risks identified in the Screening Proposal connected to accelerated asylum procedures. The European Parliament's report points to how authorities are pressured to wrap up parts of the procedures quickly, which may directly impact how well individual claims are assessed (European Parliament, 2020). *Expert 1* confirms this by explaining that efficient asylum procedures are not well suited for the international protection system:

We have to differentiate between efficiency and effectiveness. It could be that the EU Pact is trying to make more efficient procedures, but they are not effective in practice to deal with the difficulties of international protection systems and the needs of the people applying for asylum. Accelerated procedures are in contradiction with effectiveness. Effectiveness needs more time.

Indeed, as was highlighted in the theoretical framework, the short time frames may also impact how well the authorities are able to carry out their duties, and may lead to negative results on applications (European Parliament, 2020). Thus, accelerated border procedures, that come with the proposed pre-screenings, are not suited for effective procedures that respect asylum seekers' rights. As was mentioned in the theoretical framework, quick identification processes can put asylum seekers at risk, ultimately by being returned to unsafe

places (Neville et al., 2016). If the Screening Proposal is adopted, the situation regarding access to asylum in Melilla could probably worsen.

As has been noted, there are two different procedures of asylum in Spain today according to asylum law 12/2009⁴⁶: asylum at border controls or asylum in the territory. However, according to Art (3) of the Screening Proposal⁴⁷, there will be a legal basis for referring asylum seekers to the border procedure even if people arrive in the territory, which means that the border controls are extended into the territory of EU member states. Today, although there are attempts to refer asylum seekers to the accelerated border procedures as explained by the experts earlier in this chapter, the right to be channelled into the territorial procedure is largely guaranteed. The extension of border controls into the territory is thus an important change that will be introduced with the new pre-screenings, and a key aspect of why the protection guarantees will decrease with the introduction of pre-screening procedures. To connect back to Menjivar (2014), there is a trend that securitisation practices to control migration are expanded internally within territories. This is also a central aspect of the Paris School of Securitisation, which points to the merging of internal and external security (Bigo, 2006). From this view, we can understand the Screening Proposal to be a clear practice of securitisation that operates both externally and internally in EU member states.

Moreover, as *Expert 1* has pointed out in the previous part of the chapter, the authorities who manage the asylum procedures lack knowledge and training in international protection, which constitutes a gap in the protection system. This raises the question about the capacity that the border authorities have in carrying out the pre-screenings in Melilla. Indeed, if there is currently an issue that the authorities who are responsible for the asylum procedures lack knowledge about international protection, it may result in poor quality in the pre-screenings. *Expert 1* explains:

We need very individualised procedures to take special consideration of individuals circumstances, mainly in cases of special vulnerable groups such as LGBTI or children for example. We need very special procedures, and enough time to deal with them. There is also a need for a safe place to carry on with these procedures. This is very difficult to create in border crossing points.

⁴⁶ Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. «BOE» núm. 263, de 31/10/2009. Op. Cit.

⁴⁷ European Commission, Proposal introducing a screening of third country nationals at the external borders, Art (3).

This leads into another immediate issue with the Screening Proposal. As has been discussed in chapter 4, the de-briefing form that decides which procedure an asylum seeker will be channelled into does *not* consider the applicants' protection needs, but is only concerned with other data such as nationality, age and the migratory route taken. It can therefore be argued that there is an immediate risk that these pre-screening selections will not look closer at individual protection needs. As the pre-screenings decide on the next step in the asylum procedure, the brief screenings and arguably inadequate forms does not constitute a border system that takes protection needs into consideration.

All in all, the proposed pre-screening regulations may impact access to asylum in Melilla in the sense that the border procedures will likely be accelerated—which risks leading to inadequate asylum assessments and less legal guarantees for the asylum seeker. As accelerated asylum procedures are already an issue in Melilla, an apparent risk is that the current situation will worsen and leave asylum seekers with less access to an effective and fair asylum procedure. Another central possible outcome is the expansion of border controls into the territory, as third-country nationals will face screenings even if they are apprehended in the territory. This further decreases asylum seekers' protection guarantees. A final issue necessary to highlight is that the de-briefing form does not take protection needs into consideration, and risks leaving out people whose protection needs are not detected at a first glance.

6 Conclusions

All in all, this thesis has had a dual, but closely connected, focus of investigation. First, the focus has been to answer the research question of '*What is the problem represented to be in the EU Pact's Screening Proposal?*'. Chapter 4 presented an analysis of the Screening Proposal, as well as its connection to the hotspot approach, from the lens of Bacchi. The analysis has brought forward several represented 'problems' in the policies. The 'problems' are represented to be: people who seek to enter the EU are potentially a threat to internal security; unauthorised entries to the EU; people who arrive at the EU's border do not have need of protection; it is difficult to carry out returns; and the asylum procedures are inefficient. Together with these represented 'problems', several hidden silences and

assumptions that are left unproblematic have been highlighted, for instance the assumption that people on the EU's borders are not in need of international protection, and the securitisation practices that directly stops people from entering the EU in a regular way.

The Screening Proposal must be understood as a legal space to make the hotspot system permanent, and does not have the aim to strengthen the rights of asylum seekers. To repeat, the hotspots were introduced as an emergency measure in 2015 as a response to the increasing number of people who sought protection in the EU. Again, considering the numbers from UNHCR indicating a significant drop in the number of arrivals to the EU since 2016 and forward (UNHCR, n.d.), it is possible to question if the introduction of legally binding pre-screening regulations can be justified. Instead, by representing a set of different 'problems', the EC justifies the introduction of legally binding pre-screenings and finds a space to make the hotspots permanent. As brought up by Vedsted-Hansen (2021) in chapter 4, the aims of the Pact's proposed pre-screenings does not seem to be to strengthen the protection mechanism for asylum seekers, but rather to restrict access to the EU's asylum system further. Finally, it has been found that the represented 'problems' of the Screening Proposal have also been identified in the hotspot approach, in the Agenda on Migration, which further explains how the two policies are connected.

The politics of non-entrée are clearly visible in Melilla, where there are currently strong practices of securitisation taking place. Today, it is largely impossible for asylum seekers to enter Melilla in a regular way, and people are forced to cross the border by either jumping the fence in large groups or swimming. Indeed, a fence jump took place on the 24th of June 2022, which resulted in a tragic incident where many people lost their lives. To this end, it is possible to answer the research question of *how people on the move can access the asylum system in Melilla*: The politics of non entrée and the strong securitisation practices makes it largely impossible to enter Melilla in a regular manner to seek international protection, and people are forced to enter by using the means described in chapter 5. Moreover, experts working to assist asylum seekers in Melilla emphasise the institutionalised racism that makes it particularly difficult for people on the move from Sub Saharan Africa to access the border area and enter in a regular way.

However, the fence is not the only obstacle to enter the city—both Moroccan and Spanish police make efforts to stop people from entering. On the Moroccan side, this can be understood as pullbacks, practices carried out to stop people from entering. As has been explained, Moroccan police carry out searches in the border crossing in Beni Enzar to prohibit Sub Saharan people from coming close to the border and entering Melilla. On the

Spanish side, pushbacks have been reported by Spanish police, both at the fence and in the sea. The pullbacks must also be understood from how Spain and the EU cooperate with Morocco to stem migratory flows. The relationship and cooperation between the two Morocco and Spain and the EU is significant, as it impacts Morocco's willingness to stop people from accessing the Spanish territory.

Moreover, gaps in the protection system further impact access to the asylum system in an effective way. The data reveals: accelerated procedures; lack of legal assistance with too little time to prepare for the interview; locations at the border are not equipped for holding asylum interviews; the authorities participating in the interviews are not properly trained in international protection and asylum seekers' vulnerability; and sometimes a complete lack of assistance from the public lawyer assigned to an applicant's case. Even though the applicants that undergo these steps have gained access to the asylum system, they are necessary to point out as they diminish their chances of having their case properly examined.

All in all, there are two key aspects that must be highlighted when answering the research question of *how people can access the asylum system in Melilla*: 1) the difficulties of entering Melilla and accessing the asylum system to begin with, and; 2) those who do manage to enter the city face asylum procedures that lack legal guarantees. As has been pointed out in both chapter 4 and chapter 5, accelerated border procedures may lead to inadequate asylum assessments, which undermines the legal guarantees. This is thus a significant risk of the proposed pre-screenings.

To sum up the last research question: *how may the Pact's Screening Proposal affect access to asylum in Melilla?*, it must be brought to attention that several of the risks of accelerated asylum procedures, which have been highlighted in the theoretical framework, have been brought forward by the experts as examples of the challenges at large today. Indeed, accelerated asylum procedures are at this time an issue in Melilla, and it is an apparent risk that the current situation will get worse and leave asylum seekers with less legal guarantees than before. Moreover, the expansion of border controls into the territory may further diminish the protection of asylum seekers and speed up the asylum procedures for a higher number of people, in case the pre-screenings are introduced. Finally, the de-briefing form, which constitutes the mechanism to refer asylum seekers to the following procedure of asylum or return, fails to consider the applicants' protection needs, which may result in that people with protection needs are not given access to an effective asylum procedure.

Finally, to seek asylum is a human right which is stated in international law, but as has been discussed, people on the move are restricted from both seeking asylum and accessing an

effective asylum procedure. Arguably, this right is not always guaranteed, and it is central that the topic of asylum and how it can be protected continues to be researched.

6.1 Recommendations and further research

1. This thesis builds on knowledge from previous research, and the experts working in the field of asylum in Melilla and Nador, and the hope is that the findings presented can contribute to further research. Firstly, the current policy trends within asylum in the EU are important to consider, as the changes made in terms of introducing pre-selection practices of people seeking protection in the EU will have implications on how asylum seekers can find their way to a safe and protected life. For this reason, if the EU Pact is implemented, continuing analysis should be conducted in different EU member states when practices of pre-screenings start taking place. It is important to follow up on how it is adopted, and what legal guarantees asylum seekers have in practice when they go through the screening phase.
2. As was mentioned in the beginning of the thesis, the EU Pact is currently under negotiations, and has until the end of the current political period to be adopted, before new EU elections are held in 2024. As mentioned, Southern European States, thereamong Spain, have expressed the need for increased solidarity between member states. The increased pressure that frontline member states faced during the so-called migration ‘crisis’ of 2015 led to the emergency measures of hotspots—and now it is clear that they expect a more stable and long-term solution where all EU member states take responsibility for migration and asylum. With the Spanish EU presidency starting in the second half of 2023, where Spain will be in charge of the negotiations, it will be interesting how the question of solidarity will proceed. In the light of the situation in Melilla studied in this thesis, research that focuses on a reformed solidarity mechanism would make an important contribution to the existing body of research regarding the Pact’s eventual outcomes.
3. Moreover, an important point which has been discussed is the *theoretical* possibility of seeking asylum in a Spanish embassy or consulate. Although this possibility is available according to Spanish asylum law, this is as discussed not available in

practice. Since the data reveals the dangers that asylum seekers have to put themselves in in order to enter Melilla and seek asylum, the possibility of making an asylum claim in a regular and safe manner in an embassy would be a great improvement for the rights of asylum seekers. A recommendation directed towards the government of Spain is to ensure that this right is available in practice.

4. An important issue that deserves closer attention is how the EU cooperates with third countries to control migration. The data from *El Confidencial* (2022) clearly shows how cash flows from the EU and Spain result in reinforced securitisation in Morocco. An important contribution in the context of Melilla would be to look closer at how this cooperation plays out in practice, and to what extent Moroccan authorities—through EU funds—carry out securitisation practices in the Moroccan territory to stop people from entering the EU.

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Interview guide

Melilla border

- How would you describe the history of the Melilla border?
- What is the particularity of the Melilla border?
- Can you describe the current development in Melilla and the securitisation of the border?
- How would you describe the significance of the cooperation between Spain and Morocco?
 - What is the EU's role in the agreements and cooperation?

Entering Melilla and accessing the asylum procedure

- How can asylum seekers' access asylum in Melilla today?
- What regular ways are there to enter Melilla and seek asylum?
- What irregular ways are there to enter Melilla and seek asylum?
- How do most people enter Melilla today?

Pushbacks and violence

- Are there practices of pushbacks taking place in Melilla, and if so, can you describe how these practices take place?

The asylum procedure

- What irregularities are there in the asylum procedure?
- What spaces are there to present your asylum case and have it individually assessed?
- In what ways are the asylum interviews important?
- What are the general challenges regarding the asylum interviews?
 - What can you say regarding the importance of preparing for the interviews?
- Are there any challenges regarding the authorities who participate in the interviews?

- How much training about international protection do the people who carry out the interviews, as well as the public lawyers assigned to the applicants, receive?

The new EU Pact's Screening Proposal

- With the new EU Pact on Migration and Asylum and the proposed screening regulations, how would you describe the potential impacts that it may have on access to asylum here in Melilla?
- The Screening Proposal introduces procedures that aim to speed up to the border procedures. Can you explain if there are any advantages or risks involved in imposing this accelerated approach?