Article

Strategies to Exclude: Temporariness and Return/Readmission Policies of the EU

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Abstract: Migration governance, migration management and migration crises have been key themes among migration scholars and governments over the last decade. Historically, systemic political economic crises are accompanied by the scapegoating of migrants, often as a strategy to shift the focus away from political and economic decisions taken by states. The EU has been no exception, and political and social tensions around migration are arguably at an all-time high, as European governments aim to protect their interests and manage their borders amidst increasing migration pressures globally. In this paper, we will examine these three EU immigration prevention strategies, with a focus on the recently adopted Pact on Migration and Asylum. Specifically, we ask the following research question: what are the roles of temporariness and return/readmission as important EU strategies to hinder, stop, and exclude the movement of migrants to EU (and Schengen)?

Keywords: migration management; immigration restrictions; externalisation; readmission; migration policy; temporariness

1. Introduction

Despite the fact that it is hard to calculate the extent to which the EU is more restrictive compared to other regions of the world (since comparative studies of migration policies are neglected and remain far too under-resourced for meaningful comparisons, as observed by Gest et al. 2014) it is possible to describe how the EU limits the numbers of immigrants entering its member states. The EU via Pact on Migration and Asylum aims to engage in what they have framed "effective returns"[1] (i.e., "immediate return") and faster procedures at the external borders and solely understands solidarity between member states more as "financial contribution" to the migration management system. Furthermore, the Pact also considers regular pathways to migration only in the case of migrants with in-demand "talents" and "skills,"[2] single and long-term residence permits (which are already in use among EU member states), and "strengthened cooperation on readmission", which is also an objective adopted in the Pact.[3] The externalisation of migration management is a crucial part of this pact. For example, "Frontex staff has also been deployed at the EU external borders, and in the context of four Status Agreements with Moldova, North Macedonia, Montenegro, and Albania, Frontex has been able to deploy staff in these countries".[4] The Pact has been accepted recently (April 2024) in the EU parliament,[5] demonstrating EU solidarity towards the exclusion of migrants, including refugees across member states. The raison d'étre of migration policy has long leaned into exclusionary policy, and the EU Pact does not deviate from this framing. We focus in particular on the way the Pact furthers the strategy of "temporariness"—the use of temporary permits—alongside readmission and return, as mechanisms to restrict immigration into the EU. The exclusion of non-Europeans continues with the new pact that includes methods such as temporariness and readmission/return.

In this paper, first we briefly examine the legal framework for the migration policies of the EU including the Pact. Second, we focus on the policies regarding temporariness and readmission/return. Finally, we discuss the Pact on Migration and Asylum in light of these two methods for exclusion and restriction within the concluding thoughts.

2. Legal Framework for EU Migration Policy: Strict Differentiation between Regular and Irregular Migration

Migration laws and regulations in Europe can vary significantly from country to country and are subject to change over time due to evolving global migration policies and political climates. However, there are general frameworks and agreements that govern migration to Europe and that affect directly the member states' governance of migration (Fontana and Rosina 2024; Rosina and Fontana 2024): the Dublin Regulation, Schengen Agreement, Treaties of Amsterdam and Lisbon, temporary protection mechanisms, and bilateral and multilateral agreements with third countries, national immigration regulation and laws, Regulation (EU) 2024/1348 of the European Parliament and of the Council, international conventions such as the 1951 Convention Relating to the Status of Refugees, the International Convention on the protection of all Migrant Workers and Members of their families adopted in 1990, the European Convention on Human Rights and the European Social Charter, the Charter of Fundamental Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child (CRC).

The EU mostly focuses on the importance of promoting and welcoming regular migration and is determined to stop irregular migration. Regular migration is managed through different channels such as the EU Blue Card Directive for the highly skilled and directives for seasonal workers and intra-corporate transferees. Apart from the Blue Card which is designed for a longer period, the other directives such as those for seasonal workers and intra-corporate transferees are of a temporary nature. Moreover, there are different rules in each member state for the admission and rights of students and researchers; the right to family reunification; and different conditions and procedures for third-country nationals applying for long-term residence permits. Also, there are labour mobility schemes with non-EU countries, which aim to meet the needs of the employers.[6]

The EU has been devising other legal entry channels such as the Communication on Attracting Skills and Talent, which is the EU Talent Pool announced in 2021. The Talent Pool aimed at meeting labour needs and improving Europe's ability to attract sought-after skills.[7] It is indicated by the OECD that the EU has only a small share of the highly skilled migrants from abroad.[8] Despite this, it would not be wrong to say that the channels open for regular migration (visas, residence permits, long term residence permits, student visas and short-term stays, Blue Card and family reunification) can be limited in numbers and scope to meet the demographic and talent needs of the EU (Samuk 2019).

There were 53,270 irregular arrivals to the EU (and Schengen) from January to April 2024.[9] Irregular migration is one of the most important concerns of the EU especially after the 2014 "refugee crisis", although this crisis was not a crisis of "refugees" but it was a crisis of lack of solidarity for the EU member states (Panebianco and Fontana 2018; Fontana 2022). The so-called crisis that the EU encountered at the time has never reached the numbers of that of the neighbouring countries to Syria (Jordan, Lebanon and Turkey). The use of the word crisis has been criticised and deconstructed by prominent scholars from different points of view (Cantat et al. 2023; De Genova 2016; Cantat 2016; Mezzadra and Neilson 2013). Irregular migration has always been associated with border control and border management which is described also as a "border spectacle" by De Genova (2016) to underline the fact that there is a theatre at the border that is not free from what is happening inside and outside the border: irregular labour migration, precarisation, the exclusion of migrants from membership and the stratification of rights (Morris 2003). Interestingly, the myth of invasion by African migrants was written a few years before the "migrant crisis"

(De Haas 2013). Similarly, Guiraudon (2018) wrote that the refugee crisis was not a turning point in terms of policy responses. The literature therefore demonstrates that there should be an external threat to have stronger borders, and if the threat is not real, it shall be created and reproduced.

Notwithstanding the above-mentioned efforts to deconstruct the understanding of "crisis", "borders" and "invasion", the EU devised different policies to prevent "irregular migration" and laws especially aiming at migrant smugglers and migrant traffickers. First and foremost, and most deterrent is Frontex (European Border and Coast Guard Agency established in 2004), which is reliant on the EU countries' coastguards and naval services. In addition to Frontex, there is the coordination between border surveillance and authorities through European Borders Surveillance System—EUROSUR. In 2010, the EU prepared EMPACT (European Multidisciplinary Platform Against Criminal Threats).

Despite the fact that most of the overstays are the reason for irregular migration, the EU is very much attentive to concentrating rather on border protection. The EU website on irregular migration directly suggests that the "Effective and credible management of external borders is essential".[10] In 2023, a new communication was made, the "Communication establishing the multiannual strategic policy for European integrated border management", which allows the use of a high level of security via information technology such as the visa information system and biometric features (including fingerprints). Finally, with the Pact on Migration and Asylum, the Commission appears to aim to prevent further unauthorised entry, transit and residence (C(2020)6470 FINAL).[11] The European Agenda on Migration and the European Agenda on Security also concentrate on the prevention of migrant smuggling. In November 2023, the Commission proposed a new legislation to prevent and fight migrant smuggling, launching a Call to Action for a Global Alliance to Counter Migrant Smuggling.[12] This initiative strengthens the communication between member states in terms of data and information sharing as well as it making Europol stronger.[13] Last but not least, employers who employ irregular migrants are sanctioned according to the Communication on the Employers Sanctions Directive, which was adopted on 29 September 2021. This communication also foresees inspections and has the aim to protect the rights of irregular migrants. Indeed, the official EU discourse is more about criminalising smugglers.

However, such policies, which aim to restrict immigration, have counterproductive results, as research studies have already demonstrated (see: Rosina 2022; Andersson 2016; Betts 2010). For example, Czaika and Hobolth (2016) analyse bilateral asylum and visa policies on migrant flows to 29 European states in the 2000s, and they find that there is a significant bias with respect to irregular migration. They also suggest that for every 10 percent increase in asylum rejections, the numbers of irregular migration rise by 2 to 4 percent. In addition, they find that for every 10 percent increase in short-stay visa rejections, there is a 4 to 7 percent increase in irregular border entries (Czaika and Hobolth 2016). The United Nations Network on Migration confirms that there is an inherent link between the lack of regular channels/pathways and the increase in irregular migration: "While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, in the absence of safe and dignified regular pathways, migrants are often left only with precarious and irregular migration options".[14] This clearly demonstrates that the very restrictive regimes of migration have been counterproductive: as a result of the securitisation of migration, there has been an increase in irregular migration. From a more sociological point of view, there is also a need to understand irregular migration in the networks that are embedded in all its phases. Irregular migration is not only a sphere representing criminal networks and unscrupulous employers but rather crosses different interests, values, and actors that are well embedded and publicly accepted in host societies, contrary to what is portrayed in media and political debates at national and European levels (Ambrosini 2016).

The new Pact on Migration and Asylum[15] introduces five key changes without altering the Dublin principle. The Screening Regulation mandates the examination of asylum

seekers' profiles, including health checks. The Eurodac Regulation permits the collection of biometric data to prevent multiple claims under the same name. The Asylum Procedures Regulation (APR) requires individuals from countries (e.g., Morocco, Pakistan, and India) to be held at border facilities while fast-tracking other applicants coming from countries with a higher refugee recognition rate through the traditional asylum procedure. The Asylum and Migration Management Regulation (AMMR) establishes "mandatory solidarity," offering countries three options: 1. relocate a certain number of asylum seekers, 2. pay a contribution for each claimant they refuse to relocate, or 3. finance operational support. Lastly, the Crisis Regulation empowers member states to implement stricter measures during crises, such as COVID-19, including extended detention periods[16].

The Pact has been an attempt to "manage migration in a dignified and sustainable way".[17] In this pact, there are many elements to consider but return (effective and quick return) comes to the fore as a part of the migration policies of the EU. A very crucial part in the proposal explains the philosophy behind the changes: "To this end asylum applications of those who are not entitled to international protection must, on the one hand, be dealt with quickly and these migrants must then be returned quickly. On the other hand, safe and legal ways to the EU for those from third countries who need protection need to be opened. It is also part of a wider partnership with priority countries of origin and transit".[18] The new rules determined on the 14 May 2024 according to the official website will "ensure that the Union has strong and secure external borders, that people's rights are guaranteed, and that no EU country is left alone under pressure".[19]

In all these remarks above, return, "a wider partnership with origin and transit countries", and "strong and secure borders" seem to be the keywords. These are not novel, but the obsession with the efficiency of return and being fast in asylum procedures is. "The aim of this proposal is to ensure fast and efficient treatment of applications for international protection by establishing a common procedure for granting and withdrawing international protection, which replaces the various procedures in the Member States, and which is applicable to all applications for international protection made in Member States".[20] Together with these changes, the safe country list has also been changed to the European list that will be applied throughout the EU's member states. The first risk of these changes is that the asylum procedures can be lengthy by nature and it might be necessary to interview people a couple of times before deciding their position. The second risk that is run with the new Pact is that those who are vulnerable are going to be in fast-track asylum and return procedures, which means that they might have to bear the consequences of an inefficient or unsupported decision. The third problem is that if all the member states have the same criteria (which sounds good for solidarity) for asylum, it is also possible that a refugee, if determined to be not a refugee officially by fast-track asylum procedures, cannot benefit from the asylum system of another member state. All in all, these procedures require a lot of securitisation and externalisation, as was the case before, but also deterrence. However, the consequences of these are also dire. Rosina (2022, p. 229) rightfully says that it is easy to follow securitisation and criminalisation as a political tool, but it becomes very hard to undo the negative consequences of these policies' implementation. She adds that they are not effective either, and furthermore, they lead to the stigmatisation and marginalisation of migrants. Hence, policies have an exclusive and alienating effect for migrants including refugees.

It is also seen that the securitisation of migration (Huysmans 2000; Bigo 2002; Léonard and Kaunert 2022) and the criminalisation of migration, used along readmission and return practises, have been used as a way to guarantee the control of borders. Kogovšek Šalamon et al. (2020) confirm the consequence of the criminalisation of migration: xenophobia, inequality and a broadly supported violation of the rights and dignity of the migrants. However, we have not examined these strategies and philosophies as they would be beyond the scope of this paper. We looked at the main policy tools to limit immigration of both a regular and irregular nature. It goes without saying that the return/readmission policies are not devoid of securitisation and externalisation.

These changes accepted in June 2024 are very dramatic and are an important step in the EU's history of migration policies as they pragmatize the migration tools in order to slow down and stop immigration and to confound the difference between refugees and irregular migrants and irregular migration and mixed migration flows, which includes a high number of refugees in certain cases. The Pact has also been criticised by some stakeholders such as the European Council on Refugees and Exiles (ECRE), who was concerned about the lack of responsibility sharing between the member states.[21] The European Network on Statelessness (ENS) also criticised the fact that statelessness is not mainstreamed in migration and asylum policies.[22]

In short, the Pact, speeds up the processes of asylum application via mandatory screening procedures and border controls, leading to detention. In comparison to past policies, the Pact makes it easier to reject asylum applications this way.[23] Also, the way solidarity is understood has changed: the Commission can propose a pool of solidarity contributions for relocations of asylum seekers from member states that have more immigrants arriving and hence are under pressure.[24] However, it is very unlikely that these measures of the EU will lead to strive for having common policies on migration and asylum after this Pact, as migration policies are still very much rooted at the national level.

In the next section, we will see different methods via which the EU restricts migration. The first one is temporariness/forced temporary stay and the second is return and readmission agreements that are burden shifting rather than burden sharing (Junker 2005) as a part of the externalisation of migration (Boswell 2003; Niemann and Zaun 2023).

3. Two of Restriction(s) in Migration: Two Interconnected and Reinforcing Strategies

As indicated above, the European Union (EU) employs various policies and measures to regulate and restrict migration into its member states. In this paper, we examine these two types: 1. the restrictions of long-term and permanent settlement via temporariness and 2. return/readmission. We argue that these policies are philosophically and pragmatically connected with each other, and as a combined set of strategies, they are reinforcing the consequences of EU migration policies including the recent Pact, particularly regarding the restriction of immigration.

3.1. Restrictions of Permanent Settlement or Immigration via Temporariness

Creating and elongating experiences of temporariness (such as through temporary visas) is one of the key ways in which migration is restricted to the EU. Temporary migration policies prevent third-country nationals from settling permanently, so indirectly, these policies restrict immigration numbers in a very crucial way. There are different ways to create temporariness and limit the numbers of the immigrants. First of all, there is temporariness/renewable temporary stay/limited residence permits for international students/highly skilled/researchers/professionals; second, temporariness is a way of living and earning money for seasonal/agricultural migrant workers; and third, finally, temporariness has also become the destiny of asylum applicants and refugees (e.g., temporary protection status). These three categories will be explored in this section.

Even though the EU aims to keep the highly skilled migrants, the case is that even skilled migration is subjected to temporariness. For instance, the Blue Card visa lasts for two years in Italy (Blue Card Initiative for Italy 2024).[25] The timeframe of the Blue Card changes in each member state.[26] When it comes to international students doing their masters or PhDs in the EU, there are dissimilar implementations on restrictions via temporariness. Even Erasmus plus, which provides great opportunities to third-country national students for international higher education studies, has its shortcomings (Firdausi 2022). "Despite the unending integration process at the policy level to support their -international students-intake from other parts of the world, non-EU students undergoing EMJMD program are still at high risk of facing complicated legal issues as visas and residence permits" (Firdausi 2022, p. 7).

The EU aims to attract the skilled, but even this policy has its limits also due to temporariness. The EU talent pool is an example to "help match third country nationals with EU employers based on labour market shortages and labour market needs, support integration processes and protect third-country nationals from exploitation and improve cooperation with non-EU countries on legal migration whilst demotivating irregular migration" (EU Factsheet 2023, p. 2). Despite all attempts to value skills, highly skilled migrant workers "desired" by states and citizens come across problems in long-term labour market integration (e.g., exploitation, de-skillisation, the lack of career sustainability). For instance, "in 2019, about 48% of highly-skilled migrants worked in low or medium skilled jobs, compared with just 20% of EU citizens".[27] Also, the definition of a highly qualified migrant according to the EU is quite limited[28]:

In the global context, a person falling within ILO ISCO-88 Classes 1, 2 and 3, e.g., a person qualified as a manager, executive, professional, technician or similar, who moves within the internal labour markets of transnational corporations and international organisations, or who seeks employment through international labour markets for scarce skills.

In the EU context, a third-country national who seeks employment in an EU Member State and has the required adequate and specific competence, as proven by higher professional qualifications. (EU—Migration and Home Affairs, the definition of a highly qualified migrant[29]).

The definition says "manager, executive, professional, technician or similar" and hence excludes, for instance, scientists and artists. Accordingly, graduate students might fall out of this category quite easily. The definition continues with the detail "who moves within internal labour markets of transnational corporations and international organisations", which excludes the persons who come from the third countries and not from corporations or international organisations. The second part of the definition continues, saying "third country nationals with required adequate and specific competence, as proven by higher professional qualifications". This part of the definition also is quite vague, and it is a wonder why the first and the second parts of the definition are not combined. According to Migration Research Hub, the definition of highly skilled migration is "the movement of persons who normally possess university education (ISCED 5–6), extensive experience or a combination of the two".[30] So it would make sense also for the EU definition to associate different elements to be more inclusive in terms of the third-country nationals with skills. Finally, how highly skilled migrants are defined affects how policies are diversified for different types of highly skilled migrants (Boucher 2020).

EU policy has always supported the circular migration for the highly skilled migrants, but at some point, temporariness and circulation become analogous in practise (Castles and Ozkul 2014). As Geddes (2015) argues, there is an elusiveness about the meanings of the terms such as temporary and circular migration. This elusiveness has been useful for member states to create interactions between them (ibid.). However, it also has its shortcomings: "When migrants cannot access jobs where they could put their skills in use due to structural constraints, brain circulation and training remain a great challenge in European intra-mobility realities" (Lulle et al. 2021, p. 1727).

For skilled migrants, it should be added that not all the migrants want to stay permanently as they might have temporary projects to stay in the EU (Ottonelli and Torresi 2013). What matters is that temporary work should not be the alternative to creating pathways for permanence. In other words, temporariness and permanence should not be mutually exclusive. Otherwise, migrant workers have limited possibilities to stay if they want to and they have limited rights, even if they want to have more rights, after having worked and contributed to the economies of host countries. At the same time, if applied correctly, respecting the rights of the migrants, research indicates that high rates of return and circulation for the skilled are good for the economic and sociocultural development of the sending country (Hugo 2013).

The second category pertains to temporary migrant workers, who are not categorised as highly skilled. For migrant workers in general, there is the single permit (as a part of

EU policy) that is a temporary and country-specific work permit (which cannot be applied to refugees, asylum applicants, ship workers and self-employed workers).[31] The good side of this permit is that an employee is not tied to an employer, which allows workers to change their jobs[32] and this is a crucial caution against exploitation. Also, there are pathways for permits to become permanent after being temporary for five years in the EU. For instance, long term residence permit is one of the solutions. EU long-term resident status was introduced in 2003 to allow non-EU citizens, who have been in the EU legally for five continuous years, to move and work in another EU country (Denmark and Ireland are exceptions).[33] After five years, it is renewed automatically. Still, the residents need to prove that they are financially (as well as their families) stable during the time of application. Nevertheless, seasonal migrant workers for instance, cannot benefit from these rights. An example is from Spain where seasonal migrant workers obtain irregular legal statuses, being blocked from obtaining permanent residence permits and having limited rights to settle in Spain (López-Sala 2016). Spain is not an exception to what is happening to seasonal migrant workers.

The third category of migrants that are subjected to temporariness are asylum applicants and refugees. Even refugees are not safe and are subjected to temporariness. For instance, temporary protection status (TPS) provided to the Ukrainians has caused certain uncertainties in their daily lives (De Tona et al. 2023). They need to renew their TPS every six months to one year as the war continues. Although it sounds like a positive development, the nature of it being temporary even for people escaping from war makes one think that this TPS can affect their daily lives and working arrangements.[34] People continue arriving from the war zone and need housing.[35] Housing on the other hand, as it is seen in many of the EU member states, necessitates long-term solutions. According to Zaimović (2023), "there are in fact reasons to believe that the temporariness of protection could become a strategy on how to bring on board all States-even the least cooperating ones embracing national identity arguments in the field of migration—when providing protection in situations of a mass influx". (Zaimović 2023, p. 154). Carrera et al. (2022, p. 4) further criticise the discrimination faced by non-white third-country nationals and asylum seekers from African, Asian and Middle East countries as they were exercising their right to escape from the war in Ukraine and seek asylum in the EU. It seems that TPS has been presented as a "solution" for refugees by many countries (e.g., Australia, Canada, Turkey, USA), not only by EU member states.

When it comes to temporary migration, it should be underlined that temporary migration regimes are common to 90 percent of the OECD states (Ruhs 2013; Cook-Martin 2019). Temporary migration is also quite connected with (forced) return effectively as temporary migration has to be monitored. Cook-Martin (2019) says: "the policing of temporariness requires everyday bureaucratic monitoring (verification of status) and, potentially, drastic interventions (deportation) with serious consequences for migrants as well as for the communities in which they live". (p. 1390). EU member states in this sense are no exception to the general rules of temporary migration regimes. Even permanent statuses require that third-country nationals have temporary permits in the beginning (e.g., a student, researcher, intracompany transfer, seasonal migrant worker, domestic worker), unless it entails family reunification. Furthermore, in practise, one being permanent in one member state does not mean that one can live and work wherever in the EU. A third-country national can have a long term-residence permit in a member state and be temporary in another with limited rights to permanent residency as the member states protect their sovereignty when it comes to national membership and long-term residency rules. However, this is all in line with the fact that "migration regimes based on time-delimited statuses are common and not exceptional". (Cook-Martin 2019, p. 1391). It is almost as if countries are repeating the bad examples implemented by other countries both in migration control and migrant integration (Guiraudon 2000; Geddes and Scholten 2020).

3.2. Return Policies

3.2.1. Forced and Voluntary Return

Return migration policy is a very practical lens through which to measure and conceptualise how the politics of migration are increasingly moving in the direction of restriction and rejection. EU countries sent back 96,795 people in 2022, and 47 percent of these returned "voluntarily", whilst the rest were forced to return.[36]

While decades ago, return migration was considered a survival strategy for rural families who could not fit into the labour market in a destination country, in the current "age of restriction", it has become highly involuntary, imposed from above, and a restrictive means of migration management (Bhatt and Roberts 2012), being "equated with removal in official rhetoric" (Cassarino 2020, p. 343). This shift has occurred gradually and has been brought about by the changing needs and regulations of the labour markets in developed countries and consequently by the proliferation of different legal statuses that offer little opportunity for permanent and legal residence through employment in destination countries.

Currently, in the context of slowed economic growth rates and insecurity, migrants and refugees from poor regions are largely portrayed and categorised in the EU (and in Schengen and in other developed states) as a burden on development and a threat to security and economy, which they should discourage (or prevent), except for highly skilled labour (Akanle 2018). Also, within this political narrative, return migration becomes one of the most important assets of migration management, especially that of irregular migration. As indicated above, the new Pact also underlined the importance of efficient and quick returns of those who do not qualify as migrants, including refugees.

Despite the strict differentiation, the line between regular and irregular, as well as between forced and involuntary, is always blurred and highly subordinated to narratives and debates about migration (Bivand Erdal and Oeppen 2018). Furthermore, the nature of migration flows is a question of the political construction of differences and borders, and accordingly, irregular migration has to do with modern states' functioning and their complex territorial control apparatus (Ambrosini 2010). In the complex and often paradoxical relationship between liberal and human-rights-related aspects and state sovereignty, the response of the EU to irregular migration is return, mainly voluntary. At the EU level, return migration is regulated by the EU Return Directive (2008/115/EC), which came into force on 24 December 2010. It contains elements of protection through the right of appeal and the principle of proportionality and enforcement, with voluntary departure as the preferred practise (Majcher and Strik 2021). Under this perspective, different Assisted Voluntary Return and Reintegration (AVRR) programmes are implemented at the supranational and national levels. Therefore, the preferred political response to unwanted migration is 'voluntary' return 'chosen' by the migrant through reintegration support. This should also be because when migrants are actors in the decision to return, this movement could become a resource for developing countries regarding material and non-material wealth that returnees can take with them, while involuntary or forced return can result in a cycle of crime and violence (Bhatt and Roberts 2012).

Nevertheless, categorisations on paper do not fully reflect experienced categories. Thus, the concept of 'voluntariness' in the decision to return and its distinction from a forced decision needs further analysis. Cleton and Chauvin (2020) highlighted how the persuasion techniques of state officials reproduce a certain "symbolic violence of freedom in the deportation apparatus" (p. 310) so that the return appears in official records as "voluntary". Also, other research (Blitz et al. 2005; Webber 2011; Fennig 2021) showed how permeable the boundaries of the "voluntary" act and "forced" act are.

From an analytical perspective, it is possible to observe that temporariness and return are inherently connected policies. As Cassarino (2020) summarised, the first step in bringing highly state-induced return migration management was the introduction of temporary migration schemes after the 1973 oil crisis. Accordingly, temporary and circular migration became the preferred channel of developed countries seeking to adapt migration flows to their labour needs and to avoid the social and economic 'costs' of integration

(Triandafyllidou 2022). Yet, while the initial aim of temporary work was to encourage the foreign workforce to return home, a number of economic and social factors have prevented the return and made temporary workers stay longer and settle down more than expected. The second step was the deregulation and flexibility of the labour market. Under this perspective, the deregulation of the labour market led to less state intervention in some spheres while intensifying the state's presence in others (Campbell and Tham 2013). Turning back to Cassarino's (2020) list, in this overlapping policy transformation, on the one hand, the right to stay has been subordinated to the employment contract, and on the other hand, the criteria for family reunification have become more and more demanding, making the option of return less of a subjective choice on the part of migrants. The last shift combined the first two. The removal mechanism thus became a commitment to temporary stay and a deterrent for labour migrants to overstay their contract (Cassarino 2020). Again, regarding temporariness and return, we are facing the element of "deterrence", as also supported by the Pact.

Another important aspect is how the return is perceived and interpreted by sending and receiving states characterised by different interests and the gap between institutional representations and lived experiences. Also, research (Sinatti 2015) showed that the European policy debate presents return migration as the most advantageous option for all actors involved (states and migrants themselves). However, the return migration policy of countries of origin (in this case, Senegal) is driven primarily by national development priorities and does not always consider return as the most beneficial option for the country.

Finally, the EU's (and Schengen) return enforcement capacities and interests differ. Leerkes and Houte (2020) distinguish four enforcement regimes: (1) The thin enforcement regime is adopted by Spain and Italy where there is limited interest and capacity to enforce return due to the dependence on migrant labour in informal employment. (2) the thick enforcement regime is used in Norway and the Netherlands. In this regime, strong enforcement interests go hand in hand with extensive enforcement capacity. (3) Targeted enforcement regimes characterise the return policies of Germany and Sweden, where certain categories of migrants are exempt from enforcement through track-switching and formal tolerated policies, based on the labour market needs. (4) The hampered enforcement regime is adopted by Belgium and Denmark, where high enforcement interest does not coincide with return enforcement capacity.

The return policies, especially those implemented by member states at their borders, also reflect the clash between different levels of governance (national vs. supranational or local vs. national). The case of Hungary is emblematic in this respect. Its recent migration policy frames migration as a national security issue above EU directives and is characterised in part by selective border closures and a range of deterrents, including detention, poor reception conditions and a lack of integration support (Kallius 2017). The policies relating to deportations of asylum seekers and refugees from Africa and the Middle East to third countries such as Serbia were declared unlawful by the European Court of Justice (ECJ) in 2020.[37] Similarly, Italy's pushback policies also have been found illegitimate by the European Court of Human Rights in 2012, particularly with regard to those arriving by sea.[38] However, as also confirmed by the last Migration Pact, the intentions of member states do not differ much from those of the EU in terms of strengthening the borders for asylum seekers and making return, in all its forms, more viable.

Some readmission programmes have been framed as "voluntary return" such as those which have been developed by the International Organisation for Migration (IOM). However, "voluntary repatriation" or assisted voluntary return can also be similarly problematic (Chimni 2004; Crisp and Long 2016; Cleton and Schweitzer 2021) if the reintegration of the migrants including refugees in origin countries is not taken into consideration (Kirui et al. 2020). Further, such "voluntary" return programmes have been widely criticised for their coercive practises, which call their very "voluntary" framing into question (Blitz et al. 2005). The voluntary return programmes can also hinder women refugees from accessing

the refugee regime, falling short of meeting their needs (Lochan 2017). Despite all these concerns, the Pact focusses on return heavily.

Finally, the evolution in the conceptualization and implementation of the EU's migration policies on return reflects how migration flows are to be managed. However, contrary to how it is illustrated, return is not always easily applicable due to conflicting needs and interests. Moreover, the success of a return policy requires the cooperation of all countries involved, which is not always easy to achieve. Readmission is used as one of the sub-categories of return policies in general, and the next sub-section examines readmission.

3.2.2. Readmission as an Integral Part of Return Policies

Readmission agreements, by definition, are tools that are used by the EU in its external relations, especially for countries that are at the EU borders in order to manage migration and transform the border countries as possible buffer zones against a major flow of refugees and immigrants. Euro-lex official pages indicate this fact about the readmission agreements: "the objective of the readmission agreement is to facilitate the readmission to their own country of persons residing without authorization in a Member State".[39] In the same page, it is indicated that "the agreements must comply with the 1951 Geneva Convention and the 1967 Protocol on the status of refugees, internal treaties concerning extradition, transit, readmission of foreign nationals and asylum (in particular the 1990 Dublin Convention) and the 1950 European Human Rights Convention. A readmission agreement facilitates the expulsion of third-country nationals".[40]

"Readmission agreements generally cover procedural provisions regarding return procedure, transit return arrangements, responsibility criteria, standard of proof, time limits and cost distribution, although the exact nature of these procedures can vary significantly. The most difficult issue to agree upon is the readmission of third country nationals and stateless persons". (Trauner and Kruse 2008a, p. 19). As indicated by Trauner and Kruse, however, readmission agreements can have some problems regarding the expulsion of asylum seekers, whose claims are rejected as well as irregular migrants, who might also be in need of protection (Kruse 2006). Chain deportation ("under which asylum seekers removed from EU member states may be further removed to other third countries, and from there, back to the state they fled in the first place" in Fekete 2005, p. 72) can also be a consequence (Trauner and Kruse 2008b, p. 27).

The EU has established 18 bilateral binding readmission agreements (Hong Kong, Macao, Sri Lanka, Albania, Russia, Bosnia Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Ukraine, Pakistan, Georgia, Armenia, Azerbaijan, Cape Verde, Turkey, and Belarus), and for six further countries, the Council has given the Commission a mandate to open the negotiations (Special Report No 17/21 2021). Even with a pure pragmatic outlook, readmission agreements can be totally useless in terms of the objectives they want to achieve. Trauner and Kruse (2008b, p. 27) also question readmission agreements as a tool to manage migration flows because they suggest that unless there are reintegration tools regarding the returning refugees, they might try to come back. And yet, they are consistently employed to keep away "unwanted" migrants while using countries in between the EU (and Schengen) and countries of origin as buffer zones.

Kirişci (2008, p. 24) suggests that the readmission agreement between the EU and Turkey[41] effectively rendered Turkey a "dumping ground" for irregular migrants, with Turkey bearing the burden of returning irregular migrants to their countries of origin. Further, such readmission programmes are problematic for two key reasons. From a human rights perspective, the expulsion of the irregularly crossing migrants cannot be justified according to the principles of various conventions on Human Rights such as the European Convention of Human Rights and as indicated in the Report on Irregular Migrants by the Parliamentary Assembly,[42] which clearly states the following: "The Assembly considers that as a starting point, international human rights instruments are applicable to all persons regardless of their nationality or status. Irregular migrants, as they are often in a vulnerable situation, have a particular need for the protection of their human rights, including basic

civil and political rights and social and economic rights".[43] Even if a person is not identified as an asylum seeker or refugee, not granting them the regular pathways can result in vulnerabilisation.[44] Moreover, the verification and identification process of "irregular" migrants is particularly difficult, ineffectual, and costly and requires a lot of expertise; and as numbers increase, so, too, does the cost and time needed to sort (and assist) refugees from irregular migrants. Yet, the Pact underlines "fast", "effective" and "immediate" procedures contrarily.

Some have argued that it is possible to improve these programmes. For example, Kirişci (2008, p. 24) suggests that negotiations about the readmission agreement should involve "humane thinking". However, the reality is that the practises of such agreements are rooted in the governance logics of the externalisation, securitisation and criminalisation of migration, which inherently do not ensure the protection of the human rights of migrants, regardless of how much "humane thinking" is being carried out by policy makers.

4. Concluding Remarks

In this paper, we examined two ways of excluding migrants evident in the EU Pact: temporariness and return/readmission. We argue that these policies cannot exist without each other and they reinforce the result desired also in the Pact on Migration and Asylum: efficient and quick returns and cooperation and partnership with third countries to stop migration. In this sense, the Pact is not an anomaly in promoting the same old temporariness, readmission (including the externalisation and securitisation of migration via Frontex) and return (e.g., biometric measures, effective and immediate systems and collaboration with third countries to return irregular migrants).

Temporariness is used for highly skilled migrants, seasonal migrant workers and refugees. The more temporariness there is, the less rights there are for those who are residing in the EU. The policies for the highly skilled remain short of their goals despite the Talent Pool and Blue Card Directive; the policies on seasonal agricultural migrant workers demonstrate in single member states that there are insufficient provisions and policies to help them stay, if they want to do so, infringing on their basic human rights; the policy on temporary protection status forces refugees to renew their permits every six months to one year, reinforcing the fact that they are to stay in the host country temporarily. Temporariness is fundamentally connected with return: those who stay longer will be illegally present on the territory and will have to return or be deported (with other consequences such as not being able to return for a certain period to the same country). They can also live in an irregular condition without any rights until they are caught. As a part of return policies in general, readmission agreements as a migration policy tool stand out. Readmission policies are still used as a tool to externalise and securitise migration. Although they are not found to be very efficient (e.g., Turkey), they are posed as solutions publicly because they are also characteristically connected with return policies. While the EU promotes voluntary return as a preferred policy outcome, the line between voluntary and non-voluntary has not been clear in practise.

Looking historically at the EU policies regarding migration, there is a certain path dependency that came alive with the Pact once more: the securitisation, externalisation, temporalisation and criminalisation of migration. Temporariness, the importance of readmission and return are integral also to these strategies. With the Pact, compared to the previous versions, there is more solidarity in sharing information and data on migrants, including refugees; common rules on asylum for all member states are defined, and the efficiency and velocity of the return procedures are decided. The EU Pact on Migration and Asylum therefore is quite timely and not surprising looking at the past policies of the EU.

Another point that this paper makes is that the above-mentioned dimensions of the external migration policy of the EU, temporariness, return, and readmission, are wholly connected with each other in policy logic and policy outputs. Temporariness allows people to stay for a short period, blurring the line between regularity and irregularity. The first return policies were based on temporary migration; return is therefore 'the solution' for

those who overstay or are rejected, and readmission ensures that there is a return of 'unwanted' and 'undeserving' migrants, including rejected asylum seekers. These three policies reinforce and strengthen each other. The result is to filter and limit both high- and low-skilled migration, making it harder for third-country nationals to achieve their permanent residence. In the same vein, the Pact on Migration and Asylum has the objective to control, limit, and restrict migration via return, temporariness, readmission (cooperation and partnership with third countries), strengthened border controls (e.g., Frontex and Europol) and solidarity regarding the application of asylum rules in a similar way in each member state.

Further research should invest in other forms of restrictions, refusal(s) at the border(s), the deportation of highly skilled migrants, and the exploitation and irregularity of seasonal migrant workers, in addition to quotas and problems with Schengen visas. A holistic view towards restriction shall be espoused to understand the phobic philosophy behind the EU's migration policies. To be more specific, broader recommendations are as follows: (1) analyse the EU framework for alignment/compliance with international human rights frameworks; (2) carry out a gender analysis of the EU framework with respect to temporary migration/migrants; (3) investigate alternatives from other regions (in particular the African Union); (4) carry out integrated policy analysis across domains (linking domains such as migration, labour, and health) with a sustainable development goal (SDG) lens; (5) investigate/identify innovative policy levers to push states to change; and (6) support/facilitate a civil society evaluation of the EU framework that brings the perspectives of migrants to the fore.

Notes

1. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/managing-migration-responsibly_en accessed on the 10 June 2024.
2. See note 1 above.
3. See note 1 above.
4. See note 1 above.
5. https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en accessed on the 2 June 2024.
6. https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration_en accessed on the 8 June 2024.
7. https://www.oecd.org/migration/eu-talent-pool.htm accessed on the 4 June 2024.
8. See note 7 above.
9. https://www.consilium.europa.eu/en/policies/eu-migration-policy/ accessed on the 8 June 2024.
10. https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return_en accessed on the 8 June 2024.
11. See note 10 above.
12. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6081 accessed on the 22 June 2024.
13. See note 12 above.
14. https://migrationnetwork.un.org/thematic-working-group-3-regular-pathways-migrants-vulnerable-situations accessed on the 10 June 2024.
15. https://www.euronews.com/my-europe/2024/04/10/european-parliament-narrowly-endorses-eu-migration-reform-moving-it-closer-to-the-finish-l accessed on the 8 June 2024.

16   See note 15 above.

17   See note 1 above.

18   https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016PC0467&from=LT accessed on the 24 June 2024.

19   See note 5 above.

20   See note 18 above.

21   https://emn.ie/what-is-the-eu-migration-and-asylum-pact/ accessed on the 8 June 2024.

22   See note 21 above.

23   https://www.cer.eu/insights/new-migration-and-asylum-pact-smoke-and-mirrors accessed on the 9 August 2024.

24   See note 23 above.

25   https://immigration-portal.ec.europa.eu/eu-blue-card/italy_en accessed on the 20 May 2024.

26   https://immigration-portal.ec.europa.eu/eu-blue-card_en accessed on the 20 May 2024.

27   https://www.europarl.europa.eu/topics/en/article/20230413STO79903/labour-migration-improving-legal-avenues-to-work-in-the-eu accessed on the 8 June 2024.

28   Definition of highly qualified migrant retrieved from https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/highly-qualified-migrant_en accessed on the 8 June 2024.

29   See note 28 above.

30   https://migrationresearch.com/taxonomies/topics-migration-processes-migration-forms-high-skilled-migration accessed on the 22 June 2024.

31   See note 27above.

32   See note 27 above.

33   See note 27 above.

34   https://www.bbc.com/news/uk-england-northamptonshire-68404820 accessed on the 20 May 2024.

35   https://www.bbc.com/news/uk-england-cambridgeshire-68604113 accessed on the 20 May 2024.

36   https://www.europarl.europa.eu/topics/en/article/20230704STO02012/repatriation-how-many-migrants-in-the-eu-are-sent-back accessed on the 6 June 2024.

37   https://www.dw.com/en/hungary-asylum-policies-failed-to-fulfill-eu-obligations/a-55970205 accessed on the 2nd of August 2024.

38   https://www.thenewhumanitarian.org/analysis/2023/01/09/EU-pushbacks-legal-asylum accessed on the 2nd of August 2024.

39   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33105&frontOfficeSuffix=/ accessed on the 9 June 2024.

40   See note 39 above.

41   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:22014A0507(01) accessed on the 10 June 2024.

42   https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11204&lang=EN accessed on the 10 June 2024.

43   See note 42 above.

44   See note 14 above.

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