The Anatomy of the EU Pact on Migration and Asylum:

Disconnecting from the Realities on the Ground and the Fundamental Human Rights

The case of Bulgaria as an EU external border

Center for Legal Aid
Voice in Bulgaria

Introduction

In May 2024, the EU finally adopted the Pact on Migration and Asylum (the Pact) after years of negotiation. The Pact is a set of new rules managing migration and establishing a common asylum system at EU level. It must become fully operational by June 2026. Without further ado, in June 2024, the European Commission (EC) adopted a Common Implementation Plan for the Pact. This plan sets out the key actions required to implement the newly adopted migration and asylum rules. EU Member States are then expected to prepare their respective national implementation plans by December 2024.

On 24 July, few days after EC President Ursula von der Leyen was elected for a second term, the Commissioner for Home Affairs Johansson presented the Common Implementation Plan for the Pact to the new Committee on Civil Liberties, Justice and Home Affairs (LIBE) before the European parliament[1]. Commissioner Johansson pointed to an EU budget of around 3.6 billion for operational and financial support throughout the Pact implementation, not including the national budgets of Member States. The EU increases the resources of EU Agencies such as Frontex.

At the same time, from a civil society perspective, the Pact is widely criticized as detrimental to the fundamental right to asylum, normalizing pushbacks on the EU external borders and immigration detention, giving rise to grave humanitarian situations. The EU is also highly criticized for its failure to include the civil society in the Pact adoption process by further disregarding critics and the experiences of organizations working on the ground with refugee and migrant communities. This widens the gap between EU policymaking and the civil society. Particularly frontline workers are the immediate recipients of policy decisions as they are also policy implementers or practitioners, having direct insights how new policies unfold on the ground. There has been limited linkage between the Pact adoption and the realities on the ground. Instead, the EU decision makers plunged into a populist rhetoric and approach, adopting impulsive short-sighted policies which could not sustain the migration challenges of today.

In the wake of the new EU Pact, Bulgaria was busy with its political drama around joining the Schengen area. For its Schengen accession, Bulgaria was put under much pressure both at national and EU level to curb migration. Keeping the border tight was a primary goal at all costs. In March 2023, the EC launched a six-month Pilot project with Bulgaria on *"preventing irregular arrivals, strengthening border and migration management"*[2]. For the implementation of the Pilot project, Bulgaria received 45 million euro. The EU insisted that the Pilot project had nothing to do with the Pact on Migration and Asylum. Still, within the Pilot, Bulgaria exclusively tested accelerated procedures at a transit center close to the Bulgarian-Turkish border. Similarly, the Pilot project took place in Bulgaria behind closed doors. There was no clear reporting, no discussions and consultations, and no space for the civil society.

1. Committee on Civil Liberties, Justice and Home Affairs - Multimedia Centre (europa.eu) – 24.07.2024, https://multimedia.europarl.europa.eu/.
2. The European Commission launches a pilot project with Bulgaria, The European Commission launches a pilot project with BG (europa.eu).

A year later, the Pilot project became a Cooperation framework, signed between the EC and Bulgaria in March 2024. The Framework was among others framed as *"starting preparations to implement the New Pact on Migration and Asylum in Bulgaria and Romania, in particular regarding the national implementation plans"*[3]. In view of the launched Cooperation framework, Bulgaria could also apply for additional funding to *"extend or upgrade the existing border surveillance systems; purchase of means of transport including with thermo-vision capabilities; purchase of operating equipment such as movement detection cameras and thermo-vision cameras and the development or upgrades of systems"*. What the Framework however fails to mention is that Bulgaria should also upgrade its record on human rights. Bulgaria has a significant record on pushbacks. The country is a hotspot regarding migration flows as one of the longest and most complicated EU external land borders. It still remains a blind spot regarding its practices against migrants and refugees, human rights violations, occurring especially on the Bulgarian-Turkish border. The Pact foresees no leverage that could seek accountability and sanction human rights abuses. The new EU policy limits itself only to monitoring and producing reports, meaning that it foresees no independent enforcement mechanisms when it comes down to human rights violations. Instead, the border control becomes a maze of various national border guard units and Frontex. It makes is more difficult to identify and locate responsibility for human rights violations and pushbacks. The current border management blurs accountability. Frontex, for instance, is responsible only for Frontex officers. It conducts investigations only for internal purposes. Such investigations have no other consequences but providing "advice" to the agency. Let alone that Frontex practices have also been compromised. Human rights violations thus remain without any material consequence and the EU seems not to do anything about it. The power vacuum creates a comfort zone where the EU and Member States can pass the responsibility for human rights violations back and forth.

Policies of tightening the borders and complicating the access to the EU territory exacerbates the humanitarian situation of people on the move and spike the numbers of those who die on their way to Europe. The institutions abdicate from critical situations of searching and rescuing people, assisting people in grave physical condition, identifying dead bodies so they could be buried or returned to their relatives. No institution takes responsibility for the crisis leaving NGOs, hospitals, officers, working on the ground, to deal alone with the crisis.

There is also a striking disproportion between the planned budgets in border security and surveillance and the lack of investments in humanitarian and human rights work, integration programs, alternative pathways and policy models. The civil society remains skinny. Although the NGOs, human rights defenders, frontline workers are actually those who deal with the pressing humanitarian issues, given the current EU policy, human rights work seems to be left in the void.

3. Bulgaria and Romania strengthen cooperation on border and migration management, Cooperation on migration with Bulgaria and Romania (europa.eu).

The Pact agenda further involves the so-called *"embedding migration in international partnerships"*. This basically means externalizing the asylum procedures and refugee protection to the external borders and beyond, to third countries. This outsourcing strips the asylum off the EU human rights guarantees and laws, the oversight of the EU and Member States' institutions, and the jurisdiction of national and European courts. The external borders and third countries thus become the EU doorkeepers and sweepers.

The externalization of asylum procedure is however a re-decoration of old practices, which proved to be rather a liability for the EU. In 2008, the Italian prime minister Berlusconi and the Libyan president Gadaffi signed a migration deal. The EU validated the deal and financed it. Following the outbreak of Libya's conflict and Gadaffi's fall in 2011, the country plunged into a prolonged state of war, exacerbating existing migration challenges, and fostering a lucrative market for migrant exploitation and detention. At the end of 2015, the EU negotiated the deal with Turkey. The EU neighbor received approx. 3 billion EUR to keep the Syrian refugees away. In 2016, Turkey faced coup attempt and, today, it continues to be the world's largest refugee-hosting country. In 2022, the EU stroke a deal with Niger to block the Sub-Saharan route. A coup d'état occurred months later and the Nigerian government was overturned. Within the context of the Gaza war, the EU sealed 7.4 billion EUR deal with Egypt in May 2024 to avert another migration crisis. Today, the EU face pressure to revisit ties with Syrian leader Bashar Assad as calls to deport asylum seekers to Syria grow louder.

With the new Pact, the EU again pushes money to migration deals and border externalization, overlooking the clear lessons from the past where the security instability of its counterparts spilled over Europe and flawed its foreign policy. Arguing in favor of the Pact, the EU institutions and Member States played the game of security vs human rights as if human rights principles undermine Europe's security and represent a strategic burden. Some experts even voice the opinion that Europe owes refugees and asylum seekers security and not democratic standards. But for people who flee dictatorships, political persecution and oppression, democratic standards mean their survival and security. Similarly, for the EU, respect and high standards for human rights, upholding the EU values is an asset and an integral part of Europe's security. Without strong human rights the EU could well be exposed to liabilities and unsustainable polices with no endgame.

Part 1: The Screening

The New Asylum Pact introduces the so-called Screening Regulation[4] (**Regulation**). The screening of third-country nationals at the external borders will be the first step.

I. Who will be subject to screening?

The Regulation foresees screening for the following groups:

- third-country nationals, who have
  - crossed the external border in an unauthorised manner,
  - applied for international protection during border checks, or
  - been disembarked after a search and rescue operation, before they are referred to the appropriate procedure; and
  - been illegally staying within the territory of the Member States where there is no indication that those third-country nationals have been subject to controls at external borders, before they are referred to the appropriate procedure

The Regulations then specifies that **screening at the external border** will apply to

- all third-country nationals, regardless of whether they have made an application for international protection, and
- are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air;
- all third-country nationals who have made an application for international protection at external border crossing points or in transit zones and who do not possess a valid travel document;

Comment: Given the way the Regulation defines third-country nationals who will be subject to screening, it creates a kind of "funnel" pouring all third-country nationals, who irregularly crossed EU borders, through a preliminary screening. The Screening Regulation thus labels all new arrivals as unauthorised entrants without any distinction. It disregards the fact that the right to asylum overrides the entry requirements and should not be affected by an irregular or unlawful entry into a Member State. It slides away from the fundamental principle where asylum seekers are subject to special treatment with regard to entry and stay in the host country as confirmed by international and European law and jurisprudence. Article 6(5)(c) of

4. Regulation (EU) 2024/1356 of the European parliament and of the Council of 14 May 2024.

the Schengen Borders Code and Article 31 of the Geneva 1951 Refugee Convention assert asylum-seekers'right to seek protection regardless of their legal status or whether their arrival in the host country was through regular or irregular channels.

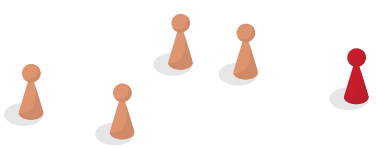
The Regulation also overlooks the reality that entering the EU without permission is usually the only option for third-country nationals to submit asylum application. For instance, Bulgaria has no official alternative pathways, where people could apply for international protection. Moreover, if they present themselves to the border checkpoints, especially certain nationalities like Afghanistan and Syria, are exposed to a real risk of being pushed back and not referred to the refugee registration centers.

II. The point of "no-entry"

During the screening, the persons subjected to these preliminary checks shall not be authorised to enter the territory of a Member State. Member States will lay down national provisions to ensure that third country nationals remain available to the authorities responsible for carrying out the screening in the designated locations, for the duration of the screening, to prevent any risk of absconding, potential threats to internal security resulting from such absconding or potential threats to public health resulting from such absconding.

Comment: The Regulation lays out the legal fiction of non-entry. It basically denies the authorized entry of third-country nationals on Member States' territory regardless of their physical presence until the screening is completed. The fiction of non-entry has already trickled into the practices of some Member States such as border controlling in transit zones at the airports. Then, EU states increasingly extended the concept to include land crossings.

By the Screening Regulation the fiction of non-entry officially made it into EU law. It will uniformly be applied at EU borders. It is however a deviation from the international principle of granting access to territory. According to the 1951 UN Refugee Convention, refugees have the right to seek asylum upon crossing an international border into another state. Under international law, host states are then required to provide certain protection and aid to asylum-seekers for the duration of the application and after qualifying for refugee status. The access to territory thus activates the states' obligations to provide access to an asylum procedure and the safeguards related to it. The Screening Regulation puts however these obligations on hold as the fiction of non-entry limits asylum-seekers' movement, access to rights and procedures, also suspending the access to asylum procedure. The explicit codification of the fiction of non-entry endorses again the concept that third-country nationals are first seen as irregular arrivals.



III. Requirements concerning the screening

1. Where?

The screening will be conducted at any adequate and appropriate location designated by each Member State, generally situated at or in proximity to the external borders or, alternatively, in other locations within its territory.

2. How long?

The screening at the external borders shall be carried out without delay and in any case be completed within seven days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point.

3. What does screening mean?

The screening will include the following elements:

1. a preliminary health check;
2. a preliminary vulnerability check;
3. identification or verification of identity;
4. the registration of biometric data;
5. a security check;
6. the filling out of a screening form;
7. referral to the appropriate procedure;

Comment: Carrying out screenings especially at the border region is just another manifestation of externalizing the asylum process and isolating it from urban and social infrastructure. Border regions are isolated areas, difficult to access, with no developed infrastructure and civil society capacities. Lawyers, NGOs, social workers, child protection officers, medical staff, psychologists do not have same access to the borders as in regular procedures.

For Bulgaria, it will particularly mean a total readjustment of its infrastructure and asylum system. In the last years, the Bulgarian Refugee Agency as the only national authority responsible for the asylum procedure, has struggled with heavy capacity shortages. It has been understaffed, underpaid and its director as a political figure appointed by the majority in the national assembly is heavily dependent on the political situation. Bulgaria will now need to arrange facilities, deploy medical and other type of trained qualified staff as well as relocate resources for operating the screening process. And the whole logistics will be paid by EU tax payers.

The screening at the external borders has to be completed within seven days. However, the Regulation does not foresee what happens if the authorities delay the screening e.g. due to capacities issues. This question is vital since third-country nationals should not leave the screening facilities. The EU overlooks the Greek experience where the authorities receive high numbers of people for very short time and are unable to timely process the checks, leading to situations of overcrowded facilities and people stuck in the screening.

Third-country nationals will also undergo medical checks. The million-dollar question is how Bulgaria will ensure the availability of qualified medical personnel in the screening facilities when the country generally struggles with grave shortage of healthcare workers. Carrying out health checks to new arrivals will definitely involve enormous work and proper facilities. Despite the recent crucial experience with Covid-19, the Regulation does not address the cases of outbreaks and pandemic. During the Covid-19 outbreak, the Bulgarian immigration detention centers were overloaded as people had to be quarantined. The EU again overlooks previous experiences and realities on the ground pushing money into fictions.

Third-country nationals subjected to screening at the external borders will undergo preliminary vulnerability check by specialised personnel of the screening authorities trained for that purpose. Now, identifying a victim of torture is a long process requiring highly professional and qualified work. Even in the regular procedures, Bulgarian officials apply substandard vulnerability checks. Asylum applications of women, suffered gender based violence in their home countries, are often dismissed on the ground that such issues have private resp. criminal nature and could not amount to international protection. The specific personal circumstances of people from the LGBTQ+ community are also often disregarded. Given this record, the question remains quite open what kind of standards will be applied to vulnerability checks during the screening.

The screening will then include identity verification, registration of biometric data and a security check. Data will be retrieved from numerous European and national databases as well as Interpol. The data complexity makes it almost impossible to trace where the data flows. There are no envisaged accountability mechanisms for data misuse by the authorities. There is no oversight ensuring that the data use during the screening aligns with any standards.

Moreover, security checks will be performed to verify if a person poses a threat to internal security. The Regulation is however unclear what exactly happens with a third-country national, where the checks ascertain that he/she poses a risk to internal security. Security checks affect fundamental rights of third-country nationals. Still, the Regulation provides no safeguards against arbitrariness.
In Bulgaria, security checks are currently carried out parallel to the asylum procedure. If the national intelligence services categorize a person as a security threat, the asylum application practically is dismissed. The dismissal could however be contested before a court, where the court could review the reasons for classifying someone as a security risk. The fact that Bulgarian courts had allowed the authorities to stretch the notion of national security beyond its natural meaning and had not double-checked authorities' assertions about security threats, triggered out a series of cases against Bulgaria before the European Court of Human Rights (**ECHR**). In numerous decisions, ECHR ruled that even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence. The individual must also be able to challenge the executive's assertion that national security is at stake.[5] Furthermore, ECHR finds that national

5. Case of Amie and others v. Bulgaria, case of Al-Nashif v. Bulgaria, Musa and Others v. Bulgaria.

security considerations could not overweigh the *principle of non-refoulement*[6]. This whole series of case law means that third-country nationals still have legal options to contest security checks assertions as inaccurate and unfounded.

Therefore, embedding the security checks now in the screening process would deprive third-country nationals of any possibility to seek judicial scrutiny of their classification as a security threat. The security checks thus remain in the bureaucratic hands without independent control regarding their accuracy and substance. The Regulation entails ambiguities, gaps opening the door to uncontrolled bureaucratic discretion.

IV. Access to Legal Aid

According to the Regulation, *"organisations and persons providing advice and counselling shall have effective access to third-country nationals during the screening. Member States may impose limits to such access by virtue of national law where such limits are objectively necessary for the security, public order or administrative management of a border crossing point or of a facility where the screening is carried out, provided that such access is not severely restricted or rendered impossible."*

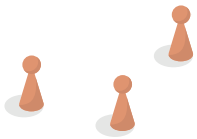
Comment: This clause affects the access to legal aid. By introducing preliminary steps to the asylum procedure and practically complicating it, the role of the access to legal aid becomes greater. It would be vital for the applicants to be informed and understand the essence of the screening procedure, what they can do about it, which procedure they would be channeled to, what would happen to them. The access to legal aid also provides insights into the standards the authorities apply. Instead, the Regulation enables authorities to limit the access to services on their sole discretion. Elastic definitions like *"objectively necessary for the security, public order or administrative management of a border crossing point or of a facility"* could well enable the screening authorities to impose arbitrary restrictions, leaving their discretion unchecked.

V. Applying detention

The Screening refers to detention on several accounts:

- Third-country nationals subject to the screening should remain available to the screening authorities during the screening. Member States should lay down in their national law provisions to ensure the presence of those third-country nationals during the screening in order to prevent absconding. Where it proves necessary and on the basis of an individual assessment of each case, Member States may detain a person subject to the screening, if other less coercive alternative measures cannot be applied effectively.

- The relevant rules on detention set out in Directive 2008/115/EC (the Return Directive) shall apply during the screening in respect of third-country nationals who have not made an application for international protection.



6. Auad vs. Bulgaria.

- Once the screening is completed or, at the latest, when it set time limits expire, third-country nationals subject to screening at the external borders who have not made an application for international protection will be referred to the authorities competent for applying procedures respecting returns and pre-removal detention.

Comment: The way the Regulation refers to detention raises serious concerns. First, the Regulation is unclear what it exactly means that third-country nationals "*should remain available during the screening*" and the authorities should ensure the "*presence*" of those people "*in order to prevent absconding*". The ambiguity of the provision could basically enable screening authorities to wield unlimited discretion and enforce arbitrary and indefinite confinement on third country nationals in the name of preventing their absconding.

Second, the Regulation fails to address how the time of the screening refers to the length of detention. In Bulgaria, for instance, immigration detention must not exceed 18 months. When third-country nationals undergo screening, while they are not allowed to leave the screening centers or they are even placed in detention-like conditions during the screening, and, they are eventually transferred to pre-removal detention, then, their overall detention could well exceed the maximum time of 18 months. The Regulation does not say if the screening period will be deducted from the detention length. The Regulation also fails to address the scenario where the screening happens to be delayed.

Third, the Regulation is unclear if a third-country national could appeal its detention during his/her screening. It merits again consideration that the access to legal aid is greatly exposed to restrictions by conducting screenings at the border regions where lawyers and courts do not have the same access or through, stipulated in the Regulation, uncontrolled unlimited discretion of the screening authorities.
Furthermore, depending on the screening outcomes, third-country nationals could be referred to pre-removal detention. Their referral could however not be legally contested because the Regulation treats the referrals as a mere technicality producing no legal consequences. The Regulation thus disables judicial control, while "referring" a person to pre-removal detention and return procedure seriously interferes with fundamental rights.

VI. Not an administrative decision but a referral?

The Regulation ends the screening with a referral. Given the screening outcome, third-country nationals will generally be referred:

- Either to return procedures under the conditions of pre-removal detention;
- or to an asylum procedure.

The screening outcome will also affect if an asylum application will be examined in a regular asylum procedure or an asylum border procedure. Third-country nationals and stateless persons, whose application have been rejected in an asylum border procedure, will be transferred to return border procedure. Specifically, to people in border procedures the fiction of "non-entry" will apply.

Where third-country nationals are to be relocated, they will be referred to the relevant authorities of the Member States.

Comment: In its information session of 23 May 2024[7], the European Commission underlined that the screening is not a procedure but just a technical process. This is basically a backdoor way to circumvent and disable judicial control because procedures and procedural decisions could only be subject to court scrutiny. Court decisions and actions could be enforceable, binding, produce material consequences. By disabling the judicial control, the Regulation practically shuts down prospects of seeking accountability and having leverage against substandard executive practices and misconduct.

Referring a person to return or regular asylum procedure substantially affect the status and the rights of that person. Defining the referral then as a "technicality" should definitely ring the alarm.

VII. What about fundamental rights during the screening?

Under the Regulation, Member States need to adopt relevant provisions to investigate allegations of failure to respect fundamental rights in relation to the screening. They will have to ensure, where appropriate, referral for the initiation of civil or criminal justice proceedings in cases of failure to respect or to enforce fundamental rights, in accordance with national law.

Each Member State shall provide for an independent monitoring with the following scope:

- monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening; and
- ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations

Comment: An independent monitoring mechanism just means producing tons of paperwork by blanket recommendations, reports and advice. The monitoring mechanism could solely monitor and has no power to sanction and seek accountability for human rights violations. Again, the Pact foresees no leverage to redress human rights abuses. It thus leaves a vacuum where the EU and Member States could pass responsibilities like pinballs.

The requirement for Member States to adopt provisions for investigating human rights violations within the screening could be seen as a red herring. It leaves the main question open why Member States should embark on another bureaucratic

7. European Commission and NGOs discuss the implementation of the Migration Pact, available at: European Commission and NGOs discuss the implementation of the Migration Pact - European Commission (europa.eu).

process to adopt provisions while the Regulation tends to disable judicial control, accountability mechanisms and provide authorities with unlimited discretion to obstruct access to legal aid. It raises the core issue what it means in real life to adopt provisions about investigation violations of fundamental rights when there is already criminal law, national, European and international binding rules. The whole approach in the Regulation seems to make the process of seeking accountability for human rights abuses more bureaucratic, complicated and unclear.

VIII. The special case of screening within the territory

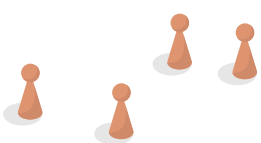
Under the Regulation, Member States will carry out the screening of third-country nationals illegally staying within their territory only where such third-country nationals have crossed an external border to enter the territory of the Member States in an unauthorised manner and have not already been subjected to the screening in a Member State. Member States shall lay down in their national law provisions to ensure that those third-country nationals remain available to the authorities responsible for carrying out the screening for the duration of the screening, to prevent any risk of absconding and potential threats to internal security resulting from such absconding.

Comment: The Regulation basically opens the door for authorities, on their sole discretion, to screen third-country nationals ad hoc within the territory and keep them in detention-like conditions again to prevent their absconding. The very question remains open if authorities decide to carry out screenings within the territory how they will make sure that third-country nationals have access to legal and other basic services. There are no enforcement mechanisms that could hold authorities' arbitrariness and misconduct accountable.

The Regulation absolutely fails to address the case of undocumented migrants. In Bulgaria, for instance, there are no regularization alternatives for long-term undocumented people, residing in the country for years or even grew up without legal status. This group lives in a legal limbo, with no access to basic rights and services, exposed to a real risk to be sent in pre-removal detention. With the Regulation's complete failure to address the situation of undocumented migrants, they could additionally be exposed to a risk of being apprehended for screening purposes.

The Regulation further fails to provide for safeguards and control mechanisms against practices of verifications on the basis of appearance, also referred to as "racial profiling", recently condemned by ECHR.[8] Several countries have already been using apprehension within the territory and applicants found it difficult to prove their legal presence and in some instances were expelled. The Regulation provision is vague and implementation details are unclear, leaving room for unchecked unlimited discretion of authorities and limited safeguards for individual to oppose unlawful or discriminatory practices.

8. e.g. Wa Balle v. Swittzerland, 2024.



IX. Guarantees for Minors

The Regulation refers to the following guarantees for minors:

- During the screening, the best interests of the child shall always be a primary consideration;
- During the screening, the minor shall be accompanied by, where present, an adult family member;
- Member States shall, as soon as possible, take measures to ensure that a representative or, where a representative has not been appointed, a person trained to safeguard the best interests and general wellbeing of the minor accompanies and assists the unaccompanied minor during the screening in a child-friendly and age-appropriate manner and in a language that he or she understands. The representative shall have the necessary skills and expertise, including regarding the treatment and specific needs of minors. The representative shall act in order to safeguard the best interests and general well-being of the minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations under this Regulation.
- The person in charge of accompanying and assisting an unaccompanied minor in accordance with the Regulation shall not be a person responsible for any elements of the screening, shall act independently and shall not receive orders either from persons responsible for the screening or from the screening authorities. Such persons shall perform their duties in accordance with the principle of the best interests of the child and shall have the necessary expertise and training to that end. In order to ensure the well-being and social development of the minor, that person shall be changed only when necessary.

Comment: The Regulation provision about children's guarantees seems to be quite blanket and insufficient. The following primary issues arise:

- How safeguards for minors will practically be enforced within the screening process;
- How the failure to comply with the best interests of the child and the guarantees for children will be accounted for;
- How the safety of children will be ensured within the screening facilities;
- Given that screening facilities are likely be located at the border regions how children's effective access to legal and social services, psychological support would be ensured;
- Whose responsibility will be to supervise the accurate recording of children's age;
- What happens with children if the screening authorities delay their screening process; who will exercise oversight that children do not end up in de facto detention;

In Bulgaria, especially unaccompanied minors receive a lawyer appointed as their special representative. This kind of special representation is often handled in a very formalistic manner and only serves the paperwork. There also a great deal of issues with the so-called safe zones, where unaccompanied minors should be accommodated within the premises of the refugee camps. Without effective oversight, children often leave these zones alone to continue their dangerous

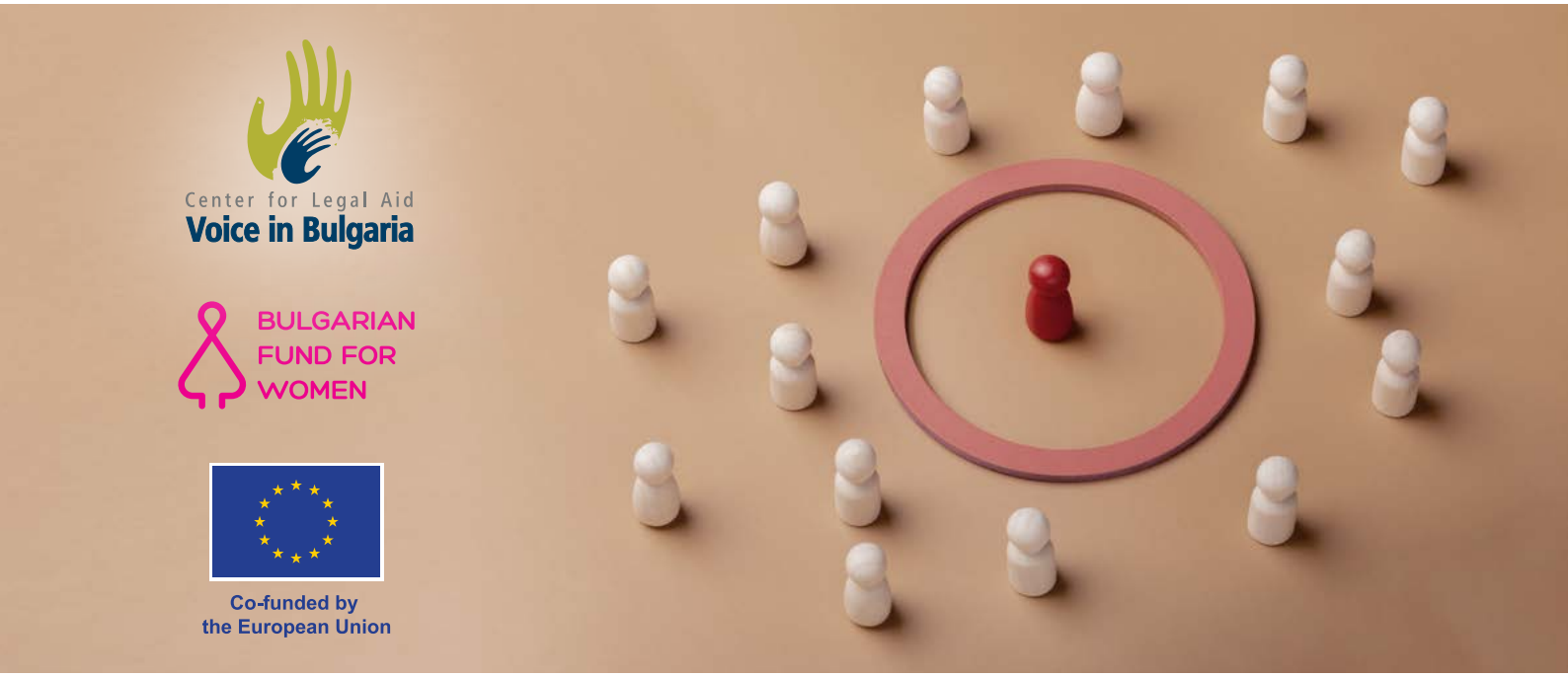
journey to West Europe with the next smuggler. In Bulgaria, there are very limited options where children could be accommodated in alternative reception facilities or foster care.

Instead of addressing the current gaps and putting higher clear requirements on Member States to effectively enforce children's safeguards, the Regulation lowers the bar, leaving particularly unaccompanied minors to face risk of uncertainties and unenforceable guarantees, substandard procedures, inadequate accommodation, no access to external professional services, care and assistance.

X. Conclusions

The Screening regulation raise the following major concerns:

- Enabling unlimited unchecked discretion of screening authorities;
- Disabling judicial control, legal remedies and enforceable accountability mechanisms, while the screening could substantially affect fundamental rights;
- Risk of obstructing or blocking access to legal aid and other basic services;
- Insufficient safeguards for children;
- Ambiguities affording screening authorities unfettered powers to apply immigration detention;
- Risks of ad hoc arbitrary screenings within the territory;



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