Denials of Existence

Discursive Strategies Legitimising the ›Fiction of Non-Entry‹

HANNAH SOMMER

Abstract: The Screening Regulation entailing a ›pre-entry screening‹ at the EU's external borders is part of the reform of the Common European Asylum System concluded in 2024. This article analyses the discursive strategies within the initial Screening Proposal to examine how the screening procedure is legitimised. Furthermore, the analysis engages with the different institutional positions regarding the question of entry to the EU territory. I then address key aspects of the proposal that remain part of the final legislative text, as well as relevant changes during the reform process. Moreover, I discuss how the screening procedure affects individuals' fundamental rights, with a focus on the ›fiction of non-entry‹: a person physically present on a country's territory is considered to be legally present only after official authorisation. This leads to a differential legal inexistence that I argue needs to be understood as part of the socio-political imaginations that feature implicitly in the proposal and condemn people to »political inexistence« (Di Cesare 2021: 155, translation HS). Finally, I argue that the analysed discursive legitimisations contribute to a normalisation of these denials of existence.

Keywords: reform of the Common European Asylum System, ›fiction of non-entry‹, Discourse Historical Approach (DHA), forms of inexistence, colonial continuities

> »The utilitarian rationale of migration management aims at enabling and preventing mobility at the same time [...]. The border is therefore conceived as a filter that allows ›useful‹ or ›desirable‹ people to pass while denying access to all others.«
> —Buckel et al. 2017: 32

This article takes this perspective of the border as filter as a starting point and asks about the underlying mechanisms of this filter. The context of the following investigation is the EU Commission's New Pact on Migration and Asylum[1], which was published in 2020 and comprises reform proposals for the Common European Asylum System. Specifically, the focus of this analysis lies on one of the legislative

1 | From here on referred to as »New Pact«.

proposals within the New Pact, COM (2020) 612 of 23 September 2020: »Proposal for a Regulation introducing a screening of third country nationals at the external borders« (European Commission 2020b).[2] By taking the example of the Screening Regulation, this article contributes to the literature on how the reform proposals of the New Pact include measures which impact an individual's access to the right to asylum.

First, the article briefly presents the context of the reform of the Common European Asylum System and the content of the proposal for a Screening Regulation, together with its explicitly stated objectives. Secondly, I analyse the proposal with a focus on its underlying discursive strategies in drawing on elements of the Discourse-Historical Approach (DHA). In this way, I address the question of what underlying filtering mechanisms the proposal builds on and how they are discursively legitimised.

In addition to the analysis of the discursive strategies in the EU Commission's proposal, I also discuss the different institutional positions (EU Commission, EU Parliament, Council of the EU) regarding the question of entry to the territory—especially, the role of the ›fiction of non-entry‹—by juxtaposing the relevant legal article. In this way, it becomes evident that the mandatory ›fiction of non-entry‹ as already suggested by the Commission's proposal can also be found in the final legal text of the new regulation adopted in 2024. The comparison between the different institutional versions of the Screening Regulation shows how the Commission's proposal already contains key aspects of the new regulation. Yet, my analysis emphasises that there are also changes between the Commission's initial proposal and the final legislative version of the Screening Regulation. For example, it is now explicitly enshrined in the final legislative text that during the screening procedure people have to »remain available to the authorities« and the related stated reasons of »internal security« and »public health« (OJ L, 2024/1356: 14). Shedding light on the transformations of the relevant article in the different versions of the Screening Regulation shows that the Council's position with its proliferation of conditions of de facto detention of asylum seekers has ultimately prevailed.

While it is necessary to examine the discursive strategies to grasp the functioning of the border's filtering mechanisms, it is equally important to understand the legal implications of the proposal and lastly, the new regulation. Therefore, drawing on secondary sources, I present a legal assessment of the proposal and likely con-

2 | It is important to emphasize that the analysis of discursive strategies here regards the initial proposal for a Screening Regulation by the EU Commission and not the final legislative text that has been published in the Official Journal of the EU (OJ L, 2024/1356, 22.5.2024) in the meantime.

sequences of its implementation for the people affected. Here, the focus is on the core element of the proposal: the legal principle of the ›fiction of non-entry‹, which considers a person physically present on a territory to *not* have entered the territory legally until officially authorised.

Furthermore, the implications of the ›fiction of non-entry‹ are related to the broader question of what kinds of geographical and socio-political imaginations the proposal for a Screening Regulation relies on. I argue that these imaginaries, together with the filtering mechanisms, condemn people to forms of denials of existence. Here, the article draws on Di Cesare's notion of »political inexistence« (Di Cesare 2021: 155, translation HS), which relates to the ›legal inexistence‹ resulting from the application of the ›fiction of non-entry‹ within the screening procedure. Finally, I argue that the discursive legitimisations and legal changes put forward in the Screening Regulation contribute to a normalisation of these denials of existence, rendering it more difficult to recognise them as such, and see the detrimental consequences they have for the lives of people concerned.

The Reform of the Common European Asylum System

A reform of the Common European Asylum System was first proposed by the EU Commission under President Juncker. In 2016, the EU Commission presented the reform proposals, but in the years that followed, no agreements could be found, and the process was blocked. In 2020, the EU Commission under President von der Leyen started a new attempt at the reform, the »New Pact«, comprising several legislative proposals and recommendations. Subsequently, the European Parliament and the Council of the EU reached their respective positions on each of the proposals. In spring 2023, German minister of the Interior Nancy Faeser spoke of a »historic momentum« regarding the negotiations, with one of the main aims of the reform being to primarily process asylum claims at the EU's external borders (Faeser 2023a). Similarly, when the negotiations between the three institutional actors reached a political agreement in December 2023, European Parliament President Roberta Metsola spoke of a »historic day« (Metsola 2023). On April 10th 2024, the reform was officially adopted by the European Parliament, followed by the formal adoption by the Council of the EU.

Among others, the European Council on Refugees and Exiles has criticised the EU asylum law reforms, claiming they reflect underlying strategies to limit access to protection for refugees (Woollard 2024). Analysing how these mechanisms limit access

to protection is crucial to understanding how the reform of the Common European Asylum System affects the right to asylum. It is important to recognise that access to a *substantive* asylum procedure is at stake. It is therefore necessary to examine the moment when the person seeking protection comes into contact with the official authorities to lodge an asylum application. This encounter is governed by the Screening Regulation. For this purpose, the proposal for a Screening Regulation prominently features a »pre-entry screening« (European Commission 2020b: 1), which determines the procedures persons should be subjected to at the external borders of the EU and plays a crucial role regarding access to the right to asylum. At this stage, the analysis focuses on the initial proposal while later, I address what has now become law as a result of the adopted reform.

The Proposal for a Screening Regulation: scope and objectives

> »We will ensure reliable identification, registration and screening of people already at the EU's external borders«
> — Faeser 2023b

The Screening Regulation proposes to introduce a »pre-entry screening applicable to all third-country nationals who cross the external border without authorisation or after disembarkation, following a search and rescue operation« (European Commission 2020b: 1). The proposal specifically states that this should include people applying for international protection. This screening procedure would serve as a sort of filtering mechanism, allocating people to different kinds of subsequent administrative procedures to determine their legal status. Therefore, it plays a crucial role in determining the subsequent procedures and lastly, for the processing and outcome of asylum applications.

According to the proposal, the suggested screening procedure should entail the following elements: a health and vulnerability check, an identity check (against European databases), registration of biometric data and a security check (see ibid.: 2). The screening should be completed within five days, but can be extended to ten days (Article 6 (3)).[3] The explicit objectives of the proposed screening are summarised in the Explanatory Memorandum as: »Identification of third-country nationals who do

3 | The numbers of the articles here refer to the initial EU Commission's proposal and have changed in the final legislative texts (see footnote 2).

not fulfil entry conditions [...]; clarifying that entry is not authorised [to them]; [...] channelling [them] to the appropriate procedures [...]; screening also of third-country nationals who entered the territory of the Member States without authorisation and who are apprehended within their territories« (ibid.: 2).

The different kinds of procedures mentioned are either a direct ›return procedure‹ or, if people make an asylum claim, allocation to the ›normal asylum procedure‹, an ›accelerated procedure‹, the ›asylum border procedure‹ or ›relocation‹ to another member state (see ibid.). To determine allocation to these different further procedures, at the end of the screening procedure, there will be a »debriefing form« containing the information gathered during the screening (ibid.: 7; also, Article 13). This means there are three possible outcomes of the screening procedure: first, allocation to a return procedure; second, allocation to an asylum procedure; or third, refusal of entry (see Jakulevičienė 2020). It is important to point out here that there is no option of judicial review regarding the decision as to which kind of procedure a person is allocated to (see European Commission 2020b: 12f.); only the decision of this subsequent procedure (e.g. the outcome of the border asylum procedure) can then be challenged legally. This is justified by presenting the screening as a »mere information-gathering stage [...] which does not entail any decision affecting the rights of the person concerned (...) « (ibid.: 12).

Later on, the document elaborates what purpose the Screening should serve: to prevent the onward movement of people. Thereby its main aim is to control the movements of people, »ensuring that entry is not authorised to third-country nationals whose status is not confirmed yet *and thus help prevent their absconding*« (ibid.: 39, emphasis HS). A key element of the proposal is stated in Article 4: »During the screening, the person referred to in Article 3, paragraphs 1 and 2 shall not be authorised to enter the territory of a Member State« (ibid.: 27). This corresponds to the legal principle of the ›fiction of non-entry‹: »a legal fiction in which states claim that the arrival of a third-country national only occurs once she has been legally approved to enter the state by authorised border officers, regardless of her physical presence in the territory« (Soderstrom 2022: 2). This is the crucial element of the proposal that will later be discussed, both with regard to its legal implications and to its broader implications regarding different kinds of denials of existence.

In the next section, I will analyse the text-immanent logics within the proposal for a Screening Regulation by drawing on the Discourse-Historical Approach (DHA) of Critical Discourse Studies. The proposal will be analysed with a focus on its underlying discursive strategies. This part of the analysis helps lay bare the legitimisation strategies that the proposal builds on to motivate implementation of the screening procedure. The Discourse-Historical Approach is particularly suited in this regard as

it has an explicit focus on the analysis of argumentation strategies (see Reisigl/Wodak 2016).[4]

METHODOLOGY AND DATA

Before presenting the Discourse-Historical Approach (DHA), a short general note about the methodology and the empirical material is necessary. The first draft of this article was finished in November 2023, when the negotiations between the EU Commission, the EU Parliament and the Council of the EU were still ongoing, the political agreement had not been reached by that time and therefore, no final legislative text existed yet. The initial focus was therefore on the analysis of the discursive strategies in the EU Commission's proposal for a Screening Regulation, but some intertextual comparisons with the European Parliament's position on the Screening Regulation were already considered.

In its final version, in addition to the analysis of the discursive strategies in the EU Commission's proposal, the present article also discusses the different versions of the relevant legal article in the respective institutional positions on the Screening Regulation regarding the question of entry to the territory, specifically, the role of the ›fiction of non-entry‹. In this way, elements that the EU Parliament's position aimed at changing in this respect are compared to the initial proposal. I show how the Council's position prevailed in the final legislative text. Despite the methodological challenges associated with such a concurrent analysis, this allows me to not only discuss the initial proposals or the results of the reform, but to emphasise that there were processes of political negotiations leading to its final legislative form and shedding light on the processes of the production of discourse via legislation.

THE DISCOURSE-HISTORICAL APPROACH (DHA)

The Discourse-Historical Approach is a specific approach of Critical Discourse Studies that emphasises the historical embeddedness of a discourse and the social reality it expresses and co-constructs. Beyond explicit focus on the use of language, the DHA aims to include several interrelated context-dimensions (historical, polit-

4 | For other approaches of Critical Discourse Studies applied to jurisprudence and legal texts see Buckel (2013).

ical, sociological, psychological) in the analysis of the object under investigation (see Krzyżanowski/Wodak 2009). Critical Discourse Studies understand written and oral language as a form of social practice (see Fairclough/Wodak 1997) and assume that there is a dialectical relationship between discourses and social practices: it understands ›discourse‹ to be both socially *constituted* and socially *constitutive* (see Krzyżanowski/Wodak 2009). Discursive practices are considered to be socially constitutive in that they contribute to producing social conditions (e.g. the construction of collective subjects), and that they play a role in perpetuating, transforming or destructing the social status quo (ibid.). ›Discourse‹ is distinguished from ›text‹, the latter being considered as part of discourses that can be assigned to different genres. ›Genre‹ is defined as »a socially conventionalized type and pattern of communication that fulfils a specific social purpose in a specific social context« (Reisigl/Wodak 2016: 27). For the analysis at hand, this means considering that the kind of text that is investigated is a legislative proposal being communicated from the European Commission to the two EU-Co-legislators, the European Parliament and the Council of the EU. In addition to ›discourse‹, ›text‹, and ›genre‹, the DHA is based on a concept of ›context‹ that comprises »the immediate language [...], the intertextual and interdiscursive relationship between utterances, texts, genres, and discourses [...]; the language external social/sociological variables and institutional frames of a specific situational context; and the broader socio-political and historical context« (Krzyżanowski/Wodak 2009: 21).

As an analysis that takes all these elements equally into account is beyond the scope of this contribution, the focus here will be on the discursive strategies in the initial proposal for a Screening Regulation. According to the DHA, there are five discursive strategies when analysing identity politics, self- and other assessments (see table 1). Strategy here means a »more or less intentional plan of practice (including discursive practice) adopted to achieve a particular social, political, psychological or linguistic goal« (Reisigl/Wodak 2016: 33).

Regarding the discursive strategies, the analysis here specifically focuses on the question of how persons are named and referred to in the document linguistically (Nomination Strategy), what characteristics, qualities and features are attributed to them (Predication Strategy) and by what arguments specific social groups try to justify and legitimise the inclusion/exclusion of others (Argumentation Strategy). I have focused on these three strategies because the main aim here is delineating the legitimisation strategies built by the proposal to motivate the need for introducing the screening procedure.

Discursive Strategies	**Objectives**	**Devices**
Referential/ Nomination	Construction of in-groups and out-groups	Membership categorization; Biological, naturalizing and depersonalizing metaphors and metonymies; Synecdoches (pars pro toto, totum pro parte)
Predication	Labelling social actors more or less positively or negatively, deprecatorily or appreciatively	Stereotypical, evaluative attributions of negative or positive traits; Implicit and explicit predicates
Argumentation	Justification of negative or positive attributions	Topoi used to justify political inclusion or exclusion, discrimination or preferential treatment
Perspectivization	Expressing involvement; Positioning speaker's point of view	Reporting, description, narration or quotation of (discriminatory) events and utterances
Intensification, mitigation	Modifying the epistemic status of a proposition	Intensifying or mitigating the illocutionary force of (discriminatory) utterances

Table 1: Discursive Strategies according to Krzyżanowski/Wodak (2009).

As intertextuality plays a crucial role for an analysis drawing on the DHA, intertextual relationships will be considered. Yet, as the scope of this contribution is limited, the focus here is mainly on the amendments to the draft act by the rapporteur of the European Parliament. These amendments will be referred to as they suggest changes that can be regarded as a contrasting scheme to the EU Commission's proposal, and in this way the specificity of the latter's version of the Screening Regulation will be made clear. As mentioned above, in the section on methodology and data, the different versions of the relevant legal article in the respective institutional positions on the Screening Regulation will be compared regarding the question of entry to the territory, respectively, the role of the ›fiction of non-entry‹.

In the section on the legal implications of the screening procedure, the »Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU«[5] will be referred to. Within this so-called Asylum Procedure Regulation, the new rules regarding border procedures are established, and the New Pact proposes that during both the screening and the border procedures the ›fiction of non-entry‹ should apply. Thus, the two proposals are specifically connected through this topic.

The DHA applied to the reform proposals of the New Pact

On the level of EU institutions and also in public debates, the need to reform the common European Asylum System is often argued for in reference to the dominant framing of a ›migration crisis‹ or ›refugee crisis‹ which in recent years mainly referred to 2015–16. This reference can be found in the document on the communication on the New Pact[6], but was also invoked since then in relation to other ›crisis situations‹ (e.g. situation at the border between Poland and Belarus in 2021).[7] In contrast to this dominant framing, there have been other ways of referring to the arrival

5 | From here on referred to Asylum Procedure Regulation.

6 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum; COM (2020) 609 final (European Commission 2020a)

7 | However, the process towards a reform of the Common European Asylum System was already under way before the ›crisis‹ in the summer of 2015 as for example becomes evident with the EU Commission's Communication on a European Agenda on Migration (COM (2015)

of people to European countries in these years: e.g. »long summer of migration« (Kasparek/Speer 2015); »crisis of European border and migration policy« (Buckel et al. 2017); »refugee protection crisis« (van Houtum/Bueno Lacy 2020) and »rule of law crisis« (Woollard 2022). Here, the use of the notion of crisis is used differently according to which perspectives are adopted: while the latter formulations put the problematisation on the institutional and governmental side, the former presenting the level of EU institutions adopts the perspective of the state—or a union of states—that is conceived of as an entity that gets confronted with the ›phenomenon of migration‹ and therefore needs ›to deal‹ with it.[8]

The concept of crisis can thereby be understood to fulfil a specific function: »This frame reproduces a division of labour, according to which migrants and refugees play a passive role while states, governments, and European institutions are the active agents, called upon to intervene and solve the ›crisis‹. This is part and parcel of a process through which the ›crisis‹ becomes a governmental category and device.« (Bojadžijev/Mezzadra 2015). Thus, the terminology used does not merely describe a social situation but also actively constructs it as— depending on the perspective and accordingly what is defined as the problem—respectively different ›solutions‹ are put forward which can be seen on the level of the EU policy proposals. Furthermore, it needs to be stressed that there are power differentials between different perspectives and therefore, different framings have more or less power to define a social situation. This means understanding power as »an asymmetric relationship among social actors who have different social positions or who belong to different social groups« (Reisigl/Wodak 2016: 26).

As Rheindorf/Wodak (2018) put it, there is »privileged access to (the production of) discourse via the media, legislation, and so forth« (ibid.: 15). Accordingly, as the EU Commission is the institution on the EU level that has the mandate for legislative initiative, the legislative proposals by the EU Commission need to be considered to have such privileged access to the production of discourse, here via legislation. Furthermore, it is important to mention that the reform suggests regulations which are immediately applicable on a national level. This contrasts with *directives*, where

240 final) presented in May 2015, followed by the EU Commission's report on a reform of the Common European Asylum System (COM (2016) 197 final).

8 | It is important to differentiate that also on the EU level, people seeking protection are not always described with reference to the notion of crisis. Regarding people fleeing from Ukraine after the Russian invasion in February 2022, a year later, European Commissioner for Home Affairs Ylva Johansson explicitly stated that this »may not even be a crisis«, mainly due to the activation of the Temporary Protection Directive (Genovese 2023).

Member States have more leeway in terms of the exact implementation of the laws. Thereby, the EU Commission exercises considerable power through the legislative proposals put forward to reform the conditions under which people can(not) seek asylum in the European Union. Among the different proposals, the Screening Regulation is the one that regulates the beginning of the administrative procedures that people are obliged to go through if they do not have prior authorisation to enter the EU at its external borders.

Discursive strategies within the Proposal for a Screening Regulation

Part of taking the historical embeddedness of a discourse into account is the postulation that there are decisive events that affect the discourse in relevant ways (see Rheindorf/Wodak 2018). As already mentioned in relation to the notion of ›crisis‹, the years 2015 and 2016 need to be understood as such a decisive discursive event, which is continuously referred to in the documents pertaining to the 2020 reform proposals of the Common European Asylum System. In the Explanatory Memorandum of the proposal for a Screening Regulation it is referred to in the following way:

> »The available data demonstrate that the arrival of third-country nationals with clear international protection needs as observed in 2015–2016 has been partly replaced by mixed arrivals of persons. It is therefore important to develop a new effective process allowing for better management of mixed migration flows.« (European Commission 2020b: 1)

The reference to these years is the starting point for the argumentative strategy realised here: the claim is that, where those in 2015–2016 arrived »with clear international protection needs« (ibid.), now, the ones needing protection arrive at the same time as ›others‹ who are »unlikely to receive protection in the EU« (ibid.).[9] This also needs to be understood as a nomination strategy that constructs an in-group and an out-group in several ways: »third-country nationals« (ibid.) are mentioned, thereby implicitly constructing an in-group of EU-nationals as well as an in-group of nationals. However, another specification of these »third-country nationals« as the ones

9 | This portrayal of the situation however, is somewhat contradictory to the dominant political statement of ›2015 must not be repeated‹ suggesting that also back then, the arrival of people was considered to be ›a problem to be managed‹, no matter their protection needs.

that shall be subject to the screening procedure is then made, namely those »not fulfilling the entry conditions« (ibid.). Furthermore, among these, it is suggested that now there is a situation with »mixed arrivals of persons« (ibid.) where it is both possible and necessary to distinguish between »those with clear international protection needs« and »those who are unlikely to receive protection in the EU« (ibid.). Here, the question arises on what basis this distinction can be made, especially if this should happen »at the earliest stage possible« (ibid.) which means here, before people are subject to a *substantive* assessment of their individual asylum claim. So, in a way, the proposal builds on a foregone conclusion that some people are ›unlikely to receive protection‹ before their claims are even substantially assessed.

This last way of distinguishing between different groups of people works by reference to the percentage of recognition rates within the context of the asylum procedure. In a footnote, it is remarked that »the share of migrants arriving from countries with recognition rates lower than 25 percent has risen from 14 percent in 2015 to 57 percent in 2018« (ibid.). Picking two years and their respective recognition rates in comparison, suggests there is a trend of increasing people arriving who do not have protection needs. This backs up the claim that there is a need to »develop a new effective process« (ibid.). In this way, a call for more restrictive measures is justified that can still be aligned with the narrative of ›helping those in need‹. In so doing, the inclusion of some parallel to the exclusion of others is justified. Here, the discursive strategies of nomination, predication and argumentation work together.

In terms of referring to recognition rates, several aspects of this example of a »logic of numbers« (Castles 2017: 1541) need to be scrutinized. First, it is important to bear in mind that it is possible to reject this kind of logic in principle in the first place. However, even if one follows this logic, it is important to highlight that which numbers are presented and how influences how the situation can be evaluated: in the EU Legislation in Progress Briefing on the Screening Proposal, the same numbers for 2015 and 2018 are mentioned, but also, a decrease to 26 percent in 2019 (see Dumbrava 2022: 3). In adding this number to the enumeration, the urgency for ›a need to act‹ in the face of the otherwise suggested ›increasing trend‹ is alleviated. Secondly, arguments whose persuasiveness relies on invoking recognition rates need to be dealt with cautiously, because there are several limitations to it as the European Council on Exiles and Refugees (ECRE) explicates: first, recognition rates usually focus on the first instance of decision-making, but they are actually significantly challenged on appeal. Thus, the first instance rates cannot be considered as a reliable indicator of protection needs. Secondly, in the Eurostat statistics, negative decisions include both in-merit decisions and inadmissibility decisions (even though Dublin decisions are not included here)—the latter meaning that no substantive assessment of the asylum

claim has been made, therefore again limiting the significance in evaluating protection needs based on these figures. Lastly, depending on the country where the asylum application is filed, there is a huge difference in obtaining a protection status; for example, for people from Afghanistan, in 2019 the recognition rate was at 93.8 percent in Italy and 4.1 percent in Bulgaria. Thus, a low recognition rate does not necessarily justify the conclusion that a person is not in need of protection (see ECRE 2020). However, it is important to note that the statement in the proposal is itself mitigated by the word »partly« which is however not further specified: »the arrival of third-country nationals with clear international protection needs as observed in 2015–2016 has been *partly* replaced by mixed arrivals of persons« (European Commission 2020b: 1, emphasis HS). Nevertheless, the portrayal of the situation within the framing of a logics of numbers is then followed by a conclusive statement: »It is *therefore* important to develop a new effective process allowing for better management of mixed migration flows« (ibid., emphasis HS).

In addition to this argumentative strategy, the strategy of predication and nomination at work here needs further examination: it suggests an association of the arrival of people with a natural phenomenon of a ›flow‹. This is a way of »persuasively representing ›immigration‹ or ›migrants‹ as something that has to be ›dammed‹, ›stemmed‹, or ›held back‹« (Krzyżanowski/Wodak 2009: 19), which reproduces a typical metaphor in xenophobic and racist discourses of »migration as natural disaster« (ibid.: 22). Thus, beyond presenting the people concerned as not in need of protection, they are furthermore discursively constructed as a threat through this kind of linguistic representation. This at first implicit construction as a threat through the metaphor of a ›flow‹ is then made explicit in terms of the notion of »internal security«: the element of the screening that regards the security check should »verify that the person does not constitute a threat to internal security» (European Commission 2020b: 2). Importantly, the Screening is intended to not only be applicable at the EU's external borders, but also for »third country nationals who entered the territory of the Member States without authorisation and who are apprehended within their territories« (ibid.).[10] Here, the notion of ›apprehension‹ further associates the movement of people across borders with a criminal activity. With this linguistic representation,

10 | The European Parliament's position on this aspect of the proposal states that the screening procedure cannot be applied to people »found« on the territory (Woollard 2023). During the final trilogue negotiations in December 2023, however, the EU Parliament's attempt to achieve a deletion of Article 5 (Screening within the territory) was not successful and screening within the territory prevails in the final legislative text (Article 7 OJ L, 2024/1356, 22.5.2024).

the movement of people gets criminalised.[11] This obfuscates the fact that, according to the Geneva Refugee Convention (UNHCR 1951), even if a person enters a country without prior authorisation this should not result in penalties if the person seeking international protection avails themselves to the authorities upon arrival (Article 31 Geneva Refugee Convention).

Furthermore, it is stated that the screening process within a Member State's territory »should compensate for the fact that such persons presumably *managed to avoid border checks* upon entry into the European Union and Schengen area« (European Commission 2020b: 6, emphasis HS). Here, the persons concerned are portrayed as active agents who are presumably circumventing the entry rules. What is omitted in this presentation of the issue is the fact that it is often precisely people fleeing from war and conflict-ridden regions who *because* of their country of origin and/or citizenship cannot enter European territory without a visa and—as visa processes are usually highly restrictive, complex and time-consuming—often do not have another option other than to enter ›irregularly‹.[12] Thus, here it is important to point out how the irregularity arises in the first place: because of the entry rules that are established through the EU visa system. Furthermore, it is striking that at the beginning of the document, the persons concerned are presented passively—as subjects that need to be channelled »to the appropriate procedure« (ibid.: 2)—to then later presented as actively avoiding border checks.[13]

11 | Even if after entering the Schengen area the stay is partly legalized in the screening, the relation between irregularisation and criminalisation of movements is significant here.

12 | According to UNHCR figures (UNHCR 2022), two thirds of all refugees worldwide come from just five countries from which only one has visa-free access to the Schengen states. This drastically shows that especially people who are in need of protection by the United Nations High Commissioner for Refugees are the ones who have very restricted possibilities of legal pathways for seeking international protection in Europe and are simultaneously to a large extent in the dominant European discourse related to the notion of ›illegal migration‹ or ›irregular migration‹.

13 | Here, we are not concerned with the question whether people try to avoid border controls. We are interested in the way people are discursively constructed in order to legitimise the proposed measures.

INTERTEXTUAL COMPARISONS BETWEEN DIFFERENT VERSIONS OF THE SCREENING REGULATION

At this point, the comparison with the amendments by the rapporteur of the European Parliament serves as a way of highlighting how the wording is decisive here in terms of how the topic at stake is discursively constructed. There are two versions by the rapporteur: a draft report and a final report. In the draft report, the sentence is changed in the following way: »address situations where third-country nationals *have not been subject* to border checks at the external borders« (European Parliament 2021: 6, emphasis in original). This framing does not associate the movement with criminal behaviour, but merely states that people have not been controlled at the external borders. However, in the final report, the sentence is changed to: »address situations where third-country nationals *are apprehended in connection with an irregular crossing* of the external borders« (European Parliament 2023: 6, emphasis in original). This framing of »irregular crossing« comes closer to the initial EU Commission's phrasing—»should address situations where third-country nationals manage to avoid border checks at the external borders« (European Commission 2020b: 16)—as it also invokes an association of the movements of the people concerned with criminal activity.

Furthermore, considering how the different versions of the regulation deal with the topic of (official) entry into the European Union and Schengen area, in the following section, I will discuss the different institutional positions (EU Commission, EU Parliament, Council of the EU), and the draft agreement and the final legislative text of Article 4 (respective 6) of the Screening Regulation (see table 2). In the EU Commission's proposal, the Council of the EU's General Approach, the Draft Agreement and also the Official Journal of the EU, the heading of Article 4 is formulated as »Authorisation to enter the territory of a Member State«, whereas the EU Parliament position's heading is »Entry into the territory of a Member State«. This already reveals that the element of authorisation plays a crucial role which can then also be seen in the differences in content. In contrast to the initial EU Commission's proposal, the EU Parliament's position entailed a »may«-clause: »During the screening, Member States may consider the persons [...] as not having entered the territory of a Member State« (European Parliament 2023: 46). Thus, according to this position, the ›fiction of non-entry‹ would not have been made mandatory. Yet, by comparing the different versions, it becomes clear that the agreement reached corresponds to the Council's position and that this adds to the mandatory ›fiction of non-entry‹ of the Commission's Proposal the element of ensuring that people »shall remain at the disposal of the competent authorities« (see table 2). The final legislative text is almost identi-

EU Commission's Proposal	EU Parliament Mandate	Council of EU General Approach	Draft Agreement	Official Journal of EU
Article 4 Authorisation to enter the territory of a Member State	Article 4 ~~*Authorisation to enter*~~***Entry into*** the territory of a Member State	Article 4 Authorisation to enter the territory of a Member State		Article 6 Authorisation to enter the territory of a Member State
1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2 shall not be authorised to enter the territory of a Member State.	1. During the screening, ***Member States may consider*** the persons referred to in Article 3, paragraphs 1 and 2 ~~*shall not be authorised to enter*~~***as not having entered*** the territory of a Member State.	1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2, shall not be authorised to enter the territory of a Member State. **Member States shall lay down in their national law provisions to ensure that persons referred to in Article 3, paragraphs 1 and 2 shall remain at the disposal of the competent authorities in the locations as referred to in Article 6, for the duration of the screening to prevent any risk of absconding, potential resulting security risks or public health risks.**	1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2, shall not be authorised to enter the territory of a Member State. ***Member States shall lay down in their national law provisions to ensure that persons referred to in Article 3, paragraphs 1 and 2 shall remain at the disposal of the competent authorities in the locations as referred to in Article 6, for the duration of the screening to prevent any risk of absconding, potential resulting threats to internal security or public health risks.***	During the screening, the persons referred to in Article 5(1) and (2) shall not be authorised to enter the territory of a Member State. Member States shall lay down in their national law provisions to ensure that persons referred to in Article 5 (1) and (2) remain available to the authorities responsible for carrying out the screening in the locations as referred to in Article 8, 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.

Table 2: Different institutional versions of Art. 4 (respective 6) of the Screening Regulation (Source: 4 Column Document of 5 February 2024, emphasis and deletions in original; amended by HS to include the final legislative text of 14 May 2024 as laid down in the Official Journal of the EU. The document is available to the author and was obtained during the research process).

cal to the Draft Agreement (and thereby, the Council's position), but the phrasing is slightly changed to »shall remain available to the authorities responsible for carrying out the screening« (ibid). Furthermore, in the Council's position (lastly, also in the final legislative text), a justification for the proposed measures is added: the measures are meant to »prevent any risk of absconding« and »absconding« is associated with »threats to internal security and public health« (ibid). Thus, the proposed measures are argued for by reference to the topics of security and public health risks.

The direct juxtaposition of the different versions of the relevant article of the Screening Regulation shows which position prevailed in the negotiations and the final legislative texts and what kinds of legitimisations they draw on. Here, it is especially important to consider in which way the discursive framing put forward by the Commission—e.g. the pre-entry screening as »a mere information gathering stage«—obscures the role that the screening plays regarding its decisive function of referring people to different procedures which indeed affects the rights of the person concerned. This relates directly to the legal content of the proposal. Therefore, it is crucial to assess the proposal in terms of its legal implications, which will be done in the following section by drawing on secondary sources of legal evaluations.

Legal assessments of the Proposal for a Screening Regulation

Measures of border control comprising identity, registration and security checks are already regulated under the Schengen Border Code, the Eurodac Regulation and the Asylum Procedures Directive. Legal assessments of the Proposal for a Screening Regulation thus remark that these elements of the screening (identification, biometric data, security checks) are not new procedures, and that the discursive framing of the ›novelty‹ of the pre-entry screening must be questioned (see Jakulevičienė 2020). However, it is important to see the Screening Regulation in relation to other proposals within the New Pact. As mentioned above, the outcome of the screening can be that people get channelled to a border procedure, and it is this outcome of the screening procedure and the rules on the border procedure that need to be considered as new (see ibid). According to the Commission's proposal, the border procedure should be mandatory in specific cases.[14]

Legal assessments of the proposal point out that there are legal problems in terms of less procedural guarantees in the context of the Screening and Border Procedures, namely the risk of »placing the applicant at serious procedural disadvantage as lawyers, NGOs and courts do not have same access to the borders as in regular procedures and might result in the underestimation of the procedural guarantees provided by the international, European and national legal frameworks« (ibid.). Examples of existing practices of border procedures show that the kind of procedure has an impact on the outcome of the procedure and thus, the screening cannot be seen as a sort of ›neutral‹ filtering mechanism merely »channelling to the appropriate procedure« (European Commission 2020b: 2).[15]

Another legal problem is that, according to the proposal, the screening procedure is envisaged to end with a debriefing form that is not a formal decision. As it is not a formal decision, there are no legal remedies foreseen to object to the fact that one got channelled to a specific subsequent procedure. Only in the next stage, the decision of the procedure that the screening procedure allocated the person to can be subject to legal remedies. However, no automatic suspensive effect is provided for during the court procedure, which means that a person can be deported before the final court decision. In the most severe cases, this could lead to a violation of the non-refoulment

14 | See COM(2020) 611 final for the criteria according to which border procedures should be obligatory.

15 | See for example a study on the German airport procedure (Pro Asyl 2021).

principle by sending a person back to a situation in which they face serious threats to their life or freedom (Article 33 Geneva Refugee Convention).

The informal de-briefing decision is an example of how processes of informalisation can pose a threat to a person's access to rights. This kind of informalisation should not be regarded as an isolated feature of the Screening Proposal, but rather as a crucial element of EU's migration management more broadly.[16] Especially, informal arrangements are increasingly used with regard to cooperation with third countries in order to increase deportations. ›Returns‹—as they are usually called in the official documents—are the central theme running through all legislative proposals of the New Pact (Moraru 2021). Hereby, the screening procedure needs to be understood as one of the first elements in the process as it is described as a tool for »enhancing the synergies between external border controls, asylum and return procedures« (European Commission 2020b: 1). This might even go as far as »the border procedure(s) [...] *de facto* gradually merging with the pre-entry screening procedure« (Vedsted-Hansen 2020, emphasis in original).

A LEGAL LIMINAL SPACE CREATED BY THE ›FICTION OF NON-ENTRY‹

A crucial aspect of the screening procedure and the border procedure is that, while undergoing these procedures, people will not be authorised to enter the territory (Article 6 Screening Regulation; Article 43 Asylum Procedures Regulation). However, if they are subject to these procedures, they are of course *physically* present on the territory of an EU Member State. Here, the legal principle of the ›fiction of non-entry‹ comes into play, which takes that »the arrival of a third-country national only occurs once she has been legally approved to enter the state by authorised border officers« (Soderstrom 2022: 2). This creates a transit zone, which is for example typically found at international airports. However, their role in asylum governance needs to be considered critically. This divergence between the legal and the physical presence of a person needs to be examined because it creates a border that cannot be crossed through mere bodily movement. Why is this consequential? According to the 1951 Geneva Refugee Convention, a person can only apply for asylum once they have crossed an international border and subsequently it is the responsibility of

16 | For further discussions of the role of informalization see Georgi (2007) and Kassoti/Idriz (2022).

the state where they are present to process their asylum claim: »The purpose of the fiction of non-entry in asylum governance is thus to externalise state responsibilities« (Soderstrom 2022: 3). Therefore, the screening procedure's establishment of another administrative procedure serving as a filter to decide who actually has the right to a ›normal‹ asylum procedure—a procedure in which the individual asylum claim is *substantially* examined—needs to be understood in the context of strategies of externalisation. Considering these implications of the Proposal, it is to be expected that the implementation of the Screening and Border Procedures will pose serious risks to the rights of the persons concerned.

Yet, it is important to point out that the legal liminal space created by the ›fiction of non-entry‹ is not the same as a condition of formal rightlessness because in transit zones, statutory and human rights guarantees still apply (see Thym 2020). Also, under the ›fiction of non-entry‹ asylum seekers are under the effective control of the state's authorities and therefore, according to international law, they are under the jurisdiction of the respective member state (see Matthes/Judith/du Maire 2020). Accordingly, the application of the ›fiction of non-entry‹ is not simply a matter of an exclusion on a legal level, but must also be seen as a differential exclusion:

> »Thus, the exception regime that is created at the borders is what I call a practice of ›semi-inclusion‹ as *the person may be simultaneously outside and inside the legal order.* For example, while asylum-seekers will be bound by national law as they will be physically present in the state's territory i.e. criminal law or civil law, and even being charged with a criminal offence, their rights associated to their registration or asylum process may be diminished as in the eyes of EU asylum law they will be considered as ›not-entered‹ in the territory« (Apatzidou 2023, emphasis HS).

Furthermore, the proposal envisages an independent monitoring mechanism to be set up by the Member States that should make sure that the fundamental rights of the persons in relation to the Screening are protected (see European Commission 2020b: 28f.). However, as pointed out above, there are serious concerns in terms of procedural guarantees while people are subjected to the border and screening procedures and it is questionable whether the envisaged monitoring mechanism is sufficient to guarantee that the fundamental rights of the persons concerned will be protected.

In this regard, the aspect of restricting people's freedom of movement and detention needs to be addressed specifically. One crucial question about the ›fiction of non-entry‹ is how to ensure that the entry of persons is not authorised until an official status determination. The proposal for a Screening Regulation does not explicitly

address this question, but it does, clearly, relate to the question of detention. In this regard, the proposal merely states that the question of if and how detention is required for the screening is »left to national law« (ibid.: 9). Again, the Screening Proposal needs to be assessed in combination with the other reform proposals. With regard to the question of detention, the recast Reception Conditions Directive states that the application of border procedures constitutes a ground for detention (see Woollard 2023; Cornelisse 2021). Even though the Commission's proposal does not envisage generalised detention, looking at current practices, it is realistic to expect blanket detention to guarantee non-entry (see Matthes/Judith/du Maire 2020).

Beyond the question of detention, there are further questions of what implications the ›fiction of non-entry‹ has for the person concerned. As described above, through the ›fiction of non-entry‹, legal liminal spaces are created that at least have the aim to »allow for easier deportation« (Soderstrom 2022: 2). There is discussion about whether the application of the ›fiction of non-entry‹ will indeed facilitate deportations, as their feasibility also depends, for example on the willingness of so called ›third countries‹ to receive people (back). Therefore, due to this unwillingness, increased deportations are not that likely, but there is agreement that it will lead to the restriction of people's freedom of movement (see Matthes/Judith/du Maire 2020).

Here, it is also relevant to keep in mind that the screening procedure is specifically established with the objective to restrict people's onward movement to other EU member states than the one of first arrival. However, even if a person moves on, according to the Commission's original proposal, the screening should also apply to people »apprehended within the territory« (European Commission 2020b: 2). Thus, the transit zone and the border procedure under (conditions similar to) detention can also be carried out within the territory of member states other than the one of first arrival. Therefore, the transit zone that is established by the ›fiction of non-entry‹ would so to say travel with the person and is not a confined to a geographical location. In terms of implementation, this would mean that the border would move with the person whose legal status remains to be determined. It is in this way that the persons concerned can be understood to be »condemned to the border« (Di Cesare 2021: 146, translation HS). Thus, in addition to representing a mechanism of externalising state responsibilities, the ›fiction of non-entry‹ can be understood as eliciting a legal inexistence with the aim of disposing of people who are termed as ›unlikely to be in need of international protection‹.

After having considered the legal implications of the ›fiction of non-entry‹, the legal inexistence created by the ›fiction of non-entry‹ will be related to the broader question of what kinds of geographical and socio-political imaginations the New Pact,

and specifically the Screening Regulation, relies on and how to understand the role of the ›fiction of non-entry‹ within these imaginations.

BEYOND THE ›FICTION OF NON-ENTRY‹: POLITICAL INEXISTENCE AND COLONIAL CONTINUITIES

In the first sentence of the Proposal for a Screening Regulation, »The Schengen area of free movement« is juxtaposed with »the external dimension« (European Commission 2020b: 1). This juxtaposition and its implications need to be analysed. It reflects a dichotomous thinking of ›inside‹ and ›outside‹ that according to Di Cesare (2021) runs through the entire modern thinking and thereby suggests a hierarchy of problems, proposes solutions and justifies principles (see Di Cesare 2021: 24). Accordingly, within contemporary European politics, migration is dominantly considered as a topic for which solutions need to be found to channel ›refugee flows‹, to establish criteria to distinguish between ›refugees‹ and ›economic migrants‹ and if need be, how to ›integrate‹ the former. However, this way of thinking represents »an immunitarian logic of exclusion« (ibid.: 7, translation HS) that arises out of a state-centric perspective that was also reinforced throughout the history of western philosophy, thereby legitimising and reproducing the border between ›inside‹ and ›outside‹ (ibid.: 28, translation HS). For example, influential ideas such as a Hobbesian state of nature took over the sovereign perspective of the state, thereby legitimising the constitution of state sovereignty. In this understanding of social conditions, according to Di Cesare, a powerful fiction is at work that relies on an illegitimate inversion: the fiction of a contract that binds members of a nation together. The contract theory pictures people coming together who are not already members of a nation. However, the mythical »founding fathers« (ibid.: 280, translation HS) who are portrayed as isolated individuals are actually already members of a nation that then come up with a contract. Yet, the powerful fiction prevails that the contract came first. Here, there is a first inversion: the contract presupposes the nation but the nation is then portrayed to be based on a contract. The fiction of the contract then becomes compelling in reality, as it determines the boundaries of the social community based on nativist principles: »Politics ends at the borders of this natural yet fictitious community [...]. Contract theory supports and promotes the attempt of the community based on birth to ceaselessly immunize itself, to protect its integrity against everything that could endanger it from the outside« (ibid.: 280, translation HS). It is also important to note how this fiction is extended to other communities: it is assumed that other communities are formed similarly (see ibid.: 279). Within the fiction, there is another fiction:

birth is considered to be something like a signature on the contract—the contract is automatically renewed through birth (see ibid.: 280). In this way, a political body is constituted that is threatened by what is constructed as ›coming from outside‹. If one accepts this social imagination, it becomes clear how the figure of the migrant challenges the constructed order of states and how this is reflected in contemporary European migration policies. Here, the concept of fear (also towards others) plays a crucial role and according to Robin (2006), fear is a central concept of Hobbesian thinking.[17]

However, in this recounting of how state sovereignty was established and is still legitimised, it is important to go back to the notion of ›founding fathers‹ here because it points to an important idea: that in fact the liberalism put forward in these accounts of classical political philosophy historically relies on systematic exclusions. Crucially, the original rights-bearers who were considered within the above-mentioned contractarian imaginations were actually limited to »propertied white males« (Mills 2017: xiv). Thus, while acknowledging that dominant imaginations of sovereignty are still powerful today, it is important to not only trace the contradictions or inversions within these imaginations but also point to the systematic yet erased exclusions that are built into them. Bearing this in mind, the inversions that take place within the Screening Regulation regarding the ›fiction of non-entry‹ will now be assessed, before being embedded them in the wider context of exercising power beyond territorial boundaries of nation states.

Similar to the inversions that Di Cesare alludes to with regard to classical understandings of sovereignty, the ›fiction of non-entry‹ can be regarded as a mechanism that works on an inversion of fiction and reality: the reality of a person's arrival is denied and the legal fiction of the persons non-arrival has very real consequences for the person affected by this principle. Here, it is especially important to bear in mind that the fact that a person has physically entered the territory of a state is the requirement for seeking international protection according to the Geneva Refugee Convention. However, the legal principle of the ›fiction of non-entry‹ treats the physical presence to be dependent on official authorisation: only if the authorities say so, are you allowed to be ›here‹. Thus, the entry has factually happened but is declared to be a fictious on the legal level. The existence of the person is thus at least on a legal level denied until official authorisation, and the person finds themselves in a position in which legal and physical presence are divergent. As there is a negation of the existence on the legal level, I speak of a legal inexistence here (not to be equated

17 | I would like to thank an anonymous reviewer who brought this reference to my attention.

with a position of formal rightlessness). Also, as discussed above, the legal inexistence is—speaking in strictly legal terms—only a partial legal inexistence as people will still be bound by other areas of the law (see Apatzidou 2023). This is emphasised here again to acknowledge that the issues at stake here cannot be understood in terms of a binary opposition of inclusion and exclusion. However, the point here is to delineate the ways in which these differential legal (in)existences are constructed and which purposes this serves: the purpose of externalisation and confinement in the case of the application of the ›fiction of non-entry‹. In this case, the person is ›here‹ now and thus, the kind of temporality at play relates to the present moment. However, the consideration of ›being here‹ also has a temporal element that alludes to the past, namely if a person is considered to be ›from here‹ which suggests a presence going back in time.

Di Cesare (2021) speaks of »existential negations» with regard to the seemingly innocent and common question »Where are you from?« because it implies a judgment: the judgment, »you are not from here« and in the contemporary context, this has a specific meaning »in the sense of an abysmal negativity [...]: ›you do not exist‹. In the context of a complete inversion, essence precedes existence now. Just because you are not from here, you do not exist« (ibid.: 154, translation HS). Thus, there is another inversion: the inversion of essence and existence. This might sound somehow abstract, but it has very real and material consequences for the people who are subjected to it. As the arbitrary fact that someone is ›from here‹ ultimately is connected to having rights in terms of housing, work, health care, access to social welfare services (see ibid.). It is this inversion of essence and existence that Di Cesare describes as a political-existential distortion. Due to nativist principles structuring the political and social community, people get condemned to political inexistence.

This kind of nativist principle becomes especially evident in the establishment of the Schengen zone that is also referred to in the first sentence of the Screening Regulation. With regard to the Schengen zone, the European Council Regulation No 851/2005 (amending the Council Regulation (EC) No 539/2001) plays a crucial role as it entails a differentiation between two lists of countries: the first listing third country nationals who need to be in possession of visas when crossing the external borders of the Member States and the second one listing third country nationals exempt from this visa requirement (see van Houtum 2010). It is in this way that the ›third country nationals‹ who feature in the Screening Regulation are constructed. As van Houtum points out, it is striking that no information can be found on the reasons for and criteria of creating such two lists. Also, in terms of the language used the lists were first called »white« (no visa required) and »black« (visa required) Schengen lists, a wording that was later changed to »positive« and »negative«: »The wording may be

less racial, but this does not alter the intentions and the discriminatory effects of this apartheid geopolitics« (van Houtum 2010: 964). First, it is telling that many countries of the »negative list« are predominantly Muslim and many of them are countries of the Global South. Second, it reflects how the EU possesses the power to select and thereby determine the (im)possibilities of mobility: »as in former colonial times, it is the EU who *selects* people on the basis of their imagined added value for the EU and their imagined potential (security) risk for the EU« (ibid., emphasis in original). So, one can see that already these visa regulations are embedded in discriminatory mechanisms and that they reflect colonial continuities in contemporary European migration policies. Taking this perspective into consideration, one comes to see that the dominant imagination of sovereignty in classical political philosophy, described above, which is still powerful today, is distorted. If one takes the role of colonial domination into account, the understanding of sovereignty and related claims centring around the alleged independence of nations is fundamentally challenged: »The key issue, however, is that, in subsequent centuries, European states did not simply exercise their sovereignty within the territorial boundaries of national states. They also exerted power and violence over territories and populations elsewhere« (Bhambra/Holmwood 2021: 7f.).

In terms of colonial continuities, the exercise of power beyond territorial boundaries of national states also takes place in contemporary European migration policies: »The conventional understanding of migration control is that each nation-state is in charge of its own borders at its territorial lines and ports, and manages visas in national embassies abroad. Yet this approach is considered incomplete within EU migration policy circles, which believes that ›efficient migration management‹ entails going beyond the place and time of the entry point« (Casas-Cortes/Cobarrubias 2019: 200). It is exactly this »going beyond the place and time of entry point« (ibid.) that is being further pursued by the current proposals to reform the Common European Asylum System, among them the Screening Regulation. In the Screening Regulation, this specifically entails the power of authorities to *define* the place and time of entry point, for example through measures such as the legal principle of the ›fiction of non-entry‹.

Conclusion

The Screening Regulation constitutes an important element of the reform of the Common European Asylum System that in combination with other parts of the New Pact (especially the increased use of border procedures) will lead to significant changes

in terms of access to rights and international protection in the European Union. The aim of this article was to discuss the explicit objectives of the Screening Regulation and reconstruct the discursive strategies that it builds on. By drawing on the Discourse-Historical Approach, I examined the nomination, predication and argumentation strategies and how they are used to motivate the implementation of a ›new‹ screening procedure. Drawing on legal assessments of the proposal showed how the rights of the persons concerned are fundamentally affected by the proposal despite the opposite claim that is made within the proposal itself suggesting it to be a »mere information-gathering stage« (European Commission 2020b: 12). The analysis of the crucial principle of the ›fiction of non-entry‹ showed how it implicates an illegitimate inversion and condemns the persons concerned to a form of differential legal inexistence. The theme of legal inexistence was then embedded in the broader context of socio-political and geographical imaginations that feature implicitly in the New Pact and how these kinds of policies contribute to condemning people to political inexistence. Finally, I argued that the discursive and legal legitimisations put forward in the Screening Regulation contribute to a normalisation of these denials of existence and therefore it becomes more difficult to recognize them as such and see the detrimental consequences they have for the lives of the people affected by the suggested measures.

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