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New Pact, Wrong Impact

How the EU Migration Pact disadvantages both Italy and asylum seekers

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Executive Summary

The aim of this document is to analyse what impact the new Pact on Migration and Asylum, would have in Italy – a country of first arrival for migrants and refugees - should the current proposal be approved. It explores the consequences that the Pact would have on the reception system, tracks the emphasis on detention that this new plan implies and demonstrates how the “solidarity” mechanism will benefit neither Italy nor asylum seekers.

By analysing data from 2016 and 2020, this simulation shows how the Pact would entail a **massive and prolonged use of detention**, with consequently severe effect on asylum seekers’ mental health and integration path. Not only harmful, but also unfeasible: the implementation of the Pact would require multiplying the number of places in detention facilities by 7.5 in normal years and by 50 in crisis years like 2016. Moreover, the analysis estimates that the **12-week limit to treat asylum border procedures is totally unrealistic**, in a country where the average duration of the procedure is currently two years.

Ultimately, as the **principle of first-entry country was maintained, Italy will have to take in charge most asylum seekers arriving on its territory**. Since the solidarity mechanism also allows Member States to **choose different alternatives over relocation**, Italy should be aware that there is **little incentive for Member States to choose relocation over return sponsorship or other forms of “solidarity”**, such as support through an economic contribution. Indeed, why would Member States now choose relocation as a form of solidarity when some did not do so in 2016 when it was mandatory?

Introduction

On 23 September 2020, the European Commission (EC) issued a new Pact on Migration and Asylum. Though it was presented as a “new fresh start” based on “solidarity”, this proposal replicates and exacerbates mistakes from the past and raises serious concerns in terms of human rights protection and respect of human dignity. Moreover, it does not end the principle of the first country of arrival but only introduces some alternative criteria to it.

EuroMed Rights has already published [“A fresh start for human rights violations”](#), an analysis of the Pact, its mechanisms and procedures, and the violations of human rights it could entail. Many key aspects, like the obsession for returns, the externalisation of migration management, the dangerous concept of “safe third country” or the risks of suspension of asylum envisaged by the *force majeure* situation will not be analysed here. Readers can find these covered in EuroMed Rights’ [analysis](#).

Instead, the scope of this document is to analyse what impact the EU Pact would have in Italy, should the current proposal be approved. This document will examine the possible implementation effects of the Pact on the whole reception and integration system in the country. Based on real data, it will explore the feasibility of the proposed screening, asylum and return border procedure. To do so, it will look at the capacity of migration border facilities, the implementation of detention and the plausible duration of these procedures, and it will estimate the effects that such new procedures would have on the integration system. Eventually, it will show the possible effects of the solidarity system in a first arrival country, demonstrating how this “solidarity” mechanism will benefit neither Italy nor asylum seekers. This report focuses on Italy, but the outcomes of this simulation are likely to apply to other countries of first arrival such as Spain, Malta, Greece and Cyprus.

1. A massive use of detention: the impact of the screening, asylum and border procedures

This section aims to explore the possible effects of the new EU Pact on Migration and Asylum on the Italian reception system. To do so, it will simulate the application of the Pact to two different scenarios: 1) 2020 - a year which has not been characterised by a massive influx of third nationals and 2) 2016 - a year when Italy experienced the most significant number of arrivals since the 1990s.

As a premise, the document proposes a short introduction to the new procedures introduced by the EC proposal and an overview of the migration detention facilities. In the second scenario, all asylum seekers channelled to this procedure remain in detention for 24 weeks, which is the maximum possible time limit according to the proposal. The figures are based on monthly arrivals from January to 15 October 2020 (TAB 3 in Annexes).

1.1 The screening and the asylum and return border procedures

Regarding the procedures, all asylum seekers entering the territory would first undergo a **screening** either after disembarkation, after arrival at airports or at land crossing points. The aim is to identify the person through various phases, including health and security checks and fingerprinting. The person undergoing the screening will be detained in closed facilities, which could be identified as the current hotspots.

The screening already raises a series of questions in terms of human rights' violations: firstly, these forms of detention do not have a legal basis and are not validated by a judicial authority. Secondly, the screening must be completed within 5 days from the arrival, which seems to be quite unfeasible in practice given the current average time of permanence in hotspots. For example, in the Messina hotspot, the average length of the stay is [42 days](#). The type and duration of the screening do not seem appropriate to effectively assess the individual situation of the person and their physical and psychological vulnerability (particularly if we consider that many asylum seekers have experienced traumatic events, including inhumane treatments and tortures, during their journeys to Europe). Furthermore, the fact that there is no access to legal aid during the screening nor judicial review on its outcome significantly reduces the legal safeguards for migrants and asylum seekers. Thirdly, looking at the current places available, the capacities of the facilities both for the screening phase and the border procedures do not seem to be enough.

According to the outcome of the screening, asylum seekers will be channelled to the normal asylum procedure – the one which is already in force now - or to the **asylum border procedure**, whose possible implementation is the purpose of this analysis. In brief, migrants undergoing this procedure would be kept in facilities at the border and deprived of their freedom of movement for the whole duration of the process, which is set to a maximum of 12 weeks. In the case of a negative outcome, a return border procedure, also under a time limit of 12 weeks, would kick-start straight after. During the return procedure, the migrant would be kept in a condition of deprivation of liberty.

In the event of a “**crisis situation**”, the EC proposal includes a possibility to change the procedures at the request of one or more Member States. Such a proposal would push the time limit for the screening to 10 days and the maximum time set for the asylum and the border procedure to 20 weeks instead of 12 each.

1.2 Detention conditions, facilities and actual duration of procedures

In Italy, the current immigration detention facilities are the hotspots (with a capacity of 1,072 places) and the Permanent Repatriation Centres (CPR - with a capacity of 1,235 places across the territory). Both amount to a total capacity of **2,307 places**.

The possibility to use **quarantine boats** for these procedures (which would amount to around 2,000 places for each boat and bring the total to approximately **8,000 places**), would lead to unlawful practices and serious violations of human rights. The fact that a 15-year-old migrant died following a prolonged detention on one of these boats and that a migrant died by throwing himself into the sea from one of the quarantine boats raises serious concerns regarding the use of such facilities. Following a [visit on one of the boats](#), the National Guarantor for the protection of detained persons reiterated the need to use these measures only in exceptional circumstances. Also, numerous [appeals](#) have been raised by civil society associations not to keep minors at sea on the quarantine boats.

As for the **duration of these procedures**¹, it is highly probable that the asylum border procedure will not be finished within the 12 weeks (3 months) as foreseen by the EC proposal. According to the current duration of asylum procedures, the applicant has to wait at least **10 months** from lodging the first application to the outcome. If we add the duration of the first appeal, the total length of the procedure would likely reach **2 years** or even **more than 3 years and 7 months**, if we also factor in the possibility of judicial review in the Court of Cassation.

In any case, according to the current proposals if, after the 3 months, the applicant is channelled to a return border procedure, s/he will remain in detention for another 12 weeks maximum, thus extending the detention to 6 months.

As for the conditions in detention facilities, numerous reports² have repeatedly denounced the deplorable conditions in hotspots and CPRs, which are often overcrowded, lack proper hygienic conditions and access to healthcare. They also do not offer separation between men, women and children. Numerous cases of suicide attempts and acts of self-harm have been reported. For example, a sentence from the Court of Bari (Apulia) in 2014 [described](#) the conditions in the CPR of Bari (former CIE – Identification and Expulsion Centre) as “inhumane” and worse than a prison. It is also challenging for civil society organisations, journalists and other external actors to access these facilities and the reasons to deny the entry are often vague³.

The multiplication of detention periods and places is contrary to the national rule, which provides that a judge must validate any detention within 48 hours. The places where the screening procedures will be carried out must therefore be located near a Court, effectively excluding the use of places such as the hotspot in Lampedusa, where there is no Court, as well as most hotspots currently in use.

These prolonged periods of detention, in such dire conditions, also have a detrimental and traumatic effect on migrants’ physical and psychological situations. Recent [research](#) from Doctors for Human Rights (Medici

¹ See Annex 3.

² See e.g. <https://openmigration.org/analisi/la-sospensione-dei-diritti-nei-cpr/>; <https://www.meltingpot.org/Gabbie-Voci-dal-CPR-di-Torino.html#.X5FqYdBLjIU>; <https://www.stampalibera.it/2018/08/29/linchiesta-di-antonio-mazzeo-hotspot-migranti-di-messina-disumano-e-abusivo/>

³ See for instance, ASGI’s appeal to the Regional Administrative Court (TAR) of Sicily to access the Lampedusa hotspot, 13/10/2020, <https://www.asgi.it/notizie/hotspot-accesso/>

per i Diritti Umani - MEDU) **scientifically demonstrates** the negative impacts of the reception model of big overcrowded centres, such as CARA Mineo in Italy or Moria camp in Greece, on the mental health of asylum seekers and refugees. This finding emphasises the importance of the post-migration environment on mental health outcomes. It also shows how large reception and detention centres can be considered as 're-traumatising models' which revive past traumatic experiences such as torture, detention, physical assaults, having witnessed the killing of one or more people, being close to death, kidnapping, sexual violence and many more.

1.3 The numbers of detention: what would have happened in 2020 and 2016?

Given the functioning of the new procedures and the current situation of migration detention facilities - and putting aside all the human rights concerns that can be listed - one question arises: **is it really possible to keep all the asylum seekers arriving in Italy in detention within the timeframe set by the EC proposal?**

The case of 2020

As of 15 October, the number of asylum seekers who had arrived by sea during 2020 was 25,920. While asylum seekers can also arrive in Italy by land or by plane, official data is not available. This can (partially) be explained by the fact that illegal pushbacks are often carried out by Italian law enforcement who leave no written trace⁴. For this report, we will therefore use the official data on arrival by sea. 25,920 is not a huge number, so the standard set of procedures put forward in the EC proposal would apply.⁵

This raises the question of how many applicants would have undergone the border procedure. We can estimate the number based on the criteria for which the border procedure applies. The main criterion is the country of origin: all the applicants coming from a country for which the last available yearly EU-wide recognition rate is 20% or lower would be automatically channelled to the border procedure⁶. Exceptions would mainly be made for unaccompanied minors, children under 12 accompanied by family members and for health and vulnerabilities reasons.

In the case of the 25,920 asylum seekers so far arrived by sea in 2020, the plausible number of migrants who would have undergone a border procedure would be estimated between 16,486 and 21,440. We can pick 19,440, the medium number, for this simulation⁷.

It is self-evident that in a time when the Italian detention system has already proven to be inadequate – and more than ever during the Covid-19 crisis - the idea of detaining thousands of people is dangerous and unfeasible. The figures below show the evolution of detention places that would have been needed in 2020 to apply the new procedures. We could foresee that hotspots will be used for the screening procedures and

⁴ To have a rough idea, in 2019 around 7000 asylum migrants entered Italy through the Slovenian border and the Guarantor for the rights of detained persons found that in 2018, 2,415 people had been refouled from Rome Fiumicino airport, and 2,111 from Malpensa Airport. Source: Asylum Country Report – Italy 2019 <http://www.asylumineurope.org/reports/country/italy>. Illegal pushbacks take place as well at sea, as a consequence of the Memorandum of Understanding between Italy and Libya signed in 2017 and later reconfirmed.

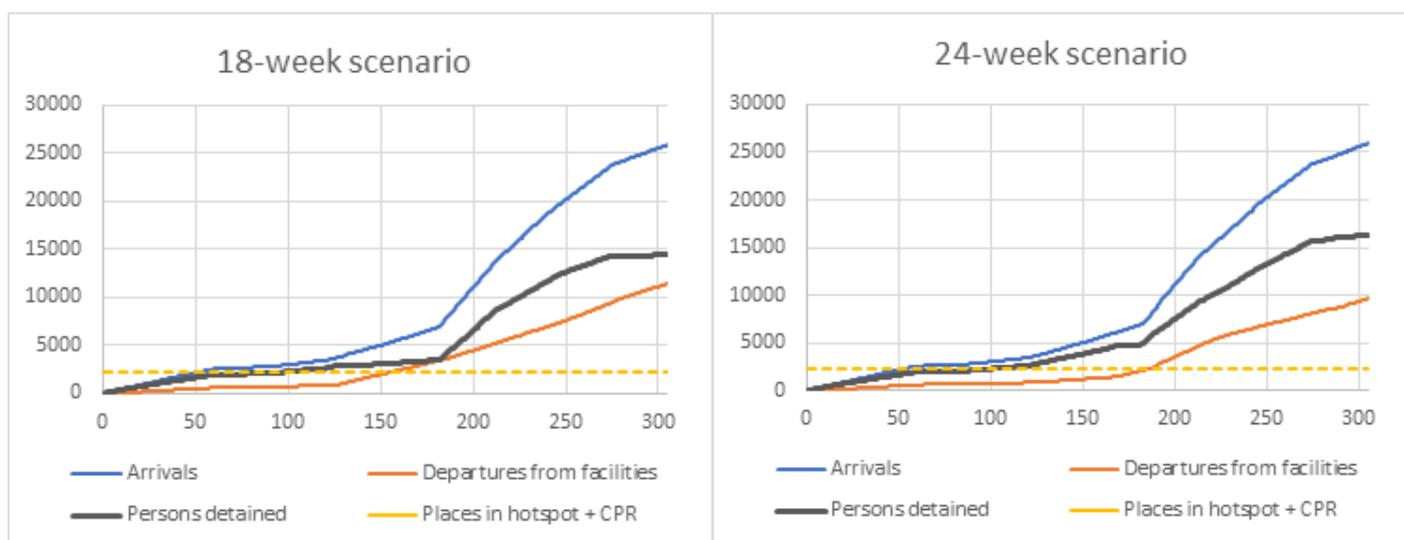
⁵ The specific reference is Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

⁶ The EC Procedure proposal (611) does not specify how the recognition rate is calculated. However, the EC Staff Working Document (207) specifies it is meant as the share of positive decisions at first instance resulting in the granting of refugee status or subsidiary protection status over the total number of asylum decisions at first instance. (p. 20, note 17).

⁷ For details, see Annex I.

CPRs for the return border procedure but, for the sake of this simulation, we would assume as detention facilities for the screening and the asylum border procedures both hotspots and CPRs.

There are two potential scenarii. In both, all asylum seekers spend five days in detention to undergo the screening procedure. In the first scenario, all 19,440 who have been channelled to the asylum border procedure stay in detention for 18 weeks. 18 is the median number between 12 (the maximum time limit for the asylum border procedure) and 24 (the maximum time limit for the asylum plus the return border procedure). In the second scenario, all remaining detention for 24 weeks, which is the maximum possible time limit according to the proposal. The figures are based on monthly arrivals from January to 15 October 2020 (TAB 3 in Annexes).



In both cases, the number of people who should be detained is unmistakably much higher than the available places. In moments of worst pressure, **14,453** or **16,289** (respectively in the 18 and in 24-week scenarios) **people would be detained in the same moment, while the capacity of hotspot and CPRs only reaches 2,307 places.**

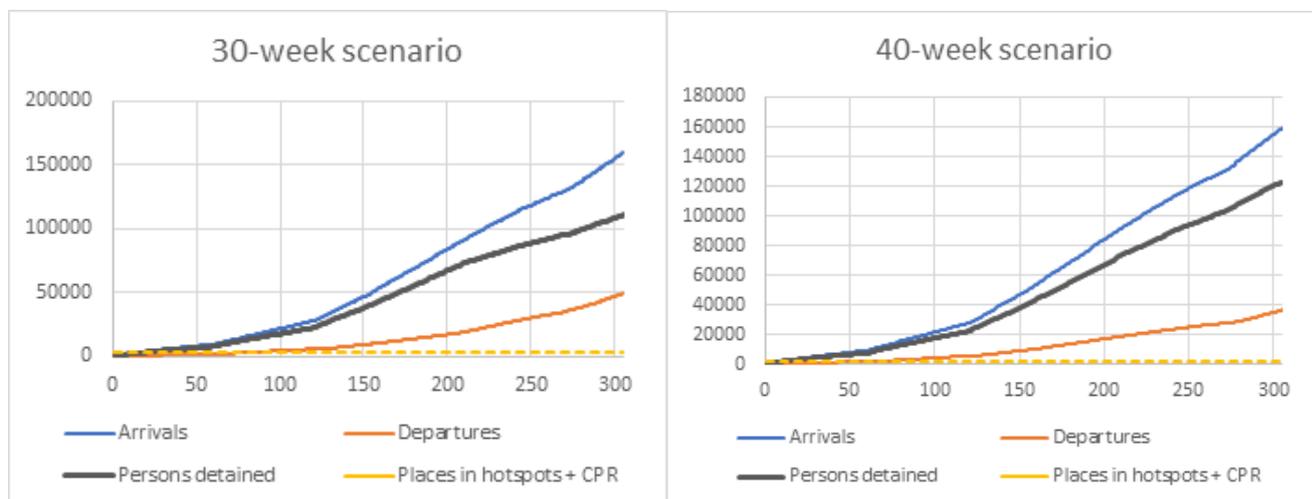
The case of 2016

If we go back to 2016, the numbers are quite different: in that year, Italy registered 181,436 arrivals by sea. In a scenario where Italy would have requested (and obtained) that the country be placed by the European Commission under the **crisis situation**, as foreseen by the EC proposal. In this case, Italy would have had to arrange screening procedures (and detention) for all 181,436 people, with the possibility of extending the time limit for the screening to 10 days. Moreover, in this crisis situation, the recognition rate for which applicants can be sent to the asylum border procedure is set to 75% or higher.

We do not have available data about the nationalities of asylum seekers who arrived, but we do have data on asylum seekers who lodged an asylum application. If we assume the incidence of nationalities was the same, we can say that approximately **141,329 asylum seekers would have been channelled through the asylum border procedure**⁸.

⁸ For details, see Annex II.

In the framework of the crisis situation, the time limit for the asylum border procedure and the return border procedure is of 20 weeks each instead of 12. In this simulation too, we will consider two scenarii: in the first one, asylum seekers stay in detention for an average time of 30 weeks – a medium time between the asylum and the border procedures time limits. In the second one, the worst-case scenario, they all stay in detention for 40 weeks, the maximum time limit set for the procedures in a crisis situation.



The figures speak for themselves. In moments of most significant pressures, **110,561 or 122,825 people would have been detained for a maximum capacity of 2,307.**

2. Solidarity for whom? Neither for asylum seekers nor Italy and other first arrival countries

“Solidarity” was the main keyword behind the presentation of the EU Pact on Migration and Asylum. Not only has it been used several times in President von der Leyen’s and in Commissioners’ Johansson and Schinas’ speeches, but it also defines the mechanism which represents the core of this proposal: the “solidarity mechanism”. As EuroMed Rights, we have already [pointed out](#) that this concept of solidarity is distorted, as it is understood to be solidarity among the Member States rather than solidarity towards migrants and refugees. But does the EU Pact even support solidarity among member States?

First of all, despite introducing some new criteria for Member States’ responsibility, **the EC proposal does not abolish the Dublin Regulation**. On the contrary, the proposal maintains the principle that the first country of arrival is responsible for asylum and combines it with the solidarity mechanism.

Though, it looks like **countries of first arrival like Italy will not benefit much from the solidarity of other member states**. The solidarity mechanism sets that compulsory solidarity among Member States can be activated in three scenarios: 1) in a situation of “migratory pressure” 2) in the landing procedures following a rescue operation and 3) in a crisis situation. In the first two scenarios, Member States can choose to relocate migrants in their territory, use the return sponsorship system or provide other forms of support such as helping the concerned Member State to strengthen its border management capacities or address the reception and asylum needs. The third scenario (the “crisis situation”), allows Member States to choose between relocation or return sponsorship.

Let us now suppose that Italy wishes to receive support from other Member States on relocating some of the asylum seekers. In this case, Italy should be aware that **there is little incentive for Member States to choose relocation over return sponsorship or other forms of “solidarity”**. This is particularly true as the financial contribution given for relocation and return sponsorship will be the same. Moreover, countries like the Czech Republic, Hungary, Poland, Slovakia – i.e. the countries of the “Visegrad four”- but also Austria, Denmark, Estonia, Latvia and Slovenia have already declared they will not do relocations. In spite of being brand new, the solidarity envisaged by the EU Pact is already controversial. Consequently, countries like Italy will continue to be among those who will shoulder most of the “burden”.

There is another very worrying aspect of the solidarity mechanism, namely **the use of detention**. As previously stated, asylum seekers can be detained in the frame of the asylum border and the return border procedures. When, within the framework of the solidarity mechanism, a Member State oversees the return of a migrant, this Member State has eight months to carry out the procedure. If the procedure is unsuccessful, and the person has not been returned within eight months, the Member State will have to transfer the person to its own territory and continue its efforts to return him/her. In the proposal, **it is quite unclear how these people will be treated: will they be detained again in the sponsoring country?** For how long? Given the discrepancy in treatment from country to country and the absence of monitoring mechanisms, this procedure raises many doubts and concerns.

Moreover, in the case of relocation, the proposal sets that Member States can relocate a beneficiary of international protection to another country within 3 years from the moment the status was granted. **Such a possibility clearly undermines asylum seekers’ integration path and reduces the positive contribution they could bring to the economy of a Member State.**

Conclusions

Like all countries of first arrival, Italy will not benefit and has very little interest in backing the Commission’s proposal. The main reasons are as follows:

- The new procedures would entail a **massive use of detention**. The current **immigration detention facilities** - hotspots and CPRs - **are insufficient**, so much so that they would need to be multiplied by 7.5 in comparison to normal times and by around 50 times in years like 2016. It is clear that Italy would never be able to deprive of liberty all these people, who would only be guilty of seeking asylum, which remains a human right.
- Detention facilities, like hotspots and CPRs, are in **deplorable conditions**: isolated, overcrowded, lacking proper hygienic conditions and access to healthcare, with no possibility to access legal aid or psychological support and with no separation between men, women and children. Numerous cases of suicide attempts and acts of self-harm have been reported.
- With a current average duration of 2 years for the asylum procedures, **it is unlikely that the asylum border procedures will be completed within the time set of 12 weeks**. Asylum seekers will then be free to enter the territory, which makes the previous implementation of detention totally useless and only harmful.

- As a country of first arrival, **Italy will have to shoulder most of the “burden”** of asylum seekers arriving in Europe. This is because the Dublin system has only been slightly amended while the **principle of first-entry country was maintained**. The **“solidarity mechanism”** also allows for other Member States **to choose different alternatives over relocation**. And many of them have already declared that they will do so.
- The traumatic post-migration environment, such as **prolonged detention** and large **overcrowded reception centres**, undermine the integration path of asylum seekers and has severe effects on **asylum seekers’ mental health**. Society as a whole will ultimately bear the health, social and economic costs.
- **Legal pathways are a better option**. Giving more opportunities to migrants to come to Italy by increasing legal migration channels is the only way to support the Italian economic system. Currently, foreign workers contribute to **9.5% of the Italian GDP**, and it is estimated that the current **600,000 undocumented people** in Italy could contribute to up to **2,6 billion EUR per year**. Humanitarian corridors’ project, resettlement pledges and community sponsorship schemes should be increased to allow people in need of protection to enjoy their right to seek asylum and come to Italy safely, without endless suffering and risk to their lives.

ANNEXES

- I. Out of the 25,920, the main nationals represented were from Tunisia, Bangladesh, Algeria, Cote d’Ivoire, Pakistan, Sudan, Egypt, Morocco, Afghanistan and Somalia. Only asylum seekers from Sudan, Afghanistan and Somalia would have qualified for the normal asylum procedure, as their 2019 EU-wide recognition rates were respectively around 53%, 46% and 46% (see TAB 1 below). To these, we would have to subtract the number of unaccompanied minors from country of origin with a recognition rate of 20% or lower. We know that 3,193 arrived in Italy in 2020, but we do not have precise data about their nationalities. We can estimate though that 75% of them at least came from countries of origin with a low recognition rate. According to the latest available official data the number to subtract is therefore 2,395. The result is 21,440. Since we do not have data about the nationalities of applicants after the ten most common, we can set a range between 16,486 and 21,440 – considering in the first case that all applicants from the “other” nationalities qualify for the normal asylum procedure, and in the second one that no one of them does. The number is yet not precise because 1) we do not have data on arrivals by plane and by land, that would make the number higher, 2) we do not have data on minors under 12 accompanied by family members, who would qualify for the normal asylum procedure and potentially reduce this figure.
- II. Out of the 123,654 asylum applications, only 9% of third-country nationals would have qualified for the normal asylum procedure. These would have come from Eritrea, Syria and Iraq. If we apply the same percentage to 181,436 (the number of arrivals) we obtain 165,107 (see TAB 2 below). To this number, we must subtract the unaccompanied minors who arrived by sea and who would not fall automatically in the normal asylum procedure, but we do not have precise

data on their nationality. But according to the available data on unaccompanied minors that were present on the Italian territory in December 2016, we can presume that only around 8% of them were from one of the countries of origin with a recognition rate of more than 75% (out of 25,846, it means 23,778). The result is therefore 141,329. Here again, we do not have numbers on arrivals by plane and land and about minors under 12 accompanied by family members.

TAB 1		
Arrivals by sea per nationality in 2020 ⁹		EU- wide 2019 recognition rate ¹⁰
Tunisia	10.745	3,8 %
Bangladesh	3.333	6,2%
Algeria	1.166	6,3%
Cote d'Ivoire	1.112	16,8%
Pakistan	1076	9,8 %
Sudan	791	53,1%
Egypt	758	12,1%
Morocco	691	7,9 %
Afghanistan	676	45,7%
Somalia	618	46,5%
others	4.954	
Total	25.920	

TAB 3	
Monthly arrivals by sea – 2020¹¹	
January	1342
February	1211
March	241
April	671
May	1654
June	1831
July	7067
August	5323
September	4386
October	2194
November	0
December	0
Total	25920

TAB 2		
Asylum applications in 2016 by nationalities ¹²		EU-wide 2015 recognition rate
Nigeria	27.289	10%
Pakistan	13.660	18,50%
Gambia	9.040	5,60%
Senegal	7.723	6,70%
Eritrea	7.472	93,60%
Cote d'Ivoire	7.459	16%
Bangladesh	6.818	5,80%
Mali	6.438	10,70%
Guinea	6.057	28,90%
Ghana	5.018	3,50%
Afghanistan	2.852	61,60%
Ukraine	2.682	17,9%
Somalia	2.404	56,30%
Cameroon	1.987	21,7%
Syria	1.590	96,4%
Morocco	1.556	6%
Iraq	1.538	87,70%
El Salvador	1.087	4,30%
China	871	30,9%
Burkina Faso	850	15,2%
Egypt	787	25,60%
Guinea-Bissau	740	5,7%
Togo	658	11,40%
Sierra Leone	618	19,6%
India	555	4,1%
Sudan	503	39,30%
Others	5.402	
Total	123.654	

⁹http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_15-10-2020.pdf

¹⁰ Data on annual recognition rates have been calculated on the basis on Eurostat data.

¹¹ Data on annual recognition rates have been calculated on the basis on Eurostat data.

¹²http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/riepilogo_dati_2015_2016_0.pdf

TAB 4	
Monthly arrivals by sea - 2016¹³	
January	5273
February	3828
March	9676
April	9149
May	19957
June	22339
July	23552
August	21294
September	16975
October	27384
November	13581
December	8428
Total	181436

III. Current average duration of asylum procedures¹⁴:

TAB 5		
	Average time (in days)	
First application		
From registration to interview	252,7	
From interview to notification of outcome	64	
Total first application		316
First level of appeal		
From notification of first application outcome to submission of appeal	24,1	
From appeal submission to outcome	290,9	
Total first level of appeal		315
Total two levels		2 years
Court of Cassation		
From the appeal outcome to the submission	222,5	
From submission to decision	464,5	
Total Court of Cassation		687
Total whole procedure		1.318 (more than 3 years and 7 months)

¹³http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31-12-2017.pdf

¹⁴http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31-12-2017.pdf