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Angela Di Stasi
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CODIFICATION OF AMBIGUITY IN THE EUROPEAN PACT ON MIGRATION AND ASYLUM THE CASE OF *DE FACTO* DETENTION IN THE PANTELLERIA HOTSPOT

Greta Albertari *

SUMMARY: 1. Introduction. – 2. *De Facto* Detention as a Central Tenet of the Hotspot Approach. – 2.1. EU Legal Basis for Detention in Hotspots in the Pre-Pact Common European Asylum System (CEAS). – 2.2. Detention in Italian Hotspots. – 2.3. Detention in the Screening Regulation. – 3. Theoretical Framework: Crisification, Formalization and Street-Level Bureaucrats. – 4. Methodology. – 5. The Case of Pantelleria. – 5.1. The Formalization of the Pantelleria Hotspot. – 5.2. *De Facto* Detention in Pantelleria. – 5.3. Narratives, Opacity and Secrecy. – 5.4. Pantelleria as an Opaque Laboratory. – 6. Conclusion.

1. Introduction

Hotspots were introduced in Italy and Greece under the 2015 European Agenda on Migration (the Agenda) to ensure the orderly registration, identification, and channeling of irregularly arrived third-country nationals at the European Union (EU) external borders. They have been characterized, in their implementation, by high levels of legal informality, their regulatory framework amounting to a "fragmented patchwork of EU and national soft law and legislation."[1] In Italy, the procedures governing the management of hotspots – established in several southern locations – mostly relied on *ad hoc* soft-law instruments, such as standard operating procedures (SOPs), roadmaps and guidelines. Although Italian law gradually provided hotspots with a fragmented and often lacunose legal framework, new facilities continued to emerge, applying the same logic and modalities while eluding formal designation. The largely unknown hotspot of Pantelleria, a relatively small island located closer to Tunisia than to Sicily, and far less visible in public debates than Lampedusa, falls within this category. This article empirically

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* PhD Candidate, Amsterdam Center for Migration and Refugee Law, Vrije Universiteit Amsterdam. E-mail: g.albertari@vu.nl.

[1] L. TSOURDI, A. OTT, Z. VANKOVA, *The EU's Shifting Borders Reconsidered: Externalisation, Constitutionalisation, and Administrative Integration*, in *European Papers - A Journal on Law and Integration*, 2022, vol. 7, n. 1, pp. 87-108, p. 98.

investigates the Pantelleria hotspot, arguing that it offers a particularly instructive vantage point for examining the intersection between the local practices examined here and EU law, and for assessing the risks that arise – and that, as the first Italian implementation of the Pact suggests, have already begun to materialize – when such practices remain legally ambiguous.

In June 2026, the EU-wide asylum reform of the European Pact on Migration and Asylum (the Pact) entered into effect, and with it the hotspot model, until then implemented only in Greece and Italy, has become the default framework for managing irregular arrivals at the EU external borders. The newly adopted Screening Regulation represents the first codification at EU level of the hotspot approach. This contribution argues that such codification risks reproducing the shortcomings that have characterized the implementation of the hotspot approach over the past decade, not only by allowing unlawful or ambiguous practices to persist and become integrated within increasingly formalized structures, but, more precisely, by codifying the very vagueness that has enabled those practices in the first place. This results in aggravating rather than merely perpetuating the practices of the past: deprivation of liberty during screening now finds legitimation in EU law, under a Regulation that neither clearly defines it nor surrounds it with specific safeguards, while the ambiguity that survives codification allows the same unlawful practices to continue. If the existence of this codification can be traced in the text of the Regulation itself, what is harder to establish is how this vagueness concretizes once it reaches the ground. It is only by looking there, at the level of everyday implementation, that its functioning and implications can be understood. Such ambiguity is left by lawmakers in legal texts in the form of discretion, or room for maneuver, but it falls to the final implementers to give that discretion operative life. The ethnographic engagement with these final implementers, here referred to as street-level bureaucrats,[2] grounds this contribution. It is in their practices, and in the narratives through which they account for them, that the consequences of an open-ended legal formulation become visible. Operating within the margins left by provisions of law, these actors are thus situated at the intersection between direct implementation and law-making from below.[3]

This is where this contribution intends to build on studies that have traced similar processes of *ex post* legalization of informal practices.[4] The aim here is to illustrate a further, under-explored variant of that process: alongside the formalization of a given practice, the article elaborates on the incorporation into law of the ambiguity surrounding it; an incorporation that leaves open the very discretionary space within which that

[2] M. LIPSKY, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*, New York, 1980.
[3] T. EULE, L.M. BORRELLI, A. LINDBERG, A. WYSS, *Migrants before the Law: Contested Migration Control in Europe*, Cham, 2019.
[4] E.W.J. NAYLOR, *Le Centre d'Arenc (1963–2006): du refoulement des 'hébergés' à la rétention administrative*, in University of Portsmouth Research Portal, https://researchportal.port.ac.uk/en/publications/le-centre-darenc-1963-2006-du-refoulement-des-h%C3%A9berg%C3%A9s-%C3%A0-la-r%C3%A9ten/; B. CHARAUDEAU SANTOMAURO, *La frontière intérieure à l'épreuve d'une fiction juridique: chronique de l'élaboration d'un régime dérogatoire*, in *La Revue des juristes de Sciences Po*, 2025, vol. 28, pp. 28-31.

practice initially took hold and which enabled its persistence and incontestability. This suggests that processes of legal formalization are shaped, in ways that existing accounts have not always made explicit, by prolonged experimentation in which street-level bureaucrats operate with wide discretion. Accounts that focus only on the legislator or only on the implementing authorities tend to overlook this reciprocal circulation of knowledge and practices between levels, leaving largely unexplored the intermediate processes through which operational experiments may be translated, selected, reformulated, and eventually incorporated into law. While legal ethnographic research conducted with implementers cannot establish an unequivocally demonstrable causal link between the experiments documented on the ground and the specific wording ultimately adopted in the Screening Regulation, it can expose an analytical correspondence between local informal practices and legal codification, a correspondence too substantial to be dismissed as merely incidental. Read in these terms, the Pact does not merely fail to resolve the ambiguity that has long characterized the hotspot approach: on the contrary, it codifies that ambiguity in a constitutive manner, absorbing into EU law the very vagueness that allowed street-level bureaucrats to operate, largely unchecked, in the secrecy of remote facilities.[5]

This contribution focuses on one such ambiguous practice in particular: *de facto* detention during screening procedures. *De facto* detention is understood as the deprivation of liberty without a clear legal basis or judicial validation. It has been described as the "worst-case scenario from a fundamental rights perspective: [in that it sees] detainees deprived of the safeguards that apply in formal detention regimes."[6] Such detention is unlawful by definition, in violation of the guarantees that international human rights law and EU law provide against arbitrary detention. This consideration, almost a truism, nonetheless fails to explain the persistence, evolution, and gradual formalization of practices of blanket *de facto* detention in hotspots.

This contribution analyzes, from an empirical perspective, precisely this process of formalization in the absence of a clear legal framework, drawing on legal ethnographic fieldwork conducted in Pantelleria between 2024 and 2025. In the Pantelleria hotspot, *de facto* detention has occurred consistently since the facility's early operation, taking the form of a measure applied to all newly arrived third-country nationals, who are systematically prevented from leaving the facility for several days, until their transfer to the mainland. The article accordingly analyses the narratives through which street-level bureaucrats frame, deny or defend the practice of detention, in a context of operational opacity that is exacerbated by the structural secrecy surrounding the island itself: the very

[5] Cf, M. GKEGKA, *La Grèce, laboratoire de la politique européenne d'asile*, in *Revue des droits de l'homme*, 2024, vol. 25; G. DE LA ORDEN BOSCH, *Pre-entry Screening and Border Procedures as New Detention Landscape in the EU Pact on Migration and Asylum. The Spanish Borders as a Laboratory for Immobility Policies*, in *Peace & Security – Paix et Sécurité Internationales*, 2024, n. 12.

[6] L. JAKULEVIČIENĖ, *Pre-Screening at the Border in the Asylum and Migration Pact: A Paradigm Shift for Asylum, Return and Detention Policies?*, in D. THYM (ed.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum*, Baden-Baden, 2022, p. 92.

existence of a hotspot in Pantelleria is largely unknown, and the island – commonly assumed to be smaller than Lampedusa, while in fact being four times its size – stands in sharp contrast to the highly spectacularized case of Lampedusa, a "theatre of the border."[7] Pantelleria functions as a backstage of the border, where experimental practices can be pursued with minimal external oversight. Its marginal position in public discourse and the secrecy surrounding both its existence and operations shed light on the broader process through which peripheral border sites can come to serve as laboratories for EU asylum policies. At a moment when the hotspot model is being generalized across the Union, examining past and ongoing experiences in locations where similar patterns have already developed is crucial to understanding this phenomenon of practice-driven codification and its implications.

The contribution is structured as follows: the first section reconstructs the genealogy of the (largely absent) legal basis for detention during screening procedures in hotspots, from the introduction of the hotspot approach to its codification under the Pact; this is followed by a theoretical framework situating this genealogy in literature centered on the "crisification" of asylum law,[8] the *ex post* legalization of practices first experimented in informality, and the role of street-level bureaucrats in that process; a methodology section follows; the analysis then turns to the gradual formalization of the Pantelleria hotspot, tracing how practices of detention have persisted while the narratives surrounding them have evolved; the concluding section situates these findings within the context of Pact implementation, arguing that what is ultimately at risk of being formalized is not only the most problematic practices of the hotspot approach, but the legal ambiguity that has characterized and enabled them until now.

2. *De Facto* Detention as a Central Tenet of the Hotspot Approach

Detention practices at EU external borders have long been documented and criticized,[9] but it is specifically in the decade-long implementation of hotspots that they have become one of their most critical and enduring features, to the point of amounting to one of their cornerstones.[10]

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[7] P. CUTTITTA, *'Borderizing' the Island Setting and Narratives of the Lampedusa 'Border Play'*, in *ACME: An International Journal for Critical Geographies*, 2014, vol. 13, n. 2, pp. 196-219; See also, more extensively, P. CUTTITTA, *Lo spettacolo del confine. Lampedusa tra produzione e messa in scena della frontiera*, Milan, 2012.

[8] V. MORENO-LAX, *The 'Crisification' of Migration Law: Insights from the EU External Border*, Queen Mary Law Research Paper 403/2023.

[9] A. DIMITRIADI, *Governing Irregular Migration at the Margins of Europe*, in *Etnografia e ricerca qualitativa*, 2017, vol. 10, n. 1, pp. 75-96; G. MATEVŽIČ, *Crossing a Red Line: How EU Countries Undermine the Right to Liberty by Expanding the Use of Detention of Asylum Seekers upon Entry: Case Studies on Bulgaria, Greece, Hungary, and Italy*, Budapest, 2019; G. CAMPESI, *La detenzione amministrativa degli stranieri. Storia, diritto, politica*, Roma, 2013.

[10] G. CAMPESI, *Chiedere asilo in tempo di crisi. Accoglienza, confinamento e detenzione ai margini d'Europa*, in C. MARCHETTI, B. PINELLI (eds.), *Confini d'Europa. Modelli di controllo e inclusioni informali*, Milano, 2017; A. BOUSIOU, *From Humanitarian Crisis Management to Prison Island:*

Primary EU law – namely Article 6 of the Charter of Fundamental Rights of the European Union (the Charter), read in conjunction with Article 52(1) thereof – recognizes that the fundamental right to personal liberty may be limited, but only when such limitation is provided for by law, respects the essence of that right, meets an objective of general interest recognized by the EU, rests on an individualized assessment, and is strictly necessary and proportionate to that objective.[11] Any deprivation of personal liberty must be accompanied by a clear legal framework of procedural safeguards and judicial guarantees.[12] Under EU asylum law, detention "entails the confinement of an applicant by a Member State in a particular place, where the applicant is deprived of his or her freedom of movement."[13] Accordingly, any factual deprivation of liberty (detention) meeting this definition without satisfying the conditions above constitutes a violation. The difficulty lies in the blurring practical distinction between a 'mere' restriction of the freedom of movement and its deprivation, only the latter constituting detention.[14] The European Parliament's implementation assessment of asylum border procedures drew attention to the difficulty of qualifying a stay at the border, noting how "the blurring of restrictions on freedom of movement and detention is a key source of concern, and that domestic law does not always provide a clear legal basis for either detention or, alternatively, the restrictions on the freedom of movement of applicants."[15] The risk thus arises that situations formally characterized as restrictions of movement,

Implementing the European Asylum Regime at the Border Island of Lesvos, 2015–2017, in *Journal of Balkan and Near Eastern Studies*, 2020, vol. 22, n. 3, pp. 431-447; FRA (European Union Agency for Fundamental Rights), *Opinion of the European Union Agency for Fundamental Rights on Fundamental Rights in the 'Hotspots' Set Up in Greece and Italy*, Vienna, 2016; C. CAPRIFOGLIO, F. FERRI, L. GENNARI, *Detention and Selection: An Overview of the Italian Hotspot System*, in *Border Criminologies* (blog), 10 April 2018.

[11] Charter of Fundamental Rights of the European Union, in OJ C 326, 26 October 2012, pp. 391-407, Arts 6 and 52(1). Pursuant to Article 52(3) of the Charter, the right guaranteed by Article 6 has the same meaning and scope as the right guaranteed by Article 5 ECHR. The same standards find a correspondence in Article 9 of the International Covenant on Civil and Political Rights (ICCPR) – to which all Member States are parties, and which falls among the "relevant treaties" with which the common asylum policy must be in accordance under Article 78(1) of the Treaty on the Functioning of the European Union (TFEU) – prohibits arbitrary detention and requires that any deprivation of liberty take place on such grounds and in accordance with such procedure as are established by law. Addressing Italy specifically, the Committee recommended that detention of migrants be used only as a measure of last resort, alongside the full implementation of the SOPs applicable to hotspots. See: Human Rights Committee, Concluding Observations on the Sixth Periodic Report of Italy, 1 May 2017, CCPR/C/ITA/CO/6; Committee against Torture, Concluding Observations on the Seventh Periodic Report of Italy, 2026, CAT/C/ITA/CO/7.

[12] Court of Justice, Grand Chamber, judgement of 15 February 2016, *JN*, case C-601/15 PPU.

[13] Directive 2013/33/EU of the European Parliament and of the Council, *laying down standards for the reception of applicants for international protection* (recast), of 26 June 2013, in OJ L180, 29 June 2013, pp. 96–116, Art 2(h); Directive 2024/1346/EU of the European Parliament and of the Council, *laying down standards for the reception of applicants for international protection*, of 14 May 2024, in OJ L, 22 May 2024, Art 2(9); Regulation 2024/1356/EU of the European Parliament and of the Council, *introducing the screening of third-country nationals at the external borders,* of 14 May 2024, in OJ L, 22 May 2024, Art 2(12).

[14] U. BRANDL, *Mix and Match. Detention, "De-Facto Detention" or just Restrictions of Freedom of Movement in the New Pact*, in *EU Immigration and Asylum Law and Policy* (blog), 14 October 2024.

[15] EPRS (European Parliamentary Research Service), *Asylum Procedures at the Border: European Implementation Assessment*, Luxembourg, 2020, p. 26.

because of the intensity of the measures actually imposed, in fact amount to *de facto* detention: an actual deprivation of liberty not classified as such, but meeting every practical condition of it.[16] The European Court of Human Rights (ECtHR) clarified that the difference between detention and restrictions on freedom of movement is one of "degree or intensity, and not one of nature or substance".[17] This test, elaborated in the *Guzzardi* case with regard to an entirely Italian measure – the compulsory residence imposed on the applicant within a restricted area of the island of Asinara – shows that the boundary between restriction and deprivation of liberty has long been blurred by national as well as European legislation and, not incidentally, in island settings.[18] This clarification has not however settled the matter, as demonstrated by the subsequent jurisprudence of the ECtHR and Court of Justice of the EU which, on the matter of detention – specifically at border zones – remains complex and not always aligned.[19] Avoiding such interpretative hurdles in reading a situation on the ground would require both EU secondary legislation and national legislation to provide as clear a legal basis as possible for the applicable regime of either restriction or deprivation of the freedom of movement for individuals at the borders.

2.1. EU Legal Basis for Detention in Hotspots in the Pre-Pact Common European Asylum System (CEAS)

It has been noted how EU law often grants Member States significant discretion in the interpretation and implementation of its provisions, a feature particularly visible in the pre-Pact CEAS, largely composed of directives.[20] Detention in the context of hotspot procedures falls squarely within these discretionary spaces in that the directives composing the pre-Pact CEAS failed to provide a framework for the deprivation of liberty during screening procedures, themselves not comprehensively regulated by EU law – but

[16] For a full analysis conducted in the context of the Greek hotspots, see, L. SLINGENBERG, *Coerced into Subsistence: Deprivation of Liberty in the EU Reception and Identification Centres in Greece*, in *Social & Legal Studies*, 2025, vol. 34, n. 3, pp. 381-401.
[17] European Court of Human Rights, judgement of 6 November 1980, application no. 7367/76, *Guzzardi v Italy*, par. 93. Applied to confinement in Lampedusa hotspot in European Court of Human Rights, Grand Chamber, judgment of 15 December 2016, application no. 16483/12, *Khlaifia and others v. Italy*, para. 64.
[18] *Guzzardi v. Italy*, cit.
[19] For a detailed discussion on the different approaches between the ECtHR and the Court of Justice, see EPRS, *Asylum Procedures at the Border: European Implementation Assessment*, cit.; European Council on Refugees and Exiles (ECRE), *Comments on the Directive (Eu) 2024/1346 of the European Parliament and of the Council of 14 May 2024 Laying Down Standards for the Reception of Applicants for International Protection (Recast)*, 2024. On the ECtHR, see also: L. BERNARDINI, *La detenzione degli stranieri tra "restrizione" e "privazione" di libertà: la CEDU alla ricerca di Godot*, in *Diritto, Immigrazione e Cittadinanza*, 2022, n. 1, pp. 74–95; A. DI STASI (ed.), *CEDU e ordinamento italiano. La giurisprudenza della Corte europea dei diritti dell'uomo e l'impatto nell'ordinamento interno (2021–2025)*, 3rd ed., Milano, 2025.
[20] C. COSTELLO, *The Asylum Procedures Directive in Legal Context: Equivocal Standards Meet General Principles*, in A. BALDACCINI, E. GUILD, H. TONER (eds.), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law after 1999*, Oxford, 2007; L. TSOURDI, C. COSTELLO, *The Evolution of EU Law on Refugees and Asylum*, in P. CRAIG, G. DE BÚRCA (eds.), *The Evolution of EU Law*, 3rd ed., Oxford, 2021.

rather finding their basis in a non-binding policy document issued by the European Commission which failed to be followed by relevant implementing legislation. In the pre-Pact CEAS, the circumstances for third-country nationals detention were exhaustively listed in the Reception Conditions and the Returns Directives; however, neither of these directives entirely covered hotspot operations, thus failing to clearly encompass detention for the purpose of screening. As a result, the regulation of detention in hotspots under the pre-Pact CEAS has been characterized by insufficient clarity, producing a legal ambiguity that Member States were left to resolve during transposition and implementation.[21]

2.2. Detention in Italian Hotspots

The lack of a precise EU legal basis for detention in hotspots during screening procedures trickled down to practices of implementation of the hotspot approach. Italian hotspots were initially regulated exclusively through non-binding instruments (SOPs and a ministerial roadmap)[22] which did not – and, given their nature, could not – designate hotspots as facilities for the deprivation of liberty.[23] Under Article 13 of the Italian Constitution, any form of deprivation of personal liberty must be regulated by law, grounded in a reasoned decision and validated by a judicial authority,[24] all requirements not met by these soft-law instruments. Subsequent legislative interventions sought to remedy this gap, without success. Only in 2017 were hotspots, or "crisis points",[25] first introduced into Italian law by Decree Law n. 13, but without the issue of detention being clarified. Law n. 132/2018 appeared to move in that direction by providing for the detention of applicants for international protection to establish their identity or nationality in "designated premises within hotspots", yet such facilities were never created. These interventions, rather than establishing a clear legal basis for detention, perpetuated the ambiguity stemming from EU law and only served as legitimizing narratives for ongoing practices: throughout this period, despite the absence of a clear legal basis, Italian hotspots have functioned as sites of *de facto* detention in which third-country nationals remained confined from a few hours up to several days.[26] This reality has been repeatedly

[21] J.M.R. HARTMANN, *A Blessing in Disguise?! Discretion in the Context of EU Decisionmaking, National Transposition and Legitimacy regarding EU Directives*, Amsterdam, 2016.

[22] Ministry of the Interior, *Roadmap italiana*, 2015, https://www.asgi.it/wp-content/uploads/2015/11/Roadmap-2015.pdf; Ministry of the Interior, *Standard Operating Procedures Applicable to Italian Hotspots*, 2016, http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf.

[23] R. CALARCO, *Political-Humanitarian Borderwork on the Southern European Border: Mainstream Humanitarian Organizations within and beyond the Hotspot System in Sicily*, Cham, 2024; M. VEGLIO, *Il trattenimento negli hotspot*, in *Questione Giustizia*, 2024.

[24] P. BONETTI, *Il Diritto d'Asilo nel Nuovo Patto Europeo. Profili Costituzionali,* in *Diritto, Immigrazione e Cittadinanza*, 2025, n. 3, p. 42, citing Italian Constitutional Court, judgements of 22 March 2001, n. 105; 26 May 2022, n. 127; 25 October 2024, n. 212.

[25] All translations from non-English sources, including legislative texts, journal articles, official correspondence, fieldnotes, and interview excerpts, are the author's own.

[26] A. MASSIMI, F. FERRI, *L'attualità del caso Khlaifia. Gli hotspot alla luce della legge 132/2018: la politica della detenzione extralegale continua*, in *Questione Giustizia*, 2019; M. BENVENUTI, *Gli hotspot come*

denounced by national and European authoritative bodies and commentators,[27] - including the ECtHR, which sanctioned Italy for having failed to show that its "regulatory framework, including the EU rules that may be applicable, provides clear instructions concerning the detention of migrants in [hotspots]"[28], thus concluding that hotspot operations had instead been conducted in a situation of "*de facto* detention", "without a clear and accessible legal basis and in the absence of a reasoned measure ordering [it]"[29]. This finding remained relevant as of March 2026, when, in the supervision of the execution of this and similar judgements, the Committee of Ministers of the Council of Europe noted that "the legal framework still appears to lack provisions justifying the deprivation of liberty in these centers."[30] The resulting image of detention in Italian hotspots is that of a generalized regime characterized by legal informality, uncertainty and incompleteness, a patchwork of political guidelines, fragmented norms, and administrative discretion in which the constitutional right of personal liberty has been routinely curtailed as a matter of practice.

2.3. Detention in the Screening Regulation

The Pact on Migration and Asylum reshaped the CEAS by *inter alia* providing, for the first time, an explicit legal basis for screening procedures in hotspots, effectively codifying the hotspot approach developed over a decade of experimentation in Italy and Greece.[31] The Screening Regulation introduces and formalizes a pre-entry procedure applicable to all third-country nationals who crossed irregularly the EU external

chimera. Una prima fenomenologia dei punti di crisi alla luce del diritto costituzionale, in *Diritto, Immigrazione e Cittadinanza*, 2018, n. 2; G. FELICI, M. GANCITANO, *La detenzione dei migranti negli hotspots italiani: novità normative e persistenti violazioni della libertà personale*, in *Sistema Penale*, 27 January 2022.

[27] EPRS (European Parliamentary Research Service), *The European Commission's New Pact on Migration and Asylum: Horizontal Substitute Impact Assessment*, Luxembourg, 2021; National Ombudsman for the Rights of Detainees, *Rapporto sui Centri di Identificazione ed Espulsione in Italia*, 2017.

[28] European Court of Human Rights, judgment of 30 March 2023, *J.A. and Others v. Italy*, application no. 21329/18, par. 90.

[29] *Ibid*., par. 97. A finding the Court reiterated, a few months later, in three further judgments concerning the Lampedusa hotspot. European Court of Human Rights, judgments of 19 October 2023, *A.B. v. Italy*, application no. 13755/18; *A.S. v. Italy*, application no. 20860/20; *M.A. v. Italy*, application no. 13110/18. For a comment, see R. PALLADINO, M.M. BARTIROMO, *"Approccio hotspot" e sistema di prima accoglienza degli immigrati (artt. 3, 5 e 8 CEDU; art. 4 Protocollo 4)*, in A. DI STASI (ed.), *CEDU e ordinamento italiano*, *op. cit.*, pp. 142-192.

[30] Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgements, H46-25, *J.A. and Others* group and *Sadio v. Italy*, 1553rd DH meeting, 9-11 March 2026, https://hudoc.exec.coe.int/eng#{%22sort%22:[%22execdocumenttypesorting%20ascending,execdocumentreferencesorting%20descending%22],%22execidentifier%22:[%22004-63687%22]}.

[31] L. JAKULEVIČIENĖ, *Re-decoration of existing practices? Proposed screening procedures at the EU external borders*, in *EU migration law* (blog), 16 July 2021; E. CELORIA, F. RONDINE, *Escludere e Disciplinare: Linee di Tendenza Emergenti dal Regolamento Accertmenti, dal Regolamento Procedure e dalla Direttiva Accoglienza del Nuovo Patto Europeo sulla Migrazione e l'Asilo,* in *Diritto, Immigrazione e Cittadinanza*, 2025, n. 1.

borders.[32] The screening process includes identity verification, health and vulnerability checks, biometric registration, and security checks. On its conclusion, to take place within a maximum of seven days at the external borders, third-country nationals are channeled to the appropriate asylum or return procedure.[33]

This newly established procedure is meant to constitute the first step of a "seamless procedure at the border […], comprising pre-entry screening, an asylum procedure and where applicable a swift return procedure – thereby integrating processes which are currently separated."[34] Such seamless procedure is regulated by three interconnected regulations[35] and, as regards asylum seekers, by the recast Reception Conditions directive.[36] For the attainment of this seamless procedure, the EU legislator also introduced a so-called "fiction of non-entry", applicable for its entire duration and enshrined in provisions finding continuity in all the three regulations and providing that third-country nationals subjected to those procedures "shall not be authorized to enter the territory of a Member State"[37] - thereby disconnecting the individual's physical presence on the territory from the legal implications attached to entry.[38]

Considering that physical entry has in reality already occurred, this fiction presupposes the need for concrete means for the prevention of legal entry; and it is precisely these means that are left unsatisfactorily addressed by the Screening Regulation.[39] The Regulation provides that third-country nationals, while not authorized to enter the territory, "shall remain available" to national authorities, leaving it to national

[32] Regulation 2024/1356/EU *introducing the screening of third-country nationals at the external borders*, cit., Art 5.

[33] For a complete analysis of the regulation, F. RONDINE, *Il Regolamento sugli accertamenti preingresso: irregolarizzare i richiedenti protezione normalizzando procedure "di crisi" alle frontiere esterne dell'Unione*, in *Quaderni ASIDUE*, Fascicolo speciale n. 4/2024.

[34] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *a New Pact on Migration and Asylum*, of 23 September 2020, COM(2020)609, p. 4.

[35] Regulation 2024/1356/EU *introducing the screening of third-country nationals at the external borders*, cit.; Regulation 2024/1348/EU of the European Parliament and of the Council, *establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, of 14 May 2024, in OJ L, 22 May 2024; Regulation 2024/1349/EU of the European Parliament and of the Council, *establishing a return border procedure, and amending Regulation (EU) 2021/1148*, of 14 May 2024, in OJ L, 22 May 2024.

[36] Directive 2024/1346/EU *laying down standards for the reception of applicants for international protection*, cit.

[37] Regulation 2024/1356/EU *introducing the screening of third-country nationals at the external borders*, cit., Art 6; Regulation 2024/1348/EU *establishing a common procedure for international protection in the Union*, cit., Art 43; Regulation 2024/1349/EU *establishing a return border procedure*, cit., Art 4.

[38] For a detailed analysis, EPRS, *Legal Fiction of Non-Entry in EU Asylum Policy*, Luxembourg, 2024; F. RONDINE, *The Fiction of Non-entry in European Migration Law Its Implications on the Rights of Asylum Seekers and Irregular Migrants at European Bord*ers, in *European Journal of Migration and Law*, 2024, n. 26, pp. 291-316; in Italian, F. RONDINE, *L'istituzionalizzazione di un regime frontaliero "dell'ammissione" dei cittadini di paesi terzi nello spazio giuridico europeo: tra norma e eccezione*, in this *Journal*, 2024, n. 2, pp. 349-374.

[39] G. CORNELISSE, *Border Control and the Right to Liberty in the Pact: A False Promise of 'Certainty, Clarity and Decent Conditions'?*, in D. THYM (ed.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum*, Baden-Baden, 2022.

legislators to determine how such availability is to be ensured.[40] While Recital 11 acknowledges that detention may be used as a measure of last resort, on the basis of an individual assessment, in accordance with the principles of necessity and proportionality and subject to effective remedies, the Regulation's operative provisions refrain from translating this into a concrete framework, explicitly delegating to Member States the power to determine how availability is enforced in practice. The resulting framework neither explicitly requires detention during screening, nor imposes meaningful constraints to it, thereby perpetuating legal uncertainty around the protection of personal liberty in screening procedures, granting Member States significant autonomy in interpretation and implementation.

This ambiguity has prompted repeated warnings. The European Parliament Research Service, in its horizontal substitute impact assessment of the Pact proposals, cautioned that: "By leaving the legal qualification of the measures that are to prevent persons from entering the territory during screening to national law, while at the same time obliging Member States to ensure that these people do not enter the territory, the new pact may have a negative impact on the right to personal liberty of refugees and other migrants, potentially facilitating instances of de facto detention (detention without a clear legal basis and no procedural safeguards). This can be expected as practices of de facto detention at external borders in order to prevent people from entering are widespread even under the current rules, where Member States are not yet under an obligation to prevent entry".[41]

In light of the experiences of Greece and Italy, numerous commentators have considered it foreseeable that such a framework will translate into procedures carried out in locations from which migrants cannot in practice leave, such as islands or other geographically inaccessible areas,[42] if not in practices of "automatic and generalized detention".[43]

3. Theoretical Framework: Crisification, Formalization and Street-Level Bureaucrats

[40] Regulation 2024/1356/EU *introducing the screening of third-country nationals at the external borders,* cit., Arts 6,9.

[41] EPRS, *Horizontal Substitute Impact Assessment*, cit., p. 97. Quoting: EPRS, *Asylum Procedures at the Border: European Implementation Assessment,* cit.; G. CORNELISSE, M. RENEMAN, *Border procedures in the Commission's New Pact on Migration and Asylum: A case of politics outplaying rationality?,* in *European Law Journal*, 2021, n. 26, pp. 181-198; G. MATEVŽIČ, *Crossing a Red Line*, cit.

[42] *Inter alia*, L. TSOURDI ET AL., *The EU's Shifting Borders Reconsidered,* cit., p. 98; L. JAKULEVIČIENĖ, *Pre-Screening at the Border in the Asylum and Migration Pact,* cit.; A. PAPOUTSI, J. PAINTER, E. PAPADA, A. VRADIS, *The EC Hotspot Approach in Greece: Creating Liminal EU Territory*, in *Journal of Ethnic and Migration Studies*, 2019, vol. 45, n. 12, pp. 2200-2212; ASGI, *The New Proposal for a Screening Procedure at the External Borders, Comments and Suggestions*, 2021; F. RONDINE, *Il Regolamento sugli accertamenti preingresso*, cit.

[43] G. CAMPESI, *The EU Pact on Migration and Asylum and the Dangerous Multiplication of 'Anomalous Zones' for Migration Management*, in S. CARRERA, A. GEDDES (eds.), *The EU Pact on Migration and Asylum in Light of the United Nations Global Compact on Refugees: International Experiences on Containment and Mobility and Their Impacts on Trust and Rights*, Florence, 2021, p. 198.

The genealogy of hotspots regulation traced above is conceptualized here as an instance of a broader pattern of gradual codification of practices first experimented in absence of a clear legal framework and in conditions of legal informality.[44] This section situates it within existing debates on codification of informal and exceptional practices, to which this contribution wants to contribute. It does so, by not only examining a practice that is absorbed into law, but a case in which codification appears to absorb, together with the practice, the very uncertainty that allowed it to develop, further arguing that this specific variant of the same dynamic only becomes visible once the analysis moves from the text of the law to the site of its everyday production and reproduction.

European asylum law is a field that has been undergoing a gradual but steady process of "crisification", to the point that "states of crisis/non-crisis become indistinguishable"[45] and crisis modalities are "routinised, normalised (and institutionalised) as the permanent condition" of the field.[46] The recurrent invocation of crisis has justified the adoption of increasingly restrictive measures,[47] typically introduced first in experimental form, "privileging ad hoc-ism, informality, executive discretion"[48] and only later normalized. Moreno-Lax identifies two interconnected mechanisms at the core of this process, which closely resonate with the evolution of hotspots described above. First, "softification", as the management of crisis through ad hoc, informal measures which, by "undermin[ing] hard-law commitments […] hinder the exercise of rights, […] evade judicial scrutiny […] and negate effective remedies"; and second, "lawification", as the subsequent codification of these "crisis-inspired (mal)practices" into law, progressively incorporated and legalized *ex post.* It is within this interpretative framework that the present contribution reads the Screening Regulation, as an EU-level "lawification" of practices first developed through soft-law to face an emergency, and since normalized and generalized.

Interestingly, comparable processes have been documented in different national contexts. Naylor's study of the Arenc detention center in France traces the evolution of a facility that operated for fifteen years without any legal basis before being granted an *ex post* legalization and ultimately becoming the template for administrative detention across

[44] Legal informality is understood here as the condition of practices that develop outside or at the margins of binding legal rules, being governed by non-binding instruments or by unwritten operational routines. It becomes problematic where it concerns matters subject to a reserve of law, as is the case for the deprivation of personal liberty, for which Article 13 of the Italian Constitution, Article 5 ECHR and Article 6 of the Charter alike require a legal basis of adequate quality. See, I. LEROY, *Migrant Reception Centres and Coercive Social Control: Rule by Legal Uncertainty?*, in *Social & Legal Studies*, 2024, vol. 34, n. 3, pp. 402-420.

[45] V. MORENO-LAX, *The 'Crisification' of Migration Law*, cit., p. 4.

[46] *Ibid.*, p. 3; see also: J. JEANDESBOZ, P. PALLISTER-WILKINS, *Crisis, Routine, Consolidation: The Politics of the Mediterranean Migration Crisis*, in *Mediterranean Politics*, 2016, vol. 21, n. 2, pp. 316-320.

[47] G. CAMPESI, *Defining 'Crisis' in Migration Governance: A Critical Legal Mapping of EU Crisis Response Mechanisms*, in *European Journal of Migration and Law*, 2024, vol. 26, n. 1, pp. 26-54; D. DAVITTI, *Biopolitical Borders and the State of Exception in the European Migration 'Crisis'*, in *European Journal of International Law*, 2018, vol. 29, n. 4, pp. 1173-1196.

[48] V. MORENO-LAX, *The 'Crisification' of Migration Law*, cit., p. 14.

the French system and beyond;[49] a similar "*légalisation à posteriori*" has been documented at the French-Italian border, where irregular practices of border control and detention were likewise absorbed into law.[50] These are local trajectories that the Pantelleria case, as will be shown, closely resembles. What these accounts share is a focus on how a given practice moves from informality into law; the present contribution fits within this strand, while turning more closely to a variation of this mechanism, exploring the situation in which it is not the practice itself to be formalized into law, but rather the discretion that first enabled it.

Such an investigation requires looking beyond the correspondence between prior practice and subsequent legal text, paying attention to the ground, where that discretion is reproduced. If Moreno-Lax described the macro-level dynamic through which informal practices "hardify"[51] into law, this contribution contends that this dynamic is enacted, at the micro level, by the individual actors who, when implementing the law, exercise the discretion it leaves open. This bottom-up dimension is central in this contribution. It also finds support in a broader reappraisal of the Europeanisation of migration policy, increasingly considered as happening "by practice".[52] Where earlier scholarship emphasized the "uploading" of restrictive policy preferences by Northern Member States into the European legal framework through negotiations,[53] more recent work has traced how Southern Member States – traditionally portrayed as recalcitrant or late recipients of EU migration law – have increasingly come to shape EU legal developments from below,[54] in a context where implementation on the ground generates feedback loops that in turn inform EU policy, and where "the adoption of rules from above goes hand in hand with the institutionalization of practices from below."[55] This contribution accordingly aims at examining these "practices from below", and it does so by focusing on local implementing authorities as street-level bureaucrats.[56] It is they, who are called upon to fill the interpretative gaps left open by ambiguous legislation, thus being in effect tasked with shaping the concrete contours of law from below, not merely implementing it, but

[49] E.W.J. NAYLOR, *Le Centre d'Arenc (1963–2006)*, cit.
[50] B. CHARAUDEAU SANTOMAURO, *La frontière intérieure à l'épreuve d'une fiction juridique*, cit., p 30.
[51] V. MORENO-LAX, *The 'Crisification' of Migration Law*, cit., p.15.
[52] V. MUSLIU, *Europeanization and Statebuilding as Everyday Practices: Performing Europe in the Western Balkans*, Abingdon, 2021, quoted in C. FINOTELLI, I. PONZO (eds.), *Migration Control Logics and Strategies in Europe: A North-South Comparison*, Cham, 2023, p. 329.
[53] See, N. ZAUN, *EU Asylum Policies: The Power of Strong Regulating States*, Cham, 2017.
[54] C. FINOTELLI, I. PONZO, *Migration Control Logics and Strategies in Europe*, cit.; L. GABRIELLI, *The Genealogy of the External Dimension of the Spanish Immigration Regime: When a Bricolage National Policy Becomes a Driver of Europeanisation*, in C. FINOTELLI, I. PONZO (eds.), *Migration Control Logics and Strategies in Europe*, Cham, 2023. Interesting to note how the Agenda was itself interpreted as a form of "normalization" of migration management practices already in use at the external borders, suggesting that this dynamic of ex post formalization is recurrent: I. PONZO, *Looking into Policy Change: How the Italian Asylum Regime Came of Age*, in C. FINOTELLI, I. PONZO (eds.), *Migration Control Logics and Strategies in Europe*, Cham, 2023.
[55] C. FINOTELLI, I. PONZO, *Migration Control Logics and Strategies in Europe*, cit., p. 331.
[56] M. LIPSKY, *Street-Level Bureaucracy*, cit.; T. EULE ET AL., *Migrants before the Law*, cit.; L.M. BORRELLI, *The Border Inside – Organizational Socialization of Street-Level Bureaucrats in the European Migration Regime*, in *Journal of Borderlands Studies*, 2021, vol. 36, n. 4, pp. 579-598.

in a way "mak[ing] it".[57] In the context examined here, the relevance of this task is heightened by the wide discretion they enjoy in implementing the hotspot approach, a framework characterized by legal indeterminacy where imprecise EU instruments are transposed in an equally vague manner.[58] In such context, discretion is delegated twice: first from EU lawmakers to national legislators, and then from national legislators to them, the local implementers.[59]

4. Methodology

Understanding how street-level bureaucrats navigate the discretion described above,[60] calls for a methodology capable of accessing what remains largely invisible in legal texts. The methodological approach adopted is accordingly informed by legal ethnography, grounded in the premise that in-depth engagement with the object of research enriches legal analysis by revealing informal bureaucratic dynamics that formal legal sources do not capture.[61] In particular, where legal frameworks are marked by legal informality, uncertainty and wide margins of discretion, legal ethnography is particularly suited to grasping how policies are enacted on the ground and what consequences such indeterminacy may produce.[62] Those mentioned above are all features that characterize the hotspot, a legal space where binding EU and national provisions coexist and interact with a plurality of other sources, such as soft-law instruments, prefectural guidelines, internal registries, and unwritten operational routines. It is at the intersection of these normative orders, and in the frictions between them, that the ambiguity examined in this

[57] D. FASSIN, Y. BOUGGA, I. COUTANT ET AL., *At the Heart of the State: The Moral World of Institutions*, London, 2015, p. 5. On discretion in migration control: L.M. BORRELLI, D. HEDLUND, L. JOHANNESSON, A. LINDBERG, *Border Bureaucracies: A Literature Review of Discretion in Migration Control*, NCCR Working Paper 32, 2023.

[58] B. AYATA, K. CUPERS, C. PAGANO, A. FYSSA, A. DIA, *The Implementation of the EU Hotspot Approach in Greece and Italy: A Comparative and Interdisciplinary Analysis*, Working Paper, in Research Project *Infrastructure Space and the Future of Migration Management: The EU Hotspots in the Mediterranean Borderscapes*, 2018.

[59] N. DÖRRENBÄCHER, E. MASTENBROEK, *Passing the Buck? Analyzing the Delegation of Discretion after Transposition of European Union Law*, in *Regulation & Governance*, 2017, vol. 13, pp. 70-85.

[60] The centrality of street-level bureaucrats in sustaining this practice should not obscure a point that is, from a legal perspective, decisive: the question of State responsibility. The street-level bureaucrats described in the sections that follow act in their official capacity. Their acts and omissions in that capacity are thus attributable to Italy. The ethnographic category of the street-level bureaucrat helps identify who exercised control in practice and how this control was exercised, but the law of State responsibility reminds us that exercise of such control is ultimately attributable to the State. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, UN Doc. A/56/10, ch. IV.E, Part One, Arts 2, 4 and 7 and the corresponding commentaries, text and commentaries. See also UN General Assembly Resolution 56/83 of 12 December 2001, annex.

[61] See, J. STARR, M. GOODALE (eds.), *Practicing Ethnography in Law*, New York, 2002; T. Bierschenk, J-P. OLIVIER DE SARDAN, *How to Study Bureaucracies Ethnographically?*, in *Critique of Anthropology*, 2019, vol. 39, n. 2, pp. 243-257.

[62] J. GRIFFITHS, *What Is Legal Pluralism?*, in *Journal of Legal Pluralism and Unofficial Law*, 1986, vol. 18, n. 24, pp. 1-55.

article is produced and reproduced on the ground, and it is precisely this intersection that a purely doctrinal analysis would risk leaving out of sight.

A methodology is thus adopted which combines participant observation,[63] formal and informal interviews, document and legal doctrinal analysis, and the triangulation between these sources. The empirical material was collected between May 2024 and August 2025 through participant observation conducted within the framework of a project of the Italian Association for Legal Studies on Immigration (ASGI), as part of a broader fieldwork for the purpose of PhD research. The *InLimine* project monitors and litigates practices affecting the rights of third-country nationals at Italian borders. Participant observation with the project entailed a combination of monitoring and reporting activities at Italy's external borders with a specific focus on the hotspot of Pantelleria. A distinctive element of this methodology is the use of *sopralluoghi giuridici* (legal field visits), developed within ASGI practice as a method particularly suited to the monitoring of practices for litigation purposes. The *sopralluogo giuridico* occurs through two main interconnected phases: the first consists of preparation, review of available documentation, preliminary contacts with actors, submission of freedom of information requests;[64] the second consists of field visits themselves, which in this case took place in Pantelleria in May 2024 and in May and August 2025. During these visits, conducted together with a delegation of ASGI members, 15 formal and informal interviews and several encounters were carried out with street-level bureaucrats involved in the functioning of the hotspots as well as other actors surrounding its functioning. Interlocutors included the hotspot management, law enforcement personnel, medical personnel, international and local organizations, and members of the local population.

The *sopralluogo giuridico* is proposed as a methodological device that operationalizes legal ethnography. By combining prior preparation with site visits, it enables "access" to otherwise hardly accessible spaces,[65] offering an alternative to "drop-in fieldwork",[66] relying instead on gradual entry into the field and sustained interaction with its actors. Data were gathered through documents obtained via freedom of information requests, fieldnotes drafted during visits, interviews and conversations, all informing the analysis developed in this article. Excerpts from these materials are mostly reported in narrative form as they were recorded in writing by the author through

[63] J-P. OLIVIER DE SARDAN, *The Policy of Fieldwork: Data Production in Anthropology and Qualitative Approaches*, in J-P. OLIVIER DE SARDAN (ed.), *Epistemology, Fieldwork, and Anthropology*, New York, 2015; K. ROZAKOU, *Nonrecording the 'European Refugee Crisis' in Greece: Navigating through Irregular Bureaucracy*, in *Focaal – Journal of Global and Historical Anthropology*, 2017, vol. 77, pp. 36-49.

[64] A. SAVAGE, R. HYDE, *Using Freedom of Information Requests to Facilitate Research*, in *International Journal of Social Research Methodology*, 2014, vol. 17, n. 3, pp. 303-317. All materials obtained through freedom of information requests are available at: ASGI, *Il monitoraggio di Pantelleria: le informazioni ottenute dalla pubblica amministrazione*, 2025, https://www.asgi.it/inlimine/il-monitoraggio-di-pantelleria-le-informazioni-ottenute-dalla-pubblica-amministrazione/.

[65] K. ROZAKOU, *'How Did You Get In?' Research Access and Sovereign Power during the 'Migration Crisis' in Greece*, in *Social Anthropology*, 2019, vol. 27, Sup. 1, pp. 68-83.

[66] H. CABOT, *The Business of Anthropology and the European Refugee Regime*, in *American Ethnologist*, 2019, vol. 46, n. 3, pp. 261-275.

fieldnotes. Anonymity of participants is further ensured by only making reference to generic roles, in a way that ensures their privacy while not distorting the scholarly value of the research material.

A final clarification concerns the scope of the findings. A single case, however densely documented, does not suffice to draw general legal conclusions or to build a causation theory, nor is this its ambition here. The case of Pantelleria is employed as a vantage point from which to observe in depth a mechanism whose existence can be traced in legal texts but whose functioning cannot.[67] The case-study-specific findings are accordingly triangulated not only with documentary and doctrinal sources, but also with relevant jurisprudence, and with other documented practices, which together allow the case to be read as an instance of a wider pattern rather than as an isolated anomaly.

5. The Case of Pantelleria

The formalization of the Pantelleria hotspot offers a concrete illustration of the dynamic of practices first experimented in informality and subsequently absorbed into law without overcoming the ambiguity that allowed them to develop. The analysis first reconstructs the hotspot's administrative history and then examines how street-level bureaucrats operating in Pantelleria navigated the discretionary spaces left open by EU and national law, and how the practice of *de facto* detention was framed, implemented, and ultimately legitimized at the local level and, arguably, beyond.

5.1. The Formalization of the Pantelleria Hotspot

The formalization of the reception facility in Pantelleria was gradual and slow, taking years for an informal point of arrival to be transformed into a fully operational hotspot. Although arrivals from Tunisia have occurred since the early 2010s, it was not until 2024 that the facility became a "crisis point" with on-site identification procedures. In all those years, Pantelleria remained largely absent from public and academic debates on migration,[68] and information about migration management on the island has been almost exclusively produced through ASGI's monitoring activities.[69]

[67] On the value of single case studies for analytical rather than statistical generalization, B. FLYVBJERG, *Five Misunderstandings About Case-Study Research*, in *Qualitative Inquiry*, 2006, vol. 12, n. 2, pp. 219-245.

[68] With the exceptions, to the author's knowledge, of: L. CANZUTTI, *Absent Tech: Data, Violence and (Non)Credibility at the EU Borders*, in *International Migration*, 2025, vol. 63, n. 4, e70040, section 3.a; J. ANDERLINI, E. FRAVEGA (eds.), *Crocevia Mediterraneo*, Milan, 2023.

[69] ASGI, SPAZI CIRCOLARI, *Il modello Lampedusa amplificato a Pantelleria: il "nuovo" hotspot e la privazione della libertà personale*, October 2023; and, among press coverage, *Pantelleria: un'isola dai diritti sospesi*, in *Nigrizia*, 24 August 2022; A. SICCARDO, *I diritti negati e il trattamento dei cittadini stranieri all'hotspot di Pantelleria*, in *Altreconomia*, 31 July 2024.

When ASGI began conducting monitoring activities in Pantelleria in 2021, the island was experiencing a consistent increase in arrivals, peaking at around 5,000 in a year.[70] Third-country nationals, in large majority Tunisian nationals,[71] were accommodated in former police barracks where they remained for up to several days before being transferred to Sicily. The *ad hoc* facility, run by the island Municipality, was described by authorities as a "*temporaneo ricovero*" (temporary shelter)[72] or "*centro di permanenza temporaneo*" (center for temporary permanence)[73] – labels with no basis in Italian law, a fact acknowledged by the Prefecture itself, which defined the "operational and juridical definition of the centre" as still "in process",[74] even as the center was already operational.

A major shift occurred when, in 2022, the center was formally designated as a hotspot under Italian law,[75] after being enlarged to a 40-person capacity and its management transferred to a private contractor under the Prefecture's control. This juridical reclassification did not immediately correspond to operational changes. In the meantime, street-level bureaucrats interviewed continued to refer to the facility with vague terminology devoid of legal meaning, as a "*centro di primissima accoglienza*" (*very* first-reception center).[76] For a prolonged period, therefore, the juridical status of the center remained indeterminate, operating as a transit site where selected elements of the hotspot model were applied.[77] Moving from a fully "softified" arrangement, this intermediate phase captures a "lawification" only partly under way: the legal categorization had hardened, but the practices it was meant to regulate had not yet been touched. The introduction of identification procedures in 2024 brought its operations more closely into line with its formal designation as a hotspot,[78] completing, on paper, the "lawification" of a facility whose underlying practices, as the next section shows, remained as uncertain as before.

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[70] ASGI, *La frontiera di Pantelleria: le procedure attuate nei confronti dei cittadini stranieri in ingresso*, 2021, https://www.asgi.it/inlimine/la-frontiera-di-pantelleria-le-procedure-attuate-nei-confronti-dei-cittadini-stranieri-in-ingresso/.

[71] Important to note that Tunisia is considered a safe country of origin in Italy, having a set of implications for the access to the asylum procedure, the procedural guarantees obtained and the possibility for return. See, *inter alia*, M. GIUFFRÈ, C. DENARO, F. RAACH, *On 'Safety' and EU Externalisation of Borders: Questioning the Role of Tunisia as a 'Safe Country of Origin' and a 'Safe Third Country'*, in *European Journal of Migration and Law*, 2022, vol. 24, n. 4, pp. 570-599.

[72] Prefettura di Trapani, *Response to a civic-access request concerning Pantelleria*, 2021, https://inlimine.asgi.it/wp-content/uploads/2021/01/Risposta-Prefettura-di-Trapani-accesso-civico-Pantelleria.pdf.

[73] Prefettura di Trapani, *Pantelleria: procedure, arrivi, accoglienza, respingimenti e manifestazioni di volontà*, 2022, https://www.asgi.it/inlimine/pantelleria-procedure-arrivi-accoglienza-respingimenti-e-manifestazioni-di-volonta/.

[74] *Ibid*.

[75] ASGI, *Hotspot di Pantelleria: l'accesso ai diritti e al trattamento dei cittadini stranieri*, 2024, https://www.asgi.it/inlimine/hotspot-di-pantelleria-laccesso-ai-diritti-e-al-trattamento-dei-cittadini-stranieri/; Prefettura di Trapani, *Il "punto crisi" a Pantelleria: alcuni riscontri dalla pubblica amministrazione*, 2022, https://www.asgi.it/inlimine/il-punto-crisi-a-pantelleria-alcuni-riscontri-dalla-pubblica-amministrazione/.

[76] Fieldnotes from visit to the hotspot, May 2024.

[77] L. CANZUTTI, *Absent Tech*, cit.

[78] ASGI, *L'hotspot di Pantelleria: aggiornamenti sulle prassi e procedure relative all'accesso ai diritti e al trattamento dei cittadini stranieri*, July 2025, report, pp. 5-7.

5.2. *De Facto* Detention in Pantelleria

A central question guiding this analysis is whether the "lawification" of the Pantelleria hotspot resulted in any substantive change to the recourse to detention. Since the earliest monitoring activities, it has been evident that third-country nationals transiting in Pantelleria were structurally deprived of their liberty: for the entire duration of their stay on the island, they were prevented from leaving the facility, whether to walk around the town or purchase basic goods. This period ranged from a few hours to several days, depending in part on weather conditions affecting transfers to the mainland. In line with other hotspot practices, this confinement assumed the features of *de facto* detention in that it was not based on any legal order nor subjected to judicial validation.

As the hotspot underwent the gradual process of formalization described above, these practices of *de facto* detention were only strengthened. Interlocutors who recalled isolated instances of exit of third-country nationals in earlier years, said that such instances no longer occurred after the Prefecture assumed control, a change they associated with a marked increase in law enforcement presence on the island, reflecting the centralization of control under the Ministry of Interior: "Everything is managed more strictly, and newcomers are no longer visible". Or, as one resident remarked: "Here we see more police cars than migrants", voicing concerns not only for the practices of detention, but also, and mostly, for the negative impact on the "island's image as a tourist destination."[79] The combined effect of the hyper-visibilization of security and the simultaneous invisibilization of third-country nationals contributed to a growing perception of Pantelleria as an increasingly militarized space.

The centrality of street-level bureaucrats in sustaining and formalizing unlawful practices, established above as theoretical proposition, finds a valuable observation point in the case of the Pantelleria hotspot. In a context characterized by legal indeterminacy, where processes of "softification" and "lawification" unfolded simultaneously and contradictorily, the facility's status hardening even as practices within it remained as informal as before, street-level bureaucrats were endowed with wide discretion to move within the boundaries of an ambiguous legal framework. It is in this context that *de facto* detention persisted *through* formalization rather than despite it.

5.3. Narratives, Opacity and Secrecy

A closer analysis of the evolution of detention practices in Pantelleria reveals not only their persistence, but an interesting shift in how they are narrated and justified, a shift that accompanies the progressive formalization of the hotspot and unfolds along two parallel and contrasting planes: official and informal narratives.

[79] Fieldnotes from informal conversations with journalists, local population, Municipality of Pantelleria, medical personnel, May 2025.

At the official level, the narrative surrounding detention underwent a significant transformation over time. When the facility still operated informally, street-level bureaucrats appeared remarkably open, even in writing, in acknowledging practices that legally amounted to detention, albeit without using the term itself. In 2021 it was candidly indicated that, while no formal detention orders had ever been issued,[80] "migrants hosted at the center [were] under surveillance by the armed force."[81] In 2023 and 2024, it was explicitly stated that, "pending transfer […], migrants, because they have not yet been photo-identified, cannot leave the facility."[82] This openness remarkably disappeared once identification procedures were activated, and official responses became more cautious, carefully worded and bureaucratically mediated. In response to new freedom of information requests, the Prefecture abruptly redefined the hotspot as an "open facility", asserting that migrants could "freely enter and exit" after fingerprinting.[83] In reality, as witnessed during the *sopralluoghi*, detention persisted in practice; it was its acknowledgement that was being withdrawn.

The fragility of this narrative was exposed when street-level bureaucrats were asked to clarify the actual possibilities of leaving the "open facility". While the Prefecture stated that "entry and exit are regulated by law enforcement officers which patrol the facility 24/7, through dedicated registries",[84] responsibility for these registries was subsequently deflected between the Prefecture, the management of the center, and the Questura (head of the law enforcement), each denying competence and pointing to another authority as responsible.[85] What emerges is a subtle rhetoric of strategic delegation of responsibility[86] that ultimately leaves no one responsible for this alleged entry and exit system, and consequently for the curtailing of the constitutional right of liberty.

At the informal level, a different dynamic emerges. In interactions not mediated by formal documentation, but rather taking place through conversations, interviews and visits to the hotspot, street-level bureaucrats framed the practice of *de facto* detention in

[80] Ministry of Interior, *Response by the official responsible for administrative review concerning Pantelleria*, 2022, https://inlimine.asgi.it/wp-content/uploads/2022/06/Riscontro-Responsabile-riesame-Pantelleria-6.6.2022.pdf.
[81] Prefettura di Trapani, *Response to a civic-access request concerning Pantelleria*, cit.
[82] Prefettura di Trapani, *Response concerning the Pantelleria hotspot*, 2023, https://inlimine.asgi.it/wp-content/uploads/2022/09/Risposta-Prefettura-Trapani-hotspot-Pantelleria-10.5.2023.pdf; Prefettura di Trapani, *L'hotspot di Pantelleria: i riscontri della pubblica amministrazione*, 2024, https://www.asgi.it/inlimine/lhotspot-di-pantelleria-i-riscontri-della-pubblica-amministrazione/.
[83] Prefettura di Trapani, *L'hotspot di Pantelleria: i riscontri della pubblica amministrazione*, 2025, https://www.asgi.it/inlimine/lhotspot-di-pantelleria-i-riscontri-della-pubblica-amministrazione-2/.
[84] *Ibid.*
[85] Prefettura di Trapani, *Response concerning entries to and exits from the Pantelleria hotspot*, 2025, https://www.asgi.it/wp-content/uploads/2025/07/Riscontro-Prefettura-entrate-e-uscite-pantelleria-12.05.2025.pdf; Management of the Center, *Response to a request for review concerning entries to and exits from the Pantelleria hotspot*, 2025, https://www.asgi.it/wp-content/uploads/2025/07/Riscontro-a-riesame-Ente-Gestore-entrate-e-uscite-hotspot-13.05.2025.pdf; Questura di Trapani, *Request for review concerning entries to and exits from the Pantelleria hotspot*, 2025, https://www.asgi.it/wp-content/uploads/2025/07/Richiesta-a-riesame-Questura-Trapani-ingressi-e-uscite-hotspot-Pantelleria-27.05.2025.pdf.
[86] M. HERZFELD, *The Social Production of Indifference: Exploring the Symbolic Roots of Western Bureaucracy*, Chicago, 1992.

slightly but importantly different terms. While the same careful avoidance of the term "detention" is noted, confinement as a logistical necessity is simultaneously acknowledged and justified. Deprivation of personal liberty is described by one law enforcement officer as a "grey zone", neither expressly prohibited nor authorized[87] – the same term the literature uses to describe the space in which street-level bureaucrats operate with utmost discretionary power, now offered back, unprompted, and all the more revealing.[88] This reflects an attempt to normalizing detention by stripping it of legal meaning and reframing it into a matter of belief or interpretation, rather than of rights and obligations. This discursive minimization obscures the potential unlawfulness of such practices and contributes to a broader regime of normalized exceptionality.[89]

This process of denial and justification operates through a variety of techniques that reframe detention as "just" temporary, "just" a precautionary measure, even benign. A first strategy is linguistic, entailing the deliberate and accurate use of alternative terminology to elude legal responsibility. As Herzfeld observes, bureaucrats reassert their authority by defining and redefining terms, insisting on "rhetorical exactitude" while simultaneously emptying words of their legal content.[90] Third-country nationals, it is explained, "are not detained", but "prevented from leaving" the facility[91] – a formulation strikingly echoing the language of the Screening Regulation itself, which vaguely requires migrants to remain "available" to the authorities. Through this rhetorical maneuver, deprivation of liberty is reframed as something other than detention, allowing street-level bureaucrats to maintain practices that would otherwise trigger legal obligations.

A second strategy banalizes deprivation of liberty as a practical necessity. Confinement is thus presented as a harmless and indispensable element of the hotspot's functioning, a precautionary measure to avoid third-country nationals "getting lost" on the island or causing concern among the local population.[92] In this framing, deprivation of liberty is stripped of its legal dimension and recast as administrative common sense, taken further with claims that "everything they need is already inside the facility, they are not willing to leave anyway."[93]

A third technique appeals to benevolence and humanitarian concern. During an interview, a law enforcement officer offered a particularly revealing and paradoxical account: "We even take them out for walks sometimes. We once brought the children to the beach!"[94] The implication of this narrative is that the legality of detention should be evaluated not through established legal criteria, but through a moral lens of benevolence versus malice – "we are not doing this because we are evil" – as if the absence of ill intent

[87] Fieldnotes from field visit, May 2025.
[88] T. EULE ET AL., *Migrants before the Law,* cit.
[89] Cf E.W.J. NAYLOR, *Le Centre d'Arenc (1963–2006),* cit., p. 115.
[90] M. HERZFELD, *The Social Production of Indifference*, cit., p. 124.
[91] Fieldnotes from visit to the hotspot, May 2024.
[92] *Ibid*.
[93] Fieldnotes from conversation with camp management, May 2025.
[94] Fieldnotes from visit to the hotspot, May 2024.

could neutralize the legal classification of deprivation of liberty.[95] A related account is the pervasive reliance on a "sense of abandonment" among street-level bureaucrats, lamenting being left "completely alone" in managing an issue far beyond their capacity,[96] to which they dedicate all their energy and good will.[97] These narratives serve both to humanize the bureaucrat and to deflect responsibility, vertically to the "heartless system" unsupportive of local realities, and horizontally, among street-level bureaucrats themselves.[98]

5.4. Pantelleria as an Opaque Laboratory

Street-level bureaucrats' narratives, which shield the persistent practice of detention, both contribute to and are facilitated by the substantial operational opacity in which the hotspot functions, and by the structural secrecy that characterizes Pantelleria as a hotspot location. Island detention is not uncommon and there is a long history of islands being used as places of detention even outside the framework of the law, as geography makes them function as natural "sites of exclusion".[99] Island detention can constitute a space of legal indeterminacy structurally produced to allow practices to escape legal scrutiny, all the more functional to this purpose where it can go unnoticed, un-spectacularized.[100] Hotspot locations have traditionally followed a similar pattern, operationalized through remoteness, poor accessibility and physical isolation,[101] "closed to all eyes except those of the administration."[102]

Unlike Lampedusa, a highly spectacularized border location that has become synonymous with the border itself,[103] Pantelleria is remarkably absent from public representations of migration control. Locally, the comparison with Lampedusa constantly recurs. Interviewees repeatedly stressed that "Pantelleria is not like Lampedusa": it is "only a temporary point of arrival, where people do not get stuck for long", it has "a different kind of tourism and nightlife", and is a place where "the state spends less". As one interlocutor put it, "in Lampedusa there is more… of everything".[104] Lampedusa – and, analogously, Lesvos in the Greek hotspot constellation – operates as a lighthouse, attracting public and media attention, while enabling other sites, like Pantelleria, to operate in its shadow, in a functional obscurity that is undisturbed by interference. In Pantelleria, this remoteness is amplified by an almost complete lack of public awareness

[95] I. VEGA, *Empathy, Morality, and Criminality: The Legitimation Narratives of U.S. Border Patrol Agents*, in *Journal of Ethnic and Migration Studies*, 2018, vol. 44, n. 15, pp. 2544-2561.
[96] Fieldnotes from conversations with law enforcement official and medical personnel, May 2025.
[97] Cf K. ROZAKOU, *Ambivalent Feelings: 'Filotimo' in the Greek Migration Regime*, in *Identities*, 2024, vol. 31, n. 1, pp. 31-46.
[98] M. HERZFELD, *The Social Production of Indifference*, cit.
[99] A. DIMITRIADI, *Governing Irregular Migration at the Margins of Europe*, cit., p. 81.
[100] I. MANN, *Maritime Legal Black Holes: Migration and Rightlessness in International Law*, in *European Journal of International Law*, 2018, vol. 29, n. 2, pp. 347-372.
[101] G. CAMPESI, *The Dangerous Multiplication of 'Anomalous Zones'*, cit.
[102] Cf. E.W.J. NAYLOR, *Le Centre d'Arenc (1963–2006)*, cit., p. 34.
[103] P. CUTTITTA, *Lampedusa 'Border Play'*, cit.
[104] Fieldnotes from various conversations, 2024, 2025.

that the island hosts a hotspot, and by the increasing exclusion of island residents and civil society from knowledge about what happens inside the facility; a process that intensified as the hotspot formalized and as increased militarization led to heightened secrecy and reduced access to the site. In this context, it is significant that in 2025 the InLimine monitoring delegation was denied access to the facility for the first time, a clear sign that formalization has been accompanied by increased opacity and restricted oversight.

These elements, read in conjunction with the genealogy of the hotspot, make Pantelleria resonate with the notion of "laboratory" as it appears in the literature of formalization of practices.[105] A laboratory whose experimental objective is never explicitly affirmed, but in which practices that derogate from applicable rules, or operate at their margins, are experimented by street-level bureaucrats left to navigate their own discretion, in absence of public scrutiny, before those same practices come to be codified and generalized in national or supranational legislation. A laboratory "that will not say its name''[106] – as there is no ultimate claim of proof that it was specifically Pantelleria to have informed the EU codification – but whose resonance with the codifying language of the Screening Regulation is worth flagging and further investigating. The administrative history of the Pantelleria hotspot supports reading the case in these terms. Pantelleria thus offers an especially instructive case for analyzing the formalization of *de facto* detention, precisely because its marginality, operational secrecy and the lack of spectacularization shielded and enabled practices that might have been less tolerated under conditions of more intense scrutiny.

6. Conclusion

On 12 June 2026, the very day in which the Pact entered into effect, Italy adopted Decree Law n. 100, containing "urgent measures on justice matters and for the implementation of the European Union Pact on Migration and Asylum of 14 May 2024".[107] A provision amending the Consolidated Text on Immigration addresses the question of detention during screening procedures: Article 10-*ter*, 2-*quinquies* provides that, for the purpose of identification during screening, the border authority "proceeds with the custody" (*fermo*) of the third-country national for a maximum of 72 hours. The ordering authority must give immediate communication to the public prosecutor, who

[105] E.W.J. NAYLOR, *Le Centre d'Arenc (1963–2006)*, cit.; B. CHARAUDEAU SANTOMAURO, *La frontière intérieure à l'épreuve d'une fiction juridique*, cit.; GKEGKA, *La Grèce, laboratoire de la politique européenne d'asile,* cit.
[106] GKEGKA, *La Grèce, laboratoire de la politique européenne d'asile,* cit., p. 2.
[107] Decree Law of 12 June 2026, n. 100, in GU n. 134, 12 June 2026, converted without amendments by Law of 7 August 2026, n. 145, in GU n. 183, 8 August 2026.

may order the release if the "conditions" for the custody are not met. Moreover, and importantly, the *fermo* must be subjected to judicial validation.

Following a *sopralluogo giuridico* conducted by an InLimine delegation in Pantelleria in September 2026, and an interview that I conducted with one of the participants, some preliminary observations are offered, with the caution that a full analysis of the legislation and of its implementation, on which only a few months of experience exist, falls outside the scope of this article. Even so, this first evidence from the field speaks directly to the argument advanced here. Newly introduced article 10-*ter* represents not only an implementation of the Screening Regulation's requirement that Member States ensure that third-country nationals "remain available" during screening, but also the codification of a practice this article has shown to have already been occurring for years. In the words of the interviewed lawyer, this measure represents "an institutionalization of practices that had already occurred *de facto*", which now gives them a "legal guise" (*veste giuridica*).[108]

The norm further illustrates the persistence of precisely the ambiguity this article has traced. The *fermo* is textually presented as an automatism, accompanied only by an obligation to provide a "summary indication of the reasons rendering the custody necessary", an indication that the public prosecutor may in principle contest, but in the absence of any defined standards. Notably, the legislator has opted for this custodial measure rather than a more "traditional" form of migration detention, a choice that may signal the willingness of distancing this retention from detention *stricto sensu*, recalling Herzfeld's deliberate and accurate use of alternative terminology to elude legal responsibility. The custody is nonetheless endowed with the same constitutional guarantees that regulate deprivation of liberty, arguably rendering the norm hardly contestable from a legal perspective. What is ambiguous, however, is less the norm itself than its likely implementation, and whether those constitutional guarantees can be effectively exercised and enjoyed in practice. A simple calculation raises real doubt: the custody has a maximum duration of 72 hours, but the two-stage judicial validation procedure that the law provides (48 hours to request judicial validation, and further 48 hours for the judge to decide) can take up to 96 hours to complete. The safeguard, in other words, is not guaranteed to conclude within the lifespan of the measure it is meant to validate. This norm seems therefore a successful codification of a pre-existing practice, but whether it will change that practice remains doubtful. Third-country nationals will likely continue to be deprived of liberty without effective legal coverage or procedural safeguards, precisely because the procedure fails to guarantee that those safeguards are triggered in time. What this norm offers is then a "legal coverage" that risks going substantially unused or improperly applied.[109] These are, of course, preliminary observations which cannot and do not claim to substitute a comprehensive implementation study. But they offer an indication that the ambiguity this article has

[108] Interview with Italian lawyer, September 2026.
[109] *Ibid.*

traced is unresolved, and that the risks identified have already begun to materialize in the Italian case.

It is against this backdrop that the argument can be restated in full. This contribution has traced, through ethnographic fieldwork read in light of the applicable legal standards, the evolution and formalization of *de facto* detention during the screening phase of the hotspot approach in Italy prior to the Pact. Enabled over the past decade by the legal indeterminacy surrounding the definition and regulation of hotspots at both EU and Italian level, this practice is connected by a thread to the very indeterminacy that now characterizes the codification of hotspot procedures in the Pact – and, as the *fermo* discussed above illustrates, to the indeterminacy already resurfacing in Italy's own implementation of it. The Screening Regulation "deliberately creates room for maneuver for [Member States] to exploit legal uncertainties by means of strict practices on the ground."[110] The likely outcome, one the Italian legislation already appears to confirm, is that Member States will either refrain from formally qualifying the containment measures required to implement the Regulation as detention, or continue not to regulate its modalities precisely, and will nonetheless persist in resorting to it as a matter of practice or perceived necessity.

Formalization of practices is not inherently problematic. Codifying previously informal practices could even in principle bring beneficial effects, enhancing legal contestability by exposing them to judicial review.[111] Normative considerations certainly arise, nonetheless, as to the appropriateness of such codification where the codified practices are not neutral administrative routines but measures affecting fundamental rights, and where the codified practice may prove more restrictive than what the law previously allowed. Further additional concerns arise when codification intervenes without resolving the ambiguities that enabled those violations to occur, and to remain uncontested, in the first place. It is this perdurance of ambiguity, more than formalization *per se*, that this contribution has sought to scrutinize. Where practices continue to operate under conditions of opacity, their effective incontestability also remains, together with the difficulty individuals face in accessing meaningful remedies.[112] To the enlargement of the discretion afforded to street-level bureaucrats corresponds a narrowing of the space of maneuver available to those who seek to contest these practices through law. As long as ambiguity persists, so will the practices it has always shielded.

Applied to the case examined here, this perdurance of ambiguity carries specific implications for third-country nationals arriving at the EU external border and subjected to *de facto* detention. Codifying the screening procedure in a Regulation does bring one clear advancement: it renders the Charter of Fundamental Rights of the European Union

[110] D. THYM (ed.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum*, Baden-Baden, 2022, p. 29; see also, M. DEN HEIJER, *The Pitfalls of Border Procedures*, in *Common Market Law Review*, 2022, vol. 59, n. 3, pp. 641-672, p. 656.
[111] G. FABINI, V. FERRARIS, *From Informal Practices to Formal Policies: The Italian Approach to Border and Migration under the EU Pact*, in *Border Criminologies* (blog), 18 March 2025.
[112] V. MORENO-LAX, *The 'Crisification' of Migration Law*, cit.

applicable to the procedure in full.[113] Yet, the ambiguity left as to how Member States are to ensure that third-country nationals "remain available", and the corresponding absence of any clear discipline of detention during screening, leaves open the question of what concrete guarantees for the effective protection of fundamental rights are actually secured, particularly in respect of the right to an effective remedy under Article 47 of the Charter. Not naming practices as detention renders it correspondingly harder to trigger the guarantees that should accompany it under EU primary and secondary law, international human rights and constitutional law alike. Without formal recognition, there is no access to procedural safeguards, information on rights, legal representation, or judicial review, undermining the rights to defense and to an effective remedy, and ultimately the principle of effective judicial protection. Operating through blanket practices hardly reconcilable with the individualized guarantees applicable in cases of deprivation of liberty,[114] leaves no written order to challenge, and no validation procedure in which to intervene. The problem recurs, in a different form, at the evidentiary stage. Centers that are remote, closed and difficult to access make it harder to establish, after the fact, that detention took place at all. The contradictions between street-level bureaucrats' formal narratives, increasingly careful in denying detention, and their informal ones, which admit to it, concretize this evidentiary difficulty rather than resolving it. When detention is denied, concealed, or rhetorically minimized, third-country nationals are deprived not only of liberty but of the very means to contest that deprivation.

This is, in essence, what this contribution has termed the codification of ambiguity: a process that combines the risks of "softification" and "lawification", rather than resolving either. What is codified is not only a set of practices, but also the lack of guarantees that made those practices possible, thus crystallizing the practice without resolving its status. Such codification, if anything, risks aggravating the situation it inherits: deprivation of liberty during screening is now legitimized under the cover of the Pact, which nonetheless neither defines it clearly nor surrounds it with specific safeguards, while the ambiguity that survives codification allows the unlawful practices of the past to continue, as the *fermo* discussed at the beginning of this conclusion already begins to suggest.

The case of Pantelleria was employed to trace how this ambiguity works and what it implies. The article traces the trickling down of discretion from the pre-Pact CEAS, to Italian legislation and local implementing authorities. In the absence of clear legal boundaries, *de facto* detention became possible, routinised, and ultimately consolidated through sustained practice. The ethnographic account shows how street-level bureaucrats filled the gaps left by imprecise or fragmented frameworks, sustaining detention through layers of obscurity and discretion, and employing official and informal narratives that denied detention while simultaneously normalizing and justifying it, presenting it as necessary or benign, and diluting responsibility for it. This is what becomes possible when

[113] Regulation 2024/1356/EU *introducing the screening of third-country nationals at the external borders*, cit., Art 3.
[114] EPRS, *Horizontal Substitute Impact Assessment*, cit., p. 98.

law recedes and bureaucratic expediency takes its place: a troubling picture in which *de facto* detention is shielded by legal ambiguity, administrative informality, and rhetorical denial. The case of Pantelleria thus provides a detailed account of the back-and-forth dynamic through which the local, national and EU levels reinforce one another, and local bureaucratic practices born in legal indeterminacy crystallize over time, to the point of eventually finding resonance in EU legislation. Pantelleria can be considered an analytical laboratory for this process of formalization, where the opacity surrounding the legal qualification of practices by street-level bureaucrats is amplified by the broader secrecy characterizing the operation of the hotspot and by the island's invisibility on the stage of the border play.[115]

Pantelleria represents only one possible articulation of a wider structural pattern, where different elements of the Pact are appraised less as a "fresh start"[116] than as a continuation and codification of pre-existing practices.[117] And while this contribution does not claim to demonstrate the direct causal mechanism through which Pantelleria's practices shaped the Pact, it identifies correspondences too consistent to be overlooked. What occurred informally in Pantelleria is, in striking respects, what the Screening Regulation now codifies. The danger is that the Pact will not dismantle practices crystallized through informal experimentation, but instead exacerbate and institutionalize them, transforming what was once a local or national experiment into the default framework at EU external borders. The article offers a first step in the direction of empirically investigating these processes of codification, through an account of Pantelleria as a marginal and obscure site in which correspondences with what the Pact now provides can be identified and observed. Beyond the specific case, it is an attempt to switch on the stage lights in this backstage of the border, and a practical invitation to pursue grounded, locally-based research in similarly peripheral, obscure and less spectacular locations where experimental practices later reflected in the Pact may have taken shape.[118] Shedding light on these locations is crucial for anticipating the effects of newly applicable instruments. The erosion of asylum law does not necessarily occur spectacularly, and rights are not abruptly dismantled but gradually eroded, dissolved in the routine language of necessity and administrative efficiency, in the secrecy of mysteriously remote islands, under the quiet approval of the EU legislator.

[115] P. CUTTITTA, *Lampedusa 'Border Play'*, cit.
[116] Communication from the Commission, *a New Pact on Migration and Asylum*, cit., p. 1.
[117] See, *inter alia*, G. CAMPESI, *Normalising 'the Hotspot Approach'? An Analysis of the Commission's Most Recent Proposals*, in S. CARRERA, D. CURTIN, A. GEDDES (eds.), *20 Years Anniversary of the Tampere Programme: Europeanisation Dynamics of the EU Area of Freedom, Security and Justice*, Florence, 2020; G. FABINI, V. FERRARIS, *From Informal Practices to Formal Policies*, cit.; M. GERBAUDO, *The European Commission's Instrumentalization Strategy: Normalising Border Procedures and De Facto Detention*, in *European Papers – A Journal on Law and Integration*, 2022, vol. 7, n. 2, pp. 615-626.
[118] A. BOUSIOU, *Peripheralisation and Externalisation of the EU Asylum Regime: Implications for the Right to Seek Asylum on the Southeastern EU Border Islands*, in *Journal of Ethnic and Migration Studies*, 2022, vol. 48, n. 19, pp. 4586-4602.

ABSTRACT: Since 2015, EU hotspots in Italy have operated in conditions of substantial legal informality, with practices of *de facto* detention persisting for over a decade without any clear legal basis. The Screening Regulation, applicable since June 2026, provides the first EU-level codification of the hotspot approach. Yet, it leaves the boundaries of detention during hotspot procedures deliberately vague. This article argues that the Pact risks codifying not only pre-existing unlawful practices, but the very ambiguity that enabled them. Drawing on legal ethnographic fieldwork in the hotspot of Pantelleria, it shows how street-level bureaucrats have long exploited this ambiguity, shielding detention through shifting official and informal narratives. Reading this local experimentation alongside the Regulation's own vague language, the article suggests that ground-level practices may not merely implement EU law, but contribute to informing it.

KEYWORDS: *De Facto* Detention – Hotspots – European Pact on Migration and Asylum – Street-Level Bureaucrats – Pantelleria.