PICUM
For undocumented migrants, for social justice.

PICUM's Input to the UN Special Rapporteur on the Human Rights of Migrants

Report on the Externalization of Migration and the Impact on the Human Rights of Migrants

June 2025

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 155 organisations working with undocumented migrants in 34 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With more than twenty years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

Examples of externalisation measures

In recent years, the European Union has advanced the externalisation of migration policies through newly adopted legislation and funding instruments, and continues to do so through ongoing legislative proposals:

Adopted legislative instruments

1. **EU Pact on Asylum and Migration**

- The **Pact** was adopted in April 2024, after years of lengthy negotiations. Despite collective recommendations from civil society as well as other actors (including UN special procedures) and warnings on the harmful impact of the proposed reforms on migrants' fundamental rights, the final texts of the legislative instruments in the Pact normalises the arbitrary use of immigration detention, including for children and families; will lead to racial profiling; and will use "crisis" procedures to enable pushbacks, and return individuals to so called "safe third countries" where they are at risk of violence, torture, and arbitrary imprisonment. In PICUM's view, the following changes introduced by the Pact pave the way for increased externalisation:
    - The so-called **'legal fiction of non-entry'**, a concept which applies in the context of the Screening Regulation and of the asylum and return border procedures under the Asylum Procedure Regulation and the Return Border Procedure Regulation. During these procedures, despite being physically present in the EU territory, people are considered to not have formally entered the territory while the screening or border procedures are ongoing. This can be used as a way to justify large-scale detention to 'prevent unauthorised entry' (Asylum Procedure Regulation, Art. 43(2)). Moreover, the legal fiction of non-entry further distances states from their responsibilities under the principle of *non-refoulement* and limit people's access to regular asylum procedures or other permits that exist at national level.
    - The introduction of a **return border procedure** – set out in the Return Border Procedure Regulation – which applies to all people for whom international protection has been rejected in the context of the asylum border procedure. In addition, member states also have the possibility to refuse entry on the territory to people whose asylum application has been rejected in the context of a border procedure (more details in PICUM's analysis, p. 10). As outlined, above the Return Border Procedure will take place under the legal fiction of non-entry, to people who have been only to access accelerated asylum procedures, most likely under conditions of detention or de-facto detention. The mandatory application of such procedures to nationalities that don't meet a 20% international protection recognition rate will also create an arbitrary distinction amongst people of different nationalities and different circumstances who are put in border procedures. The aim of this procedure is to speed up deportation, within extremely short timelines (12 weeks in normal circumstances), which should also include the appeal against the return decision. It is hard to envision how these procedures could be effectively conducted within such a limited timeframe without resorting to cursory analysis and rapid case dismissals.

- The **erosion of safeguards around the right to effective remedy** is another central change introduced by the Pact (Asylum Procedure Regulation, Arts. 67-68). The first change concerns the duration of the period granted to applicants to lodge an appeal against a negative decision. Differently from the previous Asylum Procedure Directive, which provided for "reasonable" time limits, for the first time the APR sets specific deadlines, which will vary depending on the procedure. In addition, not all types of appeal will have a suspensive effect, which means that a person could be deported to a third country before a court or tribunal could take a final decision on their appeal (more details in PICUM's analysis, pp. 16-17).

2. Schengen Borders Code

- In spring 2024, the European institutions adopted Regulation (EU) 2024/1717, also known as the Schengen Borders Code. PICUM's analysis of the reform is available here.
- The amended Schengen Borders Code **expands the definition of "border surveillance"** (art. 2 (12); art. 13) **to allow for an expanded use of technologies**. Under the new article, border surveillance should contribute not only "to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally" but also to raising situational awareness. In addition, the article details the use of electronic means that can be used, including equipment, surveillance systems and, where appropriate, all types of stationary and mobile infrastructure. Recital 16 clarifies that modern technologies can be used to prevent irregular migration, including "drones and motion sensors, as well as mobile units, and, where appropriate, all types of stationary and mobile infrastructure. Artificial intelligence (AI) and other automated decision-making systems, including profiling, are increasingly used in border control and management for generalised and indiscriminate surveillance. There is serious concern that such systems can facilitate measures preventing access to the territory, violence at border crossings, and further limit access to asylum and other forms of protection. Furthermore, these technologies disproportionately target racialised people, thus further exacerbating the risks of increased racial and ethnic profiling.
- The amended Schengen Borders Code shows that the newly introduced procedure of "internal transfers" in practice would legalise the extremely violent practice of **internal pushbacks, with the potential to trigger so-called chain pushbacks** to non-EU countries. This has been broadly criticised by civil society organisations across the EU and condemned by higher courts.
- The new text also introduces a vague provision that would allow member states to take any necessary measure to preserve "security, law and order" if a large number of migrants is attempting to enter the country irregularly "en masse and using force" (art. 5(3)). This provision, which intentionally misinterprets the already very controversial European Court on Human Rights on the case of N.D. and N.T. v. Spain, by applying it way beyond its original scope, could give Member States carte blanche to enact violent border control measures – similar to what has already been seen in Spain to Poland, which has resulted in pushbacks and migrants' deaths.

3. EU funding

- PICUM's recent analysis of the EU's Border Management and Visa Instrument (BMVI) shows how financial resources are increasingly used for the reinforcement and militarisation of the EU's external borders. In particular, while the European Commission has ruled out the possibility of using BMVI funding for walls and fences, Member States can use it to finance the renovation and establishment of buildings and permanent surveillance infrastructures, including in countries with track records of pushbacks or unlawful detention at borders. The funding is also being used to increase border controls with new technologies and the deployment of artificial intelligence measures. Investments in third countries are also focused on capacity building projects for border guards in third countries, deployment of immigration liaison officers in third countries, and secondments of border guards to third countries.

Ongoing legislative proposals

1. Return regulation proposal

- The March 2025 proposal by the European Commission for a Return Regulation is set to codify the externalisation of deportation procedures into EU law.
- First of all, the proposal was presented without meaningful consultation of civil society, and no fundamental rights impact assessment was conducted in spite of the Interinstitutional Agreement of 16

April 2016 on Better Law-Making (paragraph 13) and the Better Regulation Guidelines. This follows an established trend of maladministration in the area of migration policy-making and makes it extremely difficult to assess the proportionality of the measures proposed, as acknowledged by the European Data Protection Supervisor.

- The proposal in its entirety is centred around control-oriented and punitive measures, with a massive expansion of detention and other detention-like measures, including for children. Externalisation is reflected in the following elements of the proposal:
    - **Expansion of the list of countries where people can be deported (Art 4(3)):** under the new proposal, people could be deported against their will to countries which are not their country of origin or transit without their consent (required under the current legal framework) under several circumstances. First of all where there is an 'agreement or arrangement' between a member state and the country in question (see below), but also *any* country where they have a right to enter and reside, or countries where the person has resided / transited through in the past, or 'safe third countries' in relation to which their application for international protection in the EU has been rejected as inadmissible (see the paragraph on the Safe Third Countries amendment below).
    - As mentioned above, in Art. 17 the proposal also spells out the conditions under which **people could be deported to a third country with which there is an "agreement" or "arrangement"**. As also acknowledged by the Commission, this would allow for the creation of so-called 'return hubs' in non-EU countries, but also allow member states to engage in additional forms of cooperation with third countries on deportations.
    - Art. 17 establishes what these 'agreements' or arrangements' should include, namely modalities of transfer, modalities of onward return to country of origin, consequences of violations or other changes that could impact people transferred in that country. Yet, the proposal does not say anything on what happens to people who cannot be returned, with the risk they remain stranded in third countries.
    - PICUM also observes it is highly unlikely that these schemes could work without massive use of detention and surveillance, as it has been the case in all the models that have inspired these proposal (such as the Italy-Albania model or the Australia's offshore detention schemes).
    - Families with children and unaccompanied children are the only groups that should be exempted from the application of Art. 17. Even if this is maintained in the negotiations, children could still be subject to detention within the EU territory, but also deported to a country where they have no connection under the new grounds introduced in Art. 4 (see above).
    - PICUM strongly opposes the idea of externalising return procedures in its entirety, as it would only be a way for EU member states to distance themselves from their responsibilities under international and human rights law, inflicting immeasurable human suffering to women, men, children and families deported and detained to countries where they have no connection. These strategies also fundamentally undermine democratic scrutiny and the rule of law by facilitating the expulsion of 'undesirable' individuals. The European Commission itself had ruled out this measures for the high risk of refoulement and breaching EU values in an assessment published in 2018.
    - In addition to the above, the proposal introduces severe punitive measures which are relevant for the scope of this report, such as:
        - Including the extension of entry bans of up to 10 years (up from 5 years), extendable for 5 more years or 10 years in cases where security risks are invoked (Arts. 10-11). This appears to be extremely disproportionate, as it would constitute a blanket ban for people to re-access all EU member states.
        - Removing the obligations for appeals against return decisions or removal to have automatic suspensive effect – which would have to be requested or assessed ex officio by the competent judicial authority (Art. 28). This furthers the risk that the person is deported before the decision on the appeal is final.
        - New articles on data sharing in the context of cooperation between MS and third countries (Arts. 39-41). Includes very sensitive data regarding people's health or criminal records, including with third countries and Frontex.

2. Revision of the "safe third country" concept

- In May 2025, the Commission proposed amendments to the Asylum Procedure Regulation that would facilitate the application of the safe third country concept. The proposal would remove the mandatory 'connection criteria', so that transit through a country would become sufficient reason for the person to seek protection there. If no transit can be established, it would also be possible for member states to send people to a third country if there is a bilateral agreement or informal arrangement in place, if that country agrees to assess the individual's protection needs.
- Reading this in conjunction with the Return Regulation proposal, this would also mean that anyone with their application found as inadmissible on this ground could be deported to that country.
- In addition, the Commission proposed to remove the automatic suspensive effect of appeals againstany inadmissibility decisions based on the safe third country concept, meaning deportation could take place even while an appeal is pending.

Additional resources

On the **use of technologies**, see the following PICUM's publications:

- PICUM, 2022, Digital technology, policing and migration – What does it mean for undocumented migrants?
- Statewatch and PICUM, 2019, Data Protection, Immigration Enforcement and Fundamental Rights: What the EU's Regulations on Interoperability Mean for People with Irregular Status

On the **planned expansion of the role of Europol**, enhancing the agency's ability to massively collect and process biometric data from member states' law enforcement authorities and third countries:

- Protect not surveil coalition, 2024, Stopping the unfettered expansion of Europol's digital surveillance powers against migrants