

PICUM RECOMMENDATIONS ON THE RAMM

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ASYLUM AND MIGRATION MANAGEMENT

APRIL 2021

PICUM is a network of more than 160 organisations working in more than 30 countries, mostly in the EU, to ensure social justice and human rights for undocumented migrants. The following amendments focus on the area of PICUM's expertise, which is ensuring and protecting human rights for undocumented migrants. Therefore, provisions affecting the right to asylum are outside of the scope of the following analysis.

For a Pact-wide overview of our concerns, read [More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations](#).

Safeguarding the rights of undocumented people:

The proposed “return sponsorship” scheme raises more questions than answers.

Firstly, the multiplication of actors involved in the return process risks **creating legal gaps in accountability**. In particular, the “threat” of transfer if returns are not carried out within 4 or 8 months risks to act as a perverse incentive towards **speeding up returns at all costs, with little consideration for human rights or safeguards** that need to be in place before a person, especially children, can return. On the one hand, the “benefitting” state will have no incentive in assessing whether there might be human rights impediments to return (i.e. risks of breaches of the [principle of non-refoulement](#) or [best interests of the child](#)), and, if applicable, provide opportunities for status resolution¹, as it will know that, in any case, the person would be transferred to another country after 8

¹ It is generally unclear how, in this procedure (and in the Pact in general), access to residence permits which are not regulated at national level – including possibilities for regularisation for children and young people, which are present in at least [eight](#) European countries, would be accessible.

months. On the other hand, the “sponsoring” state will be pushed to speed up return at all costs within the first 8 months – potentially overlooking human rights concerns – to avoid transferring the undocumented person on their territory.

Secondly, the possibility for member states to indicate the nationality of individuals that they intend to return under this scheme (art. 52§3 raises **serious concerns in terms of discriminatory policing and profiling of people and communities of colour**.

This could happen, for instance, if one country would commit to return people from a specific country with which it has a readmission agreement or frequent charter flights, leading to risks of police raids to apprehend people supposedly from such country. This would not be new: at national level, there have been reports of immigration raids conducted to fill charter flights that are already scheduled for deportations to a specific country. For instance, Italy’s Ministry of the Interior issued a [memo](#) in January 2017 to police forces about a scheduled deportation flights for Nigeria, instructing them to target Nigerians. It is hard to understand how this can be in line with recent EU commitments in the newly released [EU Action Plan Against Racism](#) to “countering discrimination by law enforcement authorities” and avoiding “profiling that results in discrimination.”.

Thirdly, it is unclear what will happen to the people who are transferred to the sponsoring country. **Will they be detained, potentially in violation of EU and international law principles stating that detention should only be possible if there is a reasonable prospect of removal, and within the maximum length foreseen by the Return Directive? Or will they be left in a legal limbo and, probably, destitute? Will they be subject to a new return procedure?**

Fourth, If the return sponsorship scheme also applies to individuals who have been living in the country for years, there are further concerns that **their forced transferral would uproot them from established social and family networks, to another Member State where they do not speak the language and they have no social network, while at the same time forcing them to remain in a situation of legal limbo**. As the procedure would **also apply to children, families and unaccompanied children** would have to leave the country where they have been living, where they went to school, where they speak the language to be “transferred” to a country in which they have no ties and where they will have to continue living [without a secure residence status](#) – which already harms children, but without the crucial formal and informal support networks which may have taken them years to build. Any return should only happen if it is in the [best interest of the child](#). Uprooting children, especially those who have developed ties with their community, [harms them](#) and it is hard to see how intra-European transfers ahead of a voluntary or forced return safeguard children’s well-being.

Lastly, it is also [unclear](#), under international treaty law, whether readmission agreements signed by one country will be applicable to the territory of another

Member States – and whether the states involved will be willing to accept the political costs of pushing for such a broader interpretation of the agreement.

We recommend:

- Deleting article 45(1)(b) and article 55 on the Return sponsorship, or subordinately:
 - Excluding children (of all ages and independent on whether they are unaccompanied or with their families) from the scope of art. 55.
 - Excluding people who are already in the EU territory from the scope of art. 55, to prevent uprooting them from the country in which they might have been living for years and from supporting social networks.
 - Ensuring that people facing a transfer procedure under the return sponsorship scheme have access to an effective remedy, by deleting the final paragraph of recital 56 which limits the scope of the appeal to only three grounds (family life, rights of the child and prohibition of inhuman and degrading treatment).

Procedural safeguards for children

The provision that “the best interests of the child shall be a primary consideration for Member States with respect to all procedures” is welcome, as are the increased resources for guardians for unaccompanied children.

However, the regulation continues the trend of granting children in families fewer safeguards than unaccompanied children on the assumption that having parents sufficiently protects them from harm. While unaccompanied children have specific safeguarding needs, children in families should have their best interests assessed and safeguarded throughout migration procedures and should enjoy access to housing, education, legal representation to the same degree as unaccompanied children.

We recommend:

- Ensuring children in families and unaccompanied children alike are adequately protected by:
 - Amending recital 48 to *“Before transferring an ~~unaccompanied~~ minor to another Member State, the transferring Member State should make sure that that Member State will take all necessary and appropriate measures to ensure the adequate protection of the child, and, **in the case of unaccompanied children**, in particular the prompt appointment of a representative or representatives tasked with safeguarding respect for all the rights to which they are entitled. Any decision to transfer an ~~unaccompanied~~ minor should*

be preceded by an assessment of his or her best interests by staff with the necessary qualifications and expertise."

- Amending article 13§5 to *"Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of relocation, the transferring Member State shall make sure that the Member State responsible or the Member State of relocation takes the measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [Reception Conditions Directive] and Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration."*
- With regards to what member states should take account of in a best interests assessment:
 - Amending recital 43 to *"In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations **in the short, medium and long term** and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability."*
 - Amending article 13§4(b) to *"The minor's well-being and social development **in the short, medium and long term**, taking into particular consideration the minor's background;"*

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