

Complaint to the European Ombudsman

Lack of impact assessment and public consultations in the Commission's 'Return Regulation' proposal

October 2025

Question 1: What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary

We, Platform for International Cooperation on Undocumented Migrants (PICUM), with the support of Amnesty International, Border Violence Monitoring Network, CIRÉ, European Network Against Racism (ENAR), European Network on Statelessness, Greek Council for Refugees (GCR), Jesuit Refugee Service (JRS) Europe, Jesuit Refugee Service Belgium, La Cimade, Médecins du Monde International Network, Oxfam, Quaker Council for European Affairs, Stichting LOS, and WeMove Europe, are complaining about the manner in which the European Commission prepared the 'Proposal for a Regulation establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC' (hereafter referred to as "the Return Regulation").

Specifically, this complaint raises the failure of the Commission to conduct an impact assessment and to carry out a public consultation before the proposal was presented on 11 March 2025. While the Commission eventually published a Staff Working Document¹ in place of the missing impact assessment for the proposal (C(2025) 2911 final) in May 2025, we argue that the documents produced cannot be treated as replacing in any way a proper impact assessment.

PICUM contacted the European Commission on the matter on 10 July 2025 (Annex I), to request further explanations and redress. We maintain that the Commission's response, received on 1 August 2025 (Annex II) does not address the concerns raised in their merit.

Question 2: In what way do you consider that the EU institution or EU body has acted incorrectly?

The European Commission presented the Return Regulation proposal without conducting an impact assessment or a formal public consultation, including meaningful engagement

¹ European Commission, 2023, [Commission Staff Working Document on the Proposal for a Regulation establishing a common system for returns](#) [accessed on 29 September 2025].

with stakeholders. As with other recent legislative proposals² on migration, it was introduced without a human rights impact assessment or consultations with social partners, despite this being an area where evidence-based policymaking is especially crucial. This contravenes EU democratic principles enshrined in the Treaty on the European Union (TEU), in particular Art. 1(2), Art. 10(3) and Art. 11, which guarantee citizens' participation in the Union's democratic life and oblige its institutions to take decisions openly and as close as possible to the citizen. These principles are reflected in the Commission's Better Regulation Guidelines³, which should guide the Commission's action to ensure these principles are upheld when it initiates a legislative process.

Bypassing these essential preparatory steps risks negatively affecting the EU policy-making process and the quality of future EU legislation. Moreover, if adopted, this legislation will have an impact on the fundamental rights of millions of people with irregular migration status living in the EU and on broader society⁴.

Recently, the Ombudsman opened several inquiries in similar cases inquiring on whether the Commission has in place internal procedures for deciding on whether to derogate from the impact assessment requirements and not to perform a stakeholder consultation⁵. We believe that similar questions are relevant in the context of the publication of the proposed Return Regulation.

We argue that the Commission's failure to conduct an impact assessment and public consultations constitutes maladministration for the following reasons:

- 1. Failure to meet the requirements for a derogation from the obligation to conduct an impact assessment**

The Commission fails to meet the criteria for choosing not to conduct an impact assessment and produce an analytical document instead.

In its response to PICUM's letter, sent on 1 August 2025, the European Commission asserts the "necessity to develop a new common approach on returns" following the European Council Conclusions of October 2024⁶ calling on the Commission to propose a new legislative proposal on return as a matter of urgency.

The Better Regulation Guidelines (Chapter IV, Section I) allow for the submission of an analytical document where an impact assessment is "not possible and a derogation is granted." However, the Commission's reply to PICUM fails to clarify the reasons why conducting an impact assessment was deemed impossible and whether such a derogation was formally obtained.

² PICUM, June 2025, [Migrant smuggling: European Commission under investigation for disregarding human rights impact in current proposals](#) [accessed on 29 September 2025].

³ European Commission, 2021, [Better Regulation Guidelines](#), SWD(2021) 305 final.

⁴ MirreM Measuring Irregular Migration, Irregular Migration [Data Portal](#) [accessed on 29 September 2025].

⁵ European Ombudsman, [Case 66897](#); European Ombudsman, [Case 68856](#); European Ombudsman, [Case 67546](#) [accessed on 29 September 2025].

⁶ European Council, 2024, [European Council meeting \(17 October 2024\) – Conclusions](#).

Moreover, the urgency ground cannot be used as a blanket exception to the obligation to produce an impact assessment. On the contrary, it must be duly justified. Even in situations calling for swift action, the Guidelines require the Commission to ensure that it has “relevant and timely information on which to base its decisions.” Similarly, “the depth of analysis should reflect the significance of the impacts or effects that a given initiative or intervention may have within and outside the EU” (Chapter IV, Section I). We maintain that this standard has not been met in the present case (see point 2 below).

In this respect, as the Better Regulation Guidelines themselves emphasise, the requirement to conduct an ex ante assessment for initiatives that are likely to have significant economic, environmental or social impacts, or that entail significant spending – as is clearly the case for the proposed Return Regulation – derives directly from the Financial Regulation.

When examining how the Financial Regulation defines situations of emergency or crisis, it states that “crisis” means:

- i. “a situation of immediate or imminent danger threatening to escalate into an armed conflict or to destabilise a country or its neighbourhood;
- ii. a situation caused by natural disasters, man-made crises such as wars and other conflicts or extraordinary circumstances having comparable effects related, inter alia, to climate change, public and animal health, food security and food safety emergencies and global health threats, such as epidemics and pandemics, environmental degradation, privation of access to energy and natural resources or extreme poverty.”

It is evident that none of these scenarios applies to the proposed Return Regulation. The decision not to conduct an impact assessment thus appears to be driven less by an objective necessity and more by a sense of political urgency, which cannot substitute for the formal derogation required under the Better Regulation framework.

In the Complainants’ view, an impact assessment was required given the scale of the wide range of consequences of the proposed Return Regulation and the Commission’s discretion to choose between different policy options, as expressly laid out in the Better Regulation Guidelines (Chapter IV, Section I). The absence of such an assessment is particularly striking in light of available evidence. For example, recent estimates from the MIRREM project⁷, funded by DG Research, indicate that between 2.6 and 3.2 million people with irregular migration status lived in 12 European countries between 2016 and 2023. This suggests that any legislative measure in this field would affect a very substantial population across Member States.

The proposal would also have a direct impact on a wide range of public authorities and professional groups (including local administrations, lawyers, health professionals, and teachers), who would be involved in the implementation of the Return Regulation and would inevitably bear new administrative and ethical consequences. The proposal is also likely to have substantial implications beyond the European Union’s borders, particularly

⁷ MirreM Measuring Irregular Migration, Irregular Migration [Data Portal](#) [accessed on 29 September 2025].

due to its provisions for establishing agreements or arrangements with non-EU countries to allow for the return of people regardless of whether they have a connection with said countries (Art. 17).

Moreover, the proposal entails significant cost implications. As demonstrated in the European Parliament's Substitute Impact Assessment on the 2018 proposal to recast the Return Directive⁸, comparable measures were found to generate extensive financial and operational challenges. The current proposal is even more expansive. For instance, it is likely to substantially increase the number of people held in pre-removal detention, as it both widens the grounds for detention and extends its possible duration. This alone carries major budgetary and fundamental rights implications.

Further obligations under the proposal, such as those in Article 23 (requiring Member States to impose geographical restrictions, reporting duties, or residence restrictions on all individuals in the return process), would demand sizeable new investments in Member States' enforcement infrastructure. Without a rigorous impact assessment and the evaluation of different policy options, these costs and their wider societal implications cannot be properly anticipated, measured, or justified.

Despite these far-reaching implications, the Commission's Staff Working Document does not include any comparative cost estimates or other assessments of the kind expressly required by the Better Regulation Guidelines. By failing to provide such analysis, the Commission has not only limited transparency but also deprived policymakers and the public of essential information needed to evaluate the proportionality, costs, implications and risk of unintended consequences attached to the proposed measures.

2. The analytical document presented by the Commission is inadequate to replace an impact assessment

In mid-May 2025, the Commission eventually published an analytical document in place of the missing impact assessment for the proposal. We argue that the documents produced cannot be treated as replacing in any way a proper impact assessment, as they fail to meet the Better Regulation requirements. Please refer to our letter to the Commission of 8 August 2024 attached to this complaint (Annex I) for additional examples and explanations supporting this claim which remain valid since the Commission failed to address them in their merit in its response (Annex II).

Additionally, we note that neither the study on "Gaps and Needs of EU Law in the Area of Return" requested by the Commission, nor the preliminary findings which were used in preparation of the proposal, have been made public at the time of writing. PICUM submitted a request for access to documents on 18 July 2025 (case number 2025/3634). The Commission responded on 6 September 2025, stating that it does not hold the document as the "contract with ICF and the consortium conducting the study has been extended, and the work on the study is still ongoing."

⁸European Parliamentary Research Service, 2019, [The proposed Return Directive \(recast\): Substitute Impact Assessment Study](#), Section 2.4.

3. Failure to open a public consultation

The Better Regulation Guidelines, in compliance with Art.11 TEU, also establish the obligation to “[...] carry out consultations with interested parties in order to ensure that EU action is coherent and transparent” when preparing an initiative accompanied by an impact assessment (Chapter II). In the previous sections, the Complainants submitted that the Proposal should have been accompanied by an impact assessment, considering it constitutes an initiative likely to have significant economic and social impacts and entails significant spending, and that the Commission had a choice of policy options. It follows that the impact assessment should have been accompanied by a public consultation.

As further explained in Annex I, no public consultation was conducted during the preparation of the Return Regulation proposal. The Commission has not provided any further explanation on the reasons why it derogated from the general requirement to carry out a public consultation.

The Commission’s reply states that “[...] over the years, extensive consultations have been conducted with the relevant stakeholders, including Member States, European institutions, international organisations, non-governmental organisations, civil society, research entities, third countries, expert groups, such as the European Migration Network Return Expert Group (EMN-REG), and through Schengen evaluations, providing a robust knowledge foundation.” The Complainants note that such past ‘consultations’ could not, by any means replace a consultation targeted to the specific proposal at hand, which would have required the Commission to address several elements, including the available policy options and their potential impacts (Better Regulation Guidelines, Chapter II, Section V). Moreover, several proposals in the proposed Regulation are entirely new or widely depart from previous legislation, which means they could have not been object of previous consultations. The case of Art. 17, which would allow for the creation ‘return hubs’ in third countries, is even more striking as the Commission itself rejected similar policy options in 2018 due to risks of refoulement and breaches of EU values⁹.

We would also like to stress that that the European Commission has not conducted a formal evaluation of the current legislation on return – the 2008 Return Directive (Directive 2008/115/EC) – since 2013¹⁰. Moreover, a previous proposal¹¹ to recast the Return Directive (COM(2018) 634), which has since then been withdrawn, was also presented without an accompanying impact assessment. Given that seven years have passed since that proposal, it is surprising that the Commission has still not undertaken a proper impact assessment.

⁹ European Commission, 2018, [The legal and practical feasibility of disembarkation options: Follow-up to the informal working meeting of 24 June 2018](#).

¹⁰ European Commission, 2015, [Evaluation on the application of the Return Directive \(2008/115/EC\)](#), Directorate-General for Migration and Home Affairs.

¹¹ European Commission, 2018, [Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals \(recast\)](#), COM(2018) 634 final, 12 September 2018.

Finally, the Commission’s answer does not address the Complainants’ concerns over the lack of transparency of the consultations conducted since the Return Regulation proposal was formally announced, which were closed-door and invite-only, in breach of the requirement to consult “broadly and transparently” set out in the Better Regulation Guidelines (Chapter II, Section V).

Question 3: What, in your view, should the institution or body do to put things right?

The European Commission should withdraw its legislative package, carry out a proper impact assessment of several policy options, based on the public consultation of a variety of stakeholders to ensure transparency, equity in decision-making and participation and present a new legislative proposal drawn from its assessment and findings.

In addition, we respectfully urge the European Ombudsman to recommend that the Commission ensure the public disclosure of detailed and specific reasons for any deviations from the Better Regulation Guidelines in the preparation of future proposals. This should include an explanation of why the obligation to conduct an impact assessment or to undertake broad public consultations has not been observed. Where consultations are carried out, the Commission should also clarify the format, timeframe, methods of collecting opinions, as well as the measures taken to ensure transparency and provide feedback on the contributions received. Finally, we also request the Commission to publish any available evidence which informed the proposal without delay, including the above-mentioned study on “Gaps and needs of EU law in the area of return”.

Annexes:

Annex I: PICUM, Letter to Silvena Pesta, Head of Unit, Return and Readmission (HOME.C.1), 10 July 2025

Annex II: European commission Directorate General for Migration and Home Affairs, Response to PICUM’s letter, 1 August 2025

Complaint introduced by:



With the support of:



**Border Violence
Monitoring Network**





Ms. Silvena Pesta
Head of Unit, Return and Readmission ([HOME.C.1](#))
Transmitted by e-mail

Thursday 10 July 2025

RE: Return Regulation proposal - Failure to conduct a proper impact assessment

Dear Ms Silvena Pesta,

I am writing on behalf of the Platform for International Cooperation on Undocumented Migrants (PICUM), with the support of the Border Violence Monitoring Network (BVMN), Equinox Initiative for Racial Justice, and the European Network Against Racism (ENAR), regarding the European Commission's [proposal](#) for a Regulation establishing a common system for the return of third-country nationals staying irregularly in the Union (hereafter referred to as "the Regulation").

We consider that the lack of proper impact assessments constitutes maladministration on the part of the Commission. We therefore ask the Commission to (1) withdraw the legislative proposal, (2) carry out and publish a proper impact assessment fulfilling all requirements of quality and impartiality for the legislative proposal as soon as possible, including a consultation of all relevant stakeholders and interest groups as well as a comprehensive assessment of impacts on fundamental rights.

Similarly to what happened with recent legislative [proposals](#) in the area of migration, the European Commission failed to provide at the same time an impact assessment. The publication of the proposal seems to have been rushed for political considerations, following increasing [pressure](#) from member states to adopt more restrictive approaches to migration.

During Commissioner's Brunner confirmation hearing before the European Parliament, he initially highlighted his intention to present a legislative proposal no later than June 2025. While this initial timeline already presented significant challenges for ensuring comprehensive consultations and a robust evidence base, the [Commission](#) later committed to advance the timeline further following calls from the [European Council](#). The proposal which was eventually presented in March 2025 was not accompanied by an impact assessment. Notably, despite the proposal for a recast of the Return Directive in 2018, also lacking an impact assessment, the European Commission has not conducted a formal evaluation of the 2008 Return Directive's application since 2013.

We would like to recall that impact assessments form a key part of the Commission's [better regulation agenda](#), which seeks to design and evaluate EU policies and laws so that they achieve their objectives in the most efficient and effective way. This was confirmed in the [Interinstitutional Agreement of 13 April 2016 on Better Law-Making](#).

In view of the far-reaching implications of the Return Regulation proposal on several social and human rights of irregular migrants, an impact assessment was evidently required as is the case for all "Commission initiatives that are likely to have significant economic, environmental or social impacts or which entail significant spending, and where the

Commission has a choice of policy options” in accordance with the [Better Regulation Guidelines](#). This principle has been reaffirmed by the Court of Justice of the European Union (Case C-482/17, paragraph 84).

In mid-May 2025, the Commission eventually published an “[analytical document](#)” in place of the missing impact assessment for the proposal. We argue that the documents produced cannot be treated as replacing in any way a proper impact assessment, as it fails to meet **the Better Regulation requirements**:

1. **The evidence and data collected and relied upon are outdated, incomplete, biased or insufficient**: the analytical document argues that the proposal is underpinned by a solid evidence base. However, we argue that most of the sources indicated cannot amount to a proper evidence collection and constitute incomplete impact assessments in regard to the quality standards defined in the Better Regulation guidelines:

- The analytical document argues that the proposal was based on the preliminary results of a study commissioned to a consortium composed by ICF, Migration Policy Institute (MPI Europe), the European Policy Centre (EPC), and the Odysseus Network, covering “*Gaps and Needs of EU Law in the Area of Return*”. Yet, the terms of reference shared by the Commission following a [request](#) for access to documents indicate that the interim report - which informed the proposal - was drafted within just three months from the study's inception. As this was only a preliminary report, it raises particular concerns about the depth and reliability of the findings, also given the limited timeframe for collecting and analysing information. At the time of writing (July 2025), the results of these studies have not been made public, not allowing democratic scrutiny of its content.
- The Commission claims to have relied on the research of several EU-funded ongoing research projects on irregular migration. However, the leaders of the projects mentioned in the proposal issued [a joint statement](#) clarifying that they were not actively consulted nor involved in drafting the proposal and called out the “selective interpretation or misrepresentation of findings”.
- The European Parliament's 2019 [Substitute Impact Assessment](#), mentioned as source in the analytical document, concluded that “official Commission documents on the 2008 Return Directive do not clearly establish the need for a revision of the legislative framework to enhance its effectiveness.” Moreover, it does not replace an impact assessment in the context of the proposed regulation as it looks at a possible recast of the 2008 Directive, rather than at a change in the legal instrument from a Directive to a Regulation.
- When it comes to consultation with a “broad range of stakeholders”, no public, formal or structured consultation process was organised by the Commission for civil society and the general public. While meetings were requested by PICUM together with other NGOs, with DG HOME and Commissioner Brunner, there was a lack of transparency regarding the key elements which should be included in a call for evidence according to the Commission’s Better Regulation [toolbox](#), including the policy options under consideration. This limited the ability of civil society actors to provide meaningful input.

Moreover, the Commission fails to indicate which stakeholders it chose to consult and to provide explanations as to how it took into consideration the evidence gathered and the shortcomings raised by the consulted stakeholders, and does not take into account any minority and dissenting views, despite the existence of widespread criticism among the civil society papers and documents cited in the analytical document.

- Moreover, some of the new provisions introduced in the Regulation are entirely new and were not within the scope of the previous studies and evaluations mentioned by the Commission. This is the case of the Article 17 of the proposal, on the return to a third country with which there is an agreement or arrangement, which opens the doors for member states to establish 'return hubs' in third countries, an option which the Commission itself has previously ruled out for the high risk of refoulement and breaching EU values in an [assessment](#) published in 2018.

2. The analytical document does not sufficiently justify why the selected approach (“alternative B”) was chosen among the different policy options: This is however a requirement under the 2016 Interinstitutional Agreement that "impact assessments shall be presented in such a way as to facilitate the consideration by the European Parliament and the Council of the choices made by the Commission" (para 14).

- First of all, the choice of policy option is primarily driven by the overarching objective of increasing return rates. Although the analytical document acknowledges the limitations of this approach (page 15), it fails to critically assess whether this objective is indeed the most effective means of achieving a more sustainable return system. It also overlooks existing evidence and criticism (e.g. from the [European Parliament Research Service](#) and the [Resoma project](#)) highlighting that such an approach can undermine fundamental rights without delivering significant improvements in return policy effectiveness. Given that this objective underpins the selection of the policy option, it is questionable whether the option is genuinely the more suitable for the proposal.
- The Commission does not present any new evidence supporting the choice for this specific policy option chosen in many other respects:
 - The Commission presents additional harmonisation in the form of mutual recognition and enforcement of return decision as a necessary step, but does not present any evidence on the number of consequent return decisions issued or enforced in a second member state, or on how alleged differences in standards in terms of return procedures would lead to 'secondary movements'.
 - The analytical document claims that “alternative B” also clearly frames and defines the categories of third-country nationals who can be considered to fall within the scope of posing security risks for the purpose of applying the specialised rules in the return legislation. This is one of the rare examples where the Commission engages with criticism expressed by civil society. However, it remains unclear what would “clearly frame and define” such categories, when Art. 16(a) of the proposal states that the provision shall apply to third-country nationals under a [broad](#) and

[vague](#) set of circumstances, i.e. where they constitute a threat to public policy, public security or national security.

- The Commission claims that the possibility to carry out returns to countries other than the country of origin or transit could ‘work as a deterrent for irregular migration’ and ‘as an incentive to cooperate’. Again, there is no evidence supporting this claim. On the contrary, existing evidence only points to the fact that [similar schemes](#) only have grave implications in terms of fundamental rights.
 - In some cases, the analytical document moves away from approaches which had been incentivised in previous Commission policy documents, without providing additional evidence and arguments, or lacks coherence with its stated objectives:
 - The overall focus of the Commission’s proposal has moved away from its previous [emphasis](#) on voluntary return and towards making forced return as the default option. In what seems like a counterintuitive statement, the Commission claims that ‘making forced return a credible option’ would be instrumental to incentivise voluntary return. Yet, it does not present any evidence or studies in support of this claim.
 - The chosen policy option claims to fully harmonise procedures. However, on some key elements – such as the possibility to carry out returns to a third country other than the country of origin or of transit under agreements or arrangements defined at national level (Article 17) – it leaves Member States a very wide margin of discretion, with only a few guidelines on the conditions such agreements or arrangements should respect.
 - In addition to the above, the proposal involves the direct sharing of returnees’ personal information between member state authorities or their counterparts in third countries. In its comments to the proposal, the [European Data Protection Supervisor](#) calls out the Commission for not providing adequate oversight in the sharing of data, and not adequately circumscribing the categories of data which could be shared, as well as proportionality tests. Most of all, the EDPS calls on the Commission to carry out an in-depth fundamental rights impact assessment in the light of “the impact of the Proposal on fundamental rights, including on the rights to privacy and to the protection of personal data of the persons concerned”.
3. **Specific impacts on gender equality, regions and (types of) territories (in particular cross-border areas and outermost regions), and external aspects of internal EU policies are missing from the assessment:** despite the relevance of these specific impacts in the context of migration policies, the document entirely fails to consider these issues. This is another shortcoming of the document, as the Better Regulation Guidelines specifically require impact assessments to analyse such specific impacts where relevant.

In conclusion, we consider that the lack of proper impact assessments constitutes maladministration. We therefore ask the European Commission to (1) withdraw the legislative proposal, (2) carry out and publish a proper impact assessment fulfilling all

requirements of quality and impartiality as soon as possible, including a consultation of all relevant stakeholders and interest groups as well as a comprehensive assessment of impacts on fundamental rights.

I thank you for your consideration and I remain at your disposal should you have any question regarding our request.

Yours sincerely,

Michele LeVoy

Director, Platform for International Cooperation on Undocumented Migrants (PICUM)

On behalf of:

Border Violence Monitoring Network (BVMN)

Equinox Initiative for Racial Justice

European Network Against Racism (ENAR)



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

Directorate C – Migration & Asylum
C.1 – Return and Readmission

Brussels
HOME.C.1

Ms Michele LeVoy
Platform for International
Cooperation on Undocumented
Migrants (PICUM)

Subject: Re: Return Regulation proposal – Failure to conduct a proper impact assessment

Dear Ms LeVoy,

I would like to thank you for your letter expressing your concerns on the lack of an impact assessment to support the Return Regulation proposal.

The Political Guidelines for the European Commission 2024-2029 emphasised the necessity to develop a new common approach on returns. As you note in your message, the European Council Conclusions of October 2024 specifically called on the Commission to propose a return legislation as a matter of urgency, underscoring the immediate need for action.

The Commission agrees that whenever possible an impact assessment should be systematically carried out. In the absence of an impact assessment, as you are aware, the Commission has published on 16 May a Staff Working Document ⁽¹⁾ which gives a comprehensive picture of the background and reasoning for the proposal.

In addition to this, as you note in your letter, the Commission has taken into account the preliminary findings of the study on gaps and needs of EU law in the area of return. The study, led by ICF, in collaboration with the Migration Policy Institute (MPI Europe), the European Policy Centre (EPC), and the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe (Odysseus Network), has provided high quality analysis on the gaps and needs of the legislative framework on return, based on targeted consultations with stakeholders through surveys, workshops and interviews. These

⁽¹⁾ https://home-affairs.ec.europa.eu/document/download/863ac752-8c64-4236-8b45-40f249d0614d_en?filename=CSWD%20on%20the%20Proposal%20for%20a%20Regulation%20establishing%20a%20common%20system%20for%20returns.pdf

analyses of the gaps and needs have been an important element feeding into which aspects the proposal should focus on.

Moreover, over the years, extensive consultations have been conducted with the relevant stakeholders, including Member States, European institutions, international organisations, non-governmental organisations, civil society, research entities, third countries, expert groups, such as the European Migration Network Return Expert Group (EMN-REG), and through Schengen evaluations, providing a robust knowledge foundation.

Building upon this accumulated expertise has ensured that the proposal is well-grounded and reflective of existing insights and practical experiences. The study and broader consultations provided a comprehensive foundation of evidence and analysis upon which the Commission has relied when choosing the preferred option for the proposal, so as to ensure a holistic and pragmatic decision-making process.

We welcome the opportunity to exchange with you and look forward to a fruitful and continued collaboration.

Yours sincerely,

Silvena PESTA
Head of Unit

Ms Silvia Carta

silvia.carta@picum.org

Strasbourg, 29/01/2026

Decision concerning complaint 2933/2025/VB against the European Commission

Dear Ms Carta,

You submitted a complaint to the European Ombudsman, on behalf of PICUM (Platform for International Cooperation on Undocumented Migrants), against the European Commission concerning how it prepared the Proposal for a Regulation establishing a common system for the return of third-country nationals staying illegally in the Union.¹

I would like to thank you for bringing this case to my attention and to apologise for the time it has taken us to revert to you with an assessment of your complaint. As you will see below, this was, in part, due to the fact that developments in other inquiries had to be taken into account.

In your complaint, you argue that the Commission failed to comply with its 'Better Regulation' rules by not carrying out an impact assessment and a public consultation in relation to the proposal. You also take issue with the Staff Working Document prepared by the Commission to substitute the impact assessment and, in particular, with the sources referred to in it and with how it justified the policy option chosen.

My Office has recently received several complaints concerning the Commission's compliance with its Better Regulation rules in preparing legislative proposals that it deemed urgent. The issues raised in these complaints are very similar to those you have brought to my attention.

¹ Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM(2025) 101 final, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2025%3A101%3AFIN>.

Last year, I opened inquiries into three such complaints,² and these inquiries cover, among other issues, the Commission's failure to adequately justify the urgency of its legislative proposals and to document its reasoning for deviating from the 'Better Regulation' rules.

On 25 November 2025, I found³ that how the Commission had prepared the legislative proposals at issue in the three complaints constituted maladministration and I issued two recommendations and four suggestions to the Commission, aimed at addressing the shortcomings I identified. Specifically, I recommended that the Commission should ensure a predictable, consistent and non-arbitrary application of its Better Regulation rules, by defining 'urgent' situations that justify a derogation from the requirements set out in the rules. Furthermore, where derogations are granted, the Commission should establish a procedure to ensure that the urgent preparation of legislative proposals still complies with the principles of a transparent, evidence-based and inclusive law-making process.

To assist the Commission in this task, I also made four suggestions, which include clarifying its stakeholder consultation rules for urgent proposals and ensuring that the evidence supporting its proposals is published in good time to enable a public debate before legislation is adopted.

I expect the Commission's detailed opinion on my recommendations and suggestions by 25 February 2026.

You can follow the progress of these inquiries on my website, where I will publish the Commission's opinion, as well as my decision.

While I attach great importance to the issues you have raised in your complaint, I also note that they are largely covered by my above recommendations and suggestions. Therefore, I consider that, at this stage, a separate inquiry into your complaint is not warranted.⁴ I have therefore closed the case.

That said, I will consider the specific arguments you raise in your complaint in the context of analysing the Commission's detailed opinion on my recommendations. I have also decided to inform the Commission of your complaint, as it suggests that the issues addressed in my recommendation are not limited to the legislative proposals in question in the three cases I inquired into.

Please also note that the Commission has launched a call for evidence on its better regulation framework, inviting interested stakeholders to provide feedback on how its better regulation policy could be further improved to remain fit for purpose and future challenges. You can find more information on the Commission's *'Have Your Say'* consultation website⁵.

Finally, in your complaint you also take issue with how the Commission dealt with your request for public access to documents. Regarding requests for public access to documents, before the Ombudsman can look into a complaint, complainants must first have exhausted the two-step procedure set out in the EU legislation on public access to documents

² Complaint 983/2025/MAS, complaint 2031/2025/VB and complaint 1379/2024/MIK.

³ Recommendation on the European Commission's compliance with 'Better Regulation' rules and other procedural requirements in preparing legislative proposals that it considered to be urgent (983/2025/MAS - the "Omnibus" case, 2031/2024/VB - the "migration" case, and 1379/2024/MIK - the "CAP" case), <https://www.ombudsman.europa.eu/en/recommendation/en/215920>.

⁴ Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707>.

⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/16232-Communication-on-better-regulation_en

(Regulation 1049/2001)⁶. From the information made available to us, you do not seem to have done so.

I hope you will find these explanations useful.

Yours sincerely,

A handwritten signature in black ink, reading "Teresa Anjinho". The signature is written in a cursive style with a prominent horizontal line at the top.

Teresa Anjinho
European Ombudsman

⁶ Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:
<http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&rid=1>.