

BRIEFING NOTE

Ref ► DGI/GE/KN/cg/456-25

18 December 2025

Contribution to the call for reply to the questionnaire

**by the UN Special Rapporteur on the Human Rights of Migrants
of 21 November 2025**

concerning the externalization of migration governance and its monitoring

The Council of Europe presents its compliments to the Office of the High Commissioner of the United Nations and has an honor to submit the following submission in reply to the call mentioned above.

Recent trends and potential human rights violations: The European Court of Human Rights has underlined in its case-law that expulsion, extradition or any other measure by a state to remove an alien may engage the responsibility of the expelling state, where substantial grounds have been shown that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 European Convention of Human Rights (ECHR) in the receiving country ([Hirsi-Jamaa v. Italy](#), application no. 27765/09, Grand Chamber, 23 February 2012, §§114-115).

The Court has clarified that a state party to ECHR cannot evade its responsibility by relying on its obligations arising out of bilateral agreements with third countries concerning migration control highlighting that “[e]ven if it were to be assumed that those agreements made express provision for the return to [a third country] of migrants intercepted on the high seas, the Contracting States’ responsibility continues even after their having entered into treaty commitments subsequent to the entry into force of the Convention or its Protocols in respect of these States” ([Hirsi-Jamaa v. Italy](#), application no. 27765/09, Grand Chamber, 23 February 2012, §179, [S.S. and Others v. Italy](#), application no. 21660/18, 20 May 2025, §§95 and 110). Additional details can be found in the [Guide on case-law of the Convention – Immigration](#), August 2025, [Guide on Article 4 of Protocol No. 4 - Prohibition of collective expulsions of aliens](#), August 2025 issued by the European Court of Human Rights.

The European Committee for the Prevention of Torture (CPT) in [The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders](#) (2023) has noted that as regards conclusion of bilateral or multilateral protocols for technical and police cooperation, readmission agreements, or treaties with non-European countries, aimed at intercepting and diverting large numbers of foreign nationals at the borders, as well as returning them to the countries from which they departed or transited, in some instances, such agreements did not include a *non-refoulement* clause and allowed for the summary removal of foreign nationals without an individual assessment of the risk of exposing the persons concerned to ill-treatment in the receiving country in case of removal. CPT has therefore underlined that states should protect foreign nationals deprived of their liberty under immigration legislation from any form of ill-treatment and from pushbacks at borders, including the external borders of the EU. There is a need to reinforce the safeguards against *refoulement* and ill-treatment and promote the operation of independent monitoring mechanisms at these borders.

CPT has noted that an agreement of a member state with a third non-European state for removing foreign nationals there to process asylum claims may give rise to treatment contrary to Article 3 ECHR prohibiting ill-treatment and degrading treatment (CPT [Report on visit to UK](#), 2024, §112). Also in a case of a member state's agreement with another country concerning transferring to the latter and detention of irregular migrants subject to expulsion, CPT raised several questions relating to the detention of foreign nationals in immigration detention centres in the third country and requested the sending state's authorities to ensure that foreign nationals detained overseas under the sending state's jurisdiction are provided with decent living conditions, treated with respect and afforded their fundamental safeguards (information on rights, notification of custody, access to a lawyer and access to a doctor) (CPT [Report on ad hoc visit to Italy](#), 2024 esp. §12).

The [European Committee on Legal Co-operation \(CDCJ\)](#) has published [the 2023 Guide for practitioners on the administrative detention of migrants and asylum seekers](#). It aims at promoting the application of existing international and European standards. This guide was drawn up for professionals working in the field of migration, as a practical tool to improve their ability to effectively and adequately prevent any risk and any form of abuse or violation of the rights of migrants and asylum seekers placed in administrative detention, and to strengthen respect for their dignity and fundamental rights.

The concept of safe third countries: Under the Council of Europe Committee of Ministers [Recommendation Rec\(97\)22 containing guidelines on the application of the safe third country concept](#), to assess whether a country is a safe third country to which an asylum-seeker can be sent, all the criteria indicated below should be met in each case:

- a. observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments, including compliance with the prohibition of torture, inhuman or degrading treatment or punishment;
- b. observance by the third country of international principles relating to the protection of refugees as embodied in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, with special regard to the principle of non-refoulement;
- c. the third country will provide effective protection against refoulement and the possibility to seek and enjoy asylum;
- d. the asylum-seeker has already been granted effective protection in the third country or has had the opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek protection there before moving on to the member state where the asylum request is lodged or, that as a result of personal circumstances of the asylum-seeker, including his or her prior relations with the third country, there is clear evidence of the admissibility of the asylum-seeker to the third country.

Given that the above Recommendation was adopted in 1997 and the significant legal developments that have taken place since, the Council of Europe Committee of Ministers considered that there is a need to review and possibly to revise this Recommendation, taking into account [Parliamentary Assembly's Recommendation 2238 \(2022\)](#) on Safe Third Countries for Asylum Seekers, which addresses the setting of standards for the transfer, return and readmission of asylum seekers and refugees. On this basis, the Committee of Ministers has instructed the Steering Committee for Human Rights (CDDH) to prepare a study on the need for and the feasibility of updating Recommendation No. R(97)22. The CDDH has established a [Drafting Group on the Safe Third Country Concept \(CDDH-PTS\)](#) to conduct preparatory work and is expected to adopt the study by mid-2026.

Transparency - Monitoring by independent national mechanisms: The Council of Europe has established the [European National Preventive Mechanisms \(NPM\) Forum](#) which is a platform for exchange aimed at bringing together European NPMs and assisting them in carrying out their mandate effectively and independently through discussing different matters relating to deprivation of liberty and exchanging best practices, lessons learnt and common challenges. The Forum's objective is to contribute to steadily harmonising standards of detention in all places of deprivation of liberty, improving the effectiveness of monitoring methodologies and, enhancing detention conditions in the Council of Europe region and other interested countries through independent and objective monitoring and combined action at national, regional and international level.

The European National Preventive Mechanism (NPM) Forum [Workshop on NPM monitoring in the context of migration](#) (Strasbourg, 9-10 April 2025), provided a comprehensive overview of emerging trends in immigration detention and the evolving challenges faced by NPMs. Expert insights reinforced the importance of legal safeguards and effective remedies, while participants shared valuable strategies for monitoring and oversight, especially in extraterritorial contexts (including the complex legal and operational dynamics of the Italy-Albania migration agreement). The discussions underscored the ongoing need for training, interdisciplinary collaboration, stronger engagement with stakeholders and peer exchange and international cooperation as key to maintaining consistent, rights-based monitoring standards. The crucial role of NPMs in advocacy and shaping policy was reaffirmed, alongside the importance of adapting to the dynamic EU legal landscape.

The use of Artificial Intelligence: It is noted that the 2024 Council of Europe [Framework Convention on Artificial Intelligence](#) and Human Rights, Democracy and the Rule of Law (see also [explanatory report](#)), provides a common legal framework at the global level in order to apply the existing international and domestic legal obligations that are applicable to each state party in the sphere of human rights, democracy and the rule of law of each state party and aims to ensure that the activities within the lifecycle of artificial intelligence systems by both public and private actors comply with these obligations, standards and commitments.

Under Article 4 of the Framework Convention each state party shall adopt or maintain measures to ensure that the activities within the lifecycle of artificial intelligence systems are consistent with obligations to protect human rights, as enshrined in applicable international law and in its domestic law. Specific fundamental principles enshrined in the Framework Convention include human dignity and individual autonomy, transparency and oversight, accountability and responsibility, and equality and non-discrimination.

The Council of Europe Steering Committee for Human Rights has prepared a draft Handbook on human rights and artificial intelligence ([CDDH-IA\(2025\)R5 Addendum](#), November 2025, §36 ff) noting that the use of AI systems in immigration and border control may raise important issues under Article 3 (Prohibition of torture), Article 8 (Right to respect for private and family life), Article 14 (Prohibition of discrimination), Article 13 (Right to an effective remedy), Article 1 Protocol no. 7 (Procedural safeguards relating to the expulsion of aliens) and Article 4 Protocol no. 4 (Prohibition of collective expulsion of aliens) to the ECHR. As regards effective remedies, the draft Handbook (§139) recalls that Article 13 of the ECHR, when considered together with Article 3 (Prohibition of torture) of the ECHR, establishes that individuals subject to a removal measure should receive sufficient information to ensure adequate access to relevant procedures and available legal aid as well as information that could support them in substantiating their complaints.

Persons in vulnerable situations: In the Thematic Paper issued in October 2025 by the Council of Europe Division on Migration and Refugees titled [Vulnerability of migrants, asylum seekers and refugees: Council of Europe and European Union standards](#), it is underlined that the intensifying focus on vulnerability in the context of migration and asylum presents a demanding challenge for states: to take into account, in an individualised and contextualised manner, both the fragility inherent in the human condition and that arising from characteristics pertaining to specific groups. Recommendations contained in the above Thematic Paper (esp. p.45 ff) as regards border operations indicate that the authorities should effectively plan for the provision of specialised services in border processing facilities to meet the specific procedural guarantees and reception needs of vulnerable applicants. These services include, among others, medical and psychological assistance. As regards return operations, authorities should remain alert to the possible evolution of a migrant's vulnerability while return decisions are pending and during the implementation of return operations.

Lastly, in the Thematic Paper [Ensuring a Human Rights-Compliant End to Refugeehood through Integration, Naturalisation or Voluntary Repatriation](#), which was published by the Council of Europe Division on Migration and refugees in December 2025, the significance of a number of principles and safeguards in the context of border and return operations are highlighted including the following:

- Uphold the absolute prohibition on *refoulement*, including constructive *refoulement*, and respect the prohibition on collective and discriminatory expulsions;
- Avoid deportation or threats thereof which would undermine these protections; Provide a full *ex nunc* appeal with automatic suspensive effect to all those at risk of removal;
- Ensure that legal advice and representation is available throughout such proceedings;
- Provide a status or permission to remain to those persons whose return to their country of origin cannot be enforced, legally and/or practically, for reasons beyond their control.