

23 April 2025

FEANTSA STATEMENT

**Proposed Returns Regulation risks criminalising people facing homelessness and the NGOs supporting them**

On the 11<sup>th</sup> of March, the European Commission published the proposal for a Regulation ‘establishing a common system for the return of third-country nationals staying illegally in the Union’.<sup>1</sup> If approved, this Regulation would repeal Directive 2008/115/EC and would be directly enforceable, since Regulations do not need transposition by Member States (MS) to enter into force. This proposed Regulation follows the failure to recast Directive 2008/115 under a proposal put forward by the Commission in September 2018.

FEANTSA is concerned by the increasingly restrictive migration policies being adopted and proposed in the EU, such as this Regulation, as they will only lead to more precariousness among destitute migrants, in this case among migrants with irregular status. Undocumented migrants are becoming a bigger part of the homeless population in the EU, due to policies restricting their rights and access to services. Proposals such as this Regulation will only accelerate this trend. Migration policies should not lead to homelessness.

Several transversal elements within the proposed Regulation are concerning:

- The proposed text reinforces the criminalisation of migration by focusing on punitive measures, such as increasing the rate of returns, as the only possible solution for undocumented migrants. This neglects fundamental rights considerations, including the right to private family life, the right to health, and the best interest of the child, as well the existence of other grounds for residence at national level. These are often difficult to access for people with an irregular status, also due to lack of information and access to adequate counselling and legal assistance. The proposed Regulation reinforces a security-oriented approach to people in an irregular situation, including in the way it portrays them by using the term ‘illegally staying third country nationals’.
- Migration is not a crime, yet criminal law tools such as detention are widely used for migration control purposes. It is especially worrying that the Regulation allows for detention of migrants under broad ground, and even more so that it does not rule out detention of unaccompanied minors and families with children. This is far from following the principle of the best interests of the child, because it risks putting children in traumatising environments that will undermine their development.
- Notably, the proposed Regulation ignores the situation of those undocumented migrants who cannot be returned for a number of reasons independent of their will. Many will continue living in the EU and will also continue to be banned from the formal labour market or to have their access to public services restricted. This only leads to further destitution and homelessness service providers will likely be one of the few options available for people to cover their accommodation needs. Access to regularisation is crucial to enable people to exit this destitution.
- The proposal fails to include homelessness whenever ‘vulnerability’ or ‘basic needs’ are mentioned; FEANTSA strongly believes homelessness should be included across the Regulation together with these points, since the lack of housing is both a form of vulnerability and of unmet basic needs.

<sup>1</sup> 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, available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_724](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_724)

FEANTSA is particularly concerned regarding the following articles in the newly proposed Regulation:

- Experiencing homelessness is considered sufficient grounds to be detained, as under *Art. 29(3). Grounds for detention* an irregular migrant may be detained to prepare their return when there is a risk of absconding. Under *Art. 30. Risk of absconding*, the 'lack of residence, fixed abode or reliable address', or in other words, homelessness, is a criterion to determine the existing risk of absconding and hence grounds for detention.

FEANTSA reiterates that the detention of people experiencing homelessness, regardless of their administrative status, should not be accepted as an automatic policy response and asks for deleting point a) of paragraph 2 under *Art. 30. Risk of absconding*.

- Undocumented migrants experiencing homelessness may be indirectly discriminated under the newly proposed text in Chapter III, setting 'Obligations of the third-country national.'
  - *Art. 21. (2.g) Obligation to cooperate* asks for precise contact details to be provided, 'including current place of residence and an address', and paragraph 5 asks for any communication from authorities to be accepted, including mail. Likewise, under *Art. 23. Availability for the return process*, irregular migrants may be subject to residing at a specific address. These conditions would be difficult to meet for undocumented migrants facing homelessness, since they often lack a stable accommodation or an address. In many countries, they are explicitly prohibited from renting or to access public-funded shelters.
  - Considering this, irregular migrants facing homelessness may be deemed of non-compliance with the obligation to cooperate and hence be imposed several punitive measures described in *Art. 22. Consequences in case of non-compliance with the obligation to cooperate*. Such measures include the refusal or reduction of incentives granted to promote voluntary return; or the refusal or reduction of certain benefits and allowances - unless this would lead to the persons' inability to make provision of their basic needs. However, this leaves a wide margin of interpretation for MS on the threshold to meet basic needs and hence risks further marginalising undocumented migrants.

FEANTSA underlines that it is highly unfair for undocumented migrants to be considered as non-cooperating only because they are experiencing homelessness. This would also make them be subject to punishment measures for grounds they cannot take control of, especially given the many restrictions they face in accessing social rights and basic needs.

- NGOs and other civil society actors working with undocumented migrants, including service providers for people experiencing homelessness, may be targeted by migration enforcement officers in their search for undocumented migrants and the implementation of returns. *Art. 6(1)* of the proposed Regulation lays down that 'Member States shall put in place efficient and proportionate measures to detect third country nationals who are staying illegally on their territory'. The vague wording 'efficient and proportionate measures' leaves a wide margin of interpretation for MS, which may lead in practice to pressure on service providers to take part in the enforcement of returns. *Art. 7(10)* can only exacerbate this by mandating MS to 'take all necessary measures in accordance with this Regulation to ensure effective return.'

FEANTSA asks for a clear separation between migration control and the services supporting people experiencing homelessness. These services and the professionals employed in them should not be involved at any time in migration control, asked to systematically check the administrative status of people supported, to report this information to public authorities or to be used to carry out return operations. Doing this would undermine confidentiality, safe environment and trust relationships that are essential for social work and would disengage people from services, exposing them to more precariousness.