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Outsourcing borders

Monitoring EU externalisation policy

Bulletin 5
11 February 2024

"Fortress Europe does more than simply leaving people destitute and repelling them at its walls: Fortress Europe kills. None of this is accidental or simply unfortunate; these policies are systemic and systematic, and condone deaths. Since the EU knowingly and willingly accepts these deaths, this is clearly not a humanitarian issue but a political catastrophe."

Pia Klemp

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Editorial: old wine, old bottles – new glasses?

Earlier this month, *EUobserver* reported that the European Commission has adopted "a new rhetoric".

It targets "irregular migrants" and "failed asylum seekers," and pushes "a political priority to increase return rates of people ordered to leave the EU."

This is, in fact, historic rhetoric. We are being served old wine from old bottles. Perhaps the only thing new is the glasses in which it is being served.

In any case, the renewed prominence of this discourse is leading to new policy initiatives.

These initiatives require the EU to assert greater power over non-EU states, to encourage cooperation in the migration control agenda – an agenda that will lead to the continued abuse and dehumanisation of migrants and refugees.

"Leverage" over non-EU states

For years, the EU has been looking for ways to increase "leverage" against non-EU states, to try to get them to accept deportations.

This has included visa sanctions, and proposals to introduce trade sanctions against states that refuse to accept deportation flights.

Sound familiar?

Almost immediately after the return to power of Donald Trump, the US administration proposed massive sanctions against imports from Colombia, to try to force the country to accept deportation flights from the US.

It worked.

Blanket secrecy

Many of Trump's admirers in European governments are likely wishing they had the power to do the same, and with such ease. In the EU there is at least some semblance of democratic procedure around these issues.

Up to a point, anyway.

MOCADEM is the entity in which EU governments work to coordinate border externalisation policies. As *Statewatch* reported in January, the Polish Council presidency has proposed various ways to improve its working methods.

Parliamentary scrutiny was not amongst the potential improvements. There is currently no such scrutiny.

We hope that the MOCADEM documents published with this bulletin will aid in the struggle for, at a bare minimum, basic transparency of MOCADEM's work.

Border control: inside-out, outside-in

Elsewhere in Brussels, member state officials have been discussing their hopes and dreams for the EU's forthcoming new law on deportations.

A discussion paper from the Polish presidency raised a crucial point: increasing deportations requires the cooperation of non-EU states.

That is to say: "internal" policies have profound "external" dependencies and effects.

Other documents published with this bulletin highlight the same issue.

For example, the Polish presidency has suggested deploying migration liaison officers as far afield as Türkiye and the UAE, in the name of countering the "instrumentalisation" of migration.

The aim would be to prevent certain people travelling to Russia and Belarus.

Meanwhile, plans for deportation camps in non-EU states (referred to in the EU's sanitised jargon as "return hubs"), are ongoing.

Perhaps it is stating the obvious, but the externalisation of border and immigration controls is inseparable from the policy initiatives launched within the EU, or at its external borders.

Frontex outside the EU

Politicians and officials know this, of course. That is why Frontex has been slowly increasing its operations, contacts and initiatives in states from Morocco to Moldova.

The agency's annual report on cooperation with so-called "third countries" is examined in this bulletin.

It shows an ongoing encroachment on and involvement with the activities of non-EU states. That process will have increased further in the period after that covered by the report (2023).

We are also happy to provide, for the first time, updates on jurisprudence relevant to the externalisation of border controls. These are provided by members of the Refugee Law Initiative Working Group on Externalisation.

Trump's return to power has given a boost to his admirers and allies all around the world. Europe is no exception. They will seek to advance the initiatives examined in this bulletin, alongside many others. The question remains: how to stop them?

Thematic and regional developments

All the documents summarised here, and those published with previous editions of the bulletin, are contained in our document archive.

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- Border management
- Budgets and funding
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- Migration partnerships
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Border management

Frontex's own risk analysis for the 2024-25 period (WK 9683/2024) notes that the increase in border walls and fences "may divert pressure to border-crossing points" or sea routes, highlighting once again how more controls can lead to more dangerous journeys.

The EU's foreign policy (Common Security and Defence Policy, CSDP) missions could switch from "civilian crisis management" to focus more explicitly on "migration control policies," the Hungarian Council presidency suggested last October in a discussion paper (14103/24).

Border management is one of the topics covered by the MOCADEM action file on the Eastern Mediterranean, which also notes the importance of "prevention of departure."

The Gambia is due to receive €46 million from the EU for "improved security, migration and border management," according to a MOCADEM action file.

The "instrumentalisation of migration" continues to be a key topic, with discussions in EMWP, IMEX, and the Working Party on Frontiers.

A Polish presidency document (5234/25) discussed in EMWP covers the "eastern land route" to the EU, via Russia or Belarus.

It suggests deploying liaison officers in Türkiye and the UAE, to prevent travel to Russia and Belarus. A specific action plan on the eastern land route may be in the works.

In the Working Party on Frontiers, the Polish Presidency has asked (5012/25) member states' views on "innovative solutions… to increase the effectiveness of their protection and security, in the context of the inflow of illegal migration, in particular in cases of instrumentalisation of migration."

The use of commercial transport for "instrumentalisation" purposes was under examination by IMEX in October last year, on the basis of a Hungarian presidency paper (14204/24).

Budgets and funding

Specific projects are listed in a number of the MOCADEM action files published with this bulletin, including the amounts they receive from the EU budget.

Deportation and readmission

With regard to deportation, the key issue under discussion in the Council has been the forthcoming Commission proposal to revise the EU's Return Directive.

A document (15071/24) circulated for discussion in SCIFA in November notes: "we need to assess how the concept of "return hubs" can be made to fit within the EU legal framework."

It is likely that many of the forthcoming "innovative solutions" for reducing irregular migration will raise similar issues. That is, whether they comply with the law or not will not be immediately obvious. To put it another way, they may be illegal.

The topic of "return hubs" came up again in an IMEX meeting in December. A Hungarian presidency paper (16084/24) indicates a desire amongst member states to reform Frontex's legal mandate. This would allow it to support deportations from "return hubs" located in non-EU states to other non-EU states.

That same topic was raised in a Hungarian presidency document (14871/24) from November last year on the Western Balkans region.

The document, produced for EMWP, says that Western Balkans countries consider it a "priority" to allow Frontex to carry out deportations from those states - for example, from Serbia to Pakistan. A desire for Western Balkans states to carry out more forced removals is evident.

A subsequent meeting of the IMEX working party focused on a discussion paper from the Polish Council presidency (5244/25).

Amongst other things, the paper proposes introducing entry bans with no time limits for people deemed a threat to public security – a form of indefinite punishment.

Ensuring "more effective" national deportation systems is a topic covered in a Polish presidency discussion paper (5243/25) circulated to the IMEX working party, in response to evaluations by the European Commission.

Another priority of the Polish presidency, this time for MOCADEM, is to focus on readmission, amongst other matters.

Using visa policy to enforce EU deportations on non-EU states is raised in recent Council conclusions, a draft version of which is available in the Visa Working Party document archive.

Readmission is also a topic covered by the "action file" following up on the EU action plan for the Eastern Mediterranean, dealt with by MOCADEM.

The EU is seeking to smooth the digital procedures in place with Pakistan to facilitate deportation, according to a MOCADEM implementation report (WK 9925/2024 INIT).

Readmission is clearly a policy priority in relation to The Gambia. It is a topic covered in two separate parts of a MOCADEM action file on the country.

Migration partnerships

In January, the latest list of the EU's meetings, agreements and arrangements with non-EU states and regional "processes" (5235/25) was circulated.

The extent of cooperation with Tunisia is shown in a MOCADEM action file, though large parts of the document are censored. The majority of the uncensored parts of the text concern matters from 2023 or early 2024.

The document notes that an "anti-smuggling contract" was supposed to be signed in the last quarter of 2024, to reinforce the repressive capabilities of Tunisian authorities.

A MOCADEM action file on the Western Balkans (dated May 2024) notes that multi-year asylum "roadmaps" for all Western Balkans states were due for adoption in 2024, as part of the region's supposed alignment with EU law.

Other MOCADEM action files and implementation reports published with this bulletin cover:

- Central Mediterranean
- Eastern Mediterranean
- Pakistan
- The Gambia

The situation in the Channel was examined in a Polish presidency document for EMWP (5380/25) circulated in January.

The Presidency asks whether surveillance of the Channel region should be increased, what "measures or instruments" could be used to "reduce the migratory pressure" and how the EU can better-engage with "countries of origin/transit."

Engagement with the UK government is not directly mentioned at all in the document.

The "Silk Routes" region was under discussion in EMWP in October last year.

The Silk Routes countries discussed in a Hungarian presidency paper (14100/24) are Afghanistan, Bangladesh, India, Iraq and Pakistan.

Amongst other things, it is suggested that "Talent Partnerships" with Bangladesh and Pakistan could help reduce irregular migration to the EU from those two states.

The Silk Routes region is also dealt with by the multilateral Budapest Process. The EMWP discussed a draft declaration and call to action for the 2025-30 period (14102/24) in October. The declaration and call have now been finalised and published.

The broader role of "regional processes" was raised in a Hungarian presidency discussion paper (14872/24) from November last year.

One question that paper raised for other delegations in the EMWP was: "How can these regional processes and dialogues play an enabling role in the development of possible further comprehensive partnerships with third countries?"

Other

Multiple documents discussed by the Visa Working Party indicate a shift towards a more "strategic" use of visa policy, in particular to enforce deportations. There have also been discussions on ways to combat "visa abuse", a Commission report on the EU's visa suspension mechanism, and more.

Jurisprudence updates

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Extraterritorial detention and state responsibility: UN Human Rights Committee decisions in *M.I.* and *Nabhari*

Keywords: Immigration detention, Extraterritorial detention, Offshore processing; Jurisdiction

In two landmark decisions against Australia, the UN Human Rights Committee reaffirmed that states remain responsible under the International Covenant on Civil and Political Rights (ICCPR) for the treatment of individuals detained in offshore processing facilities, provided they exercise effective control over those operations. The rulings concerned Australia's transfer of asylum seekers to the Regional Processing Centre (RPC) in Nauru under two Memoranda of Understanding between the two countries, which allowed Australia to transfer to Nauru asylum seekers arriving by sea.

The M.I. et al. case involved 24 unaccompanied children from Iraq, Iran, Afghanistan, Pakistan, Sri Lanka, and Myanmar, who had fled persecution and were intercepted at sea by Australian authorities. They were initially transferred to Christmas Island (an Australian territory) and subsequently detained at the RPC in Nauru. Similarly, in the Nabhari case, an Iranian asylum seeker who arrived on Christmas Island with her relatives was transferred to Nauru and detained at the RPC.

The Committee relied on the principle of "power or effective control" to determine jurisdiction. Specifically, it found that Australia exercised significant control over the RPC's operation and management. Australia had arranged for the construction and establishment of the centre in Nauru and directed or oversaw its operation and management through financing, hiring private and other entities (including security, cleaning, catering, recreational and educational services) which were accountable to Australia. As a result, individuals detained at the RPC were under Australia's jurisdiction, and their detention was attributable to Australia.

In both cases, the detention was found to violate Article 9(1) of the ICCPR, which protects the right to liberty, as Australia failed to provide adequate justification for the detention.

The judgments are a timely reminder that effective control implies responsibility and outsourcing of operations does not absolve states of accountability under the ICCPR. The decisions are relevant to other offshore processing practices, including detention, most recently attempted under the Italy- Albania deal.

Izabella Majcher

European Court of Human Rights sets high bar for evidence in alleged pushback cases against Greece

Keywords: ECtHR, push back, evidence, use of technology, risk of ill treatment

On 7 January 2025, the European Court of Human Rights (ECtHR) ruled on two significant cases - A.R.E. v. Greece and G.R.J. v. Greece - confirming that Greece has systematically pushed back third-country nationals from its territory to Türkiye.

In A.R.E. v. Greece, the ECtHR found that Greece had removed a Turkish national without assessing the risk of ill-treatment the applicant might face upon return to Türkiye. The Court further ruled that Greek authorities unlawfully detained the applicant prior to the pushback, an act described as a kind of temporary enforced disappearance. Moreover, the Greek asylum system was deemed ineffective in providing remedies for these violations. Consequently, the Court determined that Greece had breached multiple provisions of the European Convention on Human Rights, including: the prohibition of inhuman and degrading treatment; the right to liberty and security; and the right to an effective remedy.

In G.R.J. v. Greece, the case involved an Afghan unaccompanied minor (aged 15) fleeing persecution by the Taliban. The applicant alleged that he was forcibly removed from the Samos refugee camp in Vathy and placed on an inflatable raft by Greek coastguard officers, despite his stated intention to apply for international protection. The ECtHR acknowledged the challenges of gathering evidence regarding clandestine state activities but ultimately deemed the case inadmissible. The decision was based on inconsistencies in the applicant's statements, coupled with insufficient evidence to prove his presence in Greece and subsequent pushback. Audio-visual material, including photographs and videos, failed to meet the evidentiary threshold required by the Court.

These cases underscore the ECtHR's heightened evidentiary expectations for pushback victims to demonstrate their presence in the state's territory. In A.R.E. v. Greece, technological evidence, such as location data sent via a mobile phone, played a crucial role in satisfying this requirement. Conversely, in G.R.J. v. Greece, the absence of consistent testimony undermined the credibility of audio-visual material in the file, thus the applicant's claims. Whether the ECtHR's approach to such cases will change remains to be seen.

Ayşe Dicle Ergin

Challenging border externalisation: evidentiary bias and procedural violations in *M.A.* and *Z.R. v. Cyprus*

Keywords: Pushbacks, state accountability, evidentiary challenges, procedural violations, Lebanon, externalisation

On 8 January 2025, the European Court of Human Rights (ECtHR) finalised its judgment on M.A. and Z.R. v. Cyprus. At its core, the case reveals the emerging tension between formal, state-sanctioned asylum procedures and the informal practices of externalisation, where states effectively outsource their border control functions to third countries, often without due regard for international legal obligations. In this case, Cyprus was found in violation of the European Convention on Human Rights (ECHR) for unlawfully expelling two Syrian nationals to Lebanon without processing their asylum claims, thereby exposing the increasing reliance on extraterritorial measures such as pushbacks, which states use to evade accountability and circumvent international obligations under both refugee and human rights law.

The Court's reasoning drew on earlier landmark decisions, notably Ilias and Ahmed v. Hungary and Hirsi Jamaa and Others v. Italy, reaffirming that a state cannot abdicate its responsibility for the protection of individuals by invoking and relying on bilateral agreements, as doing so may undermine the protection of individuals from potential harm. Importantly, it highlighted that Cyprus failed to conduct an independent assessment of the risks the applicants might face upon return to Lebanon, despite the well-documented shortcomings in Lebanon's asylum system. These failures, the ECtHR argued, demonstrate that Cyprus violated its procedural obligations under Article 3 of the Convention and Article 4 of Protocol No. 4 on account of the applicant's return to Lebanon.

Additionally, the case highlights broader challenges associated with the ECtHR's reliance on state-produced evidence. Of 28 applications documenting similar pushbacks, only *M.A. and Z.R.* was registered by the Court. This is significant because the ECtHR often dismisses cases based on testimonies from pushback survivors or civil society actors, which it deems insufficient in the absence of state-backed evidence. This evidentiary bias raises concerns about the Court's ability to adequately address violations, particularly in the context of externalisation policies where documentation is frequently suppressed.

This case highlights the critical need for the ECtHR to interrogate its evidentiary assumptions and adapt its procedures to ensure greater recognition and redress for those subjected to border violence. Furthermore, it illustrates the risk of the Court inadvertently legitimising the externalisation of border governance through so-called 'operational partnerships' with purportedly 'reliable' third countries.

Vicky Kapogianni

Analysis: Violence at a distance: Frontex's increasing role outside the EU

- Marloes Streppel

The EU tries to keep 'unwanted' people out by outsourcing border control to non-EU states. Frontex, the EU's border agency, plays a key role in a "web of violent deterrence" that is deeply-rooted in Europe's colonial past. Every year, the agency publishes a report on its work in and with non-EU states. The latest edition demonstrates how its role has expanded, whilst glossing over or ignoring human rights violations.

Document: [Cooperation between Frontex and third countries in 2023](#) (pdf)

Frontex cooperation with non-EU states

Frontex's work on border externalisation is part of a broader strategy to distance the EU from the violence promoted by its attempts to control migration. That strategy involves a "web of violent deterrence," in the words of *[Medecins Sans Frontieres](#)*.

It has [strong historical continuities](#) with Europe's colonial past, [helping to maintain](#) "European political and economic influence over former colonised territories while simultaneously restricting the movement of people who were once colonised."

This plays out in various ways. It means supporting violent pushbacks at the EU's borders, with limited – if any – means for those affected to seek accountability and justice. It means using the Russian invasion of Ukraine to expand Frontex's role in both Ukraine and Moldova. It means setting up data-sharing arrangements with non-EU states, that could be used to direct interception and pushback operations.

Unsurprisingly, the agency's own report does not take these issues into account. Where they are mentioned, they are instead framed in a technical, bureaucratic manner.

Frontex's mandate for cooperation

Frontex has a wide mandate when it comes to cooperation with third countries. This role has expanded over time, with new tasks granted to the agency [in 2016 and 2019](#). Amongst other things, Frontex can:

- deploy "border management" teams, made up of European border guards, in non-EU states;

- assist in training non-EU states' border guards;

- support cooperation on deportation and readmission; and

- assist with technical and operational cooperation between EU member states and non-EU states.

According to the report, in 2023 Frontex focused its cooperation efforts primarily on the Western Balkans, as well as Georgia, Ukraine, and Moldova. The "[Southern Neighbourhood](#)" and West Africa were other priority locations.

Building up border control in pre-accession states

For a state to join the EU, it must go through the "accession" process. This requires alignment of law, policy and practice with EU norms. In 2023, states supposedly on the path to EU membership were prioritised by Frontex.

The agency currently has joint operations in:

- Albania (since 2019);

- Moldova (2022);

- Montenegro (2020);

- North Macedonia (2023); and

- Serbia (2021).

The report highlights Frontex's status agreement with Albania, approved in September 2023. This builds upon the 2019 agreement. The new agreement allows the deployment of Frontex officials from its 'standing corps' of border guards at Albania's borders with any neighbouring country. Previously, Frontex officials could only operate at Albania's borders with Greece, due to Greece being an EU member state.

Frontex's cooperation with Albania has been accused of failing to uphold human rights. *Border Violence Monitoring Network* has reported violence and pushbacks being used against people at the border between Albania and Greece.

A memorandum of understanding (MoU) between Frontex and the Albanian ombudsman (*Avokati i Popullit*) was signed in 2022. This set out a complaint mechanism for the agency's joint operations with Albania's border guards. However, it divides responsibility between the two sides. This runs counter to recommendations from the European Ombudsman, who argued that such a system would complicate the procedure and make accountability for rights violations more difficult.

Frontex's decision to ignore the Ombudsman's recommendations reflects broader concerns about its expanding mandate and powers, which lack the necessary safeguards to ensure the protection of human and fundamental rights.

The agency's growing ties with pre-accession countries are also demonstrated through its operation in Moldova. For the first time in a non-EU state, Frontex standing corps officers deployed in Moldova were able to access national databases and check travellers' passports. The operation is referenced multiple times throughout the report.

The agreement between the EU and Moldova is a result of the Russian invasion of Ukraine, which has been used by the EU to significantly expand Frontex's role in both Moldova and Ukraine. "The priorities are clear – enact agreements, even in the midst of a war, that guarantee business as usual along the EU's external borders, no matter the human costs," the *Transnational Institute* has argued.

Cooperation with Montenegro also increased in 2023, after an agreement with the EU was signed. As well as border surveillance, Frontex's role in the country includes "debriefing and screening interviews." These interviews have been heavily criticised for targeting "isolated or mistreated" individuals, and Frontex's sharing of interview data with Europol was found to be a "severe breach" of the law. Strict limits have now been placed on how the data obtained can be used and shared.

The report also says that in 2023, Moldova, Montenegro and North Macedonia were connected to the European Border Surveillance System, EUROSUR. This collects data from satellites, border surveillance operations and elsewhere to provide "situational awareness" to border guards.

This data sharing with non-EU states has been criticised for its ability to support pushbacks: non-EU states that receive "precise locations of people on the move on their territory could then expel these persons from their territory."

Beyond Europe: cooperation in Africa and the Middle East

In 2023, cooperation activities continued to expand well beyond the EU's immediate 'buffer zone' in the Balkans and eastern Europe. Technical equipment was supplied to several African states, and multiple training activities took place.

Frontex's expanding role in Africa has been the source of concern among scholars and activists. It is part of broader policies, including the provision by the EU of funding and equipment, that make it increasingly difficult for migrants in the North of Africa to reach Europe in a safe manner. According to a recent report by *Médecins Sans Frontières*, EU externalisation practices have violently trapped people seeking protection from countries in Africa, the Middle East, and Asia.

The Africa-Frontex Intelligence Community (AFIC) was established in 2010 to increase information sharing between Frontex and thirty African states. The agency has no formal cooperation agreement with the vast majority of those countries.

In February 2023, a six-year project to strengthen AFIC states' ability to "fight serious cross-border crimes affecting Africa and the EU" concluded. Through this, Frontex trained border police analysts in eight AFIC countries,[1] and supplied equipment for Risk Analysis Cells (RACs).

This includes at least one Universal Forensic Extraction Device, a controversial tool "capable of retrieving call logs, photos, GPS locations and WhatsApp messages from any phone." This was acquired by the Senegalese authorities through EU support, along with "biometric fingerprinting and facial recognition software, drones, digital servers, night-vision goggles and more," according to the journalist Andrei Popviciu.

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[1] Côte d'Ivoire, The Gambia, Ghana, Mauritania, Niger, Nigeria, Senegal, and Togo.

The Frontex-led project 'EU4BorderSecurity', seeks to "enhance border security in North Africa and the Levant," whilst facilitating and supporting "bona fide travel." It involves cooperation with:

- Algeria;

- Egypt;

- Israel;

- Jordan;

- Lebanon;

- Libya;

- Morocco;

- Palestine;

- Syria; and

- Tunisia.

The project has involved training workshops, "familiarisation visits" for Egyptian and Tunisian officials to Frontex HQ in Warsaw, meetings between member states of the EU and the League of Arab States. The Frontex report says that, despite geopolitical developments (presumably, Israel's war on Palestine), they have "maintained a good pace of implementation."

Frontex's cooperation with the so-called Libyan Coast Guard has been the subject of longstanding critique and controversy. Through its surveillance operations, the agency gathers and shares the coordinates of boats departing from Libya with militia groups in the country, enabling interception at sea and 'pullbacks' to detention, violence and abuse.

The report does not detail Frontex's cooperation with Libya. It does state that there were four investigations into "instances of fundamental rights violations by Libyan search and rescue actors at sea that occurred following Frontex's sightings." However, those investigations "did not entail outreach to the Libyan authorities."

Border control operations, surveillance and more

The report also covers multiple other developments. This includes a brief overview of more limited cooperation with the so-called 'Silk Route' and central Asian countries, including Afghanistan, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan and Uzbekistan.

It also notes other issues likely to be of interest to researchers and activists, including:

- efforts to "enhance intelligence exchange" with the USA and Canada;

- coordination of 'Joint Action Days' on cross-border crime, resulting in hundreds of arrests and large-scale seizures of illicit goods such as weapons and drugs;

- ongoing cooperation with Interpol, particularly on false documents;

- the ongoing expansion of Frontex's role in the EU's deportation regime (the agency aided the deportation of almost 40,000 people in 2023, according to the report);

- training courses for almost 400 non-EU officials on topics such as firearms detection, document inspection and risk analysis; and

- plans to expand the use of drones for surveillance.

These forms of cooperation are now firmly-entrenched in Frontex's work, and are likely to become more deeply-embedded in the years to come. The aim is to export the EU's model of border management to countries near and far, with the ultimate goal of ensuring that unwanted people are kept out of EU territory. Resisting the violence and abuse involved in this project will require increasing transnational cooperation between those seeking to hold the EU, and Frontex, to account.

About this bulletin

This project, carried out by *Statewatch* and *migration-control.info* and funded by *Brot für die Welt*, *Misereor*, *medico international* and *Pro Asyl*, aims to make the EU's externalisation policies, plans and practices public. In doing so it seeks to highlight their impact on the rights of people on the move, as well as democratic standards, transparency and accountability. It addresses a lack of public information by publishing relevant EU documents, in this phase primarily those produced or discussed by the Council of the EU. It also tackles the overflow of information that results from a variety of EU institutions, working groups and national governments involved in the externalisation agenda by summarising thematic and regional developments, and by analysing key issues in depth.