

Letter from the European Ombudsman to the European Commission on how the European Commission monitors and ensures respect for fundamental rights by the Croatian authorities in the context of border management operations that receive EU funds

Correspondence - 06/11/2020

Case 1598/2020/VS - Opened on 06/11/2020 - Decision on 22/02/2022 - Institution concerned European Commission (No further inquiries justified) |

Ms Ursula von der Leyen

President

European Commission

Strasbourg, 06/11/2020

Complaint 1598/2020/MMO

Subject: How the European Commission monitors and ensures respect for fundamental rights by the Croatian authorities in the context of border management operations that receive EU funds

Dear President,

I have decided to open an inquiry into a complaint I received from *Amnesty International* against the European Commission, notably concerning how the Commission ensures that the Croatian authorities respect fundamental rights in the context of border management operations financed by EU funds.

The complainant claims that the Commission has failed to address persistent allegations of serious human rights abuses by the Croatian authorities in the context of border management



operations, for which it received EU funds [1] , notably at its borders with Bosnia and Herzegovina (BiH) and Serbia. In particular, the complainant claims that the Commission has failed to verify that the Croatian authorities have established an effective 'monitoring mechanism' to ensure that border management operations are fully compliant with fundamental rights and EU law.

According to the complainant, the Commission has referred to such a monitoring mechanism, and stated that EUR 300 000 has been earmarked for that purpose. However, there is no evidence that such a mechanism has been established, or what organisations are involved in monitoring fundamental rights [2] . There is thus lack of transparency around how the EU funds in question were used, the complainant continues.

Finally, according to the complainant, despite being aware of the allegations of human rights violations, the Commission awarded additional funding to Croatia for border management in December 2019.

As a first step in this inquiry, I have decided to request a written reply from the Commission to the questions in the Annex.

It would also be helpful if the Commission could share with my Office any documents relating to the issues identified above, such as correspondence with the Croatian authorities, agreements with national or international entities, or implementation and assessment reports.

Please note that I am likely to send your reply and related enclosures to the complainant for comments. [3] I would be grateful to receive the Commission's reply by 31 January 2021.

The case handler responsible for this inquiry is Maria Moustakali, who can be reached at maria.moustakali@ombudsman.europa.eu and on +32 (0)2 284 35 86.

If, in the course of this inquiry, the Commission becomes involved in court proceedings concerning the same subject matter as this complaint, I would ask you to let us know.

Yours sincerely,

Emily O'Reilly European Ombudsman

Annex

1. What does the concept of a monitoring mechanism entail under EU emergency funding? For example, does it imply funding existing international or national bodies to monitor fundamental rights and compliance with EU asylum law?

2. Commissioner Johansson recently referred to an agreement according to which the Croatian



Ombudsman, the Croatian Law Centre and the United Nations High Commissioner for Refugees would be involved in this work. Could the Commission provide more information on that agreement with the Croatian government and explain whether these entities have been involved?

3. Was the creation of an effective monitoring mechanism a prerequisite for allocating EU funding to Croatia under the emergency assistance project of December 2018 [4] ?

4. According to Commissioner Johansson [5] , the Commission has received from the Croatian authorities the final implementation report concerning the emergency assistance project above. Could the Commission share that report as well as its own assessment of how the project was carried out?

5 . Based on that report, does the Commission have concrete information on (i) whether the monitoring mechanism was set up, (ii) whether it became operational, (iii) its objectives and activities, and (iv) the entities involved?

If the mechanism was indeed set up, and the Commission has verified this:

6. Does the Commission have information about the amount of funds actually spent on the mechanism?

7. How has the Commission directly verified the independence and effectiveness of the mechanism? Did it organise a fact-finding mission to Croatia? Has the Commission discussed the results of the monitoring mechanism with the Croatian authorities, the Croatian Ombudsman and civil society organisations, as envisaged in the Communication to the European Parliament and Council on the verification of the full application of the Schengen *acquis* by Croatia [6] ?

8. Has the Commission requested any further measures by the Croatian authorities in order to enhance the effectiveness of how they monitor fundamental rights in context of border management?

9. Does the Commission envisage any further action to improve how fundamental rights are monitored in the context of Croatian border operations? For instance, will the Commission organise a mission on the ground to help the Croatian authorities? If so, what will be the concrete role and tasks of that mission, under EU emergency funding?

10. Did the allegations of systematic violations of fundamental rights at the Croatian border have an impact on allocating new (migration related) funds to Croatia in December 2019?

11. Has the Commission considered recovering funds if there is evidence that Croatia did not comply with the conditions of the project?

12. What procedures does the Commission have in place (i) to react if there is evidence that Croatia did not comply with the conditions of the project, and (ii) to ensure that EU funding in the



context of border management contributes to enhancing the protection of fundamental rights?

[1] Under the EU's Asylum Migration and International Fund (AMIF) and the Internal Security Fund (ISF) 2014-2020.

[2] According to the complainant, the United Nations High Commissioner for Refugees and the Croatian Law Centre have said that they are not involved.

[3] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'. Such documents can be sent through secure channels, such as Ares, CIRCABC or equivalent applications. The case handler can be contacted beforehand, if necessary.

[4] HOME/2017/ISFB/AG/EMAS/0076

[5]

[http://hr.n1info.com/English/NEWS/a567446/Johansson-We-have-to-make-sure-the-protection-of-borders-does-not-](http://hr.n1info.com/English/NEWS/a567446/Johansson-We-have-to-make-sure-the-protection-of-borders-does-not)

[6] COM(2019) 497 final of 22 October 2019:

<https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20191022>,
[Link].