

## **Report on the inspection of documents and meeting on how the European Commission ensures that the Croatian authorities respect fundamental rights in the context of border management operations financed by EU funds**

Correspondence - 23/09/2021

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

**COMPLAINT** : 1598/2020/MMO

**Case title** : How the European Commission ensures that the Croatian authorities respect fundamental rights in the context of border management operations financed by EU funds

**Date** : Thursday, 23 September 2021

Remote inspection arrangements: Webex online meeting

### **Present**

Commission representatives:

Ombudsman representatives:

## **Purpose of the meeting**

The purpose of the meeting was to clarify certain questions in relation to case 1598/2020/MMO. The questions had been sent to the Commission in advance of the meeting, together with the meeting request, on 12 July 2021.



## **Introduction and procedural information**

The meeting started at 10.00 and finished at 11.15.

The Ombudsman's inquiry team set out the object, purpose and procedure of the meeting within the context of the Ombudsman's inquiry into complaint 1598/2020/MMO. In particular, it informed the Commission representatives that, if they wished to provide the Ombudsman with any additional documents that they had identified as confidential, no access would be granted without the Commission's prior agreement, neither to the complainant nor to any other person outside the Ombudsman's office. Information and documents of this kind will be deleted from the Ombudsman's files shortly after the inquiry has ended.

The Ombudsman's inquiry team asked the Commission's representatives whether they had any introductory comments on the meeting request and its annex. The Commission representative replied that the questions posed were helpful and a good basis on which to proceed.

## **Information exchanged**

Before answering the questions sent to the Commission, the Ombudsman's inquiry team asked the Commission to summarize the latest developments in the case. That was, in particular, with regard to a press release issued by the complainant and other interested parties on the establishment of a new monitoring mechanism in Croatia.

The Commission explained that there were and are several mechanisms in place, which it is important not to confuse. The Commission confirmed that it can report on new developments in that respect.

First, there was the Tripartite Protocol, namely a mechanism of cooperation between the UNHRC, the Croatian Law Centre and the Croatian Ministry of Interior aimed at supporting the latter in its border monitoring activities. This Protocol led to a number of visits and reports.

Second, the Emergency Assistance (EMAS) grant agreement was meant to provide technical support to the Croatian authorities, enabling them to conduct border controls themselves. The grant was used for a number of seminars, procedures, trainings, etc. The Commission is of the view that certain progress had been achieved as a result.

The Commission representatives clarified that the border monitoring activities carried out by the parties to the Tripartite Protocol were not meant to be a prerequisite for the EMAS grant. The two mechanisms, namely the Tripartite Protocol and the EMAS grant, ran in parallel but they were not in any way connected to one another; the Protocol complemented the activities of the EMAS grant.



Due to increasing criticism in relation to the effectiveness of the Tripartite Protocol and reports of fundamental rights breaches, the Commission started, as of 2020, to increase its engagement with the Croatian authorities. This was in order to encourage them to put an independent monitoring mechanism in place, which would have dedicated structure and the possibility to act on its own initiative. The entry into force of such a mechanism was announced in June 2021. There is no existing model nor benchmark for such a mechanism. Hence, it can be further developed and improved.

As to why there was confusion about the monitoring mechanisms, the Commission said that there were possibly two different reasons: *First*, the focus of the complaint was only the EMAS grant. There may have been confusion about the fact that the monitoring by the parties of the Tripartite Protocol is not related to the EMAS grant. *Second*, there may have been an interest in convincing the Commission to initiate an infringement procedure against Croatia.

The Commission stated that in addition to the independent monitoring mechanism, it had convinced the Croatian authorities to create an *advisory body* linked to this mechanism. The parties involved are, amongst others, the Commission, the EU Agency on Fundamental Rights (FRA), the Croatian national Ombudsman and Ombudsmen for Children and for Equality of Croatia, UNHCR, IOM, Frontex Fundamental Rights Officer and EASO. This arrangement allows these parties to advise the monitoring mechanism, while remaining independent and without an impact on their own activities.

A number of announced and unannounced on-site visits have taken place as well as a first meeting of the advisory body, in which practical issues, such as how to conduct on-site visits and how to cooperate smoothly with the national authorities, were discussed.

As regards communicating on the composition and the mandate of the recently established monitoring mechanism, the Commission said that this was a matter for the Croatian authorities, but it had already raised the matter with them and was waiting for their response.

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The Commission stated that the means it had at its disposal in order to encourage the Croatian authorities to set up the independent monitoring mechanism were notably the European Ombudsman's inquiry as well as questions from the European Parliament, NGOs and Member States.

When it comes to emergency funding, the Commission in principle uses conditionality very rarely to address emergency situations. As regards the EMAS grant to Croatia, funding support was justified by exceptional circumstances at the external borders requiring swift reinforcement of border management. Therefore, the initial EMAS grant agreement did not include any conditionality.

The Commission stated that, in hindsight, this was not optimal and therefore, in the most recent grant agreement concluded with Croatia in summer 2021 the Commission did include



*conditionality*. Specifically, funding was granted after an independent monitoring mechanism was put in place.

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The Commission said that it was not oblivious to allegations about reported fundamental rights violations at the Croatian border. On the contrary, the full respect of fundamental rights, in particular in the management of external borders, is essential to the Commission. The Commission, however, has neither the competence nor personnel to conduct investigations about human rights violations in the Member States on its own. Among the EU institutions, only Frontex has such powers where it carries out operations but currently Frontex has no operations in Croatia. Furthermore, to date, UNHRC has not initiated an investigation either.

Having said that, the Commission did carry out missions to the Croatian border. The COVID-19 pandemic hindered the Commission from engaging in missions more often. The Commission expressed the hope that missions will become easier in the future. At the same time, the Commission does not want to duplicate the work of other bodies, which have monitoring powers. Rather, it stands ready to support these bodies. For example, the Commission met with the Croatian Ombudsman on several occasions, to ensure that she can exercise her powers to their full potential.

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The Commission stated that it did not have the requisite evidence to start an infringement procedure against Croatia nor to 'freeze' funds. As the initial EMAS grant agreement did not entail any explicit conditions in this respect, the Commission did not have the legal means to suspend or recall funds, nor was the requisite evidence available.

The most recent EMAS grant agreement with Croatia is conditioned on the setting up of an independent monitoring mechanism. That EMAS grant agreement provides that the new independent monitoring mechanism will be supported through the EMAS funds for one year (until May 2022).

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The newly established mechanism will evolve in the future, and the Commission stands ready to offer support for possible improvements. The Croatian monitoring mechanism is not to be viewed as the only possible model of an independent monitoring mechanism.

The Commission stated that there are more general changes on the way, which are not directly linked to the case at hand, but could still lead to an improvement. These developments include provisions concerning the protection of fundamental rights in the Schengen Agreement and in EU migration legislation. Furthermore, in the context of the new Multiannual Financial Framework, the Commission will assess how funding can be conditioned on fundamental rights compliance. Finally, the Commission proposed a modernisation of the Schengen evaluation,



which will also include an evaluation of the Member States' capacity to ensure the protection of fundamental rights.

The Commission agreed to make the following documents available to the European Ombudsman, all of which should be treated as **confidential** :

- Flash report – first meeting of Advisory Board of 17/9/2021
- Report of the mission to Croatia 17-18/11/2020
- Award Decision of the EMAS grant HOME/2020/ISFB/AG/EMAS/0136
- Grant Agreement ref. HOME/2020/ISFB/AG/EMAS/0136

## **Conclusion of the meeting**

The Ombudsman inquiry team thanked the Commission representatives for the meeting.

Brussels, 30 September 2021