



European Ombudsman

Emily O'Reilly
European Ombudsman

Ms Ursula von der Leyen
President
European Commission
1049 BRUSSELS
BELGIQUE

SG-MEDIATEUR@ec.europa.eu

Strasbourg, 12/07/2021

Complaint 1598/2020/MMO

Subject: Meeting concerning how the European Commission ensures that the Croatian authorities respect fundamental rights in the context of border management operations financed by EU funds

Dear President,

I refer to my letter of 6 November 2020 in which I notified you that I received a complaint from Amnesty International concerning how the Commission ensures that the Croatian authorities respect fundamental rights in the context of border management operations financed by EU funds. I would like, first, to thank the Commission for its reply of 14 April 2021.

In the course of this inquiry, the complainant provided its comments on the non-confidential version of the Commission's reply. I also contacted the Croatian Ombudsman to seek her input on the subject matter of this complaint. The complainant's comments and the contribution of the Croatian Ombudsman are attached to this letter.

I have now decided that, for the purposes of my inquiry, it would be useful if the inquiry team could meet with the relevant representatives of the Commission to clarify certain matters (as set out in the enclosed Annex).

I would be grateful if your staff could contact Ms Maria Moustakali (maria.moustakali@ombudsman.europa.eu, +32 (0)2 284 35 86), who is in charge of this inquiry, to agree the arrangements for the meeting to take place before 30 September 2021, if possible.

During or prior to the meeting, the Commission should share with my inquiries team any *additional* documents it considers relevant. Information or



documents that the Commission considers to be confidential will not be disclosed to the complainant or any other person without the prior agreement of the Commission.¹

Thank you for your ongoing cooperation on this important matter.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosures:

- Annex
- The complainant's comments on the Commission's reply dated 18 May 2021.
- The reply received from the Croatian Ombudsman dated 14 December 2020.

¹ Please clearly mark such material 'Confidential'. Encrypted emails can be sent to our dedicated mailbox eo-secem@ombudsman.europa.eu. Please contact eo-secem@ombudsman.europa.eu beforehand. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.



Annex

In its reply **the Commission** mentions the requirement for ‘technical monitoring’ of border control activities (Sub-action 5) included in the emergency assistance (EMAS) grant agreement between the Commission and Croatia. Sub-action 5, constituting *“part of an effective monitoring mechanism”*, was intended to finance actions such as training of police officers and assistance with complaints and reported incidents, the revision and development of standard operating procedures, and a round table discussion among the Ministry of Interior, civil society organisations and the Croatian Ombudsman. The Commission also states that it has been asking the Croatian authorities for additional measures to enhance the effectiveness of fundamental rights monitoring, and that it has committed to support the Croatian authorities in their efforts to develop a *“new, independent monitoring mechanism [...] that provides for the possibility of early detection of any incidents in view of their timely follow-up, including if appropriate, investigations under national law and remedial action by the competent Croatian authorities”*. The Commission points out that the implementation of such a monitoring mechanism is the responsibility of the Croatian authorities.

In its comments on the Commission’s reply, **the complainant** contends that the requirement for ‘technical monitoring’ under the EMAS project, as described in the Commission’s reply, falls short of and, in fact, contradicts previous statements of the Commission on the matter. Over the last three years, the complainant continues, the Commission has been portraying the ‘monitoring mechanism’ established under the EMAS grant agreement as a credible means to independently assess the conduct of Croatian border police and ensure compliance with fundamental rights. That has not been achieved. In the complainant’s view, in assessing whether the requirements of the EMAS project had been fulfilled, the Commission should have requested additional clarifications from the Croatian authorities as regards the complaint-handling mechanism under Sub-action 5. In this respect, the complainant claims that the rates of criminal and disciplinary action against potential violators are negligible in comparison to the allegations about violations of fundamental rights. The complainant adds that the Commission has an obligation to ensure that EU funds are spent in compliance with fundamental rights and EU laws, irrespective of whether that was provided for under the EMAS grant agreement.

The complainant also considers that the Commission’s reply did not clarify the relationship between the monitoring requirement in the EMAS grant agreement (Sub-action 5 above) and the tripartite Protocol concluded between the Croatian Ministry of Interior, the UNHCR and Croatian Law Centre. That Protocol too was ineffective, in the complainant’s view. The complainant goes on to emphasise the importance of the involvement of the Commission and the European Union Agency for Fundamental Rights in the process of putting such



a mechanism in place.² Finally, the complainant claims that a potential failure to put in place a mechanism with the ‘necessary safeguards’³ in Croatia will have broader negative consequences for the EU migration policies, as it is viewed as being a ‘pilot’ mechanism for the broader independent monitoring mechanism in the EU Pact on Migration and Asylum.

In her reply, **the Croatian Ombudsman** stated that, in the recent years, her office has received complaints from migrants and from national and international organisations regarding the conduct of Croatian police and border authorities. She stated that her office has found - among other things - that, in immigration detention centres and police stations, identification and registration procedures of vulnerable groups of migrants were not adequate. Moreover, she stated that the Croatian Ministry of Interior has denied all allegations of mistreatment of migrants by Croatian authorities, and that her office has been denied access to relevant information.

In view of the above, for the purposes of the Ombudsman’s inquiry, it would be useful to meet with the relevant representatives of the Commission to clarify certain matters (as set out below):

1. In this case, the understanding of the Commission and the complainant as to what ‘technical monitoring’ entailed and when an independent monitoring mechanism would be in place seems to differ. During the meeting, it would be helpful if the Commission could elaborate on its understanding.

2. Has the Commission considered enhancing or strengthening the requirement for monitoring border control activities (Sub-action 5) included in the emergency assistance (EMAS) grant agreement to ensure full respect for fundamental rights?

3. (a) Has the Commission considered initiating an infringement procedure against Croatia⁴, or reducing or suspending funding for border operations until an independent and effective monitoring mechanism exists? (b) Does the Commission have any other means to encourage the Croatian authorities to: (i) set up a new, independent monitoring mechanism; and (ii) address the conduct of Croatian police and border authorities, as reported by the Croatian Ombudsman, towards migrants and asylum seekers?

² In the complainant’s words, “[t]he involvement of the Commission and Fundamental Rights Agency in these discussions is crucial and they must firmly insist that the final agreement signed by Croatian authorities includes a robust, effective and independent system of monitoring, including an independent fact-finding capacity”.

³ The complainant states that the monitoring mechanism “must be independent in law and practice; equipped with the necessary means to ensure that violations of rights at and in proximity to EU borders are recorded; that those responsible are held to account; and that justice for the individuals affected is guaranteed”.

⁴ Having regard to the provisions of Article 258 TFEU, Article 3(4) of Regulation (EU) 515/2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0515-20200328>] and the EU Charter of Fundamental Rights.



4. How does the Commission view the role of national authorities (for example, the Croatian Ombudsman) and other organisations (for example, the UN High Commissioner for Refugees or civil society) in monitoring border management activities? In particular, what role does the Commission envisage for such organisations in an effective monitoring mechanism?