

Comments of the Commission on a suggestion for improvement from the European Ombudsman
- Complaint by Amnesty International, ref. 1598/2020/MMO

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

Since 2018, DG HOME has been providing emergency assistance to Croatia to support border management activities, due to increased migratory pressure. The grants were awarded under the Internal Security Fund - Borders and Visa to the Croatian Ministry of Interior to carry out three 'emergency assistance' projects, which aimed at strengthening the border control. The emergency assistance grants also included activities relating to the monitoring of the activities at the external borders.

On 20 September 2020, the European Ombudsman received a complaint from Amnesty International against the Commission. It raised concerns that the Commission had failed to address persistent allegations of serious human rights abuses by the Croatian authorities in the context of border management operations, for which Croatia received EU funds.

The European Ombudsman opened an inquiry and further sought information on the complaint from the Commission, in writing and during a meeting with representatives of the Commission.

On 22 February 2022, the European Ombudsman informed the Commission about its decision to close the case, with the following conclusion: *"The inquiry identified significant shortcomings in the context of the emergency funding for border management activities in Croatia, notably as regards how fundamental rights compliance was monitored and how the Commission communicated about the monitoring activities. As the Commission has taken steps to address these shortcomings, no further inquiries are justified."*

In addition, the Commission was asked to provide feedback by 22 May 2022 to the following suggestions:

A. The Commission should provide clear and up-to-date public information on the functioning of the monitoring mechanism in Croatia.

B. The Commission should take an active role in overseeing the monitoring mechanism and demand concrete and verifiable information from the Croatian authorities on the steps taken to investigate reports of collective expulsions and mistreatment of migrants and asylum seekers.

C. The Commission should monitor whether the mechanism is indeed independent and that it is effective in ensuring compliance with fundamental rights and EU law.

II. THE COMPLAINT

The European Ombudsman has opened an inquiry into a complaint 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 considers that the Commission failed (i) to address persistent allegations of serious human rights abuses by Croatian authorities on the Croatian borders with Bosnia and Herzegovina (BiH) and Serbia and, in particular, (ii) to establish/ensure an establishment of an effective means of monitoring to verify that the EU funds allocated to Croatia for border management are spent in compliance with fundamental rights and EU laws and (iii) to use widely-available reports on alleged violations and the absence of effective monitoring mechanism to inform its decisions on funding and other assistance to Croatia.

According to the complainant, the Commission has stated that Croatia has received EU funding to establish this monitoring mechanism. However, the complainant indicates there is no evidence that such a mechanism has been established. Moreover, according to the complainant, the Commission has not investigated the allegations to ensure these had not been facilitated by EU funding.

Furthermore, the complainant considers that there is thus lack of transparency and clarity in the Commission's communications on how the EU funds in question were used.

Finally, according to the complainant, in the last years the allegations of human rights violations continued in the absence of independent monitoring of the activities of the Croatian police and of investigation of these unlawful activities, while, Croatia has received extensive EU funding.

III. THE COMMISSION'S COMMENTS TO THE OMBUDSMAN'S SUGGESTION FOR IMPROVEMENT

A. The Commission should provide clear and up-to-date public information on the functioning of the monitoring mechanism in Croatia.

Croatia has set up an Independent Monitoring Mechanism, which entered into force on 8 June 2021 based on the agreement between the Croatian authorities and Croatian stakeholders. It gives the possibility to directly conduct Independent Monitoring Mechanism activities at the border with Bosnia and Herzegovina, Montenegro and the Republic of Serbia, police stations and police administrations of the Republic of Croatia.

The Coordination Board of the Independent Monitoring Mechanism (chaired by a representative of Croatian Academy of Legal Sciences and includes members from Croatian Academy of Medical Sciences, Center for the Culture of Dialog, Croatian Red Cross and Faculty of Law) is responsible for the appointment of monitoring experts, drafting of the monitoring reports as well as the final summary report. The Coordination Board members appoint two experts each who carry out the monitoring activities. The monitoring activities

under this mechanism include a combination of on-site visits, scrutiny of files and reports as well as ensuring that procedures ensuring the respect for fundamental rights and international protection are in place.

In December 2021, the Coordination Board of the Independent Monitoring Mechanism produced a publicly available interim (six-monthly) report, which included preliminary findings, as well 14 recommendations on improvements of an operational and administrative nature. The recommendations inter alia included improving the manner of identifying irregular migrants, the cooperation of border police stations related to migrants irregularly crossing the external borders, the provision of legal assistance and police cooperation. The Croatian authorities have informed the Commission and the European Parliament on the measures they have taken/proposed to take in order to start implementing the initial recommendations.

On 2 July 2022, the Coordination Board presented a final report that is publicly available.

The Advisory Board, an informal body that is not part of the Monitoring Mechanism, could only issue recommendations to the Coordination Board, and ultimately address them to the Croatian Ministry on how to improve the transparency and the independence of the monitoring mechanism. The Advisory Board includes representatives from the Commission and relevant EU agencies as well national human rights institutions and various national institutions whose mandates include overseeing fundamental rights compliance.

The Advisory Board met in Zagreb, on 6 July 2022, to discuss recommendations to the final report. The recommendations are expected to be finalised by end of September 2022.

B. The Commission should take an active role in overseeing the monitoring mechanism and demand concrete and verifiable information from the Croatian authorities on the steps taken to investigate reports of collective expulsions and mistreatment of migrants and asylum seekers.

Through regular contacts, and as member of the Advisory Board, the Commission continuously reminds to the Croatian authorities the importance of ensuring the respect for fundamental rights and international protection obligations, in particular in the context of border control. Respect for fundamental rights, including the right to international protection and respect for the non-refoulement principle, is a cornerstone of the Schengen Borders Code. It is crucial that any allegations of mistreatment of migrants and asylum seekers are investigated promptly and thoroughly.

The Commission has at every occasion underlined to the Croatian authorities that systematic follow-up investigations that are fully transparent as regards to their outcome are the best way to respond to such allegations. Indeed, prompt and effective investigations are crucial to establishing whether any wrongdoing has taken place. However, the responsibility lies with the national authorities to act in compliance with fundamental rights and in case of doubt of any wrongdoings to conduct investigations in accordance with national law.

C. The Commission should monitor whether the mechanism is indeed independent and that it is effective in ensuring compliance with fundamental rights and EU law.

The Commission continues to closely monitor the Independent Monitoring Mechanism, in particular to assess the outcome of its monitoring activities. Although the recommendations of the Advisory Board, together with the final report of the Coordination Board of the Mechanism, are expected to be presented to the Ministry of Interior in October and it is thus too early to make a full review and assess its effectiveness, the Croatian authorities have already reported to the Commission that they have addressed some of the findings of the abovementioned interim report.

The Commission, as member of the Advisory Board, will continue to provide recommendations both to the Coordination Board and to the Croatian authorities, also in view of the likely renewal of the mechanism. Such recommendations are aimed at strengthening the functioning of the Independent Monitoring Mechanism. The Croatian authorities will remain responsible for following up on the recommendations and for continuing strengthening its independent functioning in full respect of fundamental rights and EU law.

Once the relevant procedural steps for the lifting of the controls at internal borders will be completed, Croatia will be subject to regular evaluation visits, including unannounced ones, under the Schengen Evaluation Mechanism. The new Schengen Evaluation and Monitoring Mechanism Regulation, recently adopted by the Council, further increases the capacity of the mechanism to identify shortcomings in the way in which Member States apply the Schengen acquis, including any possible violations of fundamental rights. This will be achieved through enhanced training in fundamental rights of Schengen evaluators and the possibility to use evidence from third parties, including on possible fundamental rights violations, in the planning and content of evaluations.

IV. Conclusions

The final report of the Independent Monitoring Mechanism Coordination Board was published in July and it is publicly available¹. At their last meeting, that took place in Zagreb on 6 July 2022, the Advisory Board committed to provide recommendations to improve the Independent Monitoring Mechanism, which should, among others cover aspects related to the renewal of the mechanism. These recommendations are expected to be finalised in September 2022.

The Commission has been advocating for Croatia to continue the implementation of the Independent Monitoring Mechanism in the future [REDACTED]

[REDACTED]

[REDACTED] Hence, the monitoring mechanism is an important safeguard guaranteeing in principle compliance with fundamental rights in border control activities as well as

¹ <https://www.hck.hr/UserDocImages/dokumenti/Azil,%20migracije,%20trgovanje%20ljudima/Annual%20report%20of%20the%20Independent%20monitoring%20mechanism%20-%201%20July%202022.pdf?vel=2061078>

² [REDACTED]

ensuring that necessary investigations are carried out whenever necessary. Croatia is expected to continue allocating EU funding for the continuous implementation of the mechanism under its Border Management and Visa Instrument national programme.

For the Commission

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Member of the Commission

