

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 European Ombudsman made the following suggestions for improvement:

- 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.
- D. The Commission should inform the Ombudsman within one year of the steps it has taken to strengthen fundamental rights compliance in Croatian border operations receiving EU funds.

The current situation and measures taken in relation to the last point (D) are described in the section III below.

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

The Independent Monitoring Mechanism (IMM) was first established on 8 June 2021 by a legal agreement (Cooperation Agreement) concluded between the Croatian authorities and the relevant national stakeholders. An emergency assistance (EMAS) grant signed in June 2021 to strengthen border management in Croatia was conditional to the establishment of the IMM in Croatia. The functioning of the IMM was supported under this EMAS grant i.e. the technical functioning of the IMM, [REDACTED] for the period 1 June 2021 - 31 May 2022.

The final report of the IMM's Coordination Board was published in July 2022 and is publicly available¹, as per mentioned also in the previous reply of the Commission. The last meeting of the Advisory Board, which took place in Zagreb on 6 July 2022, discussed its recommendations to improve the IMM.

The Advisory Board issued its recommendations and submitted them on 27 October 2022 to the IMM, which were made publicly available². It contained both observations on the content of the annual report of the IMM, and catered for recommendations in view of its renewal. The recommendations of the Advisory Board with regard to the renewal of the cooperation agreement focused in particular on allowing unannounced visits at the green border, and improved access to information [REDACTED]. The renewed cooperation agreement between the Ministry of Interior of Croatia and the participating actors that was concluded on 4 November 2022 incorporated these two core elements.

¹<https://www.hck.hr/novosti/nezavisni-mehanizam-nadzora-objavio-prvo-godisnje-izvjesce/11387>

² <https://www.hck.hr/novosti/potpisan-sporazum-o-suradnji-nezavisni-mehanizam-nadzora-nastavlja-s-radom/11527>

Among the signatory parties there are the Croatian Academy of Medical Sciences, Association of Centre for Cultural Dialogue, the Association of the Croatian Red Cross [REDACTED]. The current IMM is established for automatically renewable periods of 18 months.

In the BMVI programme of Croatia for 2021-2027, as recommended by the Commission, the effective functioning of the IMM is embedded in the arrangements put in place to ensure the fulfilment of the Horizontal Enabling Condition on the effective application and implementation of the Charter of Fundamental Rights (Charter HEC). In line with the Article 40(1)(h) of the Regulation (EU) 2021/1060 (Common Provisions Regulation), the monitoring committees of the three funds shall examine the fulfilment of the enabling conditions, including the analysis of the activities performed within the IMM in relation to fulfilment of the Charter HEC.

The BMVI programme foresees funding support to the IMM specific activities, under the action “supervision of actions of the border police for the purpose of protection of fundamental human rights and freedoms”.

Further to the conclusion of the renewed cooperation agreement, on 6 December 2022 the Ministry of the Interior was awarded [REDACTED] under the BMVI programme³, of which 90% EU contribution, to ensure the implementation of the activities under the IMM Cooperation Agreement, [REDACTED]

[REDACTED]

The implementation period of this project is December 2022 - June 2024.

The Commission, as a member of the Advisory Board, continues to closely monitor the IMM, in particular to assess the outcome of its monitoring activities. In the first year of the implementation, the IMM mandate covered monitoring at the border crossing points, police stations and reception centre as well as announced visits to the green border. The Advisory Board noted that according to the annual report of the IMM, the monitors did not detect irregularities in the course of its direct observations as regards the right to asylum and access to the procedure at official border crossing points and police stations.

The creation and the first results of the monitoring activities of the IMM had a positive contribution to Croatia’s accession to the Schengen area. As a result of the decision of the European Council on 8 December – requiring the unanimous decision of all EU Member States – controls at internal borders of Croatia have been lifted.

With this decision Croatia will also be subject to regular evaluation visits, including unannounced ones, under the Schengen Evaluation Mechanism. The new Schengen Evaluation and Monitoring

³ The project is financed under the BMVI programme of Croatia - Specific objective 1.

Mechanism Regulation, adopted by the Council in June 2022, further increases the capacity of the mechanism to identify shortcomings in the way Member States apply the Schengen acquis, including any possible violations of fundamental rights.

The Commission, as a member of the Advisory Board, will continue to assess in its advisory capacity the IMM's effectiveness and support the improvement of its functioning. With the entry into force of the renewed cooperation agreement, the new Chair of the Advisory Board is the EU Agency for Fundamental Rights, for the duration of one year.

The Croatian authorities will however remain responsible for following up on the recommendations of both the IMM and of the Advisory Board and for continuing strengthening its independent functioning, in full respect of fundamental rights and EU law, also in the future.

IV. Conclusions

The Advisory Board issued its recommendations and submitted them on 27 October 2022 to the IMM. In its recommendations, the Advisory Board welcomed the efforts made to enhance the transparency of the IMM operation and provided recommendations for its renewal. These recommendations were made publicly available to allow also the general public to have direct access thereto.

The Advisory Board underlined in its recommendations that the final report well-illustrated the purpose of having a monitoring mechanism, the first of its kind established in an EU Member State

The Commission has been advocating for Croatia to continue the implementation of the IMM in the future.

The European Commission, also as a member of the Advisory Board, will continue to contribute to the recommendations to enhance the independence and functioning of the monitoring mechanism, which remains to be an important safeguard guaranteeing in principle compliance with fundamental rights in border control activities as well as ensuring that necessary investigations are carried out whenever necessary. Croatia is expected to continue allocating funding for the continuous implementation of the mechanism, for instance under its BMVI programme.