



ARTICLES

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NATIONAL INDEPENDENT MONITORING MECHANISMS FOR FUNDAMENTAL RIGHTS COMPLIANCE AT THE EU'S EXTERNAL BORDERS

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ABSTRACT: The European Union is torn between its aim to curb down the number of migrants and refugees and its obligation to protect fundamental rights of all individuals on its territory. National independent monitoring mechanisms, stipulated by the Screening Regulation and the Asylum Procedures Regulation, are the reflection of this tension. The mechanisms' aim will be to contribute to the protection of fundamental rights of irregular migrants and applicants for international protection, by monitoring the activities of police officers at the EU's external borders. While the establishment of national monitoring mechanisms is a positive step in the context of the protection of fundamental rights at the EU's external borders, their confinement to screening activities and novel border procedures is a manifest disregard of the fact that violations of third-country nationals' rights are most likely going to happen during border surveillance, which are not encompassed by the mandate of monitoring mechanisms. The aim of this *Article* is to critically evaluate the rules for the establishment and work of national independent monitoring mechanisms, point to the main challenges and make recommendations, while using the Croatian pilot mechanisms as a test case to discuss the mechanisms' mandate, methodology and work.

KEYWORDS: monitoring – fundamental rights – migration – asylum – borders – Migration Pact.

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I. INTRODUCTION

The situation at the EU's external borders over the past decade has been marked by strong influxes of migrants and refugees and many violations of their fundamental rights in different Member States.¹ Fortification and digitalisation of the EU's external borders are the response to migration pressures and the result of Member States' official policy objective of preventing irregular arrivals and their unofficial aim of reducing the number of asylum applications. At the same time, the Union continues to officially uphold the same values and individual rights, and EU law continues to ban violent treatment of third-country nationals. The Union's aspiration to reconcile the tension between these conflicting policy goals at the EU's external borders is reflected in the future establishment of national independent monitoring mechanisms, which is foreseen by the Screening Regulation and the Asylum Procedures Regulation,² recently adopted as part of the New Pact on Migration and Asylum.³ The national mechanisms will have to be established and become functional as of 12 June 2026, when the Screening Regulation and the Asylum Procedures Regulation start to apply.

The mechanisms' aim will be to contribute to the protection of fundamental rights of irregular migrants and applicants for international protection, by monitoring the activities of police officers at the EU's external borders, no matter whether they are surrounded by walls or not.⁴ As explained below, the limited mandate of these mechanisms reflects the conflict between the Commission's ambition to ensure compliance with fundamental rights at the EU's external borders, and Member States' reluctance to strengthen the monitoring of their border surveillance and other border activities. While the establishment of national monitoring mechanisms is a positive step in the context of the protection of fundamental rights at the EU's external borders, their confinement to screening activities and novel border procedures is a manifest disregard of the fact that violations of third-country nationals' rights are most likely going to happen during border surveillance, which are not encompassed by the mandate of monitoring mechanisms.

In this respect, the *Article* suggest that the mandate of national independent monitoring mechanisms should be broadened to encompass all border activities, including

¹ See e.g. Protecting Rights at Borders (PRAB), *Pushbacks at Europe's borders: a continuously ignored crisis* www.asgi.it.

² Regulation 2024/1356 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817; Regulation 2024/1348 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

³ Communication COM(2020) 609 final from the Commission of 23 September 2020 on 'A New Pact on Migration and Asylum'. For a detailed analysis of the Pact, see I Goldner Lang, D Thym, L Tsourdi and C Warin (eds), 'Special Collection on the EU Asylum and Migration Legislation after the Pact' (2024) *Odysseus Blog eumigrationlawblog.eu*.

⁴ For the discussion of walls and fences at the EU's external borders see I Goldner Lang, 'Walls and Fences at the EU's External Borders and their Monitoring', in P De Bruycker, F Lutz, J Rijpma and D Thym (eds), *The Law of Schengen: Limits, Contents and Perspectives after 40 Years* (Edward Elgar, forthcoming).

border surveillance, and that the location of monitoring should not be limited to the EU's external borders, but should expand to other locations within the EU's territory. Additionally, the *Article* advocates for the adoption of harmonised EU-level rules on evidence collection and processing, which are needed to ensure reliable and comparable results among Member States. It also proposes defining follow-up procedures and obligations of national independent monitoring mechanisms in case of irregularities, to ensure their consistent and effective operation across EU Member States. Otherwise, there is risk of dissonance between the mechanisms' objectives and their practical outcomes.

The text is structured in four sections. Following the introduction, the second section presents the pilot case study of the Croatian national independent monitoring mechanism, assessing its mandate, methodology and activities within a Member State context, with the aim to derive lessons for future national independent monitoring mechanisms stipulated by the Screening Regulation and the Asylum Procedures Regulation. The third section outlines the legal framework of national independent monitoring mechanisms, based on the two Regulations, and highlights open issues. The concluding section identifies essential requirements for the successful operation of future mechanisms, at the same time summarising the positive sides and deficiencies of the adopted rules.

II. CROATIAN EXPERIENCE WITH ITS NATIONAL INDEPENDENT MONITORING MECHANISM

The Croatian model of a national independent monitoring mechanism, established as part of the European Union's broader initiative to enhance fundamental rights protection at its external borders, provides valuable insights into the practicalities and challenges of implementing such mechanisms. As a pioneering initiative, it sets a precedent for other Member States, highlighting the importance of a comprehensive approach to enable effective monitoring and protection of fundamental rights. This pilot project, initially set up on June 8, 2021, for a year, by an agreement signed between the members of the mechanism's Coordinating Board and the Ministry of Interior, and subsequently extended, embodies the EU's aspiration to balance rigorous border control with fundamental rights protection. A new agreement, signed on November 4, 2022, extended the project for an additional 24 months with a possibility of further extension. However, the following paragraphs will also show the initial challenges and limitations of the mechanism, especially in terms of its operational capacity and mandate, highlighting the difficulties in effectively realising the mechanism's ambitions goals.

The primary aim of Croatia's independent monitoring mechanism is to "contribute to the respect of fundamental rights by monitoring actions of Croatian police officers in the area of border surveillance, irregular migration and international protection, with particular emphasis on the respect of the principle of non-refoulement, prohibition of collective

expulsion, prohibition of torture and other forms of ill-treatment".⁵ The mechanism's operations cover Croatian external borders towards Bosnia and Herzegovina, Montenegro and Serbia, including green border, border crossing points, police stations and police administrations.⁶ Monitoring can also take place in reception centers on the Croatian territory.⁷ This expansive coverage presents challenges, considering the limited number of individuals conducting the monitoring and the number of monitoring visits the mechanism is expected to perform.

Managed by the Coordinating Board comprising four NGOs (civil society organizations and academic institutions) and one independent expert specialized in EU migration and asylum law, the mechanism includes the Croatian Red Cross, the Centre for the Culture of Dialogue, the Croatian Academy of Legal Sciences, and the Croatian Academy of Medical Sciences, whereas Iris Goldner Lang serves as an independent expert. The members of the Coordinating Board have signed an agreement with the Croatian Ministry of Interior, which is the legal basis for the establishment and operational scope of the mechanism. The diverse composition of the Coordinating Board underscores a commitment to a multi-stakeholder approach. However, the mechanism's function based on an agreement, rather than Croatian or EU legislation (such as the Screening Regulation and the Asylum Procedures Regulation), highlights its temporary character, dependent on the duration of the agreement and the willingness of the Croatian Ministry of Interior to enter sign it, and its legally weaker position, compared to other national and European bodies with monitoring mandates, such as the national Ombudsperson's Office or Frontex.

Each NGO in the Coordinating Board appoints two monitors. Altogether eight monitors are responsible for conducting at least 20 monitoring visits. Monitors' activities include both announced and unannounced visits to the green border, border crossing points and reception centers.⁸ Additionally, they also include access to individual case files, files of cases under observation, finally disposed cases on received petitions alleging illegal treatment of irregular migrants and asylum seekers, and access to the activities and reports from the General Police Directorate regarding alleged illegal treatment of irregular migrants and asylum seekers.⁹ Notably, monitors have the right to access information from the Croatian Ministry of Interior's information system, either through written or oral requests.¹⁰

The authorisation of monitors to perform unannounced visits to the green border and access files of cases under observation and information from the Ministry's information system are novelties, inserted in the second agreement signed in November

⁵ Art. 1 of Cooperation Agreement to Implement an Independent Monitoring Mechanism on the Protection of Fundamental Rights in Actions of Police Officers of the Ministry of the Interior in the Area of Border Surveillance, Irregular Migration and International Protection, 4 November 2022, www.hck.hr.

⁶ Art. 6 of the Agreement.

⁷ Art. 6 of the Agreement.

⁸ Art. 8(1) of the Agreement.

⁹ Art. 8(2) of the Agreement.

¹⁰ Art. 9 of the Agreement.

2022. It represents a response to the Coordinating Board's 1st annual report and the Advisory Board's recommendations. The first agreement from June 2021 permitted announced and unannounced visits to the border crossing points and only announced visits to the green border. It did not include unannounced visits to the green border or access to pending cases and the Ministry's information system. This amendment significantly enhances the mechanism's powers and effectiveness, serving as vital guidance for the mandates of future national mechanisms under the Screening Regulation and Asylum Procedures Regulation. However, despite the importance of unannounced visits to the green border, their practical value is limited by the small number of monitors and the need to evenly distribute the limited number of observations across Croatia's lengthy external border. On the other hand, access to pending cases and to the Ministry's information system are extremely important advancements, contributing to a more comprehensive approach and significantly enhancing the mechanism's findings.

Upon completing its first year, the Croatian mechanism's Coordinating Board published its 1st annual report, outlining its main findings and key recommendations.¹¹ The report states:

"The Mechanism is not a static and one-time or even final answer to all challenges of civil monitoring of the police in the area of irregular migration in Croatia. Its establishment is the start of an unbiased, independent and expert dialogue with the Ministry of Interior, which is not led with the exclusive objective of detecting and processing individual illegal actions of police officers, but rather with the purpose of determining normative, institutional, systematic, operational, technical as well as human factors, which contribute or even cause such illegal actions. It is clear that leading such a dialogue must conform to the requirements of dynamics and adaptability and it should have the potential of longevity, which also opens the possibility for the evaluation of proposed and implemented measures as well as their timely corrections (evidence-based policy). In that sense, the Mechanism implements its mandate in accordance with the Agreement and positive regulations of the Republic of Croatia and it is guided in its work by the vision of a direct, unbiased, independent and expert dialogue with the Ministry of Interior, in which a broad circle of stakeholders is indirectly involved through the Advisory Board, as well as the public from which the Mechanism receives certain information and to which it transparently communicates the findings of its work".¹²

In its 1st annual report, the mechanism noted that from July 2021 to June 2022 no irregularities were detected at official border crossing points and police stations concerning the right to asylum and access to procedures.¹³ However, at the green border, the

¹¹ Independent Monitoring Mechanism, *Annual Report of the Independent Oversight Mechanism Monitoring the Actions of Police Officers of the Ministry of the Interior in the Field of Irregular Migration and International Protection, June 2021 – June 2022* www.hck.hr.

¹² *Ibid.* 22-26.

¹³ 1st annual report, pp. 22-26.

report identified irregularities, including incidents of illegal police deterrence in mine-suspected areas and misinterpretations of law by border police officers, who did not consider mined locations as Croatian territory and prevented individuals apprehended in these areas from entering the country and claiming asylum.¹⁴

The non-detection of systemic irregularities at the Croatian green border towards Bosnia and Herzegovina, and Serbia contrasts with the reports from some NGOs, which have found systematic pushbacks in the Croatian mechanism's first year.¹⁵ This discrepancy stems from two main factors. First, it is a consequence of the mechanism's limited operational capacity, lacking both access to the Ministry's information system and the authority to conduct unannounced visits to the green border under the initial agreement with the Ministry. Second, it arises from the absence of a defined methodology and specific rules governing the mechanism's operation in gathering and processing evidence in case of allegations of irregularities. The lack of clear procedural rules and a defined work methodology left the Croatian mechanism without guidance on which evidence to use and rely upon in its operations. Consequently, the mechanism has depended on findings from its eight monitors during 20 observations, supplemented by interviews with police officers and migrants, as well as various news reports. However, it did not incorporate NGO findings into its work and reporting, nor was it possible for organizations or individuals to report irregularities to the mechanism, as it lacked a mail address, website, or contact number. These challenges underscore the limitations of the Croatian mechanism, particularly in its first year.

Some of these deficiencies have been addressed with the creation of the mechanism's website, enabling the reporting of irregularities in 11 languages. Undoubtedly, such a website enhances the transparency and efficiency of the mechanism. However, it does not resolve the issue of lacking methodological guidance. Therefore, as discussed in the following sections, it is imperative that future national independent monitoring mechanisms, established based on the Screening Regulations and Asylum Procedures Regulations, are accompanied by an EU-wide set of procedural rules. These rules should specify the mechanisms' obligations regarding evidence gathering and processing, outline the exact steps to be taken in cases of allegations of fundamental rights violations at the external borders, and include other necessary procedural guidelines. Without such uniformity, different national mechanisms may adopt varying methodologies, leading to incomparable and potentially unreliable findings.

In any case, the first annual report offers valuable recommendations for enhancing the effectiveness and role of the mechanism in safeguarding fundamental rights, as well as in reducing potential future violations and deficiencies in police procedures at the Croatian external borders. Most notably, these recommendations encompass the need to enable

¹⁴ 1st annual report, pp. 22-26.

¹⁵ See for example the report by the initiative Protecting Rights at Borders (PRAB), consisting of a number of organizations, such as the Danish Refugee Council in Bosnia and Herzegovina, the Greek Council for Refugees in Greece and others. See PRAB, *Beaten, Punished and Pushed Back* pro.drc.ngo.

unannounced visits to the green border and to provide access to the Ministry's information system within the mechanism's mandate. Additionally, they suggest increasing the number of trainings for police officers on the lawful treatment of third-country nationals, establishing more effective processes within the police for addressing detected deficiencies, and introducing cameras to be worn by officers surveilling the Croatian external borders.¹⁶

Reflecting on the mechanism's 1st annual report, its Advisory Board issued a set of recommendations aimed at strengthening the mechanism's capacity to protect fundamental rights.¹⁷ These recommendations included the need to further clarify the mechanism's scope and enable it to conduct unannounced visits to the green border, as well as to gain access to the Ministry of Interior's information system.¹⁸ Another significant recommendation was to empower the Croatian mechanism with the authority to request official investigations from state bodies, a move that would substantially enhance the mechanism's powers and effectiveness.¹⁹ The Advisory Board also advocated for increased cooperation and complementarity with various authorities and actors, addressing the issue of overlapping competencies with other national and European monitoring bodies, such as the Ombudsperson's Office and Frontex.²⁰ Additionally, the Advisory Board recommended establishing a formalized feedback channel from the police, including anonymous submissions through a dedicated and flexible complaint mechanism not constrained by hierarchy.²¹ Undoubtedly, these recommendations could significantly improve the function of national mechanisms in Croatia and other Member States.

In conclusion, Croatia's pilot independent monitoring mechanism, while a pioneering effort, epitomizes the challenges that Member States will face in operationalizing their obligation to establish such a mechanism, based on the New Pact on Migration and Asylum. The Croatian experience, reflecting both achievements and limitations, serves as a critical reference point for the future implementation of national mechanisms across the EU. It highlights the necessity of a comprehensive approach, continuous evaluation, and the political will to ensure effective monitoring of fundamental rights at the EU's external borders.

¹⁶ 1st annual report, pp. 22-26.

¹⁷ The Advisory Board of the Croatian mechanism is comprised of the following international organisations and bodies, highlighting the multi-stakeholder approach and combining international and local expertise and oversight: the Fundamental Rights Agency (FRA), as the currently presiding member of the Advisory Board, the European Commission, Frontex Fundamental Rights Officer, the European Union Agency for Asylum, the Ombudsperson of the Republic of Croatia, the Ombudsperson for Children of the Republic of Croatia, UNHCR Croatia, and IOM Croatia.

¹⁸ Recommendations of the Advisory Board on the Annual Report of the Independent Monitoring Mechanism (June 2021 – June 2022), 2022, www.hck.hr, recommendations 1 and 2, p. 4.

¹⁹ *Ibid.* recommendation 3, p. 4.

²⁰ *Ibid.* recommendation 4, p. 4.

²¹ *Ibid.* recommendation 5, p. 5.

III. LEGAL FRAMEWORK AND CHALLENGES OF NATIONAL INDEPENDENT MONITORING MECHANISMS

Member States' obligation to establish national independent monitoring mechanisms is stipulated by art. 10 of the Screening Regulation, which states that such mechanisms shall "monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening".²² The newly established mechanisms will have to "ensure that substantiated allegations of non-respect for fundamental rights in all relevant activities in relation to the screening, are dealt with effectively and without undue delay, to trigger such investigations where necessary and to monitor the progress of such investigations".²³ Additionally, according to art. 43(4) of the Asylum Procedures Regulation, "each Member State shall provide for a monitoring of fundamental rights mechanism in relation to the border procedure".²⁴

Initially, the establishment of national independent monitoring mechanisms was limited exclusively to screening, as drafted in the Screening Regulation. However, at the final stage of negotiations, monitoring was expanded to border procedures, by the insertion of art. 43(4) of the Asylum Procedures Regulation. Nevertheless, the mandate of national independent monitoring mechanisms remains both functionally and geographically limited. In terms of geographic limitations, it is confined to the EU's external borders, as only few screening activities may take place within the territory, while all border activities – as implied by their name – have to be conducted at the borders.²⁵ Functionally, monitoring mechanisms are limited to screening and border procedures, rather than encompassing all activities conducted at the EU's external borders – no matter whether borders are fenced or not. This limitation is a wasted opportunity to address violations of fundamental rights taking place during border surveillance and checks. It raises questions about the underlying intent behind establishing these mechanisms, due to their restricted capabilities and impact.

This importance of enabling monitoring mechanisms to monitor all border activities has been recognized by the Fundamental Rights Agency (FRA), which has issued comprehensive guidance for Member States on establishing such mechanisms, as recommended in art. 10(2) of the Screening Regulation.²⁶ FRA's Guidance from 2022 recommended that the mechanism should have a much broader scope than the one stipulated by the Screening Regulation. It asserted that the mechanism "should have a broad thematic mandate"

²² Art. 10(2) of the Screening Regulation.

²³ *Ibid.*

²⁴ Art. 43(4) of the Asylum Procedures Regulation.

²⁵ See art. 3 and 5 of the Screening Regulation.

²⁶ Fundamental Rights Agency, *Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders* fra.europa.eu.

by overseeing the actual implementation of fundamental rights safeguards "during border checks and border surveillance" and that it "should have unimpeded access to observe all border operations at any time".²⁷ Evidently, in 2022 the Fundamental Rights Agency maintained that only a broad mandate of national monitoring mechanisms, encompassing the monitoring of all border activities, including surveillance at border walls, can effectively contribute to the protection of fundamental rights at the EU's external borders.

The updated version of the FRA Guidance from 2024 is much more cautious. Here, FRA refrains from the use of strong language and departs from its initial straightforward recommendation to monitor all border operations, including border checks and surveillance. Instead, the 2024 FRA Guidance states that: "where appropriate and advisable considering the national circumstances and operational situation, Member States may decide to extend the mechanism to cover related border management activities, including border surveillance; and/or to the return border procedure without prejudice to Article 8(6) of the Return Directive".²⁸

It remains to be seen whether national mechanisms will try and find a way to include, in their monitoring, other activities taking place at the external borders, by linking them to screening and border procedures. Much will depend on how the Court of Justice, if asked, will interpret the word "implement" in art. 10(2) of the Screening Regulation, which provides that the mechanisms "shall cover all activities undertaken by the Member States in implementing this Regulation". In case the Court chooses a broader reading of the word "implement", it will empower national mechanisms to monitor a wider range of states' border activities, which are only indirectly linked to screening. Another consequence of the Court's extensive reading of the word "implement" could be to place a wider range of states' border activities within the field of application of the Charter, similar to the situation in *Åkerberg Fransson*.²⁹ This would be especially relevant if one could argue that monitoring – as an implementation of EU law based on art. 51 of the Charter – brings about the application of the Charter not only for the monitoring process as such, but for the state behaviour that is being monitored

On the positive side, the independent monitoring mechanisms will be authorised to carry out their tasks on the basis of "spot checks and random and unannounced visits".³⁰ The power to conduct unannounced visits enhances the mechanisms' powers and effec-

²⁷ *Ibid.* n. 39.

²⁸ Fundamental Rights Agency, *Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms* fra.europa.eu.

²⁹ Case C-617/10 *Åklagaren v Hans Åkerberg Fransson* ECLI:EU:C:2013:280. For a narrower reading of the word "implement" in art. 51 of the Charter, see *X and X* (case C-638/16 *PPU X and X v État belge*, ECLI:EU:C:2017:173). For the discussion of *X and X*, see I Goldner Lang, 'Towards "Judicial Passivism" in EU Migration and Asylum Law?', in T Čápetá, I Goldner Lang and T Perišin (eds), *The Changing European Union: A Critical View on the Role of Law and the Courts* (Hart 2022) 175.

³⁰ Art. 10(2) of the Screening Regulation.

tiveness of monitoring. However, despite the significance of unannounced visits, their practical value will be limited by the mechanisms' mandate. Additionally, the capacity of national independent monitoring mechanisms to conduct their activities efficiently will also depend on their human and other capacities and the number of checks they will be assigned with.

On the other hand, it will be important to authorise the mechanisms to have access to national police information system and to pending cases before national ministries in charge of migration and asylum. Having access to the information system could partly compensate for the mechanisms' limited capacities and number of checks, and it could significantly contribute to the effectiveness of monitoring, particularly of police activities at the green border, provided such activities will be monitored. The Screening and Asylum Procedures Regulations do not stipulate the power of national monitoring mechanisms to access police information systems, so one can expect disparities among different Member States, in terms of the degree of powers they are granted in this area. This could be avoided by agreeing on an EU-wide set of rules, specifying the powers of national mechanisms, needed for efficient monitoring, triggering of investigations, in case of allegations of violations of fundamental rights, and monitoring of such investigations. Such an EU-wide set of procedural rules should specify the mechanisms' obligations regarding evidence gathering and processing, outline the exact steps to be taken in case of allegations of fundamental rights violations and include other necessary procedural guidelines. Without such harmonisation of methodologies and procedures, different national mechanisms may adopt varying methodologies, leading to potentially unreliable and incomparable findings.

Unfortunately, the Screening Regulation is not strict enough in this respect. Art. 10(2) provides that "Member States may request the Fundamental Rights Agency to support them in ... the monitoring methodology". Consequently, Member States have the discretion to ask FRA for help in defining their monitoring methodology, but it is up to them whether they will use this possibility and whether they will rely on the FRA's support or apply a different methodology.

Additionally, national independent monitoring mechanisms should have a clear power and obligation to make referrals directly to national prosecution authorities. In this respect, art. 10(2) of the Screening Regulation obliges national mechanisms to trigger investigations, in case of "substantiated allegations of failure to respect fundamental rights ... in relation to the screening", and to monitor their progress, but it is not clear whether the obligation to "trigger investigations" can be understood as the obligation to request state prosecution authorities to launch investigations and to follow these investigations.

Finally, the Screening and Asylum Procedures Regulations address the issue of overlapping competencies with other European monitoring bodies by stating that national independent monitoring mechanisms shall be without prejudice to the monitoring of the EU Asylum Agency and the role of fundamental rights monitors of Frontex.³¹ The same should

³¹ Art. 2a of the Screening Regulation refers to both the EU Asylum Agency Frontex monitors, while art. 43(4) of the Asylum Procedures Regulation refers exclusively to EU Asylum Agency.

apply to potential overlap with national monitoring bodies, such as Ombudsperson's Office. The Screening Regulation obliges national human rights institutions to participate in the operation of the mechanisms and enables them to be appointed as independent monitors, while also suggesting the involvement of relevant international organisations, NGOs and independent public bodies in mechanisms' structure.³² The involvement of these organisations and bodies as members in the Advisory Board of the Croatian pilot mechanism has proven highly beneficial. However, the flexible wording of the Screening Regulation gives Member States multiple possibilities to decide how they want to connect the future national monitoring mechanisms with other national and international bodies. One of the possibilities will be to include national independent monitoring mechanism in the work of the already existing national monitoring institution, such as the ombudsperson' office. Another possibility would be to establish the national independent monitoring mechanism as a new and separate body, which would involve the existing national monitoring bodies in its internal structure, as members of the coordinating/management or advisory board. In any case, one can expect divergent national solutions and institutional frameworks.

IV. CONCLUDING REMARKS: MUST-HAVES OF NATIONAL INDEPENDENT MONITORING MECHANISMS

National independent monitoring mechanisms need to fulfil a number of important requirements to ensure their work is effective and their results reliable and mutually comparable. Most of these requirements have been stipulated by the Screening and Asylum Procedures Regulations. However, there are still some open issues that will be listed below. These issues should be addressed, in addition to the mechanisms' deficient mandate and the need to agree on EU-level harmonised rules on evidence gathering, processing and follow-up procedures in case violations of fundamental rights.

On the positive side, art. 10(2) of the Screening Regulation obliges Member States to authorise national mechanisms to conduct "on-the-spot checks and random and unannounced checks".³³ This power increases the likelihood that national mechanisms will spot potential violations of fundamental rights related to screening and border procedures and that they will reach more objective and reliable results than would have been the case had the mechanisms' tasks been limited to announced visits. Additionally, art. 10(2) of the Screening Regulation obliges Member States to "put in place adequate safeguards to guarantee the independence of the independent monitoring mechanism".³⁴ Proper implementation and practical application of this provision is highly important, as national mechanisms should be independent both in law and in practice. Their independence should be ensured both at the point of their establishment and throughout their work, and it should

³² Art. 10(2) of the Screening Regulation.

³³ Art. 10(2) of the Screening Regulation.

³⁴ *Ibid.*

encompass both operational and financial independence. In this context, art. 10(4) of the Screening Regulation obliges Member States to equip their mechanisms “with appropriate financial means”.³⁵ Without sufficient financial and human resources national mechanisms will not be able to carry out their tasks and reach their proclaimed objective.

Art. 10(2) of the Screening Regulation obliges Member States to provide the national independent monitoring mechanisms “with access to all relevant locations, including reception and detention facilities, individuals and documents insofar as such access is necessary” for the fulfilment of the mechanisms’ tasks.³⁶ As discussed previously, access to national police information system is not explicitly granted, giving room for different national interpretations of this provision. On the other hand, the 2024 edition of the FRA Guidance is more precise, stating that “access to documents should include files, registers, records, videos and all electronic systems and records relevant to the mandate of the mechanism”.³⁷ Hopefully, all Member States will take on board the FRA’s Guidance and grant national mechanisms access to national policy information systems.

Additionally, as mentioned previously, even though art. 10(2)(b) of the Screening Regulation obliges national mechanisms to trigger investigations in case of allegations of violations of fundamental rights, it is not clear whether this commitment encompasses the mechanisms’ power to request state prosecution authorities to launch investigations. Again, the 2024 FRA Guidance tries to clarify this, by stating that national mechanisms “should be entitled to communicate directly with competent investigative authorities, to trigger prompt and effective investigations by internal disciplinary bodies and/or prosecutors”.³⁸

One of the most significant deficiencies of the Screening Regulation is the lack of a binding commitment of national independent monitoring mechanisms to issue reports and make recommendations, as well as no reference to national follow-up procedures, once such reports and recommendations have been issued. Art. 10(2) of the Screening Regulation grants national mechanisms with “the power to issue annual recommendations to Member States”.³⁹ It would be advisable to amend this provision by altering the mechanisms’ discretionary power to issue recommendations into a binding obligation, and to specify national follow-up procedures, with the view to respond and implement the mechanisms’ recommendations.

These findings suggest that, even though the establishment of national independent monitoring mechanisms is a noteworthy novelty of the New Pact on Migration and Asylum, there is room for improvement, especially with regard to their mandate, procedural rules and operational powers.

³⁵ Art. 10(4) of the Screening Regulation.

³⁶ Art. 10(2) of the Screening Regulation.

³⁷ Fundamental Rights Agency, *Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms* cit.

³⁸ *Ibid.*

³⁹ Art. 10(2) of the Screening Regulation.