



Statement on the European Commission's Rule of Law Reports

Border Violence Monitoring Network (BVMN) has provided information to the 2023 Rule of Law Report to contribute to the evaluation of three EU Member States: [Greece](#), [Croatia](#), and [Slovenia](#). BVMN submitted crucial evidence of pushbacks and limited access to asylum, gathered by the Network and its member organisations, highlighting the erosion of the rule of law in these countries. BVMN strongly emphasises the need for the Rule of Law Report to be conducted independently, objectively and comprehensively without political considerations and followed by consequences for breaches. The Rule of Law report should more thoroughly consider pertinent information from independent sources and impartial reporters and to involve independent experts in its drafting.

In the reporting period (January - December 2022), [BVMN collected](#) 120 pushback testimonies from Croatia, affecting 1088 people, 35 testimonies from Greece, affecting 2006 people and 4 testimonies from Slovenia, affecting 32 people. Pushbacks, in their systematic nature, do not only breach several fundamental rights in their modus operandi, oftentimes including [elements of torture](#), but also hinder access to asylum. In addition, seeking legal remedy for survivors is highly challenging. Therefore, in their nature, pushbacks breach core principles of the rule of law, such as arbitrary exercise of executive power, respect of Fundamental Rights and effective judicial protection.

Access to asylum is not mentioned in any of the country chapters of the three countries of concern in the 2023 Rule of Law report, while pushbacks are briefly addressed in the context of border monitoring mechanisms, such as in [Greece](#), the Recording Mechanism of Informal Forced Returns, and in [Croatia](#), the Independent Monitoring Mechanism.

BVMN reported that access to asylum and pushbacks should be an integral part of the Rule of Law report. Upholding Fundamental Rights and establishing mechanisms of accountability and legal remedies, both of which are eliminated through the conduction of pushbacks, should be core elements of upholding the rule of law in EU Member States. This also includes adherence to the 1951 Geneva Convention on the Status of Refugee which with the right of asylum established a right central to the European Union. By including both pushbacks as well as access to asylum in the Rule of Law report, the EU Commission would establish an accountability mechanism that points to challenges in upholding the rule of law in EU Member States.

This aligns with scholars, CSOs and international bodies arguing the fact that pushbacks constitute a breach of the Rule of Law in Europe. For instance, Delphine Rodrik [argues](#) that “pushbacks reflect increasing lawlessness and erosion of the rule of law within Europe.” Likewise, CSOs [argue](#) that Fundamental Rights breaches through perpetrating pushbacks and other rights violations are more pervasive in Member States that are non-compliant with the rule of law. Breaches of the rule of law in migration largely target minorities and shed light on increasing threats to the rule of law in the respective [countries](#). The protection of minorities is one of four political conditions to become an EU member according to the 1993 Copenhagen Criteria, alongside rule of law, democracy and human



rights. The lack of legal remedies, implementation of judicial frameworks and enforcement of court rulings concerning pushbacks furthermore points to a widespread erosion in the respect for [in those countries](#). This is consistent with arguments by the [Council of Europe](#), stating that “States can no longer afford to carry out these violations, deny documented incidents and police and border guard wrongdoings, nor to silently condone the normalisation of unlawful practices by others. Such avoidance of responsibility undermines the rule of law.” Consequences of the lack of adherence to the rule of law will in the long term impact the overall access to Fundamental Rights in the EU as well as the accountability of [governmental actors](#).

This aligns with [international bodies](#) and [scholars](#) arguing on the connection between rule of law and access to asylum for people on the move. Concerning access to asylum overall in Greece [CSOs](#) “warn of ‘persisting concerns relating to the rule of law through the lens of the Greek asylum system’” ([ECRE](#)). By ignoring evidence and analysis of both civil society, as well as international bodies, independent juridical review is hindered, while EU law and international jurisprudence is ignored.

The blatant disregard in the Commission’s reports of the EU states’ justice systems that refuse to prosecute governmental actors for pushbacks and other violations at borders, that abandon asylum seekers in legal limbo without legal remedies, and that criminalise people on the move and human rights defenders, in the service of a general policy of abuses of fundamental rights implemented by these states indicates that Rule of Law reports lack strength. However, EU Member States have ratified the Treaty on European Union, which establishes Articles 2 and 7 and imposes a mandatory legal obligation for them to adhere to the rule of law. Therefore, the Commission has an obligation to trigger mechanism cases of rule of law breaches.

Therefore, BVMN firmly holds that Rule of Law assessments must be carried out independently, objectively, and coherently. This requires considering relevant information from independent sources and impartial reports, as well as involving independent experts in the drafting process. Legal mechanisms as prescribed by EU law should be triggered when necessary to address any violations of the rule of law.

In summary, the current shortcomings in the Rule of Law reports call for a more robust and rigorous approach to ensure that EU Member States adhere to their obligations and safeguard fundamental rights in a just and accountable manner.

One possibility to monitor breaches of the rule of law such as pushbacks and lack of access to asylum is the establishment of an Independent Border Monitoring Mechanism as suggested by the EU Commission for Greece and Croatia. However, BVMN observes that the assessments in the Rule of Law report 2023 country chapters Greece and Croatia on their Independent Border Monitoring Mechanisms are insufficient, as both mechanisms cannot be considered as independent, effective and impartial.

In contrast to current realities in both Croatia and Greece, an Independent Monitoring Mechanism must have an explicit mandate to monitor fundamental rights and have powers to bring judicial and/or other authorities to make measures to ensure their respect of fundamental human rights. This should be accompanied by clear penalties being laid out for states that do not comply with the



mechanism or obstruct its workings. Therefore, the Independent Monitoring Mechanism must have frameworks in place to hold States and Institutions accountable to abiding by the agreed mechanism, while ensuring transparency and access to justice.

The mechanism must have the power to trigger investigations into misconduct at its own initiative, and its findings must be publicly accessible and transparent. Furthermore, it must encompass all actions of border management authorities and their activities and should include input and expertise from non-governmental organisations, civil society organisations and institutions. At the same time it must include a cross-border collaboration, as most survivors of pushbacks remain outside of the territory of the monitored Member States. The Independent Monitoring Mechanism must include an alarm , as well as a complaint mechanism in place for survivors of pushbacks. The implementers of the Independent Monitoring Mechanism must be chosen in a transparent and accountable manner and must be financially independent from the Member State in which it is operating.

An independent monitoring mechanism can only make sure that there are no pushbacks at the borders' if it is truly independent, able to hold human rights perpetrators accountable for violation of fundamental rights, and ensure remedies for those subjected to border violence. Without, the mechanism will certainly likely fail to produce any meaningful change in addressing violations at the borders.

BVMN therefore assesses that the scope of the current rule of Law Report should be extended. If aiming to establish accountability of Member States, it has to address breaches of fundamental rights within these States, as well as the lack of access to asylum and legal remedies for survivors. This also includes a realistic assessment of existing Independent Border Monitoring Mechanisms, including their independence, as well as their ability to monitor violations.. Therefore, input from civil society, such as BVMN, should be more thoroughly considered.