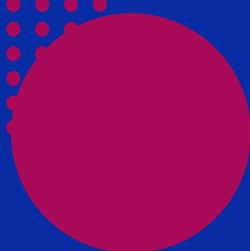
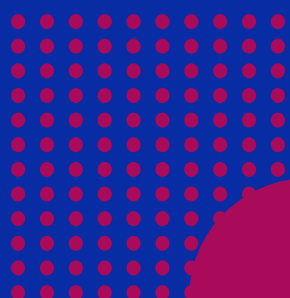
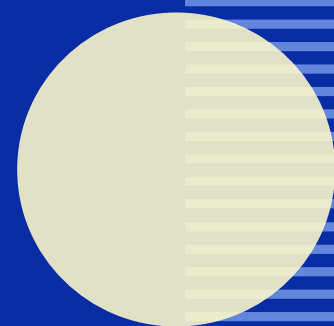


# Border Violence Monitoring Network



NOV 2020



## NEW PACT ON MIGRATION



### Policy Analysis



Border Violence  
Monitoring Network

**\*Border Violence Monitoring Network (BVMN) is a coalition of grassroots NGOs and groups operating along the Balkan route including Are You Syrious? Centre for Peace Studies, Collective Aid, Infokolpa, Josoor, Mare Liberum, Mobile Info Team, No Name Kitchen, [RE:]ports Sarajevo and Rigardu.**

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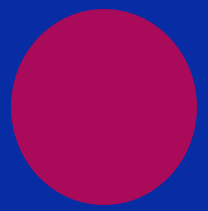
### **Case study: Croatian failure to establish the independent border monitoring mechanism**

On 23rd September 2020, the European Commission presented its plans for the future of migration and asylum management in Europe. Whilst it has been widely acknowledged that an overhaul of the current system is imperative, the New Pact does little to quell concerns from INGOs, civil society groups, and human rights watchdogs.

The Border Violence Monitoring Network (BVMN) has decided to focus on independent border monitoring, pre-screening procedures and mechanisms that immediately follow for the purpose of this policy analysis. These indicate a system in which external borders will be fortified in the interest of accelerating decision making processes for new arrivals into the bloc.

This move has been criticised as a repackaging of the EU's failed 'hotspot' approach which saw thousands trapped in camps at borders and on islands in geographically disadvantaged states least equipped to deal with influxes, such as Greece and Italy. The inadequacy of this approach was most recently exemplified by the recent fire in Moria on Lesbos which left 13,000 homeless. The pre-screening procedure will hold all incoming third country nationals (TCNs) in de facto detention as they await health assessments, confirmation of identity and a first assessment of whether or not they require international protection in the EU, before being granted entry into the territory of any Member State (MS). This, coupled with a renewed commitment to accelerated returns, suggests that the stage has been set for a regime that continues to violate human rights guarantees as laid out in the 1951 Geneva Convention and the European Charter of Fundamental Rights.

# Screening Procedure



The screening procedure is set out in document COM(2020) 612 as follows:

## Who?

- At all external borders of the EU, all third country nationals (TCNs) who:<sup>1</sup>
  - Cross external borders outside of official crossing points;
  - Present themselves at official crossing points without fulfilling entry requirements;
  - Are disembarked from search and rescue (S&R) operations;
  - Are apprehended inside MS territory without fulfilling entry conditions
  - **Will be subject to pre-screening procedures.**

## How?

- Screening should be conducted at or in proximity to the external border to prevent entry into any MS prior to screening completion.<sup>2</sup>
- The European Border and Coast Guard Agency (EBCGA) and the EU Agency for Asylum (to be established) will accompany and support in all pre-screening procedures.<sup>3</sup>
- During the screening, all persons should be guaranteed a standard of living in compliance with the EU Charter of Fundamental Rights and all authorities involved should respect human dignity, privacy and refrain from any discriminatory actions or behaviour. In order to achieve this, the EU Agency for Fundamental Rights
- During the screening, all persons should be guaranteed a standard of living in compliance with the EU Charter of Fundamental Rights and all authorities involved should respect human dignity, privacy and refrain from any discriminatory actions or behaviour. In order to achieve this, the EU Agency for Fundamental Rights (FRA) will support MS in developing independent monitoring mechanisms of fundamental rights in relation to screening.<sup>4</sup>

## What? - Article 6

- The procedure will consist of:<sup>5</sup>
  - A preliminary health and vulnerability check to identify those in need of immediate care at the earliest stage possible;<sup>6</sup>
  - An ID check against information in European databases;<sup>7</sup>
  - Registration of biometric data into the appropriate databases;<sup>8</sup>
  - A security check through the relevant databases, in particular the Schengen Information System (SIS), to verify the individual does not constitute a threat to the internal security of the MS;<sup>9</sup>
  - A debriefing form upon completion which provides the following information:<sup>10</sup>
    - Name
    - Date of birth
    - Country of origin
    - Sex
    - Initial indication of nationalities and countries of residence prior to arrival
    - Languages spoken

1 Article 3 COM(2020) 612

2 Article 6(1) COM(2020) 612

3 Article 6(7) COM(2020) 612

4 Article 7 COM(2020) 612

5 Article 6(6) COM(2020) 612

6 Article 9 COM(2020) 612

7 Article 10 COM(2020) 612

8 Article 14(6) COM(2020) 612

9 Article 11 COM(2020) 612

10 Article 13 COM(2020) 612

- Reason for unauthorised arrival/entry and, where appropriate, illegal stay or residence including information on whether or not the person has made an application for international protection.
  - Information obtained on routes travelled, including point of departure, place of previous residence, third countries of transit, and those considered safe third countries (STCs) where protection may have been sought or granted, and intended destination within the EU.
  - Information on assistance provided by a person or criminal organisation in relation to the unauthorised border crossing, and any related information in cases of suspected smuggling.
- ***TCNs will succinctly be informed about the purpose and modalities of the screening and their rights and obligations during the procedures. This information shall be given in a language which the person understands or is reasonably supposed to understand.***<sup>11</sup>

## How much?

- The total financial resources necessary to support implementation of pre-screening procedures is estimated at **EUR417.626 million** for the period 2021 - 2027 to support:<sup>12</sup>
  - Infrastructure for screening: the creation and upgrade of existing premises at border crossing points
  - Access to relevant databases at new locations
  - Hiring additional staff to carry out screening
  - Training of border guards and other staff to carry out screening
  - Recruitment of medical staff
  - Medical equipment and premises for preliminary health checks
  - Setting up an independent monitoring mechanism of fundamental rights during the screening

## What next?

- Those TCNs who do not fulfil entry conditions, as revealed in the pre-screening procedure, will be referred to the relevant authorities to apply procedures for return.<sup>13</sup>
- The MS may also consider applying a border procedure upon completion of pre-screening under these circumstances:<sup>14</sup>
  - Following an application made at an external border crossing point or in a transit zone
  - Following apprehension in connection with an unauthorised crossing of the external border
  - Following disembarkation after S&R operation
  - Following relocation based on the new Dublin agreement

Merits of an application suitable for accelerated procedures are met in line with the Safe Country of Origin (SCO) concept.<sup>15</sup>

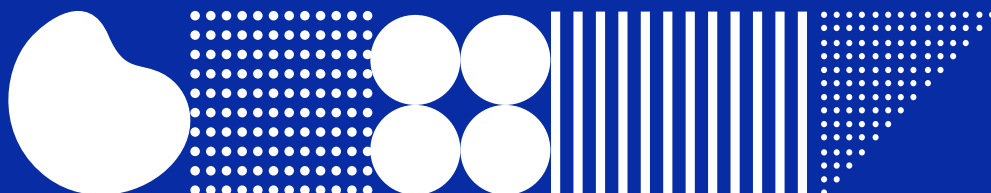
<sup>11</sup> Article 8(1) COM(2020) 612

<sup>12</sup> Legislative Financial Statement, 1.6, COM(2020) 612

<sup>13</sup> Article 14(1) COM(2020) 612

<sup>14</sup> Article 14(2, 3, 4) COM(2020) 612

<sup>15</sup> Recital 40b COM(2020) 611



# Detention


The New Pact on Migration builds on the legal framework for illegal practices that have, for years now, been a common tactic of multiple MS for deterring applicants for international protection. The newly defined screening procedure at the borders which prescribes detention of people for the duration of the process normalizes extremely rigid migration policies that not so long ago were widely deemed unacceptable. Although the designated pre-screening centres should be in the near proximity of the external border,<sup>16</sup> the fact that a person is technically inside a MS does not *de facto* place that person on MS territory. With this approach, the EU has added yet another barrier to accessing the asylum system. Incoming TCNs will have to undergo a screening to determine their need for protection before being able to apply for it - this violates several human rights obligations: the right to asylum, right to appeal, right to legal aid and right to liberty. Instead of opting for a more humane approach that respects international and EU human rights standards, the New Pact heavily relies on detention procedures which stands in contradiction with the EU legal framework. According to the current Reception Conditions Directive, an applicant for international protection should not be detained on the basis of her/his status as an asylum applicant.<sup>17</sup> Having in mind that time spent in the so-called pre-screening centre does not formally constitute detention, although it represents an extreme violation of the right to liberty, the person can, upon the completion of screening, end up in lawful detention. Thus, the question of the possibility to lodge a complaint with regards to the length and necessity of detention arises, specifically having in mind that detention should be a measure of last resort, and not standard protocol as is the case with the new Pact.

Looking into the approach defined in the New Pact, there are some extremely worrying similarities between the proposed screening centres and [Hungarian transit zones](#), against which the European Court of Human Rights (ECtHR) issued several interim measures, one on the account of starvation of people who were within the transit zone. In addition, the Court of Justice of the European Union [ruled for the abolishment of transit zones](#). By positioning detention as part of the standard protocol of the asylum procedure, the New Pact both directly and indirectly legitimises overuse of detention. BVMN documented multiple cases in which people on the move were arbitrarily detained and afterwards denied access to asylum. This method is often used by Croatian police officers, who have on several occasions [detained people in a garage](#) in Korenica, without access to basic facilities.

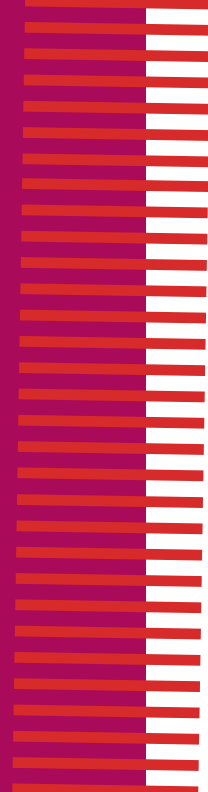
Testimonies collected by BVMN have shown that arbitrary detention is often a precursor to inhumane and degrading treatment, and in some cases torture. [In one case](#) minors as young as 12 were held in a room whilst Croatian border officers beat them with their hands, feet and batons. One testimony described the room as approximately 2mx4m and located at the bottom of a single flight of stairs directly below a border crossing point. Overuse of detention and severe violence as a means of preventing access to the asylum system was also recorded in Greece, and a recent [BVMN report](#) on violence within the state's borders expanded on the extent of these unlawful practices in state run facilities.

<sup>16</sup> Article 6(1) COM(2020) 612

<sup>17</sup> Article 8(1) 2013/33/EU



“ Testimonies collected by BVMN have shown that arbitrary detention is often a precursor to inhumane and degrading treatment, and in some cases torture. ”



An inhumane case of arbitrary detention that was extensively documented in international media was the limitation of freedom of movement for an entire family with several children for more than two months in a transit camp in Tovarnik, Croatia - a de facto detention site. The family in question is [that of Madina Hussiny](#), a six-year-old girl that, in the winter of 2017, became the first victim of a brutal border regime that does not refrain from violating human and children's rights. Madina's death will forever represent the injustice of the current European border regime which closes the doors of protection to those who need it most. She died on 21st November 2017, just meters from the Croatian border, after she and her family were pushed back by the Croatian police to Serbia. The case reached the European Court of Human Rights which, three times in a row, ruled against the decision, sending [three urgent notifications](#) of their decision on an interim measure requiring the Croatian Ministry of Interior to immediately place Madina's family in an environment where they would not be exposed to further inhuman or degrading treatment.

Arbitrary detention has, for years now, been a policy of individual MS such as Hungary, with the New Pact this will rise to the EU level. This shift might happen discreetly, with people being detained in transit zones, and such detention, in the eyes of the EU will not constitute arbitrary detention or detention itself although people are completely stripped of their right to liberty.

## SCO concepts

The New Pact outlines how country of origin will be identified through the pre-screening mechanism and will subsequently be used to accelerate procedures at the border for certain groups. Safe Country of Origin (SCO) principles were first codified in the Asylum Procedures Directive in the early 1990s and have maintained their presence in the directive throughout all subsequent recasts (2013, 2016, 2020). The concept has been the subject of two significant harmonisation attempts by the Commission who have twice proposed the creation of an EU common SCO list to ensure MS practices converge. In 2004, during the first phase of the CEAS, national SCO practices diverged widely between MS: some had formal national lists, others had informal arrangements, and others still did not subscribe to the policy in any meaningful way. In spite of attempts by the Commission, MS were highly divided over a proposed common list of SCOs and were [eventually unable to reach an agreement](#). The initiative resurfaced again in 2015 as a response to the unprecedented scale of the European migration 'crisis'. The [European Agenda on Migration](#) drew on narratives of 'bogus' asylum seekers abusing the system to recentre the importance of a common SCO list, which was to be coordinated by EASO. However, by 2016, the Council had announced [the suspension of negotiations](#). In spite of this, the New Pact ushers in renewed commitment to the creation of a common EU SCO list. Rather than developing this proposal in light of the complex history of harmonisation attempts, the policy document merely states that "a greater degree of harmonisation ... through EU lists ... will be particularly important".<sup>18</sup> There is no identified procedure as to how these lists will be established or agreed on which despite evidence for this being a highly contentious area of policy.

On top of this, SCO lists in their essence have severe implications for human rights and fundamental freedoms. Article 3 of the 1951 Geneva Convention puts forth that access to asylum procedures will be provided for without discrimination based on race, religion, or **country of origin**. Amnesty International has, in the past, argued that SCO lists constitute "[discrimination among refugees that is strictly forbidden by the Geneva Convention](#)", and ECRE argue that the "[far-reaching adverse procedural consequences for the individual asylum seeker](#)" renders the SCO concept unsafe. One key concern is that one of the central tenets of the CEAS, respect for the principle of **non-refoulement**, risks violation in the roll-out of SCO lists. In spite of this, the New Pact lays out procedures by which MS should accelerate the examination of applications from applicants who are TNCs of a third country for which the share of decisions granting international protection is lower than 20% of the total number of decisions for that third country.<sup>19</sup> [As BVMN has reported on](#), violence within MS such as Greece may prevent people from lodging claims for protection, therefore the proportionality figures are essentially defunct as some countries of origin will seem to have a higher acceptance rate. Not only is the harmonisation of SCO lists unsatisfactorily expanded on in the New Pact, but the concept itself is stated unquestioningly, ignoring years of critique from the humanitarian community.

# Age Verification Procedures:

As part of the pre-screening procedures, MS will be required to verify the ages of those lodging applications for protection,<sup>20</sup> however the inability of the New Pact to address the highly fragmented age assessment policies, procedures and practices in European MS reveals a significant flaw in the New Pact. Age assessments are most [commonly initiated](#) to determine the age of unaccompanied children and young people or those who do not carry identity documents, or when the authenticity of these documents is disputed.

Except for two EU member states who conduct the age assessment procedure through interviews alone, [all other states](#) conduct the procedure through the implementation of a range of methods including medical examinations. [Common methods of medical age assessment](#) include X-ray scans of the jaw, hand or wrist; CT scans of the collarbone; MRI scans of the knee; or the examination of secondary sex characteristic. These age assessment methods are often criticized for their lack of scientific or empirical basis, with the [European Academy of Paediatrics issuing recommendations](#) in 2015 that, due to the lack of reliability of some of these methods, paediatricians should not participate in the process.

Additionally, the methods of medical examination used during age assessment procedures have often been found to be invasive or cause mental or physical harm to young persons. This is in direct violation of the [Convention on the Rights of the Child](#) that the Union has ratified. Furthermore, a [report published by Council Of Europe Children's Rights Division](#) indicated that: **States may have a vested interest in considering young persons as adults because the safeguards put in place to protect children are more onerous for States.** For example, EU member states are bound by the [EU Procedures Directive](#) and the Reception Directive to provide a person below 18 years of age specific procedural guarantees and adapted reception conditions. BVMN has documented several cases in Croatia where children have been coerced into falsely declaring themselves as adults, thus significantly reducing the responsibility of care and protection the state is legally required to provide.

Disregard for these protection guarantees has proven to be a slippery slope, with BVMN partners [Centre for Peace Studies \(CMS\) reporting](#) cases in which children have been the victims of illegal pushbacks and police brutality. BVMN has reported 209 cases of violent and illegal expulsions of children from Croatia since 2017, while [Save the Children recorded 2969 expulsions](#) of children at the borders in the Western Balkans during the first 9 months of last year. Upholding the rights of the child in borderzones, throughout both pre-screening procedures and returns, is of the utmost importance when seeking to protect the most vulnerable from severe human rights abuses.

In January 2020, the [UNHCR published recommendations](#) for the EU's Pact on Migration and Asylum that recommended the EU adopt a common method for age assessment. BVMN joins the UNHCR in issuing this recommendation and supports the European Asylum Support Office and the Fundamental Rights Agency in advocating for a more uniformed approach to age assessments that guarantee the rights of the child within the EU.



# Extension of time limits in ‘crises’:

The New Pact outlines that pre-screening procedures should not exceed **five days**<sup>21</sup> where they are conducted at external borders to the Union, and **three days**<sup>22</sup> where they occur within the territory of a MS. However, the policy document also states that these limits may be extended in the case of exceptional circumstances at external borders where capacities are exceeded for reasons beyond MS control such as ‘crisis situations’.<sup>23</sup> Applying the principles of proportionality and necessity must be fully included into any crisis response measures. Under the said principles, derogations from the protection of asylum seekers and migrants must be strictly required by and proportional to the crisis situation, considering the harm they might cause to vulnerable groups. Fundamentally increasing the timelines individuals can be held at the border for the purpose of pre-screening is a significant derogation, cannot be taken lightly and should only be utilised as a last resort.

In any case, under the proposal, the first point of crisis response should be solidarity actions between Member States as stated in **Article 2**<sup>24</sup> of the proposed **Crisis Regulation** before going into an extension of time limits which could violate the necessary safeguards for those lodging applications for protection. Similarly, if the crisis situation can be handled with measures that grant immediate protection status<sup>25</sup>, that should be recognized as preferable to other mechanisms which opt for prolonging the durations for registering an asylum application<sup>26</sup>, or relying on the SCO concept.<sup>27</sup> It is unclear how an increase in the numbers of individuals seeking protection in a MS at a certain time would assist in the management of crisis situations. Indeed this would require MS to spend more resources on the de facto detention of these individuals in border zones. Similarly, it is uncertain how the proposed “crisis measures” would be absolutely necessary to better support a MS’s asylum, reception or return system. Instead, the proposal should investigate whether other methods would be better suited for responding to situations of mass-influx that would not require derogations from the safeguards.

## Appeal Procedures:

The New Pact outlines that accelerated border procedures for those who don’t fulfil the requirements for entry or to pursue their application for international protection further, should be as short as possible whilst also guaranteeing a complete and fair examination of claims. The time period stated is a maximum of **12 weeks**<sup>28</sup>, including the decision on the merits of the asylum claim in the first instance as well as the decision of the first level of appeal, where applicable. After this time the applicant should, in principle, be authorised either to enter the territory of the MS or, if they have no right to remain or have not requested an appeal, to be subject to return procedures. These return procedures should take no longer than **12 weeks**<sup>29</sup> counted from when the TCN is informed of whether or not they have the right to remain.

21 Article 6(3) COM(2020) 612

22 Article 6(5) COM(2020) 612

23 Article 6(3) COM(2020) 612

24 Article 2 COM(2020) 613

25 Article 10 COM(2020) 613

26 Article 4(1.b) COM(2020) 613

27 Article 4(1.a) COM(2020) 613

28 Article 41(11) COM(2020) 611

29 Article 41a(2) COM(2020) 611

The policies outlined are cause for significant concern with regards to adequate legal safeguards for asylum seekers subject to border procedures, especially when referring to the right to an effective remedy.<sup>30</sup> The time limit of 12 weeks for the entire procedure is extremely strict and many MS will struggle to fulfil this window. A key concern is that MS will try to limit the deadline for lodging an appeal to the minimum time period possible in order to grant themselves more time for processing the claim. Taking into account the current issues of accessing legal aid in many EU member states (see [case of Greece on p.65](#)), it seems impossible that the majority of rejection decisions will have access to effective remedy. One week is simply not enough for accessing legal aid and building an adequate appeal. The lack of legal aid combined with the short deadlines will certainly amount to violations of the right to an effective remedy as enshrined in **Article 47 of the EU Charter of Fundamental Rights**. Additionally, appeals will not automatically be suspensive of the return decision. The applicants would need to separately request the suspension from the court or tribunal, unless the competent authority does it ex officio. Consequently, the asylum seeker in concern must at the same time appeal the rejection decision of the asylum claim and appeal against the return decision, which increases the workload on the appeal and further creates obstacles for accessing the right to an effective remedy. Foreseeably, it will be challenging for asylum seekers to apply for the right to enter the country without adequate legal aid.

## Independent monitoring mechanisms:

Under the New Pact, the proposal for pre-screening mechanisms foresees independent monitoring in an attempt to ensure fundamental rights are complied with. According to the Commission, MS are required to set up an independent monitoring mechanism<sup>31</sup> in compliance with [guidelines developed by the Fundamental Rights Agency](#). Additional monitoring should be provided by the new European Union Agency for Asylum and through Frontex Serious Incident Reports (SIR) system, when applicable.<sup>32</sup> This indicates the political will to monitor and better address human rights violations at Europe's borders, a move welcomed by human rights defenders. BVMN alone has documented 874 cases of collective expulsions, involving an estimated 11,313 people and estimates that 85% of all pushback cases carried out in 2020 involved one, or in many cases, multiple forms of torture or inhumane and degrading treatment. The Commission has [promised to carry out more systematic monitoring](#) of both existing and new rules within MS, and to launch infringement procedures against such cases where necessary.

In light of such a necessary proposal, it is important to look at the Croatian example to better illustrate the state of play, and the implications of MS being tasked with the establishment of these so-called independent mechanisms. BVMN fears that such an approach, despite FRA's regulations, might in fact deepen the accountability vacuum those tasked with the protection of fundamental rights of arrivals into the bloc often find themselves in.

30 Article 53 COM(2020) 611

31 Article 7(2) COM(2020) 612

32 Article 6(7) COM(2020) 612



# Case study:

## Croatian failure to establish the independent border monitoring mechanism

Since the formal closure of the Balkan route in March 2016, the Croatian government, police and border officials have continued their assault on the fundamental rights of people on the move. Whilst prohibited under international law, the practice of pushbacks is ongoing, with complete impunity. BVMN partners Are You Syrious (AYS) and Centre for Peace Studies (CPS) are frequently contacted by individuals and families inside police stations who are denied the right to ask for asylum, intimidated, and ultimately pushed back with no paper trail. Additionally, there has been no real reaction to the Ombudswoman's letter requesting appropriate, efficient and independent investigations of alleged police maltreatment of migrants, which was borne of an anonymous complaint from a police officer.

In the period 2016-2020, INGOs such as [MSF](#), [DRC](#), Save the Children, [Human Rights Watch](#) and [Amnesty International](#) as well as UNHCR through their implementing partners, documented a systematic lack of access to asylum procedures and collective expulsions at Croatian borders. Further insight has been provided by smaller organisations and informal groups present in the field where such irregularities are easily documented. BVMN alone has documented 446 cases of collective expulsions from Croatian territory. In comparison to other MS, the Croatian authorities' use of torture and inhumane or degrading treatment is unprecedented. In the past, BVMN has recorded and published testimonies which describe the punitive [forced undressing of children](#) as young as 13, sometimes in front of their groups of adults and often leaving them to stand naked for many hours at a time. In spite of such overwhelming evidence, Croatian authorities repeatedly claim such [allegations are unfounded](#) and have [failed to trigger effective investigations](#).

On 20 December 2018, the Commission announced an additional 305 million euros of funding to MS 'under pressure', of which 6.8 million euros was allocated to Croatia for border surveillance through the EMAS grant. In the [Commission's press release](#) there was an explicit commitment "to ensure that all measures applied at the EU external borders are proportionate and are in full compliance with fundamental rights and EU asylum laws." Following this, in the LIBE meeting of November 7 2019, a Commission representative claimed that "Croatia continues to make progress regarding the protection of fundamental rights" and stated that UNHCR and Croatian Law centre (CLC) were implementing the EU-funded independent border monitoring project in Croatia. Both UNHCR and CLC denied involvement in such activities; yet at the [LIBE meeting on 27 January 2020](#), the Croatian Minister of Interior again claimed EMAS-funded border monitoring was in place, and that UNHCR was the beneficiary. CLC then clarified that a monitoring project was implemented by them in 2019, in conjunction with UNHCR and the Ministry of Interior, but was actually funded entirely by UNHCR and was limited to post-hoc access to official police files and interviews with individuals after their accommodation in reception centres. **CLC clearly stated "the project has not included insight into the actions taken by the Croatian police on the green border, i.e. areas where there are no official border crossing points", where irregularities are most regularly documented.**

An independent inquiry into the implementation of the EMAS grant in Croatia, led by MEPs in collaboration with civil society actors, including BVMN members, revealed underspending, misreporting, and a subsequent cover-up of the fact that [no independent border monitoring mechanism was ever established](#) under the EMAS grant. Not only did the Croatian government fail to establish a truly independent and efficient border monitoring mechanism, it also systematically prevented the existing National Preventive Mechanism (NPM) and human rights defenders from independently investigating allegations of irregularities and/or monitoring access to the asylum system. In July 2019 the Ombudswoman Lora Vidović (who serves in the capacity of the NPM) warned the the Minister of Interior to comply with the accepted international and Croatian obligations for the effective prevention of torture and other cruel or inhumane and degrading treatment and punishment after she was denied access to all data on treatment of irregular migrants during a visit to Tovarnik Border Police Station. Human rights defenders from AYS and CPS have [experienced a more severe backlash](#) when attempting to independently monitor border procedures and access to the asylum system. This reached its peak in a [legal case against an AYS volunteer](#) who was falsely charged by the Ministry of Interior for facilitating an illegal border crossing after he assisted the family of the deceased Madina Hussiny, already within Croatian territory, in approaching police officers to access asylum procedures.

In spite of this litany of inaction, misuse of funds, ongoing human rights abuses and an ultimate failure to establish a truly independent monitoring mechanism, Commissioner Johansson [continues to claim](#) Croatian authorities have put such a mechanism in place with the Commission's support. This case study quite clearly illuminates that the decision of the New Pact to task MS with establishing such mechanisms, giving little further elaboration on how they would be implemented, does not give much in the way of hope to human rights watchdogs across Europe's borders.

Independent monitoring mechanisms can supposedly be in place whilst at the same time pushbacks, collective expulsions, and a systemic lack of access to the asylum system are ongoing. We are worried by the way EU funds are streamlined to selected NGOs through the Ministry of Interior (in the Croatian case) or other governmental bodies, which raises questions concerning the independence of EU-funded mechanisms that are in place to look into the policies of MS governments and actions implemented by the Ministries. As a result BVMN advocates for the creation of **truly independent monitoring mechanisms** that are led by NPMs and independent NGOs and are funded directly by the Commission or through an independent agency. These must include unannounced visits to border zones and police stations in the border areas, full access to data in border police stations, and must see enhanced cross-border collaboration in testimony collection from the affected population, as the ineffective mechanisms that are currently in place only take into account the cases of those who were able to remain in European territory, and therefore were not necessarily victims of unlawful practices. Such a monitoring mechanism would benefit from **an alarm system that could be triggered by potential asylum seekers** in situations where their fundamental rights are violated. Only by recentering the voices and realities of the victims of Europe's border regime can the EU hope to monitor it effectively and launch infringement procedures that would lead to tangible change.

