

Recommendations of the Advisory Board
On the Annual Report of the Independent Monitoring Mechanism
(June 2021 – June 2022)

The Advisory Board is an informal body linked to the Independent Monitoring Mechanism (hereinafter “IMM”) in Croatia, but not forming part of it, tasked to provide recommendations for the enhancement of the independence and functioning of the IMM. The Advisory Board provides recommendations after the delivery of the reports of monitoring activities carried out under the IMM.

The Advisory Board of the IMM held three meetings with the Coordination Committee representatives of IMM: on 17 September 2021, 21 December 2021, and 6 July 2022. The Advisory Board would like to share its views on the annual report of the IMM (June 2021-June 2022). For ease of reference, this [report](#) is attached.

The Advisory Board would like to convey its appreciation for the well-structured and detailed report that illustrates the purpose of having a monitoring mechanism, the first of its kind to be established in an EU Member State in line with the European Commission proposal for a Screening Regulation ⁽¹⁾. The report enables to observe some of the police practices, enhances awareness on the applicable laws and fundamental rights safeguards and recommends improvements of the internal procedures of the Ministry of the Interior (MoI) when deficiencies are detected.

The Advisory Board is all the more appreciative of the efforts made to enhance the transparency of the IMM’s operation, in particular by making the annual report publicly available. In addition, the Advisory Board welcomes the fact that the report provided recommendations for the renewal of the IMM beyond the originally established period, updated the recommendations produced following the semi-annual report, and related follow-up actions. The Advisory Board also appreciates the efforts of the Croatian authorities to take into account in their Border Management and Visa Instrument programme the need to support the IMM.

The Advisory Board commends the activities of the IMM conducted so far, in particular the setting up of an expert dialogue with the MoI and the performance of twenty announced and unannounced on-site observations within the first year of implementation of the IMM. This represents a tangible achievement that deserves further expansion, as stressed in the annual report.

First, the Advisory Board would like to provide a few observations on the content of the annual report of the IMM. Second, the Advisory Board would like to provide some recommendations in view of the renewal of the IMM.

⁽¹⁾ Article 7 of the Proposal for a Regulation of the European Parliament and of the Council introducing a 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; COM/2020/612 final.

I. Main comments on the annual report of the Independent Monitoring Mechanism

1. Scope

The core of the IMM's activities lies in contributing to the respect for fundamental rights of irregular migrants and applicants for international protection. Therefore, the Advisory Board believes that the report could put further emphasis on fundamental rights, including to reflect that all monitoring activities conducted by the IMM 'direct activity providers' (hereinafter 'monitors') are aimed to monitor the respect for fundamental rights. In this respect, particular attention should be paid to vulnerable migrants and applicants for international protection, including children.

The Advisory Board notes that some findings and recommendations of the annual report concern issues that do not fall under the scope of the Agreement² (serving as the legal basis of the IMM) and that could be tackled in other fora. Besides, the Advisory Board welcomes the inclusion in the report of aspects relating to the state of the health of irregular migrants and applicants for international protection. However, further and more detailed recommendations for better use of the healthcare system³ are not deemed to fall under the scope the Agreement. Providing details on the causes of the injuries and how they evolved over time in terms of causes, perpetrators and quantity would be more useful for the purposes of fundamental rights monitoring.

2. Mandate

In the first year of implementation, the IMM mandate included monitoring at border crossing points, police stations and reception centres as well as announced visits to the green border. Based on this initial mandate⁴, the Advisory Board notes that according to the annual report, the monitors did not detect irregularities as regards the right to asylum and access to the procedure at official border crossing points and police stations⁵.

The Advisory Board also notes that the report stressed the limitations of the current IMM, in particular the exclusion of unannounced visits to the green border and the lack of access to the information from the MoI Information Systems. Extending the mandate of the IMM is necessary for more effective monitoring of compliance with fundamental rights at external borders.

² See for instance findings about fake identities or the role of migrant smugglers p. 20, or recommendations about the cross-border cooperation and the analysis of visa liberalisation regimes with Bosnia and Herzegovina and Serbia (recommendation 6 part 2), the creation of EU-wide databases on anti-trafficking and anti-smuggling (recommendation 7, part 2) or monitoring of implementation of return decisions (recommendation 12, part 2).

³ Recommendation 15, part 2, of the final report.

⁴ IMM's entitlement to access the police files and documents only relates to files following complaints made against alleged illegal treatment of irregular migrants and applicants for international protection. In addition, the IMM is only entitled to interview police officers who dealt with the selected files and the complainants and, under certain conditions, the complainants. The IMM is also provided with access to the activities and reports of the General Police Directorate regarding alleged illegal treatment of irregular migrants and applicants for international protection. At the same time, the IMM is not given the authority to access MOI's electronic databases.

⁵ Page 24 of the final report.

Despite these limitations, the IMM identified irregularities related to the situation at the green border, on the basis of the information obtained from the MoI. Based on this, the IMM identified isolated cases of illicit police deterrence in mine-suspected areas, as well as misinterpretation on the side of border police that do not consider those mined locations as Croatian territory – which they are - and prevent those persons apprehended there from entering, without a possibility to claim asylum.

3. Methodology

The Advisory Board appreciates the explanations provided on the IMM methodology, based on the analysis of primary data sources – observations and interviews – and secondary data sources⁶. In the Advisory Board’s opinion, the report would benefit from further evidence supporting the findings and from establishing a clearer link between the observations and interviews carried out by monitors during on-site visits and the conclusions drawn from these visits. The report could describe the different profiles of monitors. This would help to better understand which skills and competences are covered by current monitors. The report could include further information on concrete methodology used during interviews with migrants. The complete methodology used to reach each conclusion should also be spelled out (e.g. type of primary and/or secondary sources, list of stakeholders’ interviews, etc).

Besides, the report would benefit from listing and referring to the criteria developed in the relevant case-law of the EU Court of Justice when interpreting applicable EU legislation in line with the EU Charter of Fundamental Rights⁷, in particular respecting the right to access international protection, the principle of *non-refoulement* and the prohibition of torture and other forms of ill-treatment. Furthermore, when it describes the legal sources used for the analysis, section 2.1 should also refer to the EU Charter of Fundamental Rights. It could refer as well to the relevant guidelines produced by the UN, including UNHCR, Council of Europe and EU actors, including the EU Agency for Fundamental Rights.

In addition, recommendations pertaining to similar issues could be grouped together for maximum impact and should be prioritised based on their seriousness and urgency, and categorised by type of follow-up actions needed to correct the irregularities detected, starting with actions requiring an immediate response from the MoI.

4. Challenges

The Advisory Board notes that the annual report identified several challenges faced by the IMM during the monitoring period. In order to tackle them better, the Advisory Board believes the report would gain in further elaborating these, in particular as regards the unannounced visits and handling of and access to the information obtained from the MoI Information Systems, as follows:

- **Unannounced visits:** the Advisory Board welcomes recommendation 2, part 2, of the final report to strengthen the Agreement to allow unannounced visits at the

⁶ Page 6 of the final report.

⁷ Furthermore, section 2.1. on analysis of primary data should also refer to EU law, including the EU Charter of Fundamental Rights.

green border. The amendment should also accommodate the modalities for unannounced visits to the green border that are not suspected of being land-mine contaminated.

- **Access to information:** as per recommendation 3, part 2, the Advisory Board supports the possibility for the members of the IMM to access and handle information from the MoI Information Systems according to a clearly defined protocol. The protocol should also cover how the data/information is stored, used, or processed later (e.g., how to ensure confidentiality, as such information obtained within the IMM is not used outside the framework of the IMM). Besides, the monitors' contract should include a confidentiality clause and a statement of conflict of interest, including after the end date of the contract.

II. Main recommendations in view of the renewal of the Independent Monitoring Mechanism

1. **The scope** of the IMM should be further clarified and encompass respect for fundamental rights by the police in all circumstances, with particular attention to the right to an effective access to the asylum procedure, the respect for the principle of non-refoulement, prohibition of collective expulsion, prohibition of torture and other forms of ill-treatment.
2. **The mandate** of the IMM should be clearly formulated as allowing the possibility to undertake **unannounced visits** at the green border and to consult relevant primary and secondary sources⁸, specifying the access rights to files and documents that monitors would be entitled to independently scrutinise when relevant. The Agreement should therefore set out the conditions regarding **evidence collection and access rights**.
3. As regards **the follow up to be given to the detection of irregularities and possible fundamental rights violations**, the Advisory Board believes that the IMM must be competent **to require the launching of official investigations from the relevant state bodies**. Besides, the annual report makes clear that the IMM **is not a complaint-based mechanism** and that its mandate is limited in time, space and scope. The Agreement should therefore clarify that the IMM should refer the received complaints to the competent bodies, in particular the Ombudsperson.⁹
4. For the future activities, the IMM would benefit from having an **increased level of cooperation** with different authorities and reinforcing the complementarity with other activities of state bodies and non-state governmental actors.

⁸ Including medical files, border surveillance video, interview of irregular migrants and refugees without the presence of the police and with professional interpreter if needed, as well as CSOs, international organisations and media reports.

⁹ The Ombudsperson's role is to examine allegations of illegal activities and maladministration with respect to the work of the government bodies, bodies of the local and regional self-government units, legal persons vested with public authority and legal and natural persons in accordance with special laws (Croatian bodies) and to carry out regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Therefore, and without prejudice to the recommendation in the preceding paragraph, it should limit more strictly the possible redundancy with the mandates or the prerogatives of other authorities, which have a constitutional role to examine allegations of illegal activities and maladministration.

5. The Advisory Board supports the IMM's recommendations to **establish processes within the police** in cases when systematic and individual deficiencies or irregularities are detected. The Advisory Board also supports an enhanced dialogue within the police in order to implement the recommendations with clarity as well as the possibility for police officers to give their feedback, possibly anonymously, through a dedicated flexible complaints mechanism that does not run through hierarchy. In addition to formalising a feedback communication channel, this may also be achieved by awareness raising and/or training of police officers to familiarise them with all national authorities to which they could report such cases.
6. The Advisory Board finds advisable to conduct a **Training Needs Assessment** and develop a training plan on such basis. Further to training of police officers, the IMM is invited to reflect about its own training needs on EU fundamental rights law or specific aspects of it, for example the principle of non-refoulement, to further enhance its work in year two and beyond.
7. The Advisory Board recommends that the Agreement lay down rules to regulate **relations with the public and the media**. It also suggests establishing a dedicated website to publish – both in English and in Croatian – all relevant information relating to its functioning, as well as an (e)mailbox to ease the communication with the general public. The Advisory Board also considers that administrative support remains necessary for its functioning.
8. The Advisory Board recommends to the Coordination Committee to reflect on the selection of **new/additional members**, on the basis of a public call of interest and following established objective criteria, to take part in monitoring activities. This could improve the IMM by adding to the diversity and expertise of the monitors' team.
9. The Coordination Committee could explore with the MoI ways to provide **regularly updated information on the follow-up** given to its recommendations as well as detections of irregularities and possible fundamental rights violations. This would foster IMM transparency towards the public.
10. The Advisory Board would welcome the opportunity and place at the disposal of the authorities concerned, the expertise of its members in **reviewing the draft Agreement related to the IMM renewal**.

In conclusion, the Advisory Board firmly believes that the following amendments to the Agreement would greatly enhance the IMM effectiveness:

- possibility of unannounced visits to the green border;

- access rights for the IMM monitors to information from the MoI Information Systems according to a clearly defined protocol;
- detailed rules on evidence gathering and processing;
- follow-up procedure for all irregularities and possible fundamental rights violations detected by the IMM, including updates on investigations and referral. Conversely, the IMM should also receive details on the follow-up actions taken by the MoI as well as a timeline and a rationale where they were not taken.

Finally, the Advisory Board would like to reiterate its appreciation for the close cooperation between the IMM and the Advisory Board and invite the Head and several members of the Coordination Committee to attend the next Advisory Board's meetings. As of the entry into force of the renewed Agreement, the new Chair of the Advisory Board will be the EU Agency for Fundamental Rights for the duration of one year.

For the Advisory Board,

Current Chair
Olivier ONIDI

Done at Brussels on 27 October 2022

Annexes:

- Annual report of the IMM (June 2021-June 2022)
- List of the Advisory Board's Members