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Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece

Monitoring is a core fundamental rights protection tool.* Effective and independent monitoring protects people whose fundamental rights may be at risk. It also protects the State and its institutions by providing unbiased and neutral reporting, thus strengthening its accountability and enhancing public trust.

Monitoring fundamental rights compliance is particularly beneficial for actions which occur in locations where the public has, under usual circumstances, no or limited access. The forced return monitoring systems set up under Article 8 (6) of the EU Return Directive (2008/115/EC) illustrates the added value of independent and effective monitoring of immigration law enforcement activities.

Monitoring is not an end in itself. It is part of the wider system for human rights accountability. At the EU external border, as border control is bolstered to address a highly challenging environment, mechanisms to monitor adherence to fundamental rights should be equally enhanced. Monitoring should lead to positive recommendations which help identify and correct possible shortcomings. It should also support victims to access fundamental rights, a legal remedy and justice.

The following ten points intend to support the Greek Government when discussing the parameters and safeguards for the establishment of an independent national border monitoring mechanism further to the recommendations under the EU Pact on Migration and Asylum. To be independent and effective, the domestic legal provisions establishing the mechanism should:

1. Provide the mechanism with a **broad thematic mandate** to monitor respect of all fundamental rights – whether civil, political, economic, social or cultural – during border checks, during border surveillance and at initial registration of new arrivals.
2. Guarantee its **independence**. The entity/ies entrusted with monitoring must be free from any institutional connection with the authorities responsible for border management and migration policies. Institutional independence should be set in primary legislation or, even better, in the constitution. The mechanism's independence in law and in practice should be regularly assessed.
3. Guarantee the mechanism's **operational autonomy** and provide it with the authority to take action on its own motion and to establish its own procedures and parameters on how, when and what it monitors within the scope of its mandate. The mechanism should be fully guided by the principles of impartiality and professional integrity.
4. **Ensure coherence** and complementarity with existing human rights monitoring bodies, by designing the mechanism in a way that builds upon existing monitoring mandates at the national, regional and international level and takes into account the role of civil society.
5. Ensure that those entrusted with monitoring fundamental rights at borders have thorough **institutional experience** in international human rights law, EU fundamental rights law and in fundamental rights as guaranteed by the Greek Constitution and national legislation as well as on evolving international, European and national case law interpreting such law. Institutional experience in asylum, border management and return as well as practical experience in human rights monitoring and in working with law enforcement actors are additional assets which facilitate a successful functioning of the monitoring mechanism.

* The term 'fundamental rights' is used in the European Union (EU) to express the concept of 'human rights'. The two terms refer to similar substance, including compliance with national, EU and international law related to ensuring the effective respect, protection and fulfilment of human rights.

6. Provide the mechanism with **sufficient and sustainable funding** to conduct regular missions to relevant border locations and **adequate resources** for implementing its activities. The mechanism should have and be able to appoint at short notice a sufficient number of experienced staff (including human rights lawyers, medical professionals, and forensic experts) with expertise in working with various profiles, including new arrivals in vulnerable situations.
7. Provide the mechanism with the following **powers and rights**:
 - to conduct periodic as well as unannounced visits;
 - to access without limitation all documents and records, including relevant electronic records, of relevance to its mission;
 - to have unimpeded access to all places where the actions to be monitored takes place;
 - to hear witnesses and alleged victims, in full respect of confidentiality;
 - to receive, consider, and where appropriate, follow-up on credible information collected through its monitoring or by other relevant actors; and
 - to collect information from victims, witnesses and other actors who are outside Greece and to cooperate with human rights actors in other countries and with international organisations.
8. Set appropriate standards of transparency and accountability. Establish procedures for the mechanism to **present its findings** and recommendations to the responsible authorities, to produce regular **public reports**, to receive information by the responsible authorities on their follow-up and to report on **progress** based on its recommendations.
9. Allow the mechanism to **communicate directly with the authorities in charge of investigations** in the event that malpractice is uncovered during monitoring activities and to secure rapid access to forensic medical examinations for alleged victims.
10. Building on Article 3 (1) (e) of the European Border and Coast Guard Regulation (EU) 2019/1896, underline that national bodies in charge of border and migration management must have a duty to **cooperate** with and respect the mandate of the monitoring mechanism.

Additional resources (in inverted chronological order)

OHCHR, Manual on Human Rights Monitoring, Chapter 26: Human Rights Monitoring in the Context of Migration, (forthcoming 2021).

European Parliament, Resolution the Annual Report on the Functioning of the Schengen Area ([2019/2196\(INI\)](#)), 8 July 2021, point 18.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [30th General Report of the CPT](#), May 2021, pp. 15-16.

Council of Europe, Committee of Ministers, [Recommendation CM/Rec\(2021\)1](#) of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021.

European Network of National Human Rights Institutions (ENNHRI), [Opinion on Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum](#), March 2021.

OHCHR and UNHCR, [Joint Consultation on Independent National Monitoring Mechanisms proposed in the EU Pact on Migration and Asylum](#), February 2021.

Several civil society actors, Joint Statement: Turning rhetoric into reality: [New monitoring mechanism at European borders should ensure fundamental rights and accountability](#), Nov. 2020.

European Commission, [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, 23 September 2020, Recital (23) and Article 7.

OHCHR, [Principles and guidelines on the human rights protection of migrants in vulnerable situations](#), 2018.

OHCHR, [Recommended Principles and guidelines on human rights at international borders](#), 2014.

UN Paris Principles ([‘Principles relating to the Status of National Institutions’](#)), adopted by United Nations General Assembly resolution 48/134, 20 December 1993.