



Office for Democratic Institutions and Human Rights

Border Police Monitoring in South-Eastern Europe

New opportunities



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Table of contents

List of abbreviations.....	4
1. Executive summary.....	5
2. Introduction.....	6
Selected OSCE commitments relating to human rights at international borders.....	7
The EU’s role: recent policy developments.....	8
Technology.....	10
Age, gender and diversity-responsive policing and monitoring.....	11
3. Developments in border policing and monitoring co-operation in South-Eastern Europe.....	13
Bulgaria.....	16
North Macedonia.....	17
Serbia.....	18
Bosnia and Herzegovina.....	19
Croatia.....	20
Hungary.....	20
Romania.....	21
4. Ad hoc mechanisms negotiated by the European Commission and EU Member States.....	23
The Croatian case.....	23
Powers.....	23
Methodology.....	24
Limitations on participation and access.....	24
Lessons learned.....	25
The Greek case.....	26
Way forward.....	28
5. The missing link.....	30
6. Conclusion.....	33
7. Recommendations.....	34
8. Bibliography.....	35

Table of figures

I. The EU Action Plan on the Western Balkans.....	9
II. Regional overview.....	14
III. Ten points to the government.....	29
IV. Non-governmental border monitoring networks.....	31

List of abbreviations

AIDA	Asylum Information Database
BVMN	Border Violence Monitoring Network
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO	Civil society organization
DCAF	Geneva Centre for Security Sector Governance
DRC	Danish Refugee Council
ECRE	European Council on Refugees and Exiles
ENNHRI	European Network of National Human Rights Institutions
EU	European Union
EUAA	European Union Agency for Asylum
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
GNCHR	Greek National Commission for Human Rights
IBMM	Independent Border Monitoring Mechanism
IOM	International Organization for Migration
IRC	International Rescue Committee
MARRI	Migration, Asylum, Refugees Regional Initiative
MoI	Ministry of Interior
MoU	Memorandum of Understanding
MYLA	Macedonian Young Lawyers Association
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PRAB	Protecting Rights at Borders Initiative
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Executive summary

The present report is written based on desk research and stakeholder interviews carried out in August–October 2023 with the aim to provide a snapshot of recent developments and trends in border management in South-Eastern Europe. The report then links these to the prospect of developing independent border monitoring mechanisms in the region and provides an update on progress made in that regard. The report notes that human rights monitoring is particularly important in the context in which the region’s role as one of the most travelled irregular migration routes has been solidified, and where state authorities as well as the EU Border and Coast Guard Agency, Frontex continue to face allegations of unlawful treatment causing human suffering to people on the move.

The report underlines a new momentum for national monitoring mechanisms to be developed on both sides of the external borders of the European Union. It also suggests that efforts to launch such mechanisms should be first backed up by political support at the highest levels, a crucial component to their acceptance by agencies, and be equipped with mandates necessary to work independently around law enforcement officers, accessing all locations and information needed for credible and efficient implementation.

Many of the examples contained in the report point to the merits of cross-border, transnational co-operation between monitoring actors while maintaining participating States’ primacy in guaranteeing respect for the rights of migrants. This includes implementing individualized safeguards in practice. States can rely on a wealth of knowledge and best practice contained in research and authoritative guidance on human rights at borders and on monitoring. The report aims to showcase several of those to underline that expertise and know-how stand ready to be utilized.

At the level of the European Union, the political case for development of independent border monitoring mechanisms has already been made in September 2020 with the initiation of negotiations on the New Pact on Migration and Asylum. The report discusses the limited and stalled efforts, by Croatia and Greece respectively, to develop and implement the first two national mechanisms in line with the proposal in the New Pact. The report takes also note of the financial and operational support participating States in the Western Balkans have been benefiting from in the context of combating irregular migration, as part of the EU Action Plan on the Western Balkans. The latter initiative provides an immediate opportunity for States to bolster transparency and accountability through monitoring.

Access to justice for border abuses currently remains a rare occurrence. The preventive function of monitoring and its broader impact on the human rights record of States is not given adequate attention. There continues to be hostility towards irregular migrants and human rights defenders, making trust-building a critical element of any process that requires the co-operation in good faith of the state and non-state stakeholders concerned. The report recommends that participating States in the South-Eastern Europe region recognize the practical steps they can take and move forward through inclusive consultation with national human rights institutions, international organizations, and civil society stakeholders, towards developing the first successful, truly independent border monitoring mechanisms. The added potential of mainstreaming a national model negotiated and supported by all relevant stakeholders across the region should not be overlooked.

Border management and human rights are cross-compatible and can be achieved simultaneously through committing political support, resources, and respect for existing obligations and OSCE commitments. Border police monitoring should not be seen in isolation, but as part of strengthening the national human rights system for the benefit of migrants, border communities, state institutions and the whole of society. ODIHR stands ready to support participating States in any such endeavors.

2. Introduction

ODIHR commissioned this update report on border police monitoring in the OSCE region, to map and promote opportunities for enhancing co-operation between monitoring actors and border police authorities, and to further the discussion on best practices and transferable knowledge.

To increase human rights-compliance of border police practices, ODIHR has recommended that participating States set up functionally independent, well-resourced, and efficient monitoring mechanisms across the OSCE region. In 2021, ODIHR commissioned a report on the need and basis for human rights monitoring of border police practices, to initiate a dialogue based on international standards and OSCE commitments in the area of the protection of the human rights of migrants.¹ The research involved consultation with state and non-state stakeholders across the OSCE region, including national authorities and police/border police agencies, national human rights institutions (NHRIs) and ombuds institutions, non-governmental organizations (NGOs) as well as international organizations such as the UN Refugee Agency (UNHCR) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the OSCE Border Management Staff College. The research also collected existing standards on efficient and independent monitoring and transferable authoritative guidance on detention monitoring.² The CPT, drawing on its own experience of monitoring apprehensions at the EU external borders, developed criteria for new monitoring mechanisms specifically, with the aim of ensuring that such mechanisms can function efficiently and independently in a border context.³

In April 2021, ODIHR organized a one-day online meeting to discuss the findings and validate the report's recommendations with migration, policing and human rights experts representing those stakeholders.⁴ Participants also discussed ways and means to enhance political support, build trust, provide technical support and encourage co-operation nationally and regionally to advance the establishment of independent mechanisms.

ODIHR has subsequently organized four rounds of training between May 2022 and June 2023, open to human rights defenders (HRDs) from Central and Eastern Europe, South-Eastern Europe and the Northern and Southern Mediterranean with the view to build the capacity of participants to carry out robust and safe human rights work at international borders.⁵

This report is based on desk research carried out in August–October 2023 to raise awareness of developing human rights concerns affecting migrants at international borders in South-Eastern Europe in particular, to consolidate available information on current practices of border police monitoring in this region, and propose actionable recommendations to national and international stakeholders which support the setting up of independent monitoring mechanisms as a means to prevent and address some of those concerns. In addition to literature review, information and interview requests were sent to 30 stakeholders with relevant expertise, of whom 14 responded. Where possible, the name and affiliation of interviewees were included. Several interlocutors participated in the research anonymously or independently from their organization, which is noted in related references.

The report focuses on selected land border areas in South-Eastern Europe and related border policing, in particular along the East-West migration routes from Greece, Bulgaria and Romania towards other

¹ Todor Gardos, "Border Police Monitoring in the OSCE Region: A Discussion of the Need and Basis for Human Rights Monitoring of Border Police Practices", 10 May 2021, <<https://www.osce.org/odihr/486020>>.

² Ibid., pp. 52–54.

³ See 30th General Report of the CPT, May 2021, pp. 15-16, <<https://rm.coe.int/1680a25e6b>>.

⁴ "OSCE/ODIHR Meeting Report: Border Police Monitoring in the OSCE Region — Upholding a Human Rights Approach to Migration", OSCE/ODIHR, 10 May 2021, <<https://www.osce.org/odihr/486014>>.

⁵ E.g., "Training on Human Rights at International Borders: Human Rights Principles, Monitoring, Safety and Security", OSCE/ODIHR, March 2022, <<https://www.osce.org/odihr/514231>>.

European Union member states along the so-called Western Balkans route, which remains one of the main corridors for irregular migration into Western Europe.⁶ The report's aim is not to serve as a repository of the human rights violations reported from the region over the past years, as these have been extensively documented by international organizations and civil society.⁷ For the same reason, it will not examine the latest tragedies which have occurred on Europe's shores and maritime search and rescue areas, which continue to be the deadliest routes for migrants globally.⁸ These incidents have also been well documented and alleged state and institutional responsibility remain subject to scrutiny.⁹

On 28 September 2023, the UN Committee on Enforced Disappearances published its 1st General Comment on Enforced Disappearances in the context of migration.¹⁰ The Committee notes that various measures taken by States in the context of restrictive and dehumanizing border governance directly contribute to the disappearance of migrants.¹¹ To ensure that the principle of non-refoulement is respected in every individual's case, and to prevent and address practices such as pushbacks, chain pushbacks and systematic failure of search and rescue, the Committee calls on States to consider establishing national independent border monitoring mechanisms.¹²

Selected OSCE commitments relating to human rights at international borders

The commitments made by OSCE participating States require law enforcement agencies to respect the right to seek asylum (Istanbul 1999) and to promote dignified treatment of all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law, in particular human rights (Ljubljana 2005).¹³ In line with these commitments, participating States ought to carry out

⁶ See "Western Balkans Route", European Commission, 21 June 2023, <<https://www.consilium.europa.eu/en/policies/eu-migration-policy/western-balkans-route>>.

⁷ "News Comment: UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders", UN High Commissioner for Refugees (UNHCR), 21 February 2022, <<https://www.unhcr.org/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations>>; "Beaten, Punished and Pushed Back. A Pattern of Institutionalised Human Rights Violations at EU Borders Reconfirmed: How Pushbacks Remained the Standard Practice and a De Facto Tool for Border Management in 2022", Protecting Rights at Borders Initiative (PRAB), January 2023, <<https://pro.drc.ngo/media/cxihgutp/prab-report-january-to-december-2022.pdf>>; Hope Barker, Milena Zajović (eds.), "Black Book of Pushbacks", Border Violence Monitoring Network (BVMN), December 2022, <<https://left.eu/issues/publications/black-book-of-pushbacks-2022>>.

⁸ "Türk Sounds Alarm at Escalating Migrant Crisis in Central Mediterranean", OHCHR, 13 April 2023, <<https://www.ohchr.org/en/press-releases/2023/04/turk-sounds-alarm-escalating-migrant-crisis-central-mediterranean>>. See also "Over 29,000 Migrants Died on Route to Europe since 2014 — Report", AP & euronews, 25 October 2022, <<https://www.euronews.com/2022/10/25/over-29000-migrants-died-on-route-to-europe-since-2014-un-agency>>.

⁹ "‘Lethal Disregard’ — Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea", OHCHR, May 2021, <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>>; see also Letter from European Ombudsman Emily O'Reilly to Mr Hans Leijtens, Executive Director, European Border and Coast Guard Agency, "How the European Border and Coast Guard Agency (Frontex) Complies with Its Fundamental Rights Obligations in the Context of Its Search and Rescue Activities, CASE OI/3/2023/MHZ", European Ombudsman, 24 July 2023, <<https://www.ombudsman.europa.eu/en/opening-summary/en/172812>>; and Katrien Luyten, "Addressing Pushbacks at the EU's External Borders", European Parliamentary Research Service, October 2022, <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI\(2022\)738191_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf)>.

¹⁰ Committee on Enforced Disappearances, "General Comment No. 1 on Enforced Disappearances in the Context of Migration" (CED/C/GC/1), OHCHR, 28 September 2023, <<https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration>>.

¹¹ Ibid., para. 6.

¹² Ibid., para. 33.

¹³ ODIHR's Input for the Special Rapporteur's Report on Pushback Practices and Their Impact on the Human Rights of Migrants, OSCE/ODIHR, February 2021, <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/OSCEODIHRSubmission.pdf>>.

all border policing action respecting the principle of non-refoulement, and ensuring that migrants have access to individualized procedures with adequate safeguards, including age, gender and diversity-responsive treatment and referral to competent authorities for a full evaluation of individual needs.¹⁴ Further, OSCE commitments require that all measures taken at borders, including during a public health emergency such as the COVID-19 pandemic, are applied without distinction of any kind and in respect of the principle of non-discrimination.¹⁵

To successfully implement those commitments, participating States have agreed to promote the sharing of good practices in migration management, as well as to support civil society organizations working to prevent and combat torture and other cruel, inhuman or degrading treatment.¹⁶

ODIHR underlines that the development of adequate monitoring mechanisms can contribute to guaranteeing due process during border policing, as monitoring has a preventive and corrective function, and can contribute to providing solutions to addressing systemic shortcomings such as pushback policies.¹⁷

The EU's role: recent policy developments

Much of the conversation on border management has been led in the context of securing the EU's external borders and related challenges of responsibility sharing and solidarity among EU Member States. The European Commission's September 2020 proposal for a New Pact on Migration and Asylum has for the last three years provided the reference framework for these conversations and political negotiations. At the same time, migration management also increasingly forms part of EU neighborhood, development and international co-operation strategies, with corresponding funding that has been allocated to this end. The European Border and Coast Guard Agency (Frontex) increasingly supports third countries through technical co-operation agreements. The trend is set to continue during the 2021–2027 budget cycle, including through the pre-accession funds earmarked for the Western Balkans.¹⁸

¹⁴ See paras. 43–49 in Special Rapporteur on the human rights of migrants, Felipe González Morales, "Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea", OHCHR, 12 May 2021, <<https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>>.

¹⁵ "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", OSCE/ODIHR, July 2020, <https://www.osce.org/files/f/documents/e/c/457567_0.pdf>.

¹⁶ Gardos, "Border Police Monitoring in the OSCE Region", op. cit., p. 11.

¹⁷ ODIHR's Input for the Special Rapporteur's Report, op. cit.

¹⁸ Chris Jones, Romain Lanneau, Yasha Maccanico, "Europe's Techno Borders", EuroMed Rights and Statewatch, July 2023, pp. 12–13., <<https://www.statewatch.org/media/3964/europe-techno-borders-sw-emr-7-23.pdf>>.

I. The EU Action Plan on the Western Balkans

In December 2022, the European Commission presented the EU Action Plan on the Western Balkans, spelling out its priorities for managing migration and enhancing border management in the region. 20 operational measures are set out in 5 key thematic areas:

1. strengthening border management,
2. swift asylum procedures and supporting reception capacity,
3. fighting migrant smuggling,
4. enhancing readmission cooperation and returns,
5. achieving visa policy alignment.¹⁹

The European Commission has foreseen the increased deployment and joint operations involving Frontex on the territory of the non-EU members on the basis of so-called status agreements. Such agreements have been concluded with Albania, North Macedonia, Montenegro and Serbia. Bosnia and Herzegovina is seeking to conclude one in the coming period.²⁰ Since late 2022, limitations on the deployment of Frontex corps to the border areas with EU Member States have been lifted and operations can now extend to the whole territory of the partner country.²¹

The Screening Regulation proposed as part of the New Pact foresees the establishment of independent monitoring mechanisms at the external borders of the EU,²² with the view to ensure that the proposed screening procedures for third country nationals seeking to enter the EU are in line with human rights obligations.²³ The regulation is yet to be adopted and foresees the creation of national mechanisms with the participation of national, international and non-governmental organizations and bodies. These independent monitoring mechanisms are even more needed in the context of human rights concerns emerging due to the proposal's emphasis on preventing irregular arrivals, and focusing on expedited border procedures and returns.²⁴ The implementation of such "asylum border procedures" and "return border procedures" will likely result in widespread use of detention of asylum-seekers at or near borders, or other area-based restrictions of movement,²⁵ which should be subject to human rights monitoring.

¹⁹ "Commission Action Plan for Migratory Routes in Western Balkans", European Commission, December 2022, <https://home-affairs.ec.europa.eu/news/commission-action-plan-migratory-routes-western-balkans-2022-12-05_en>.

²⁰ Chiara Swaton, "Bosnia Seeks Austrian Support for Frontex Status Agreement", Euractiv.com, 30 August 2023, <<https://www.euractiv.com/section/politics/news/bosnia-seeks-austrian-support-for-frontex-status-agreement>>.

²¹ "EU Increases Support for Border and Migration Management", European Commission, 22 October 2022, <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6276>.

²² 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, European Commission, 23 September 2020, <<https://eur-lex.europa.eu/legal-content/en/TXT/?Uri=CELEX%3A52020PC0612>>.

²³ For a discussion of the proposal and shortcomings raised by civil society, see Markus Jaeger, Apostolis Fotiadis, Elspeth Guild and Lora Vidović, "Feasibility Study on the Setting up of a Robust and Independent Human Rights Monitoring Mechanism at the External Borders of the European Union", May 2022, pp. 45–48., <<https://www.proasyl.de/wp-content/uploads/Feasibility-Study-FINAL.pdf>>.

²⁴ Iris Goldner Lang, "The New Pact on Migration and Asylum: A Strong External and A Weak Internal Dimension?", European Foreign Affairs Review, Vol. 27, No. 1, 2022, pp. 1–4, <<https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\EERR\EERR2022001.pdf>>.

²⁵ Janna Wessels, "Gaps in Human Rights Law? Detention and Area-Based Restrictions in the Proposed Border Procedures in the EU", European Journal of Migration and Law 25, no. 3, 30 August 2023, pp. 275–300, <https://brill.com/view/journals/emil/25/3/article-p275_2.xml>.

The European Union Agency for Fundamental Rights (FRA) has provided general guidance²⁶ to member states to enable seamless set up of national independent mechanisms, recommending a broad scope that covers border surveillance, apprehensions at land, sea and air borders, and the operation of referral mechanisms, as well as mandates that are consistent with other national bodies entrusted with the protection of human rights.²⁷ The FRA underlined that an independent mechanism, in addition to its preventive and protective function, can support domestic investigations of allegations against public authorities by providing objective, evidence-based and unbiased analysis and reporting.²⁸

Technology

Across the OSCE region, border architectures set up to manage migration and to disrupt smuggling and trafficking routes have rapidly and radically evolved over the past decade through the use of technology. Tools for data collection and surveillance, when installed and operated without adequate safeguards, raise new types of human rights concerns and can deepen existing ones.²⁹ This is most visible but not exclusive to the European Union's external borders, where enhanced surveillance measures have been prioritized in budgets and in policy. Extensive research is done at EU level to assess the efficiency of various technological solutions and provide advice to the EU executive and Frontex on priority technologies to further develop in the coming years.³⁰ At the same time, human rights experts have pointed out that only partial information is publicly available on the use of technologies in border management and a dedicated framework to regulate such usage has not yet been developed, either at the national or the regional level.³¹ In fact, there is very limited transparency in relation to the technologies themselves and whether human rights impact assessments are being carried out prior to deployment, including with regards to the involvement of private actors and their treatment of personal data.³²

The South-Eastern Europe region is no exception: technological solutions are increasingly part of border architectures and affect the scope of monitoring necessary to ensure human rights-compliant border management in practice.³³ When establishing monitoring mechanisms, stakeholders should seek to include additional areas of concern for scrutiny, such as data protection and privacy, the operation of remote and mobile border surveillance equipment and give considerations to concerns for racial bias or the legality of collective deterrence and denial of access measures.³⁴ In fact, the rationale for the

²⁶ "Establishing National Independent Mechanisms to Monitor Fundamental Rights Compliance at EU External Borders", European Union Agency for Fundamental Rights (FRA), October 2022, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-monitor-fundamental-rights-eu-external-borders_en.pdf>.

²⁷ See Section 5 in "Preventing and Responding to Deaths at Sea: What the European Union Can Do", FRA, 30 June 2023, <<http://fra.europa.eu/en/publication/2023/fra-deaths-sea-paper>>.

²⁸ FRA, "Establishing National Independent Mechanisms", op. cit., p. 13.

²⁹ "Policy Brief: Border Management and Human Rights — Collection, Processing and Sharing of Personal Data and the Use of New Technologies in the Counter-Terrorism and Freedom of Movement Context", OSCE/ODIHR, 2021, <<https://www.osce.org/files/f/documents/f/a/499777.pdf>>; see also the video resource "New Technologies in Border Management and Human Rights", OSCE/ODIHR, 18 May 2023, <<https://www.osce.org/odihr/543904>>.

³⁰ Jones et al., "Europe's Techno Borders", op. cit., p. 33.

³¹ Lorna McGregor and Petra Molnar, "Digital Border Governance: A Human Rights Based Approach", University of Essex and OHCHR, September 2023, pp. 4–5, <<https://www.ohchr.org/sites/default/files/2023-09/Digital-Border-Governance-A-Human-Rights-Based-Approach.pdf>>.

³² Ibid. See also minimum requirements proposed by the authors to ensure that digital technologies at borders comply with international human rights standards (pp. 20–25).

³³ Emma Wallis, "EU Helps Bulgaria and Romania to Protect Borders against Migrants", InfoMigrants, 21 March 2023, <<https://www.infomigrants.net/en/post/47634/eu-helps-bulgaria-and-romania-to-protect-borders-against-migrants>>.

³⁴ For a non-exhaustive list of trends, tactics and tools, see Joshua Askew, "'Mass Surveillance, Automated Suspicion, Extreme Power': How Tech is Shaping EU Borders", euronews, 6 April 2023, <<https://www.euronews.com/next/2023/04/06/mass-surveillance-automated-suspicion-extreme-power-how-tech-is-shaping-the-eus-borders>>, and Jones et al., "Europe's Techno Borders", op. cit.

introduction of the concept of independent border monitoring mechanisms in the EU, as proposed in the draft Screening Regulation, has inter alia been to ensure that the application of these technologies at the external borders, including mandatory biometric data collection and database checks, are in line with human rights obligations.³⁵

Participating States cannot derogate from their obligations and commitments even if borders are managed through unmanned assets, and even in circumstances where those are operated remotely from control rooms, or where such infrastructure for detection and deterrence is installed so that law enforcement officers do not physically take charge of migrants.

Age, gender and diversity-responsive policing and monitoring

ODIHR has recognized that integrating a gender perspective into the work of border police authorities through training and knowledge transfer can have a significant impact on the ability of law enforcement officers to recognize and respond to the different needs and vulnerabilities of migrants, in particular migrant women, children and LGBTI individuals.³⁶ In the context of addressing irregular migration at borders, migrants are often subjected to stereotypical assumptions and to policing that does not take into account their needs, or is not culturally appropriate. ODIHR and its partners have provided state authorities with a toolkit towards establishing border police operations which do not only respect, but also advance gender equality, and which integrate a gender perspective throughout.³⁷ The organizations have also recommended the authorities to recruit a diverse pool of staff to increase access to all segments of people crossing borders and to have a better understanding of their situation and needs.

Non-discrimination is a fundamental principle protected in international, regional and national laws, however there is a multitude of risk factors that people in displacement face, due to their gender, age, racial, ethnic, national or linguistic background, age, sexual orientation and gender identity, disability or other characteristic, and which need institutional responses in the context of border management.³⁸

Monitoring mechanisms should work together with internal oversight units and inspectorates as well as with NHRIs, for which guidance has been developed on integrating gender into oversight of the security sector.³⁹ Such co-operation can lead to attitudinal change and institutional reform more broadly, benefiting the wider institutional context in which border police carries out its work:

“The effectiveness of internal oversight mechanisms greatly depends on the commitment of police managers to tackle misconduct and be accountable for providing good services. At times, police may be reluctant to expose their institution to criticism. Internal oversight mechanisms may lack public credibility owing to the belief that police managers shield their staff from accountability. In addition, internal mechanisms are often limited in scope and tend to concentrate only on reactive (punitive) measures, as opposed to proactive (preventive) measures. For these reasons, it is important that internal oversight mechanisms are complemented by external ones. Moreover, supervision and monitoring by external oversight

³⁵ Jones et al., “Europe’s Techno Borders”, op. cit., p. 24.

³⁶ DCAF, OSCE/ODIHR and UN Women, “Border Management and Gender”, in Gender and Security Toolkit, (Geneva: DCAF, OSCE/ODIHR, UN Women, 2019), p. 1., <<https://www.osce.org/files/f/documents/c/4/447049.pdf>>.

³⁷ Ibid., p. 4.

³⁸ See e.g., Policy on Age, Gender and Diversity Accountability, UNHCR, 2018, <<https://www.unhcr.org/media/policy-age-gender-and-diversity-accountability-2018>>.

³⁹ See Megan Bastick, Integrating Gender into Internal Police Oversight (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014), <<https://www.osce.org/files/f/documents/2/a/118326.pdf>>; and Megan Bastick, Integrating a Gender Perspective into Oversight of the Security Sector by Ombuds Institutions & National Human Rights Institutions (Geneva: DCAF, OSCE, 2014), <<https://www.osce.org/files/f/documents/0/e/118327.pdf>>.

*bodies can reinforce and sustain police managers in their efforts to make police services more gender-responsive.*⁴⁰

An independent monitoring mechanism equipped with the necessary expertise and mandate, and crucially, composed of a diverse pool of female and male monitors, could assess corresponding policies and protocols (e.g., on the screening of migrants with a specific need) and their implementation. It could also assess age, gender and diversity-related disaggregated data collected in the context of border police operations, in addition to observing police behavior *in situ*, and make thematic recommendations to improve practices.

⁴⁰ Bastick, Integrating Gender into Internal Police Oversight, op. cit., p. 7.

3. Developments in border policing and monitoring co-operation in South-Eastern Europe

Countries in the South-Eastern Europe region grapple with the dual challenge of securing borders and addressing irregular migration while enabling free movement. This challenge also impacts their prospects of joining the European Union —as in North Macedonia, Serbia and Bosnia and Herzegovina — or of acceding to the Schengen free-travel area — as in Bulgaria and Romania. Croatia and Hungary, which have achieved both are now responsible for securing the external borders of the Schengen zone, an undoubtedly complex task. In response to these challenges, transnational co-operation among border police authorities, as shown below, is widespread and is an area of significant investment. For example, the Migration, Asylum, Refugees Regional Initiative (MARRI) is a regional structure dedicated to promoting closer co-operation and common, comprehensive and harmonized approaches to border and migration management.⁴¹ In parallel, it is becoming increasingly urgent to match joint border security measures with adequate human rights safeguards for migrants so that these efforts do not perpetuate abusive policies and practices and widespread impunity. While regular and safe routes for migrants to the EU are limited, irregular movements will prevail.

According to the International Organization for Migration (IOM), 2022 was “a paradigm shifting year” for migration in the Western Balkans: the number of irregularly travelling migrants rose, however the length of their stay in each transit country before attempting to enter the EU became shorter.⁴² Authorities registered close to 200,000 migrants in the region, while many more travelled clandestinely. The year-on-year increase of irregular migrants has prompted state authorities to bolster surveillance at every border. Many of the migrants journeying through the Western Balkans have experienced some form of violence or abuse along the route.⁴³

In November 2022, IOM facilitated the adoption of the high-level Skopje Declaration on Sustainable Migration Governance in the Western Balkans, which *inter alia* expressed signatory States’ commitment to strengthen co-operation to address smuggling of migrants and trafficking in human beings, to take measures to adopt rights-based and victim-centered approaches and to optimize the use of existing regulations to increase access to temporary or permanent legal pathways for migrants.⁴⁴

⁴¹ See "About us", MARRI website, undated, <<https://marri-rc.org.mk/about-us>>.

⁴² "Migration Trends in the Western Balkans in 2022", International Organization for Migration (IOM), 2023, p. 3, <https://bih.iom.int/sites/g/files/tmzbdl1076/files/documents/WB_Annual_Report.pdf>.

⁴³ *Ibid.*, p. 5.

⁴⁴ "Skopje Declaration on Sustainable Migration Governance in the Western Balkans", facilitated by IOM, 16 November 2022, <<https://north-macedonia.iom.int/sites/g/files/tmzbdl2301/files/documents/Skopje%20Declaration.pdf>>.

II. Regional overview					
	No. of irregular border crossings into country (2022)	Prevention of entry/removal at borders reported or self-reported (2022)	Presence of Frontex and other police co-operation (2023)	Human rights monitoring of border police operations (2023)	EU & Schengen free-travel area membership status
Bulgaria	16,767 persons apprehended for irregular entry or stay (Mol) ⁴⁵	5,268 alleged pushbacks affecting 87,647 persons (NGO monitoring) ⁴⁶	Joint Operation Terra since 2022. Pilot Project (EUAA, Europol, Frontex) since March 2023. ⁴⁷	State-approved: limited (tripartite MoU by the Border Police, UNHCR & Bulgarian Helsinki Committee, 2010) ⁴⁸	EU Member State, expected to join the Schengen Area by end of 2023. ⁴⁹
North Macedonia	22,379 persons registered (IOM) ⁵⁰	20,000–40,000 informal returns (MYLA) ⁵¹	EU funding to enhance operational capacity of the border police and improve migration management (implemented by IOM). ⁵² Frontex status agreement signed in April 2023. ⁵³	State-approved: limited, since 2015 (MYLA); NGO-led (BVMN, PRAB)	EU candidate status granted in 2005, began accession negotiations in 2022. ⁵⁴
Serbia	120,883 persons registered (IOM) ⁵⁵	45,965 preventions of entry from North Macedonia (self-reported) ⁵⁶	Frontex status agreement signed in May 2021. ⁵⁷ Enhanced trilateral co-operation with Hungary	NGO-led initiatives only (BVMN, PRAB)	EU candidate status granted in 2012, began accession negotiations in 2022. ⁵⁹

⁴⁵ Cited in Iliana Savova, "AIDA Country Report 2022: Bulgaria", ECRE, March 2023, p. 27, <https://asylumineurope.org/wp-content/uploads/2023/03/AIDA-BG_2022update.pdf>.

⁴⁶ Ibid., p. 12.

⁴⁷ "Migration Management: Update on Progress Made on the Pilot Projects for Asylum and Return Procedures and New Financial Support for Bulgaria and Romania", European Commission, 7 June 2023, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3132>.

⁴⁸ Savova, "AIDA Country Report 2022: Bulgaria", op. cit., p. 12.

⁴⁹ "Bulgaria and Romania should be in Schengen by end of 2023, says Parliament", European Parliament, 12 July 2023, <<https://www.europarl.europa.eu/news/en/press-room/20230707IPR02431/bulgaria-and-romania-should-be-in-schengen-by-end-of-2023-says-parliament>>.

⁵⁰ Cited in "Migration Trends in the Western Balkans in 2022", IOM, op. cit., p. 7.

⁵¹ There is no formal procedure nor judicial oversight over returns from North Macedonia to Greece over the land border. Interview with Mr. Zoran Drangovski, Policy and Advocacy Coordinator, Macedonian Young Lawyers Association (MYLA), 9 October 2023.

⁵² "EU for Improved Border and Migration Management Capabilities in North Macedonia", European Commission, March 2020, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-03/2020_ad2_eu_for_improved_border_and_migration_management.pdf>.

⁵³ "Frontex Status Agreements with Non-EU Countries", EurLex, 1 March 2023, <<https://eur-lex.europa.eu/EN/legal-content/summary/frontex-status-agreements-with-non-eu-countries.html>>.

⁵⁴ "North Macedonia", in: EU Enlargement Policy, European Council, 20 March 2023, <<https://www.consilium.europa.eu/en/policies/enlargement/republic-north-macedonia>>.

⁵⁵ "Migration Trends in the Western Balkans in 2022", IOM, op. cit., p. 7.

⁵⁶ Cited in Nikola Kovačević, "AIDA Country Report 2022: Serbia", May 2023, ECRE, p. 57, <https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-SR_2022update.pdf>.

⁵⁷ "Frontex Status Agreements with Non-EU Countries", EurLex, op. cit.

⁵⁹ "Serbia", in: EU Enlargement Policy, European Council, 6 September 2023, <<https://www.consilium.europa.eu/en/policies/enlargement/serbia>>.

			and Austria since 2022. ⁵⁸		
Bosnia and Herzegovina	27,429 persons registered (IOM) ⁶⁰	N/a	EU-funded projects enhancing internal police co-operation and co-ordination and migration management. ⁶¹ Frontex status agreement TBC. ⁶²	NGO-led initiatives only (BVMN, PRAB)	EU candidate status granted in 2022. ⁶³
Croatia	50,624 persons apprehended for irregular border crossing (Mol) ⁶⁴	3,461 persons pushed back to Bosnia and Herzegovina; 289 persons pushed back to Serbia (DRC & UNHCR monitoring) ⁶⁵	Joint Operation Terra since 2022.	European Commission-brokered mechanism: limited (Mol & selected institutions/CSOs); NGO-led (BVMN, PRAB)	EU Member State, joined the Schengen Area in 2023.
Hungary	158,565 removals to Serbia (National Police) ⁶⁶	158,565 removals to Serbia (National Police)	Frontex suspended operations in January 2021, ⁶⁷ Hungary however participates in Joint Operation Terra since 2022. ⁶⁸ Trilateral co-operation with Austria and Serbia. ⁶⁹	NGO-led initiatives only (from Serbia)	EU and Schengen Member State.
Romania	4,966 persons apprehended for irregular entry (Border Police) ⁷⁰	9,044 persons prevented entry (Border Police) ⁷¹	Joint Operation Terra since 2022. Pilot Project (EUAA, Europol, Frontex) since March 2023. ⁷²	State-approved: advanced (Border Police, UNHCR and NGO partner) ⁷³	EU Member State, expected to join the Schengen Area by end of 2023. ⁷⁴

⁵⁸ Thomas Hill, "Austria, Serbia and Hungary Strike Migration Deal, Saying EU Measures Have Failed", euronews, 17 November 2022, <<https://www.euronews.com/2022/11/17/austria-serbia-and-hungary-strike-migration-deal-saying-eu-measures-have-failed>>.

⁶⁰ "Migration Trends in the Western Balkans in 2022", IOM, op. cit., p. 7.

⁶¹ See e.g., "European Commission Vice-President Margaritis Schinas Visits Bosnia and Herzegovina and Underlines Full EU Support for Migration Management", Delegation of the European Union to Bosnia and Herzegovina, 9 October 2022, <<https://archive.europa.ba/?p=76123>>.

⁶² See Swaton, "Bosnia Seeks Austrian Support for Frontex Status Agreement", op. cit.

⁶³ "Bosnia and Herzegovina", in: EU Enlargement Policy, European Council, 20 July 2023, <<https://www.consilium.europa.eu/en/policies/enlargement/bosnia-herzegovina>>.

⁶⁴ Cited in Lana Tučkorić, "AIDA Country Report 2022: Croatia", ECRE, June 2023, p. 25, <<https://asylumineurope.org/wp-content/uploads/2023/06/AIDA-HR-2022-Update.pdf>>.

⁶⁵ Ibid., p. 16.

⁶⁶ Cited in Katalin Juhász, Gruša Matevžič and Zsolt Szekeres, "AIDA Country Report 2022: Hungary", ECRE, April 2023, p. 24, <https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-HU_2022-Update.pdf>.

⁶⁷ "Frontex Suspends Operations in Hungary over Asylum System", Deutsche Welle, 27 January 2021, <<https://www.dw.com/en/frontex-suspends-operations-in-hungary-over-asylum-system/a-56364948>>.

⁶⁸ "Joint Operation Terra 2022" (video resource), Frontex, 2 March 2022, <<https://frontex.europa.eu/media-centre/multimedia/videos/joint-operation-terra-2022-rasCUq>>.

⁶⁹ See supra note 59.

⁷⁰ Felicia Nica, "AIDA Country Report 2022: Romania", ECRE, May 2023, p. 21, <<https://asylumineurope.org/reports/country/romania/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs>>.

⁷¹ Ibid., p. 23.

⁷² See supra note 48.

⁷³ Nica, "AIDA Country Report 2022: Romania", op. cit., p. 26.

⁷⁴ See supra note 50.

Bulgaria

Bulgaria has seen a sharp increase in the number of migrants entering the country in recent years. According to official figures, the fenced-off land border with Turkey has seen significant increase of police intervention, with 164,000 attempts for irregular crossing prevented in 2022 at the border, a threefold increase on the previous year.⁷⁵ According to human rights monitoring reports, border police have responded with a surge in pushbacks.⁷⁶ NGOs have recorded testimonies from migrants reporting what appeared to be excessive use of force, extortion and humiliation tactics.⁷⁷ Another report by investigative journalists from December 2022 documented in detail that Frontex has been present at locations near the land border with Turkey where migrants would be detained arbitrarily in makeshift cells and poor conditions.⁷⁸

Bulgaria is scaling up its border policing, including by installing additional security and surveillance equipment, as it looks to fulfil criteria to join the Schengen zone — a priority for the whole EU but regarded with some caution.⁷⁹ In March 2023, the European Commission launched a 6-months pilot project in the country, along with a second pilot in neighboring Romania, to address identified shortcomings in the areas of asylum, returns, border management and international co-operation.⁸⁰ The project is set to enhance the border management infrastructure with vehicles, cameras, roads and watchtowers.⁸¹ The pilot, closely linked to the EU Action Plan on the Western Balkans, also supports national authorities in introducing accelerated asylum procedures, streamlining the implementation of asylum and return procedures, and digitalizing related processes.⁸² As part of aligning their operations and making use of EU expertise, Bulgarian authorities have agreed to strengthen cooperation with the EU Asylum Agency, Europol as well as with Frontex. The latter has made its standing corps and technical equipment available for border management and returns, while the project has received EUR 45 million in dedicated funding.⁸³ Additionally, Bulgaria is set to receive EUR 205 million from the EU in the next years for additional surveillance equipment and training.⁸⁴

Some non-governmental organizations, including those trained by ODIHR, have faced pressure by institutions responding to their work supporting migrants in vulnerable situations.⁸⁵ However, increased co-operation with EU agencies presents an organic opportunity to improve trust with civil society and build on their expertise, including monitoring experience. While Bulgaria has established tests of necessity and proportionality for the use of force in national laws and policies, including in the Bulgarian Police Code of Ethics,⁸⁶ independent border police monitoring could enhance the implementation of these policies in practice and perform a preventive function.

⁷⁵ Sou-Jie van Brunnersum, "Bulgaria Migrant Pushbacks: EU Political Pressure and Surveillance (4/4)", InfoMigrants, 21 August 2023, <<https://www.infomigrants.net/en/post/51215/bulgaria-migrant-pushbacks-eu-political-pressure-and-surveillance-44>>.

⁷⁶ "Bulgaria: Migrants Brutally Pushed Back at Turkish Border", Human Rights Watch, 26 May 2022, <<https://www.hrw.org/news/2022/05/26/bulgaria-migrants-brutally-pushed-back-turkish-border>>.

⁷⁷ "Bulgaria: Migrants Brutally Pushed Back", Human Rights Watch, op. cit.

⁷⁸ May Bulman et al., "Europe's Black Sites", Lighthouse Reports, 8 December 2022, <<https://www.lighthousereports.com/investigation/europes-black-sites>>.

⁷⁹ "Austria Opposes Expansion of EU Visa-Free Travel, Supports Bulgaria in Bolstering Border", InfoMigrants, 24 January 2023, <<https://www.infomigrants.net/en/post/46312/austria-opposes-expansion-of-eu-visafree-travel-supports-bulgaria-in-bolstering-border>>.

⁸⁰ "Migration Management: Update on Progress Made on the Pilot Projects", European Commission, op. cit.

⁸¹ European Commission, 'Progress Made by Bulgaria and Romania', Text, accessed 24 October 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5063.

⁸² "Migration Management: Update on Progress Made on the Pilot Projects", European Commission, op. cit.

⁸³ Ibid.

⁸⁴ van Brunnersum, "Bulgaria Migrant Pushbacks, 4/4", op. cit.

⁸⁵ See also van Brunnersum, "Bulgaria Migrant Pushbacks, 1/4", op. cit.

⁸⁶ "Bulgaria: Migrants Brutally Pushed Back", Human Rights Watch, op. cit.

North Macedonia

The Macedonian Young Lawyers' Association (MYLA) regularly monitors temporary transit centers at the country's southern and northern entry and exit points since 2015. When interviewed for this report, its representative stated that in North Macedonia, returns are mostly implemented without the necessary formal procedure. Furthermore, some migrants apprehended are taken to reception centers where they are detained as witnesses in criminal proceedings against smugglers. Then witnesses are often returned to Greece without formal procedure and protection-sensitive profiling,⁸⁷ along with other migrants who have been apprehended whilst travelling irregularly.⁸⁸

MYLA has advocated for the development of an independent border monitoring mechanism to enhance the scope of this work. This initiative has not succeeded thus far due to a reported lack of political support.⁸⁹ The organization has also reported challenges in operating amidst *ad hoc* decisions taken by authorities under a state of emergency, continuously in force since 2015⁹⁰ and the reluctance of authorities to enter into formalized co-operation.⁹¹ However, new momentum may be gained in the coming months with extensive scale-up of border management, including through the implementation of the EU Action Plan for the Western Balkans and other international co-operation efforts.

To support alignment with EU and international standards, IOM has been regularly implementing capacity building activities on protection sensitive migration management and border policing. The organization provides sessions for national border police officers on humanitarian border management, including migrant protection and human rights. The organization extensively co-operates with CSOs on identification and protection of vulnerable migrants and on referral for victims of trafficking.⁹²

On 19 April 2023, Frontex launched a joint operation in the country on the basis of a so-called status agreement, deploying over 100 border guards to support local authorities with border surveillance and border checks.⁹³ According to the Frontex's factsheet, its own fundamental rights monitors will "oversee operational activities, assess the fundamental rights compliance, provide advice and assistance and contribute to the promotion of fundamental rights."⁹⁴ However, authorities in North Macedonia should consider establishing a national mechanism which can complement *ad hoc* visits of fundamental rights officers and can solidify co-operation with local stakeholders.

⁸⁷ Interview with Mr. Zoran Drangovski, 9 October 2023.

⁸⁸ See also "Quarterly Field Report 2022 (Q4)", MYLA, February 2023, p. 4., <<https://myla.org.mk/wp-content/uploads/2023/03/Field-Report-Q4-2022-1.pdf>>.

⁸⁹ Gardos, "Border Police Monitoring in the OSCE Region", op. cit., p. 42.

⁹⁰ This state of emergency was launched in response to rapid increase of irregular arrivals of people heading towards the European Union in 2015.

⁹¹ Interview with Mr. Zoran Drangovski, 9 October 2023.

⁹² E-mail communication from Mr. Aleksandar Sazdovski, IOM Skopje, 26 September 2023.

⁹³ "Frontex Launches Joint Operation in North Macedonia", Frontex, 20 April 2023, <<https://frontex.europa.eu/media-centre/news/news-release/frontex-launches-joint-operation-in-north-macedonia-U4l3lv>>.

⁹⁴ "Factsheet: Joint Operation North Macedonia", Frontex, April 2023, p. 2., <https://frontex.europa.eu/assets/Key_Documents/JO_North_Macedonia_documents/FPI-23.0164_Factsheet_JO_North_Macedonia.pdf>.

Serbia

Due to its geographical position, bordering Croatia, Hungary and Romania to the north, Serbia has remained the main hub for transiting migrants, accounting for two-thirds of all registrations regionally.⁹⁵ At these borders, allegations of unlawful returns from these EU Member States and other abuses have persisted.⁹⁶

The Commissariat for Refugees and Migration provides reception to registered migrants, including asylum-seekers. In October 2023, the Commissariat reported that up to two thirds of its reception capacity were currently available, and it was using this temporary window to work on its infrastructure and to introduce procedures and training which improve the quality of its services.⁹⁷ The Commissariat acknowledged the importance of monitoring at borders as a measure of transparency and visibility for Serbia's migration strategy, including for its commitment to fulfil human rights obligations and provide protection to those in need.⁹⁸ The Commissariat noted Serbia's progress to align its policies with the EU *acquis* and expected the country to become a destination country for groups of refugees in the future. This was also noted by NGOs providing legal aid and integration support to asylum-seekers.⁹⁹ NGOs also noted that the reinforcement of EU external borders currently benefited smuggling networks as irregularly travelling migrants became completely dependent on them for onward movement.¹⁰⁰ They argued that in Serbia, as in the whole South-Eastern Europe region, boosting of the co-operation with Frontex and with individual EU Member States should also involve transparency and accountability measures.¹⁰¹

One way to advance a discussion between institutions and organizations on modalities of transparency and accountability is to consider independent border monitoring mechanisms as a joint activity benefiting from the support of State institutions as well as civil society. Groundwork in that regard has already been carried out. As part of a project by the European Network of National Human Rights Institution (ENNHRI) on migrant rights at borders, the Protector of Citizens (the Serbian NHRI), has carried out several monitoring visits to the borders with North Macedonia, Bulgaria and Croatia, and at international airports, and published a dedicated report in 2021.¹⁰² The Protector of Citizens currently performs forced return monitoring and monitoring of certain aspects of border management as part of its National Preventive Mechanism (NPM) mandate, in co-operation with a non-governmental partner organization (Ombudsman+ model).¹⁰³ According to its assessment, the legal-operational context in which the Protector of Citizens operates is conducive to thorough and efficient monitoring. The NHRI has unrestricted access to all places where migrants are located, and to all information with regards to border police operations concerning them. The Protector of Citizens has a high level of co-operation

⁹⁵ "Migration Trends in the Western Balkans in 2022", IOM, op. cit., p. 7.

⁹⁶ Kovačević, 'AIDA Country Report 2022: Serbia', 13–18; U.S. Department of State, '2022 Country Reports on Human Rights Practices: Hungary' (Bureau of Democracy, Human Rights, and Labor), accessed 24 October 2023, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/hungary/>; U.S. Department of State, '2022 Country Reports on Human Rights Practices: Romania' (Bureau of Democracy, Human Rights, and Labor), accessed 24 October 2023, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/romania/>.

⁹⁷ Interview with Deputy Commissioner Ms. Svetlana Velimirović, Commissariat for Refugees and Migration, 9 October 2023.

⁹⁸ Ibid.

⁹⁹ Interview with Ms. Jelena Ilić, Asylum and Immigration Project Coordinator, Belgrade Centre for Human Rights, 6 October 2023.

¹⁰⁰ Interview with Ms. Milica Švabić, Lawyer, Klikaktiv – Center for Development of Social Policies, 3 October 2023.

¹⁰¹ Ibid.

¹⁰² "Serbia: National Report on the Situation of Human Rights of Migrants at the Borders", Protector of Citizens of the Republic of Serbia, August 2021, <<http://ennhri.org/wp-content/uploads/2021/08/Serbian-National-Report.pdf>>.

¹⁰³ Communication from Mr. Marko Anojčić, Advisor to the Protector of Citizens, 22 September 2023.

with authorities. Civil society organizations providing legal aid can also access migrants in detention and reception centers, based on prior notice.¹⁰⁴ State institutions have a legal obligation to co-operate with the NHRI and enable it to carry out its work, including through responding to requests for interview.¹⁰⁵

As noted above, the Protector of Citizens already co-operates with some civil society organizations during the exercising of the NPM mandate and has occasional contacts with NHRIs in neighboring countries.¹⁰⁶ However, there seems to be no effective pathway to follow-up on allegations of human rights violations in the context of border management in Serbia nor on individual complaints of cross-border physical violence or other abuse.¹⁰⁷ The development of a monitoring mechanism that covers all aspects of border management and involves a larger pool of stakeholders, including possible external and international partners, could improve the situation.

Such an independent mechanism could not be performed under the NPM mandate, rather, it would make use of the full spectrum of expertise and experience available and build on the specialized skills of stakeholders. Stimulating further dialogue on the establishment of such a mechanism by state institutions grounded in a consultative process and supported by civil society would build trust between stakeholders and provide for solid foundations for its mandate and autonomy.

Bosnia and Herzegovina

Bosnia and Herzegovina has been a transit country for many irregularly travelling migrants over the past years. According to IOM's monitoring of migrant journeys, over one-third of people on the move entered the country with the help of a facilitator.¹⁰⁸ Four out of five migrants surveyed by the organization have reported having been pushed back to the country at least once.¹⁰⁹ They intended to move on towards Western Europe regardless of the difficulties in crossing into the EU.

Non-governmental organizations have taken on recording human rights concerns related to border police actions at the Bosnia and Herzegovina-Croatia land border and have raised the alarm on the abuses migrants reportedly faced at this border: denial of access to asylum procedures, arbitrary arrest and detention, ill-treatment as well as theft and destruction of property.¹¹⁰ The Croatian authorities have come under increased pressure to address human rights concerns, and a 2021 emergency funding from the EU was granted conditional on establishing an independent border monitoring mechanism in Croatia. Authorities in Bosnia and Herzegovina have set up increased humanitarian reception capacity for migrants repeatedly returned to the country, as returns remain the priority of its EU neighbor, while international and non-governmental organizations are engaged in supporting people in precarious situations in border areas and in documenting incidents of human rights violations.¹¹¹

¹⁰⁴ Ibid., p. 6.

¹⁰⁵ Ibid., p. 9.

¹⁰⁶ Ibid., p. 4. The thematic report recommended that cross-border co-operation among NHRIs and NPMs is further increased, so as to adequately respond to the numerous reports of violations that have reportedly taken place across the state border.

¹⁰⁷ Ibid., pp. 15–16.

¹⁰⁸ "Migration Trends in the Western Balkans in 2022", IOM, op. cit., p. 15.

¹⁰⁹ Ibid.

¹¹⁰ "Beaten, Punished and Pushed Back", PRAB, op. cit., pp. 6–7.

¹¹¹ "What We Do in the Shadows", PRAB, May 2023, <https://prof.euwest01.umbraco.io/media/3h1d5s5r/vi-prab-report_-what-we-do-in-the-shadows_-jan-to-april-2023.pdf>; "Croatia: Ongoing, Violent Border Pushbacks", Human Rights Watch, 3 May 2023, <<https://www.hrw.org/news/2023/05/03/croatia-ongoing-violent-border-pushbacks>>.

Croatia

The Croatian authorities have been challenged over the past years over the treatment of migrants at the country's border with Serbia and Bosnia and Herzegovina. With the country's accession to the Schengen zone effective 1 January 2023, these land borders have become the last barriers to the free movement area for irregularly travelling migrants. Passing into Croatia has arguably become an even more lucrative proposition for smuggling and trafficking networks. Current border management challenges require further efforts by state authorities in complying with human rights obligations — as the scale and severity of violations documented at these borders became evident, authorities came under pressure to provide institutional responses for oversight and accountability as well as access to justice for victims.¹¹² As mentioned above, EU institutions have taken issue with the way border management is implemented, not least because of the involvement of European funds.¹¹³ The cumulative pressure on state authorities has eventually led to the establishment of the first EU-brokered independent border monitoring mechanism in June 2021. A discussion on the merits and shortcomings of the mechanism is included in Chapter 4 of this report.

Hungary

State authorities continue to deviate from fulfilling the country's obligations to ensure the enjoyment of the right to seek asylum in Hungary, as enshrined in the Charter of Fundamental Rights of the European Union by effectively suspending access to asylum at borders and legalizing pushbacks from the whole territory of the state; despite rulings of the Court of Justice of the European Union that such practices are against the EU law.¹¹⁴ Hungary's border management has been widely criticized by civil society for its extensive reliance on prevention of entry and immediate return of all irregularly arriving migrants without a meaningful screening or individualized assessment of international protection needs.¹¹⁵ A number of judgements of the European Court of Human Rights finding Hungary in breach of the fundamental rights of migrants and refugees testify to this reality.¹¹⁶ Further, more than half of migrants recently interviewed by the Protecting Rights at Borders Initiative have reported physical abuse or assault at the border between Hungary and Serbia.¹¹⁷ In this context, compounded by a reluctance from state agencies to engage with human rights defenders,¹¹⁸ monitoring of border police procedures is *de facto* impossible. Non-governmental organizations and journalists resort to documenting cases and allegations of abuse on the Serbian side of the border, where medical and humanitarian workers provide

¹¹² See e.g., "Report to the Croatian Government on the Visit to Croatia Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020", 3 December 2021, para. 22. <<https://rm.coe.int/1680a4c199>>.

¹¹³ See European Ombudsman Emilly O'Reilly, "Decision Concerning How the European Commission Monitors and Ensures Respect for Fundamental Rights by the Croatian Authorities in the Context of Border Management Operations Supported by EU Funds (Case 1598/2020/V)", European Ombudsman, 22 February 2022, <<https://www.ombudsman.europa.eu/en/decision/en/152811>>. The European Ombudsman's inquiry was initiated following a September 2020 complaint by Amnesty International.

¹¹⁴ Juhász et. al., "AIDA Country Report 2022: Hungary", op. cit., pp. 19–21. CJEU's judgment in the case European Commission against Hungary (C-808/18, 17 December 2020); CJEU's judgment in the case European Commission against Hungary (C-823/21, 22 June 2023).

¹¹⁵ Juhász et. al., "AIDA Country Report 2022: Hungary" Ibid., pp. 24–27. See also Section B in Hanaa Hakiki and Delphine Rodrik, "Accessing Borders, Accessing Justice? The European Court of Human Rights' Jurisprudence on Pushbacks at Land Borders", *Asyl*, No. 1, 2023, pp. 3–17, <<https://asyl.recht.ch/de/artikel/01asyl0123abh/accessing-borders-accessing-justice>>.

¹¹⁶ For instance, the cases of Ilias and Ahmed v. Hungary (application no. 47287/15, 14.03.2017), Shahzad v. Hungary (application no. 12625/17, 08.07.2021), H.K. v. Hungary (application no. 18531/17, 22.09.2022),

¹¹⁷ "What We Do in the Shadows", PRAB, op. cit., p. 2.

¹¹⁸ Interview with Ms. Anikó Bakonyi, Hungarian Helsinki Committee, Refugee Program Director, 3 October 2023.

returned migrants with first aid and basic needs assistance.¹¹⁹ The Hungarian Helsinki Committee regularly visits these areas to collect testimonies and to offer legal representation. The organization has noted that vulnerable migrants, including unaccompanied children are also removed from Hungary without any safeguards. They rarely engage in legal challenges due to fear of perceived negative consequences on their prospects to claim asylum in the EU.¹²⁰ As such, they have no practical access to justice and remedies guaranteed in law.

In the context of the ongoing expansion of the Schengen zone, including the upcoming entry of Romania to the free movement area, it is imperative that these border management practices are revised and comply with international obligations and OSCE commitments. The establishment of an independent border monitoring mechanism could contribute to more humane and rights-respecting practices and to the downscaling of incidents and violations at the border, even within the restrictive policy framework currently in place.

Romania

Since March 2023, Romanian authorities have participated in a pilot project funded by the EU and implemented with operational and technical support from the EU Asylum Agency, Europol and Frontex. The pilot, analogous to efforts in neighboring Bulgaria, is focusing on expediting asylum and return procedures and preventing absconding and secondary movements of asylum seekers.¹²¹ Romania's strategic geographical position bordering Serbia, Ukraine and Moldova has made it instrumental in securing the EU external border.¹²²

Frontex is supporting Romania's border management, focusing on the Romania-Serbia border, where national authorities have been implementing a common patrol protocol to prevent irregular migration.¹²³ Frontex's Terra 2023 Operation is being extended to that land border and will be the first operational area to make use of Frontex's mobile surveillance vehicles.¹²⁴ Romania has been allocated EUR 10.8 million for this project.¹²⁵ The pilot projects with Bulgaria and Romania benefit from monthly steering committee meetings between the European Commission, EU Agencies, and national authorities, underlining their priority status.

Human rights concerns affecting migrants traveling through Romania have received less attention overall, the exception being police operations in the so-called "triangle" area at the border lines with Serbia and Hungary. As described in the AIDA report, each year, thousands of migrants are apprehended and expelled in the border area. While returns are reportedly carried out in the framework of readmission agreements, civil society organizations in Serbia also recorded unlawful pushbacks.¹²⁶ Recently, an

¹¹⁹ "Annual Report 2022: More People, More Police and Less Safety", Klikaktiv – Center for Development of Social Policies, 2023, pp. 16–21, <<https://drive.google.com/file/d/1OHU32iFgKpAbT42Qn0pCvv9cmVxy-QW7/view>>. May Bulman et al., "Europe's Black Sites", Lighthouse Reports, 8 December 2022, <<https://www.lighthousereports.com/investigation/europes-black-sites>>.

¹²⁰ Interview with Ms. Anikó Bakonyi, Refugee Program Director, 3 October 2023.

¹²¹ European Commission, 'Progress Made by Bulgaria and Romania'.

¹²² "The European Commission Launches a Pilot Project with Romania", European Commission, 17 March 2023, <https://ec.europa.eu/commission/presscorner/detail/en/statement_23_1724>.

¹²³ "Migration Management: Update on Progress Made", European Commission, op. cit.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ See Nica, "AIDA Country Report 2022: Romania", op. cit., pp. 19–28. See also "New Developments on the Balkan Refugee Route: Illegal Push Backs from Romania to Serbia", Klikaktiv & Pro Asyl, December 2021, <https://www.proasyl.de/wp-content/uploads/Report-pushbacks-from-Romania-to-Serbia_final.pdf>.

increase in violence during such pushbacks has been reported by the Border Violence Monitoring Network.¹²⁷

There is an advanced monitoring framework in place in Romania, based on a bilateral agreement between the General Inspectorate of the Border Police and UNHCR, implemented with the participation of the agency's partner. The scope of monitoring extends to border crossing points and detention centers, and legal counselling is provided on a regular basis. Monitoring is however limited to migrants registered by authorities through a formal process and does not extend to other police operations at the border line. As such, this framework represents a good basis for extending co-operation as no major obstacles to the implementation were reported; in 2022, a total of 77 monitoring visits took place.¹²⁸

¹²⁷ "Balkan Region Monthly Report: Illegal Pushbacks and Border Violence Reports", Border Violence Monitoring Network, October 2022, p. 6, <<https://borderviolence.eu/app/uploads/MonthlyReportOCT2022-1-1.pdf>>.

¹²⁸ Nica, "AIDA Country Report 2022: Romania", op. cit., p. 26.

4. Ad hoc mechanisms negotiated by the European Commission and EU Member States

The Croatian case

The first of the new generation of border police monitoring mechanisms, following the 2020 publication of the New Pact, was established in Croatia following discussions between the government, the European Commission and FRA.¹²⁹ The monitoring mechanism intended to serve a dual purpose: responding to credible reports of instances of violent pushbacks at the border,¹³⁰ and as an additional measure ahead of Croatia's accession to the Schengen zone — which meant that the borders with Bosnia and Herzegovina, Montenegro and Serbia would become the EU's external borders, effective 1 January 2023, and were to be reinforced. To this end, the European Commission agreed to provide EUR 14.4 million of emergency assistance to Croatia, including EUR 116,000 allocated to activities of technical monitoring of border control and EUR 320,000 to support the functioning of the monitoring mechanism.¹³¹

Powers

“The Independent border monitoring mechanism on the protection of fundamental rights in actions of police officers of the Ministry of the Interior (MoI) in the area of border surveillance, irregular migration and international protection” was established in June 2021 by agreement between the Ministry of the Interior of the Republic of Croatia, the Croatian Academy of Medical Sciences, the Croatian Academy of Legal Sciences, the Centre for Cultural Dialogue, the Croatian Red Cross, and an independent legal expert. An informal Advisory Board was also named and includes the European Commission, FRA, Frontex, IOM, UNHCR as well as the Office of the Ombudsperson for Children.¹³² Following the initial agreement, in November 2022, an 18-month renewable co-operation agreement has been signed by the parties maintaining its scope of activities and pool of participants unchanged.¹³³ It remains unconfirmed whether the mechanism will benefit from longer-term funding and if steps are taken to enhance integration with other institutions of the national human rights system.¹³⁴

The mechanism's tasks are observing the behavior of police officers in the context of border management, conducting visits to border areas and related infrastructure, including outside of border crossing points, and inspecting files on completed complaint and internal oversight procedures, conducted against police who have been reported for alleged unlawful treatment of migrants.¹³⁵

The mechanism carefully navigates around existing processes of internal oversight and other forms of complaint mechanisms and monitoring (e.g. the NPM mandate), in order to avoid legal and practical

¹²⁹ Jaeger et al., "Feasibility Study", op. cit., p. 40.

¹³⁰ See e.g., Section B in: "Report to the Croatian Government", CPT, op. cit., pp. 4–5.

¹³¹ Jaeger et al., "Feasibility Study", op. cit., p. 42.

¹³² "Tražitelji Međunarodne Zaštite i Iregularni Migranti (Asylum-Seekers and Irregular Migrants)", Ombudswoman of the Republic of Croatia, 24 April 2023, <<https://www.ombudsman.hr/hr/trazitelji-medunarodne-zastite-i-iregularni-migranti-4>>.

¹³³ "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, <https://www.hck.hr/UserDocsImages/Nezavisni%20mehanizam/22_146%20Sporazum%20NMN-final_EN.pdf?vel=217379>.

¹³⁴ The mechanism's members contacted as part of this research either did not respond or declined to provide requested information.

¹³⁵ "Cooperation Agreement to Implement an Independent Monitoring Mechanism", op. cit.

overlaps. To date it has published a semi-annual report for the period of June–December 2021¹³⁶ and a subsequent Annual Report covering the period of June 2021 – June 2022.¹³⁷ In the latter, the authors state the following with regards to the intention and *modus operandi* of the mechanism:

“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 MoI, 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 MoI, 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.”¹³⁸

Methodology

The mechanism conducts up to 20 observations annually, the vast majority of which are reportedly unannounced.¹³⁹ It additionally considers secondary sources of data to establish its conclusions and make recommendation to the Ministry of Interior. A significant share of its time and resources is devoted to further dialogue on its findings with the Advisory Board and to engage with national and international experts on migration management more broadly.¹⁴⁰

Limitations on participation and access

Despite the commendable initiative, from the outset the mechanism was criticized by civil society organizations for failing to include any of the organizations who were previously participating in NGO-led monitoring and for not fulfilling criteria of independence and efficiency.¹⁴¹ Experts familiar with the Croatian context have pointed out that the establishment of the mechanism was a necessary step towards

¹³⁶ "First Semi-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–December 2021", Independent Oversight Mechanism, December 2021, <https://www.cms.hr/system/article_document/doc/764/Final_version_of_the_1st_IBMM_report.pdf>.

¹³⁷ "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", Independent Oversight Mechanism, July 2022, <<https://www.hck.hr/UserDocsImages/dokumenti/Azil,%20migracije,%20trgovanje%20judima/Annual%20report%20of%20the%20Independent%20monitoring%20mechanism%20-%201%20July%202022.pdf?vel=2061078>>.

¹³⁸ Ibid., pp. 3–4.

¹³⁹ Ibid., p. 11. Critics have questioned whether these visits can genuinely be considered as unannounced (see below).

¹⁴⁰ Ibid., pp. 17–19.

¹⁴¹ E.g., the Border Violence Monitoring Network’s Croatian partner Are You Syrious, contributing to regular collection and reporting of testimonies from migrants, or the NGO Centar za mirovne studije (Centre for Peace Studies), which has submitted complaints on several cases.

Schengen accession, yet it was bound to have limited impact due to inbuilt restrictions on its mandate.¹⁴² Several NGOs have raised detailed concerns in writing with the Advisory Board of the mechanism, including on the lack of operational independence, a weak mandate and the failure to conduct timely, thorough and independent investigations.¹⁴³ The Protecting Rights at Borders Initiative (PRAB) has highlighted the mechanism's inability to provide pathways to justice for victims and to record pushback incidents as its main shortcomings.¹⁴⁴ The initiative continued to record pushbacks from Croatia to Bosnia and Herzegovina as of August 2023 and observed that border police increasingly used drones and surveillance cameras to detect and intercept irregularly crossing migrants.¹⁴⁵

As noted in Croatia's submission to the UN Special Rapporteur on the human rights of migrants, the participation of the ombuds institution in the monitoring mechanism would require legal amendments to the laws governing its competences, which are currently not planned by lawmakers.¹⁴⁶ Despite long-standing expertise on human rights of migrants and asylum-seekers, and the holding of the NPM mandate, the institution is therefore unable to contribute to the work of the mechanism. With regards to specific complaints received by the institution, the Ombudswoman has previously noted that she is "usually unable to reach a conclusive opinion as to whether these violations took place due to limitation of means and authority within its legal mandates to assess facts and circumstances thoroughly and based on available information."¹⁴⁷

Fully unannounced visits to the green border area are not permitted due to security reasons and limitations of the agreement.¹⁴⁸ Critics have pointed out that the mechanism is thus unable to factually verify claims and counterclaims on the circumstances in which violent pushbacks and other forms of deterrence are carried out. The mechanism is also unable to verify individual cases of credible allegations of torture and ill-treatment such as those documented by the CPT.¹⁴⁹ In its first annual report, the mechanism's parties did however conclude that the Croatian police's deterrence practices at the external borders were not fully aligned with the Schengen Borders Code.¹⁵⁰ Among its recommendations, the mechanism noted that members of the border and riot police should receive training on behavioral standards in the exercise of border police operations, "to clearly determine the differences between actions that are allowed and those that are not."¹⁵¹ A report for the subsequent period (July 2022 – July 2023) has not been made public at the time of writing.

Lessons learned

Following its initial pilot phase, the Advisory Board has recommended the parties to the agreement to expand and clearly define the mandate of the mechanism, to specify that it should primarily focus on addressing reported human rights concerns within its area of operation, most notably on monitoring and ensuring access to asylum, the prevention of torture and ill-treatment and the absolute respect for the principle of non-refoulement and the prohibition of collective expulsions during border police

¹⁴² Expert interview, 27 September 2023, (anonymized).

¹⁴³ Interview with Ms. Birte Schorpion, Senior EU Policy & Advocacy Coordinator, DRC, 9 October 2023.

¹⁴⁴ "Surprisingly Surprised (Periodic Report May-August 2023)", PRAB, September 2023, p. 14, <<https://pro.drc.ngo/media/zprpb3cq/prab-report-may-to-august-2023--final.pdf>>.

¹⁴⁵ Ibid., p. 5.

¹⁴⁶ Inputs by the Republic of Croatia to the Questionnaire of the Special Rapporteur on the Human Rights of Migrants, 2021, <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/CroatiaSubmission.pdf>>.

¹⁴⁷ "Croatia: National Report on the Situation of Human Rights of Migrants at the Border", Ombudswoman of the Republic of Croatia, August 2021, p. 11, <<http://ennhri.org/wp-content/uploads/2021/08/Croatian-National-Report.pdf>>.

¹⁴⁸ "Annual Report of the Independent Oversight Mechanism", op. cit., p. 24.

¹⁴⁹ "Report to the Croatian Government", CPT, op. cit., pp. 10–18.

¹⁵⁰ "Annual Report of the Independent Oversight Mechanism", op. cit., p. 25.

¹⁵¹ Ibid., p. 50.

operations.¹⁵² It also recommended that a more elaborate methodology is spelled-out and implemented, and that co-operation with external stakeholders is strengthened, including by conducting public calls for a more diverse membership.¹⁵³

When closing her inquiry,¹⁵⁴ the European Ombudsman urged the European Commission “to monitor fully whether the mechanism is indeed independent and effective in ensuring compliance with fundamental rights and EU law.” The Ombudsman also recommended the Commission to require the state authorities “to provide concrete and verifiable information on steps taken to investigate reports of collective expulsions and mistreatment.”¹⁵⁵

Non-governmental organizations supporting migrants and recording incidents have also called on the Ministry of Interior to make the mechanism effective, *inter alia* by granting the monitors access to green border areas and information systems without being escorted and supervised by law enforcement officers.¹⁵⁶ The organizations also urged the mechanism’s implementers to pursue monitoring in currently inaccessible green border areas and to focus on interviewing migrants who allege a violation of their rights, so that incident reports are recorded and allegations can lead to effective investigations.¹⁵⁷

The Greek case

Greek authorities have come under serious criticism for human rights violations at the country’s land and sea borders, another EU external border, which have become more widespread following the enforcement of the March 2016 EU–Turkey statement.¹⁵⁸ The level of concern has prompted the European Commission to issue a communication in September 2020 in which it specified that its co-operation with state authorities would be further expanded and include an independent and credible monitoring mechanism “that will help prevent fundamental rights violations at the borders and ensure that procedures are in place to effectively investigate any allegations of such violations.”¹⁵⁹

According to the plans of the Commission, the monitoring mechanism would have been the model mainstreamed through the subsequent proposal for a new Screening Regulation. Despite the freezing of an emergency budget line, which was the first such step taken by the Commission, Greece has consistently opposed the establishment of the mechanism.¹⁶⁰ In mid-2022, some progress was made on

¹⁵² Cited in “Asylum-Seekers and Irregular Migrants”, Ombudswoman of the Republic of Croatia, op. cit.

¹⁵³ Ibid.

¹⁵⁴ See supra note 116.

¹⁵⁵ “How the European Commission Ensures That the Croatian Authorities Respect Fundamental Rights in the Context of Border Management Operations Financed by EU Funds (Case Summary)”, European Ombudsman, 2022, <<https://www.ombudsman.europa.eu/en/case/en/57811>>.

¹⁵⁶ “The Annual Report of the (Independent) Monitoring Mechanism, as per the Instructions of the Ministry of the Interior”, Centar za mirovne studije (Centre for Peace Studies), 4 July 2022, <<https://www.cms.hr/en/azil-i-integracijske-politike/novo-godisnje-izvjesce-neovisnog-mehanizma-nadzora>>.

¹⁵⁷ “What We do in the Shadows”, PRAB, op. cit., p. 16.

¹⁵⁸ The EU–Turkey statement envisaged that irregular crossings into Greece are prevented and that all migrants “not in need of international protection” are rapidly returned to Turkey. See “EU–Turkey Statement”, European Council, 18 March 2016, <<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement>>. By 2019, the UN Committee against Torture expressed serious concern at consistent reports of “repeated allegations of summary forced returns of asylum seekers and migrants [...] intercepted at sea and at the land border with Turkey in the north-east of the Evros region, with no prior risk assessment of their personal circumstances”. See “Concluding Observations on the Seventh Periodic Report of Greece”, UN Committee against Torture, 9 September 2019, para 16. <<https://www.ohchr.org/en/documents/concluding-observations/catcgrcco7-concluding-observations-seventh-periodic-report-greece>>.

¹⁵⁹ “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum”, European Commission, 29 September 2021, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0590>>.

¹⁶⁰ Jaeger et al., “Feasibility Study”, op. cit., pp. 42–43.

setting up the mechanism by the Ministry of Migration and Asylum, yet the required political decisions to launch the mechanism are yet to be taken.¹⁶¹

As of 2023, the authorities maintain that the National Transparency Authority, designated to investigate and act upon pushback allegations has made the establishment of such a mechanism devoid of purpose and superfluous.¹⁶² However, civil society critics have pointed out that the authority lacked the necessary expertise, that it could not act independently, and that effective and thorough investigations into pushback allegations are yet to be carried out.¹⁶³

Acting on the government's reluctance to establish the monitoring mechanism, the Greek National Commission for Human Rights (GNCHR) and civil society organizations have formed the so-called Recording Mechanism of Incidents of Informal Returns, with the purpose:¹⁶⁴

“[T]o monitor, record and report incidents of informal forced returns of third country nationals from Greece to other countries, through personal interviews with the alleged victims and through a common, transparent, and scientific recording methodology. [The Recording Mechanism] seeks to promote and consolidate respect of the principle of non-refoulement as well as to safeguard guarantees and compliance with legal procedures. Moreover, the aim of the Recording Mechanism is to boost accountability for reported human rights violations alleged to have occurred during informal forced returns of third country nationals from Greece to other countries.”¹⁶⁵

The Recording Mechanism was established through a unanimous vote in the plenary session of the GNCHR in September 2021, acknowledging its relevance to address the reported violations and giving it increased legitimacy.¹⁶⁶ The Recording Mechanism has been established using lessons from the decade-long operation of the Racist Violence Recording Network, also implemented through co-operation of the GNCHR and CSOs. The Recording Mechanism uses a similar methodology but a more detailed recording form that goes into more depth in recording details of incidents. By operating under the umbrella of the NHRI, information collected by NGO participants is brought under an official relationship with the state. As the GNCHR is the independent advisory body to the Greek state on human rights, it acts as a bridge between the State and civil society and facilitates co-operation and dialogue between the two.¹⁶⁷ The European Commission has recognized the Recording Mechanism as a positive development in its most recent report on the rule of law in Greece.¹⁶⁸

¹⁶¹ “What We do in the Shadows”, PRAB, op. cit., p. 16.

¹⁶² See “AIDA Country Report 2022: Greece — Access to the Territory and Push Backs”, Greek Council for Refugees, ECRE, 8 June 2023, <<https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs>>.

¹⁶³ See “Mapping Potential Elements of an Independent Border Monitoring Mechanism in Greece”, International Rescue Committee, 5 April 2022, <<https://www.rescue.org/eu/report/mapping-potential-elements-independent-border-monitoring-mechanism-greece>>.

¹⁶⁴ “Recording Mechanism of Incidents of Informal Returns”, Greek National Commission for Human Rights, undated, <https://nchr.gr/en/recording-mechanism.html>.

¹⁶⁵ “Press Release: Presentation of the Recording Mechanism of Incidents of Informal Forced Returns and Its First Interim Report”, Greek National Commission for Human Rights, 24 January 2023, <<https://nchr.gr/en/news/1544-press-release-presentation-of-the-recording-mechanism-of-incidents-of-informal-forced-returns-and-its-first-interim-report.html>>.

¹⁶⁶ Interview with the Supervisor of the Recording Mechanism, Mr. Ilias Tsampardoukas, 28 September 2023.

¹⁶⁷ Ibid.

¹⁶⁸ “2023 Rule of Law Report, Country Chapter on the Rule of Law Situation in Greece”, European Commission, 5 July 2023, p. 25, <https://commission.europa.eu/system/files/2023-07/21_1_52575_coun_chap_greece_en.pdf>.

By the end of December 2022, the Recording Mechanism has recorded 50 incidents of informal forced returns.¹⁶⁹ It will publish its annual report for 2022 before end of 2023.¹⁷⁰ Additionally, UNHCR in Greece has collected close to 540 reported incidents of informal returns by Greece since 2020¹⁷¹ and provides expertise and technical support to the Recording Mechanism as a co-operating agency.

In September 2023, the Ministry of Migration and Asylum rolled out a Fundamental Rights Complaints Mechanism, which opens a way for direct contact for third country nationals and the submission of complaints on alleged violations of human rights during access to territory, reception or asylum procedures in Greece.¹⁷² Complaints are to be handled by the Ministry's Fundamental Rights Officer. Following a preliminary examination of admissibility, they may be handed over to the National Transparency Authority or to other competent authorities for further action. Complaints can currently be submitted online or in writing in Greek and English languages through a form.¹⁷³

While the Recording Mechanism of Informal Forced Returns cannot make its own submissions through the newly established Complaints Mechanism, member organizations representing victims might make use of this new channel to communicate at their discretion individual cases to authorities.¹⁷⁴ Its efficiency in enhancing accountability for allegations of abuse at Greek borders and in reception remains to be seen.

Way forward

UNHCR in Greece, the UN Office of the High Commissioner for Human Rights' Europe Regional Office and ENNHRI have produced guidance to support the Greek government when discussing the parameters and safeguards for the establishment of an independent national border monitoring mechanism.¹⁷⁵ Keywords from the guidance are included below for reference.

¹⁶⁹ "Presentation of the Recording Mechanism of Incidents of Informal Forced Returns and Its First Interim Report", GNCHR, op. cit.

¹⁷⁰ Interview with Mr. Ilias Tsampardoukas, 28 September 2023.

¹⁷¹ "UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders", op. cit.

¹⁷² "Fundamental Rights Complaints Mechanism", Hellenic Republic Ministry of Migration and Asylum website, September 2023, <<https://migration.gov.gr/en/fro-complaints>>.

¹⁷³ "Complaint Form", Hellenic Republic Ministry of Migration and Asylum website, September 2023, <https://migration.gov.gr/wp-content/uploads/2023/09/Complaint-Form-FRO_English-FINAL-v1-xtd.pdf>.

¹⁷⁴ Interview with Mr. Ilias Tsampardoukas, 28 September 2023.

¹⁷⁵ See also ENNHRI's broader recommendations to EU Member States in relation to the establishment and functioning of monitoring mechanisms at borders, as foreseen in the proposed Screening Regulation: "ENNHRI's Opinion on Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum", March 2021, <<http://ennhri.org/wp-content/uploads/2021/03/ENNHRI-Opinion-on-Independent-Human-Rights-Monitoring-Mechanisms-at-Borders-under-the-EU-Pact-on-Migration-and-Asylum.pdf>>.

III. Ten points to the government

To guide the establishment of an independent and effective national border monitoring mechanism in Greece:

1. Broad thematic mandate.
2. Independence in law and practice.
3. Operational autonomy and authority; impartiality and professional integrity.
4. Coherence and complementarity with other stakeholders.
5. Experience and legal expertise.
6. Sufficient and sustainable funding.
7. Broad powers to act independently and to access sites and information.
8. Transparency and accountability.
9. Ability to directly communicate with investigators.
10. Respect for the mandate of the mechanism by authorities.¹⁷⁶

Additionally, the International Rescue Committee (IRC) commissioned a study to map potential elements of such a monitoring mechanism in Greece, and to assess the ability of various stakeholders engaged in the debate and in human rights reporting more generally, to carry out those activities. The study found that the Office of the Greek Ombudsman, which already is mandated to monitor forced returns, acts as NPM, acts on complaints and conducts investigations into allegations of arbitrariness in law enforcement, and possesses the necessary resources, ought to lead on co-ordinating the operation of such a mechanism.¹⁷⁷ The IRC has further recommended that the government initiates a transparent consultation process involving the Greek Ombudsman institution as well as civil society, in order to design and establish a mechanism that lives up to the criteria of independence and efficiency.¹⁷⁸ In a special report, the Ombudsman reported in June 2023 that the institution receives “an increasing number of complaints filed by third country nationals directly to the Ombudsman for illegal pushbacks conducted at the land and sea borders” and urged the establishment of the mechanism without further delay.¹⁷⁹

¹⁷⁶ "Ten Points to Guide the Establishment of an Independent and Effective National Border Monitoring Mechanism in Greece", UNHCR Greece, OHCHR Europe Regional Office and ENNHRI, 9 September 2021, <https://www.unhcr.org/gr/wp-content/uploads/sites/10/2021/09/10-points_EN.pdf>.

¹⁷⁷ Apostolis Fotiadis, "Mapping Potential Elements of an Independent Border Monitoring Mechanism in Greece", October 2021, pp. 3–4, <<https://www.rescue.org/sites/default/files/2022-04/Greece%20IBMM%20Report%20final.pdf>>.

¹⁷⁸ "Mapping Potential Elements of an Independent Border Monitoring Mechanism in Greece", IRC, op. cit.

¹⁷⁹ "Return of Third Country Nationals — Special Report 2022", Greek Ombudsman, June 2023, pp. 7–8, <<https://www.synigoros.gr/api/files/download/478688>>.

5. The missing link

Civil society participation and transparent, inclusive functioning appear to be key elements of a credible monitoring mechanism and cannot be achieved without political support and leadership. The above case studies show that expertise on border monitoring and methodological know-how have been organically acquired by national human rights institutions and non-governmental organizations as part of their responses to human rights concerns in border areas, and participating States would benefit from transferring this expertise and know-how to the monitoring mechanisms set up at the national levels.

The examples provided by Croatia and Greece show that it can take significant time negotiating, and several iterations of trialing a mechanism which, particularly because of its purpose to investigate the practices of border police authorities, will often face reluctance and outright refusal from government ministries and law enforcement bodies. The onus is therefore on participating States' political decision-makers to provide these processes with the necessary support and capitalize on existing national and international resources and co-operation opportunities. In the context of long-standing concerns as well as newly emerging trends in border management, an OSCE-wide initiative to share knowledge and best practices could additionally be considered.

Connecting with civil society would also require that decision-makers apply a broad lens to who should be allowed to monitor and adopt an inclusive approach to this process. Participation in border police monitoring should be a co-operative endeavor and take into consideration the diversity of perspectives and legal and thematic expertise and ensure that the scope of monitoring encompasses all relevant aspects of border management.

IV. Non-governmental border monitoring networks

The Border Violence Monitoring Network (BVMN) and the Protecting Rights at Borders (PRAB) initiative are good examples of cross-border co-operation between organizations monitoring human rights in border areas.

The Border Violence Monitoring Network is composed of 12 organizations active across Austria, the Western Balkans and Greece. Its members collect individual testimonies from migrants at various locations near borders, where they also provide basic humanitarian help. The network has documented allegations of collective expulsions, torture and ill-treatment, theft and extortion, arbitrary detention and other violations and has published dozens of reports since its founding, including monthly bulletins and several volumes of the Black Book of Pushbacks.¹⁸⁰ Additionally, members of the network co-operate on thematic special reports, legal submissions and policy briefs. Using its ability to perform monitoring across borders, BVMN contributed to substantiating allegations of co-ordinated chain refoulement through multiple countries in the region.¹⁸¹

The PRAB initiative has succeeded in gathering organizations in eight European countries, for the purpose of documenting abuses in a co-ordinated manner and pushing decision-makers to enhance accountability at borders. Members of the initiative advocate for the four key criteria set by NGOs in 2020 following the first publication of the New Pact, to be met by any mechanism developed at European borders regardless of its implementers: scope, independence, accountability, and consequences.¹⁸²

Participating organizations cover mainly the EU external borderlands in Belarus, Bosnia and Herzegovina, Greece, Italy, Lithuania, North Macedonia, Poland and Serbia.

In 2022, PRAB partners recorded pushback incidents involving 5,756 persons.¹⁸³ Beyond individual incidents, the organizations advocate for the human rights violations to be seen and addressed as part of a rule of law crisis whereby states systematically derogate from respecting existing legal obligations and commitments and fail to enforce judicial rulings.

The initiative's five-point advocacy agenda sums up priority areas for urgent intervention by states:

1. Human rights and dignity at all borders for all people,
2. End of systematic use of pushbacks,
3. Effective independent border monitoring mechanisms at all EU borders,
4. Political courage to support a culture of human rights at borders,
5. Safe and legal pathways for a high number of people in need of protection.¹⁸⁴

An inclusive understanding of monitoring would also entail that participating States consider the proactive engagement of actors beyond those already listed, who may not at first sight appear to be key stakeholders but who in fact often possess either a professional background, a critical perspective or experience to contribute to the success of such mechanisms: people with lived experience of (irregular) migration, people living in border communities, child rights professionals, gender experts, women's rights and sexual and reproductive health researchers and advocates, medical professionals, cultural

¹⁸⁰ See e.g., "Monthly Reports", BVMN, <<https://borderviolence.eu/databases/monthly-reports>> and Barker & Zajović, "Black Book of Pushbacks", op. cit.

¹⁸¹ "Migration: Key Fundamental Rights Concerns", FRA, September 2021, p. 10, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-migration-bulletin-2_en.pdf>.

¹⁸² Interview with Ms. Birte Schorpion, 9 October 2023. See also ECRE et al., "Joint Statement: Turning Rhetoric into Reality: New Monitoring Mechanism at European Borders Should Ensure Fundamental Rights and Accountability", 10 November 2020, <<https://ecre.org/turning-rhetoric-into-reality-new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability>>.

¹⁸³ "Beaten, Punished and Pushed Back", PRAB, op. cit., p. 2.

¹⁸⁴ Ibid., pp. 22–23.

mediators and interpreters, humanitarian and social workers, members of religious organizations and journalists. The list need not be a closed one.

What's more, if properly resourced and truly transparent, such mechanisms would contribute to improving the overall human rights record of states and provide transferable knowledge to other areas where co-operation between law enforcement and civil society may sometimes be difficult. As pointed out by the PRAB initiative and others, human rights crises at borders can become rule of law crises, and conversely, greater respect for rights at borders in practice impacts on the broader society, including border communities, law enforcement and other practitioners.

6. Conclusion

Border policing is a challenging balancing act between state security and individual rights and freedoms. Migrants in South-Eastern Europe often travel irregularly and with the help of criminal smuggling networks due to the lack of safe and legal options to enter EU territory, the result of long-standing stalemate on solidarity and responsibility-sharing. This is the political reality in many parts of the broader OSCE region as well.

Border management is aligned with political priorities. Preventing irregular migration into the EU is a priority for the bloc; beyond the effects on EU Member States, neighboring and accession countries, as well as those benefiting from development assistance are also affected. Externalization efforts affect participating States in South-Eastern Europe regardless of on which side of the EU external border they find themselves. Human rights violations continue to take place at all those borders and are widespread and systematic in some cases.

Independent border police monitoring protects migrants whose human rights are at risk and contributes to preventing new violations. Three years after the publication of the proposal for an EU-wide New Pact on Migration and Asylum and a year on from the EU Action Plan on the Western Balkans, monitoring mechanisms continue to be sporadic and inefficient. Existing mechanisms either lack the independent mandate, the adequate scope or the necessary resources to fully carry out their work. Consequently, the impact on accountability of police is limited and access to justice for human rights violations at borders is extremely rare. Many border areas remain in the shadow. The human rights implications of the use of technologies applied for surveillance and deterrence are not systematically monitored. Returns are carried out for most part without the application of individualized safeguards prescribed in international law.

The increased transnational co-operation on border security and border management, including with the involvement of Frontex across the region can be seen as an opportunity to invest in and enhance accountability. Both in the short and in the long term, participating States benefit from abandoning policing strategies that carry greater risks for human rights violations, and from using available funding, technology and know-how to create rights-respecting border infrastructures. Adopting an age, gender and diversity-responsive approach to border management is crucial in recognizing and addressing the needs of migrants, in particular those in a situation of vulnerability. Monitors should think beyond current restrictions on mandates, aim to achieve free and full access to locations, people and data, and strive to make comprehensive observations and recommendations.

This report shows that there is a wealth of knowledge and monitoring experience on the side of international organizations, NHRIs and NGOs, and that they stand ready to contribute to the success of independent border police monitoring mechanisms. The onus is on participating States to provide the necessary political support and leadership to work on the development of such mechanisms through a transparent and genuinely inclusive process. This is the missing link that currently impedes these processes from really taking off, as shown by the case studies on Croatia and Greece.

Participating States in South-Eastern Europe, in particular those advancing on the EU accession path can make use of the current wealth of co-operation opportunities aiming at better border management regionally and include independent and efficient human rights monitoring as one building block towards achieving it. The institutions and agencies of the European Union, on their part should insist on and support human rights-compliant border management in the candidate countries, together with adequate reception capacities and efficient asylum procedures, including by ensuring meaningful access to territory for persons in need of international protection. Even in times of crises, migration and border management cannot contradict the rule of law and human rights values on which the EU is founded.

7. Recommendations

ODIHR's recommendations to participating States in South-Eastern Europe:

- Commit to respect, protect, and fulfil human rights at borders.
- Initiate the development of independent border monitoring mechanisms without delay and ensure the political support needed for their success.
- Ensure that law enforcement agencies, state institutions, NHRIs and civil society share ownership of the development process, and that authoritative international guidance and best practice are considered and transposed in national monitoring mechanisms.
- Ensure the functional independence and efficiency of monitoring mechanisms, including by adequately resourcing them and by providing an enabling environment for co-operation, including across borders.
- Make monitoring mechanisms transparent and accessible to migrants and to the public, including through ensuring the participation of a diverse pool of monitors and periodically consulting with relevant stakeholders for evaluation and learning.
- Acknowledge the results of monitoring. Make reports and recommendations public and act on them within reasonable timeframes.
- Request and make use of existing opportunities for capacity building provided by international organizations and promote co-operation transnationally, regionally and internationally. Strive to mainstream good practices across the OSCE region.

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