

## ENNHRI's Opinion on Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum

---

**ENNHRI presents 10 recommendations in relation to the establishment and functioning of monitoring mechanisms at borders. We call for monitoring mechanisms to be truly independent, adequately resourced and have appropriate expertise and powers. Their monitoring should lead to human rights accountability at borders and be considered alongside other EU policies. National Human Rights Institutions (NHRIs) should be consulted and considered when establishing such mechanisms.**

Among the initiatives under the European Union (EU) Pact on Migration and Asylum, the European Commission proposes the establishment of human rights monitoring mechanisms at borders by each EU Member State in its [legislative proposal](#) for a new Screening Regulation.

The introduction of a pre-entry screening applicable to all third-country nationals who cross the external border without authorisation is one of the main features of the EU's proposed approach to border management. The screening would serve to carry out preliminary identification, health and security checks, fingerprinting and registration in the relevant databases of people concerned. According to the proposal, the monitoring mechanisms will provide an additional safeguard during the pre-entry screening, ensuring that it is carried out in compliance with fundamental rights, the principle of non-refoulement, and applicable national rules on immigration detention.

In order to ensure that the mechanisms will lead to a better promotion and protection of the rights of migrants, a concerted effort is needed to guarantee the mechanism's independence, effectiveness and place in the broader human rights architecture at the national, regional and international levels.

NHRIs have a [special standing](#) as State institutions, but independent of government, with a constitutional or legal mandate to promote and protect all human rights, [including of migrants](#). The European Parliament has recently adopted two resolutions where it [acknowledged](#) that NHRIs play a key role in monitoring human rights in forced returns of migrants and [recommended](#) that NHRIs, alongside other human rights defenders, should be a part of the independent monitoring mechanism to be established at borders. The voice of NHRIs should be heard by EU co-legislators, national authorities and other actors considering the legislative proposals.

Human rights monitoring should be an essential part of European and national approaches to borders, migration and asylum. However, establishing a monitoring mechanism alone is not sufficient to achieve a human rights-compliant migration policy. The starting point should always be that authorities must respect human rights at borders, regardless of an individual's migration status.

Therefore, while the European Commission's call for monitoring mechanisms to be established at borders is welcomed, it does not alleviate human rights concerns arising from other elements under the EU Pact's proposal, such as the risk of making border procedures the norm and the widespread use of immigration detention.

ENNHRI believes that the negotiations under the EU Pact on Asylum and Migration bring opportunities to achieve a human rights-compliant migration and asylum policy and legislation in Europe. For this purpose, ENNHRI encourages the co-legislators to reinforce human rights standards throughout the different proposals, and to strengthen the provisions with regards to independent human rights monitoring at borders.

## 10 Recommendations for effective and independent human rights monitoring at borders

Europe needs more transparent, accountable and human rights-compliant governance at its borders. NHRIs, alongside other human rights defenders, are already playing a crucial role in independently monitoring Europe's borders, and their work should be reinforced. NHRIs should be consulted and considered when establishing such mechanisms.

Building on the experience of European NHRIs, ENNHRI presents 10 recommendations in relation to the establishment and functioning of monitoring mechanisms at borders.

1. National monitoring mechanisms must be independent.
2. Mechanisms should have a broad scope to monitor human rights at borders.
3. Mechanisms should be given strong powers to carry out their mandate.
4. NHRIs should be consulted and their mandate respected when establishing and implementing the monitoring mechanism.
5. Mechanisms should be adequately resourced and possess the necessary skills and expertise.
6. Mechanisms should be accessible and transparent.
7. Mechanisms need an enabling space for their effective and independent functioning.
8. Monitoring should lead to better protection and human rights accountability.
9. Mechanisms should be considered alongside other EU policies.
10. Cooperation among monitoring bodies is essential, including from non-EU countries.

## 1. National monitoring mechanisms must be independent.

According to the proposal, “Member States shall put in place adequate safeguards to guarantee the independence of the mechanism”. While respecting the principle of subsidiarity, co-legislators should ensure that the provisions would lead EU Member States to designate and maintain truly independent monitoring mechanisms at borders. Otherwise, the credibility and effectiveness of the mechanisms will be at risk.

The mechanism’s independence should be regularly assessed by the European Commission, in cooperation with other relevant bodies. EU Member States and the European Commission can seek inspiration from the experience of NHRIs, who are subject to [international standards](#) and an accreditation process to periodically assess their independence and effectiveness. This assessment must also form part of the European Commission’s broader work in monitoring EU Member States’ compliance with the asylum, border and returns *acquis*.

Lessons can also be drawn from the example of the “forced return monitoring systems” under Article 8 (6) of the EU Return Directive. Under this provision, EU Member States shall provide for an effective forced-return monitoring system. However, the EU Fundamental Rights Agency (FRA) has repeatedly [identified](#) that, in practice, the monitoring systems in many EU Member States are ineffective or not sufficiently independent.

Due to the politically sensitive nature of migration and border policies, the independence of the mechanisms, both in its formal setting and its functioning, will be a pre-condition for their effectiveness in monitoring, tackling, and preventing human rights violations at borders.

## 2. Mechanisms should have a broad scope to monitor human rights at borders.

Under the proposal, the mechanism shall ensure, during the screening process, broad compliance with human rights law and with national rules on detention, as well as ensuring that allegations of violations are dealt with appropriately. Therefore, the current text limits the scope of the monitoring mechanisms to the screening process.

It is paramount that the text is amended to expand the scope of the monitoring mechanism to actions and inactions in the wider context of border governance, such as those outside official procedures, border crossings and facilities. The monitoring should encompass all human rights violations by national authorities at borders, particularly in situations that often go unreported, such as pushbacks and violence at the borders. Strict geographical or procedural limitations to the scope of the mechanism would severely impact its effectiveness and credibility. As a result, human rights violations would continue to occur at the borders without any accountability.

NHRIs already have a broad human rights mandate, vesting them with powers to promote and protect migrants' rights at borders. Therefore, while the present proposal could reinforce NHRIs' work at borders should they be granted this additional mandate, it is important to stress that the the creation or designation of monitoring mechanisms at borders should not negatively impact on the broad existing mandates of NHRIs and their compliance with the [UN Paris Principles](#).

The scope of the mechanism should be clearly defined from its establishment, without prejudice to its ability to carry out its mandate effectively. The interrelations with the work of other human rights bodies, such as NHRIs, Ombuds institutions and National Preventive Mechanism (NPMs), must be clarified in order to avoid protection gaps and ensure the mechanism contributes to a stronger national human rights framework.

### **3. Mechanisms should be given strong powers to carry out their mandate.**

The proposal is silent as to the powers the independent monitoring mechanism must have. ENNHRI believes this gap must be filled by the co-legislators in order to guarantee the mechanism's effectiveness and avoid wide discrepancies across the EU.

Monitoring mechanisms must have unhindered access to documents, information, facilities, border areas and any place where victims of human rights violations may be found. This should be accompanied by an obligation of national authorities to cooperate with and respect the mandate of the monitoring mechanism.

When detailing this provision, the co-legislators should reflect on the experience of NHRIs when carrying out their broad human rights mandate at borders. For example, despite the legal provisions that provide NHRIs with strong powers, national authorities in some countries have refused to provide access to documents or facilities to NHRIs. Therefore, it is important that the essential functions and powers of the mechanism are explicitly and clearly set out, and that consequences for non-compliance by national authorities are established.

The proposal foresees a role for national mechanisms that is predominantly focused on monitoring during the screening phase. However, the work of the mechanism should be considered alongside the activities of other national authorities, civil society organisations, and human rights bodies that work to both promote and protect human rights at the national and regional levels.

#### **4. NHRIs should be consulted and their mandate respected when establishing and implementing the monitoring mechanism.**

The legislative proposal is not prescriptive about the exact composition of the monitoring mechanism, leaving it in the hands of EU Member States with the possibility of seeking support from the EU's Fundamental Rights Agency (FRA). According to the proposal, "Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring".

ENNHRI has [called](#) on the EU and its Member States to strengthen existing organisations carrying out human rights monitoring at borders, such as NHRIs, instead of creating new bodies. We believe this principle must be further reflected in the adopted text.

National authorities must rely on the input from those with experience and expertise of conducting human rights monitoring when creating or designating the independent mechanism under the proposed legislation. NHRIs, Ombuds institutions, National Preventive Mechanisms, and civil society organisations with human rights monitoring experience must be consulted at an early stage and have a genuine opportunity to consider their possible role as the designated mechanism, part of it, or a close partner.

The establishment of monitoring mechanisms must allow for proper consideration of a state's human rights infrastructure and legal framework, and for better consistency with existing monitoring and supervisory bodies, including in the field of human rights. The implementation of this provision must not impact negatively on the existing mandate and work of NHRIs.

The monitoring mechanism should develop, formalise and maintain working relationships, as appropriate, with other national and international organisations established for the promotion and protection of human rights, particularly NHRIs.

#### **5. Mechanisms should be adequately resourced and possess the necessary skills and expertise.**

Monitoring mechanisms must receive sufficient funding and have adequate resources for implementing their activities. This includes having necessary qualified personnel and any other human or material resources.

If NHRIs are granted this additional mandate, this must be accompanied by a corresponding increase in their funding and must not undermine other work of the NHRI. This is also the [opinion](#) of the EU's Agency for Fundamental Rights and of [GANHRI's Sub-Committee on Accreditation](#).

The European Commission must support the independent and effective functioning of the mechanisms, for instance by encouraging EU Member States to provide them with adequate resources or through direct funding, such as under the Integrated Border Management Fund (IBMF). In particular, national monitoring mechanisms acting at the EU's external borders should receive robust funding and resources in order to be effective.

When granting or allocating resources to the mechanism, the EU and its Member States must respect the mechanism's independence. The mechanism must have the power to allocate funding according to its priorities, within the scope of its human rights monitoring work at borders.

As stated by the EU's Fundamental Rights Agency in its recent [report on NHRIs](#), "the capacity of NHRIs and ENNHRI to engage effectively [with the EU] must also be ensured by providing sufficient human and financial resources". We encourage the European Commission to consider this recommendation when supporting the establishment and functioning of the national monitoring mechanisms at borders.

It is welcomed that the proposal entrusts the EU Fundamental Rights Agency to provide general guidance for Member States on the setting up and functioning of the mechanisms. However, we believe that the text can be stronger in ensuring continued support for building the capacity and expertise of national mechanisms.

## **6. Mechanisms should be accessible and transparent.**

The mechanism should benefit from regular exchanges with civil society organisations and other human rights defenders on topics of common concern. Its work should be submitted to public scrutiny through clear, periodical reporting requirements. While the mechanisms should observe the principles of transparency and accessibility, this should not be in detriment to their independence.

The mechanism should be able to receive, consider, and where appropriate, follow-up on credible information collected by other relevant actors, such as international and non-governmental organizations, journalists, EU agencies and institutions, even if they are not formally part of the mechanism.

To ensure transparency, the mechanism must ensure that its findings, recommendations, steps taken to address violations, as well as information about its composition, powers and funding are publicly available. Annual and periodic reports can also serve to increase transparency nationally, may contribute to the assessment of compliance with the national and international law, and inform decisions on possible need for financial and technical assistance by relevant actors. Easily

accessible information also allows for the identification of best practices or common issues across the region.

## **7. Mechanisms need an enabling space for their effective and independent functioning.**

EU Member States must ensure that monitoring mechanisms have an enabling space for their independent and effective functioning. All relevant authorities, including national border guards and the police, as well as EU authorities operating at the borders, must respect the mandate and work constructively with the mechanism. The obligation to cooperate with the mechanism must be clearly defined, as well as safeguards and consequences for when national authorities obstruct or do not cooperate with the mechanism.

The mechanism should not face threats, intimidation or reprisals from public authorities and, where necessary, should be able to seek protection from threats or aggression from groups or individuals. The personnel working for the mechanism should be equally protected. They should never face legal charges for activities carried out in good faith and within the scope of their work.

The European Commission and the European Parliament must support monitoring mechanisms when they face threats or substantial challenges, making use of all applicable political, financial and legal options, where appropriate.

The Council of the European Union [stressed](#) in a Resolution “the necessity of safeguarding an enabling environment for independent national human rights institutions, Equality Bodies and other human rights mechanisms”. Similarly, the Committee of Ministers of the Council of Europe [recommended](#) that states should ensure a conducive political and public environment for human rights defenders, including civil society organisations, NHRIs and other bodies.

ENNHRI [provides support](#) to its members when they come under threat or face major obstacles to carry out their work in compliance with the UN Paris Principles.

## **8. Monitoring should lead to better protection and human rights accountability.**

Human rights monitoring is not an end in itself. In order to guarantee that the mechanism can reach its objective of better respect of migrants’ human rights at borders, the mechanism must be part of the wider system for human rights accountability at the national, regional, and international levels.

The mechanism should contribute to ensuring access to justice for victims of human rights violations. At the national level, the mechanism must be able to easily refer information and, where appropriate, input to any process to seek that violations are accounted for or redressed,

such as internal disciplinary inquiries or judicial investigations. For this purpose, they should work cooperatively with other national authorities, such as NHRIs, Ombudsman institutions or prosecutors.

In addition, the mechanism shall propose recommendations to relevant authorities based on its findings, which should be publicly available. The mechanisms must have facilitated access to border authorities, ministries, and national parliaments, who should duly consider the mechanism's findings and recommendations. The relevant authorities should implement the recommendations of the mechanism or inform in writing why they cannot or will not do so.

NHRIs and NPMs can offer [good practices and lessons learned](#) about ways to utilise their functions - ranging from monitoring and investigating to reporting and advising – in a complementary manner to establish connections between monitoring and accountability.

The mechanism must contribute to an environment at borders where people are able to have their voice heard, exercise their rights, and hold national authorities accountable.

## **9. Mechanisms should be considered alongside other policies and initiatives at the regional and international levels.**

The EU should consider the role and placement of monitoring mechanisms alongside its other initiatives in the field of border management, asylum and migration and fundamental rights. Human rights monitoring and accountability at borders must also be considered as an element of the respect for the rule of law.

The mechanisms must enjoy close cooperation with EU institutions and their reports must be part of the assessment of an EU Member States' broader compliance with the EU asylum, border and returns *acquis* and the EU Charter for Fundamental Rights. The European Commission should build on the information and work done by the national mechanisms not only to assess compliance with EU law but also when developing future policy and legislation.

Where relevant, the activities and findings of the mechanism should feed into the Schengen Evaluation and Monitoring Mechanism to ensure that border management is carried out in compliance with human rights.

If grave and systematic human rights violations continue to happen at EU borders, without subsequent investigation and redress, this must be identified as a challenge to the respect for the rule of law. This relation must be considered by EU institutions in their continued efforts to support the respect for the rule of law throughout the EU.

Human rights monitoring at borders must also be part of the wider EU's Strategy on the Charter for Fundamental Rights, for instance when it comes to ensuring the realisation to the right to asylum. Internal and external EU borders should not be places where fundamental rights violations occur. The EU should consider how it can build the national monitoring mechanism's capacity to monitor respect for the EU Charter at borders. As [recognised](#) in the European Commission's Charter Strategy, ENNHRI and NHRIs have a key role to play with regards to ensuring the application of the EU Charter at the national level.

When establishing and cooperating with the monitoring mechanisms, EU institutions and EU Member States must build on the growing recognition of NHRIs at the regional level. For instance, in its first Rule of Law report, the European Commission [identified NHRIs as important actors](#) of a Member States' system of checks and balances. The European Parliament [acknowledged](#) NHRIs' role in investigating and preventing pushbacks and violations at borders, and the EU Fundamental Rights Agency have [published strong recommendations](#) for more engagement of NHRIs at the EU level.

If NHRIs are designated or involved in the monitoring mechanisms, the EU should build on its growing cooperation with ENNHRI to obtain a regional perspective on NHRI's findings and monitoring expertise.

The monitoring mechanism should seek to engage with other human rights frameworks at the regional (for instance, the Council of Europe) and international (such as under the UN human rights system) levels.

## **10. Cooperation among monitoring bodies is essential, including from non-EU countries.**

When a mechanism is monitoring human rights at borders, it is often the case that individuals whose rights were violated or who may have relevant information regarding the actions of national authorities at borders will no longer be in the territory or jurisdiction of that EU Member State. This is the case, for instance, where pushbacks or collective expulsions occur. Therefore, cooperation among human rights monitors, including in States outside of the EU, will be fundamental for the effective exercise of the mechanisms' activities.

The EU should support and cooperate with independent human rights bodies, such as NHRIs, in the EU's neighbouring countries, so they can also effectively monitor human rights at borders. It is only by ensuring human rights-based cooperation on both sides at the borders that violations can be monitored, tackled and prevented.

ENNHRI has acted as a platform for over 40 NHRIs in wider Europe for peer exchange, sharing of good practices, capacity building and joint advocacy, including in the field of migration. With the

appropriate resources, ENNHRI can contribute to the exchange of information and to strengthen the work of NHRIs monitoring human rights at borders, within the EU and wider Europe.

*Supported in part by a grant from the Foundation Open Society Institute  
in cooperation with the OSIFE of the Open Society Foundation*

