

1ST HALF-YEAR REPORT

**OF THE INDEPENDENT MECHANISM FOR MONITORING
THE CONDUCT OF POLICE OFFICERS OF THE MINISTRY OF THE
INTERIOR IN THE FIELD OF IRREGULAR MIGRATION AND
INTERNATIONAL PROTECTION**

June - December 2021

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1. INTRODUCTION

The independent mechanism for monitoring the conduct of police officers of the Ministry of the Interior in the field of irregular migration and international protection (hereinafter: the Mechanism) was established by the Agreement of 8 June 2021 (hereinafter: the Agreement) signed by the Ministry of the Interior of the Republic of Croatia (hereinafter: Mol) on the one hand and the Croatian Academy of Medical Sciences (hereinafter: AMZH), the Croatian Academy of Legal Sciences (hereinafter: APZH), Centre for Cultural Dialogue (hereinafter: CKD), the Croatian Red Cross (hereinafter: HCK) and Professor Iris Goldner Lang on the other hand. The Agreement defines the purpose and key concepts, implementing partners, types of activities (see Chapter 2), places of their implementation, the structure of the Mechanism and its financing. The term of application of the Agreement is one year (with the possibility of extension). Within that time, the Mechanism will conduct 20 monitoring sessions (announced and unannounced) to observe police conduct. The Mechanism consists of a Coordination Committee (5 members, one per each organisation AMZH, APZH, CKD and HCK, and Professor Iris Goldner Lang), which, independently of the Mol (whose officials are not present at the Committee's meetings), decides on the implementation of activities, and direct implementing partners (8 members, 2 members each on behalf of AMZH, APZH, CKD and HCK) who, following the decision of the Coordination Committee, carry out monitoring sessions in the field (police stations, border crossing points, green border, reception centres for foreigners, etc.).

The Head of the Coordination Committee is Professor Davor Derenčinović (APZH) and the members are Krunoslav Capak, M.D. (AMZH), Nermin Botonjić (CKD), Josip Jelić, M.D. (HCK) and Professor Iris Goldner Lang. The direct implementing partners are Professor Nadan Rustemović, M.D. and Professor Mario Starešinić, M.D. (AMZH), Professor Davorin Lapaš and Professor Damir Primorac (APZH), Samir Ilijazi, LL.M. and Admir Muhić (CKD), Robert Markt and Branislav Tomić (HCK). In accordance with the Agreement, the logistical and administrative support for the operation of the Mechanism is provided by the Mol, who has appointed a liaison officer to ensure a smooth and timely exchange of information and the implementation of other tasks enabling the Mechanism to carry out the monitoring and other activities.

The broader domestic and European socio-political, geopolitical, geostrategic, security, human rights, but also media context¹ in which the process of designing and establishing the Mechanism has taken place is extremely important, especially in the context of hasty/premature and unfounded criticism by certain civil society organisations on the account of its creation, the expertise of its members and the independence of its operations.² However, in this context it is even more important to stress that there is no comparable *specialised* mechanism for (civil) monitoring of police conduct in the field of irregular migration in operation anywhere else in Europe, although the New Pact on Migration and Asylum provides for the establishment of such mechanisms in all Member States of the European Union (hereinafter: EU).³ In this sense, there are no European models according to which the Mechanism could have been established, and consequently no guidelines and/or best practices have been developed which could guide the Mechanism in its activities. However, there are European models and expert studies on the best practice for *general* mechanisms for (civil) monitoring of police conduct, based on which the Mechanism was designed and soon after its establishment put into operation.⁴

Precisely due to the above-mentioned criticisms and possible doubts about the independence and functionality of the Mechanism, the key concepts relevant for understanding its

functioning are briefly explained below, along with the key principles of its operation, which fully meet all the key principles of operation of a police oversight body listed in the so-called Police Oversight Principles⁵ insofar as they are relevant to the tasks, competences and powers of the Mechanism (see in more detail the note in Table 1).⁶

Police Oversight Body: An organisation with a defined statutory responsibility for oversight of aspects of policing. There is no standard form for any such organisation but it should have the necessary independence to carry out its duties and should aspire to have the characteristics described in the principles.⁷

The above-mentioned definition of a police oversight body contains three key elements. (1) First, it is an organisation with a defined statutory **responsibility for oversight of aspects of policing** (e.g., the conduct of police officers of the MoI in the field of irregular migration and international protection). (2) Second, there is no standardised organisational form of such an oversight body - **the independence of its operation is crucial**. (3) Third, such an organisation **must aspire to achieve the following principles**, although it does not necessarily have to achieve them all and to their fullest extent.

Table 1: Key principles of operation of a police oversight body

Key principles: Operation of a police oversight body ⁸		IMM	Agreement
1.	The body should be sufficiently separated from the hierarchy of the police that are subject to its remit.	✓	Art. 8
2.	It should be governed and controlled by persons who are not current serving police officers.	✓	Art. 8
3.	It should in general have the power and competence to, at its own discretion, address the general public and the media about aspects of its work.	✓	Art. 8 IMM practice
4.	To perform its functions effectively it should be provided with adequate finance and resources, and should be funded by the state.	✓*	Art. 9
5.	Its mandate shall be clearly set out in a constitutional, legislative or other formal text, specifying its composition, its powers and its sphere of competence.	✓	Agreement
6.	Its investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations, in particular the power to obtain all the information necessary to conduct an effective investigation.	✓**	Art. 3(3), Art. 4, Art. 5, Art. 6 and Art. 7.
7.	Police oversight bodies and the police should proactively ensure that members of the general public are made aware of the role and functioning of the oversight body, and their right to make a complaint.	✓***	IMM practice
8.	The police oversight body shall have adequate powers to carry out its functions and where necessary should have the powers to investigate, to require an investigation or to supervise or monitor the investigation of:	✓	
i.	serious incidents resulting from the actions of police officers;	✓	Art. 3(3), Art. 4, Art. 5, Art. 6 and Art. 7.
ii.	the use of lethal force by police officers or law enforcement officials and deaths in custody;	✓	
iii.	allegations that police officers or law enforcement officials have used torture or cruel, inhuman or degrading treatment or punishment; or	✓	
iv.	allegations or complaints about the misconduct of police officers or law enforcement officials.	✓	

Note: *The Mechanism is adequately funded and has adequate resources, with the condition of state funding met to the extent that although the Mechanism is financed by EU funds, they are managed indirectly by the MoI, which would therefore be indirect state funding; **Within the limits of its statutory task and remit, the Mechanism is equipped with precisely those powers which enable it to carry out impartial, independent and effective oversight. It is important to bear in mind that the Mechanism is neither a “complaint” nor an “internal affairs” oversight body, given that such bodies already exist in Croatia (the State Attorney’s Office, the Ombudsperson, Internal Control of the Ministry of the Interior);***The Mechanism fulfils the above-mentioned condition, while it should be stressed again that it is neither a “complaint” nor an “internal affairs” oversight body.

Bearing in mind that the key principles of operation outlined above refer to *general* police oversight mechanisms (primarily “complaint” and “internal affairs” oversight bodies), it is necessary to evaluate those, but also other key principles governing the Mechanism⁹ in the light of:

- a) the lack of comparable mechanisms;
- b) the *specificity* of the purpose and objective of a *civil* monitoring mechanism *in the field of irregular migration* (which are neither “complaint” nor “internal affairs” purposes/objectives) and
- c) the remit and powers of *existing state and civil police oversight mechanisms in Croatia*.

In that regard, the requirement for a “full range of police powers” should be linked to the “adequate powers to carry out its functions” and it is necessary to evaluate the achievement of both key principles of operation of the Mechanism as a *civil* oversight mechanism in the *specific field* of irregular migration and as one of the actors in the entire *general* police oversight system in Croatia, whose remit and powers are not competing against, but are complementary to the remit and powers of other bodies (Ministry of the Interior, State Attorney’s Office, Office of the Ombudsperson, etc.). The Mechanism is therefore a body of limited remit, whereby the remit of other actors in the general police oversight system condition the very remit of the Mechanism. The Mechanism’s work focuses on the on-the-spot and administrative operation, which combines the analysis of primary and secondary data sources (see Chapter 2 below).

The Mechanism is not a static and one-off or final response to all the challenges of civil police oversight in the field of irregular migration in Croatia. Its establishment marks the beginning of an impartial, independent and expert dialogue with the MoI, which is pursued not with the sole aim of detecting and prosecuting individual unlawful conduct of police officers, but with the purpose of identifying normative, institutional, systemic, operational, technical and, ultimately, human factors contributing to or even causing such unlawful conduct. It is clear that such a dialogue must be conducted in a dynamic and adaptable way and have a long-term potential, which also provides an opportunity to evaluate the proposed and implemented measures and to correct them in a timely manner (evidence-based policy). In this respect, the Mechanism exercises its mandate in accordance with the Agreement and positive regulations of the Republic of Croatia and is guided by the vision of a direct, impartial, independent and expert dialogue with the MoI. This dialogue indirectly involves a wide range of stakeholders through the Advisory Committee, but also the public from which the Mechanism draws some insights and to which it communicates the findings of its work in a transparent manner.

2. MECHANISM'S MONITORING ACTIVITIES

The Mechanism's monitoring activities, along with the manner and place of their implementation, are defined in the Agreement. The activities of the Mechanism are carried out at the border with Bosnia and Herzegovina, Montenegro and Serbia (border police stations) and in reception centres for foreigners. They include monitoring the conduct of police officers towards migrants and applicants for international protection in the implementation of the regulations governing border control and the provision of international protection, inspecting case files concluded with the force of *res judicata* pursuant to filed complaints about alleged unlawful conduct towards irregular migrants and applicants for international protection, and examining the activities and reports of the General Police Directorate regarding alleged unlawful conduct towards these categories of persons. The Mechanism also carries out its monitoring activities at the green border. Although the Agreement defines these visits as "announced", in practice the Mechanism, with the consent of the Mol, also carried out unannounced monitoring sessions at the green border (see item 2.1 below).

The working methodology of the Mechanism is based on two different sets of actions (analysis of primary and analysis of secondary data sources) and, depending on the type and sources of data, the type of conduct, the specificities of individual activities, and the observed phenomena, it uses the following methods: in vivo observation, semi-structured interview, normative analysis, statistical analysis and case study. The sets of actions of the Mechanism include:

- 2.1. implementation-based analysis of primary data sources:
 - 2.1.a. monitoring sessions (announced and unannounced) and
 - 2.1.b. interviews with persons (irregular migrants, police officers, other persons who have immediate knowledge of possible unlawful conduct by police officers)
- 2.2. analysis of secondary data sources (case files and complaints, statistics, normative framework, rules and practices of police conduct, etc.)

When sampling cases/monitoring sessions/files/complaints, the Mechanism's key selection criteria are the vulnerability of the person/group, urgency of action, the scale/severity of potential unlawful conduct and the geographically balanced distribution in correlation with the incidence and prevalence of irregular migration.

2.1. Analysis of primary data sources

The core activity of the Mechanism in relation to the analysis of primary data sources is realised through sessions for monitoring police conduct (hereinafter: monitoring sessions). Pursuant to the Agreement, the direct implementing partners shall carry out a total of 20 monitoring sessions in the period of one year. Monitoring sessions are carried out on the basis of the provisions of the Agreement, the Protocol of Procedure (internal document) and ad hoc agreed guidelines. For the purposes of monitoring, an individual report template has been drawn up, to be submitted by direct implementing partners as soon as possible after the conducted session to the Head of the Coordination Committee and to its members.

The Coordination Committee takes the decision on conducting a monitoring session based on statistical reports which a Mol representative submits to the Mechanism on a monthly basis. These reports contain information on all irregular migrants and applicants for international

protection according to police departments and border police stations (hereinafter: BPS). In addition to statistical reports, the Coordination Committee also takes decisions on the basis of other available sources of information. For example, two monitoring sessions were carried out on the basis of media reports on the conduct of police officers towards irregular migrants. Both monitoring sessions were conducted in BPS Cetingrad. The first monitoring session was also conducted in Porin Reception Centre, and the second (unannounced) session was conducted as soon as possible by visiting the site and locations where unlawful conduct by police officers towards irregular migrants was determined and documented in a feature by RTL television broadcast on 6 October 2021. In this case, in addition to the on-site visit, an urgent meeting was held at the General Police Directorate with the Head of the Border Administration Zoran Ničen. The swiftness and appropriateness of the Mechanism's reaction is also confirmed by the fact that these activities were carried out even before the MoI confirmed that the persons on the footage were officers of the tactical police force, against whom disciplinary proceedings have been initiated and who have been suspended from duty. The importance of the Mechanism's timely reaction was confirmed for the media by both the highest officials of the MoI and the European Commissioner for Home Affairs Ylva Johansson.¹⁰

In addition to the above-mentioned sources of information on which the Mechanism bases its actions, the representative of the MoI informs the Head of the Coordination Committee in real time about irregular migrants caught and brought to the competent BPS and about the conducted procedure. The Head forwards this information without delay to the members of the Coordination Committee and a decision on whether to conduct a monitoring session is taken based on held consultations. One of the monitoring sessions was conducted expeditiously (**within a few hours after receiving the information an on-site monitoring report was submitted**) in BPS Slavonski Brod and the following day in Porin Reception Centre.

During the monitoring sessions, the direct implementing partners determine whether the fundamental human rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms as well as the Convention and Protocol Relating to the Status of Refugees, which is central to the international protection of refugees and is based on Article 14 of the Universal Declaration of Human Rights, have been respected in relation to irregular migrants and applicants for international protection. During the monitoring of police officers, it is determined whether they acted in accordance with the Police Affairs and Powers Act and the Foreigners Act. Having due regard to the purpose of Article 4 of the Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which is to prevent states from expelling aliens before individually examining their personal circumstances and whether they had the opportunity to seek asylum, and to allow them to put forward their arguments against expulsion, the competent police officers were questioned on how irregular migrants were treated at the time they were found on the territory of the Republic of Croatia. Consequently, during the monitoring session it is determined whether the migrants were enabled to apply for asylum or international protection, whether they were guaranteed the right to an interpreter, whether they were provided with the possibility to use forms in their language to express their intention to seek international protection, whether they were guaranteed the right to free legal aid and the right to medical assistance (in particular for vulnerable groups). Monitoring sessions also include the inspection of premises where migrants are detained, inspection of vehicles transporting them, and visits at the green border, while in police stations case files are inspected as well as forms on which international protection is sought and lists of persons providing free legal aid.

Upon arrival at the monitoring site, direct implementing partners equipped with official accreditations and conspicuous vests present and identify themselves at the registration desk of the respective border police station of the MoI. They then interview the authorised persons in the BPS, inspect files of individual cases, check accommodation capacities and carry out on-site visits to the border area. In case there are persons in the BPS who were caught attempting to enter Croatia illegally, the direct implementing partners interview them with the help of an interpreter. Police officers are questioned in detail about the rules of procedure in situations when they find irregular migrants, with special attention paid to vulnerable groups. Direct implementing partners conduct interviews with persons only with their consent, with due regard to the protection and confidentiality of personal data, in particular where vulnerable groups and/or sensitive interview topics and/or traumatic events are concerned.

Monitoring sessions may be announced or unannounced. For unannounced monitoring sessions on the entire territory of the Republic of Croatia (including the so-called green border), the Mechanism applies two models of action. According to the first model, a monitoring session is carried out on the basis of the Coordination Committee's decision without informing the representatives of the MoI that the session will be carried out and where and when it will be carried out. On the basis of the Coordination Committee's decision, the selected direct implementing partners make an on-the-spot visit after the preparatory consultations have taken place. They arrive with their own personal vehicle, without prior notice, at the selected border police station where the monitoring process involving all the above operations is initiated. According to the second model, the Head of the Coordination Committee informs the representative of the MoI that the Mechanism will conduct a monitoring session, but does not specify when and where. Monitoring sessions conducted in this way are also de facto unannounced because the MoI does not know when and where they will take place. The first unannounced monitoring sessions were conducted according to the second model, due to the wording of the Agreement according to which monitoring sessions at the so-called green border can only be carried out if the implementing partners are accompanied by the MoI personnel. The police escort serves exclusively to protect the direct implementing partners in high-risk areas (e.g., mine or mine-suspected areas, the danger of possible encounters with smugglers, traffickers, poachers, etc.). The last two monitoring sessions conducted by the Mechanism took place according to the first model, which was very successfully tested, given that after their unannounced arrival in the BPS, the direct implementing partners were provided with access to the so-called green border accompanied by police officers.

In the first six months of its operation, the Mechanism conducted eight monitoring sessions, of which two were announced, four were unannounced according to the second model and two were unannounced according to the first model. When sampling cases/monitoring sites, as key selection criteria, the Mechanism was guided by the size of the group and the degree of vulnerability of migrant groups/persons, the estimated urgency of monitoring, an assessment of the scale/severity of potential unlawful conduct, and the geographically balanced distribution of monitoring in correlation with the incidence and prevalence of irregular migration in particular locations (monitoring sessions covered BPS Cetingrad, Slavonski Brod, Donji Lapac, Dvor, Stara Gradiška and Trilj). In addition to the aggregated statistical data and reports from the MoI, for sampling cases/monitoring sites the Mechanism also relied on daily notifications from the MoI on persons found in irregular migration (location, number of persons in the group, presence of vulnerable persons in the group, origins of group members, etc.).

Following the monitoring session, the direct implementing partners promptly draw up an individual monitoring report to be discussed at the next meeting of the Coordination Committee, which adopts the report. Individual reports of the direct implementing partners are not publicly available, but the Coordination Committee informs the public in an appropriate and timely manner of the content of the half-year and annual reports. Exceptionally, where there is a substantial public interest, the Mechanism issues a press release immediately after having conducted a monitoring session, as was the case with the press release of 8 October 2021 on the occasion of a feature broadcast on 6 October 2021 on RTL television in the show "Potraga". In the press release, the public was informed about the prompt implementation of an unannounced monitoring session in connection with the incidents documented in the feature. Along with the information, in the press release the Mechanism expressed *"regret that the footage was not published much earlier and submitted to the relevant state bodies, primarily the State Attorney's Office of the Republic of Croatia, as this would certainly contribute to shedding light much earlier on the event and gathering evidence, protecting migrants and initiating appropriate proceedings against those responsible as well as to preventing possible similar incidents referred to in the feature"*.

Monitoring sessions are an important, but not the only oversight power and activity of the Mechanism. The findings gathered from on-the-spot monitoring sessions primarily serve to verify and determine a possible discrepancy between the normatively foreseen and institutionally conceived rules of procedure of police officers and the everyday practice in the field. Accordingly, monitoring sessions complement the overall working methodology of the Mechanism and are a valuable source of knowledge, but it would be wrong to conclude that they are the only source of knowledge in the Mechanism's work. An illustrative example is the finding of the Mechanism related to the Mol's misinterpretation of the time and location of the capture of irregular migrants in the territory of the Republic of Croatia, which, depending on the circumstances, (does not) guarantee them right to apply for asylum or international protection (see in more detail below). This is one of the key findings of the Mechanism, which did not result from the monitoring sessions, but from an impartial and expert dialogue with the Mol. Finally, this finding of the Mechanism also explains the causes and thus suggests solutions to the issue of unlawful conduct arising from such a misinterpretation.

2.2. Analysis of secondary data sources

In addition to the analysis of primary data sources, the working methodology of the Mechanism also includes the analysis of secondary data sources. The Mechanism draws its findings from the analysis of files and complaints¹¹, statistics, the relevant normative framework, rules of procedure and practices of conduct for police officers and other persons involved in the reception and/or provision of assistance to irregular migrants, media reports and reports from relevant stakeholders, etc.¹² It is important to stress that the Mechanism does not act on the basis of complaints as it does not have the status of a complaint-based mechanism. This avoids possible conflicts of jurisdiction with other competent bodies that are established and act, *inter alia*, on the basis of complaints received (e.g., Office of the Ombudsperson). However, the Mechanism may forward any complaints received to the competent national authorities.

The analysis of secondary data sources also includes the use of monthly statistical reports submitted to the Mechanism by a representative of the Mol. These reports contain information on all irregular migrants and applicants for international protection according to police departments and border police stations, their country of origin, gender, etc. In addition,

the MoI provides the Mechanism with real-time information on ongoing actions related to irregular migrants. According to the information provided to the Mechanism by the MoI on a regular basis as the actions are being carried out, in the period from 29 July to 16 November 2021, the police conducted a total of 41 action with respect to persons caught illegally crossing the state border. These actions involved a total of 329 people from nine countries — Afghanistan, Iraq, Iran, Syria, Turkey, Cuba, Pakistan, India and Nepal. The largest number of irregular migrants targeted by police actions is from Afghanistan (over 70 %). The actions took place in 10 BPSs — Novska, Stara Gradiška, Trilj, Dvor, Gvozd, Glina, Slunj, Korenica, Cetingrad and Slavonski Brod. Actions towards the largest number of persons were taken in the territory of BPS Slavonski Brod (119 persons or 36 %) and BPS Cetingrad (84 persons or 25 %).

In the vast majority of cases (over 90 %), irregular migrants expressed the intention to seek asylum/international protection. Two irregular migrants, despite having expressed intention, did not make the application. An expulsion order was issued for 14 persons who did not express their intention to seek asylum/international protection. On 20 November 2021, 245 asylum seekers/applicants for international protection whose proceedings have been pending since 29 July 2021 are still in the reception centre (around 75 %), while for most other irregular migrants the proceedings were terminated on the basis of Art. 39(2)(3) of the Act on International and Temporary Protection (Official Gazette of the Republic of Croatia Nos 70/15, 127/17) because they left the reception centre.

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3. OTHER ACTIVITIES

Shortly after the signing of the Agreement on 8 June 2021, the Coordination Committee held a constituting meeting at which the Head of the Committee was elected (Professor Davor Derenčinović). So far, the Coordination Committee has held three formal meetings and a series of ad hoc informal meetings using video conferencing tools. At the meetings, the Committee adopted the rules governing the operation of the Mechanism (Protocol of Procedures) and the wording of the template used for conducting direct monitoring sessions after discussion and input from all the members of the Mechanism.

On 16 September 2021, the Head of the Committee met in the premises of the General Police Directorate with members of the Commission of the U.S. Department of Homeland Security in relation to decision-making on the visa waiver for citizens of the Republic of Croatia. On this occasion, he acquainted the participants with the functioning of the Mechanism and answered their questions regarding its independence, working methodology, relationship and cooperation with the Ministry of the Interior, etc.

At the invitation of the Advisory Committee, which held its constituting meeting on 17 September 2021, the Head of the Committee briefly presented the activities of the Mechanism and announced the adoption of the first half-year report by late November or early December 2021. At a meeting attended by representatives of DG Home, UNHCR, Office of the Ombudsperson, Office of the Ombudsperson for Children, FRA, FRONTEX and EASO the operationalization of the Mechanism was positively assessed, along with the importance of its independence in theory and in practice and the expertise of its members. The importance of adequate financing of the Mechanism's activities was also emphasised, as well as the avoidance of duplication or overlapping of competencies with existing human rights institutions (e.g. with the Office of the Ombudsperson).

On 1 October 2021, the Head of the Committee held a presentation at the webinar "*Migration and asylum: Council of Europe standards and channels for practical cooperation*" jointly organised by the Council of Europe and the Ministry of the Interior of the Republic of Croatia.

On 29 October 2021, members of the Mechanism Davor Derenčinović, Iris Goldner Lang, Nermin Botonjić and Robert Markt participated in the Schengen Scrutiny Working Group of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) in Brussels to present the establishment and functioning of the Mechanism and took part in a debate with Members of the European Parliament, a representative of the European Commission (DG HOME), the Ombudsperson and invited members of Croatian and international NGOs (Centre for Peace Studies, Danish Refugee Council, Border Violence Monitoring Network).

4. PRELIMINARY FINDINGS

The preliminary findings of the Mechanism are divided into several categories: effectiveness of the legal framework, rules of procedure of the Mol, challenges in the practice of police conduct, detected irregularities, good practices and the difficulties encountered by irregular migrants. When assessing and interpreting the preliminary findings, it should be borne in mind that they result from the fact that Croatia has an exceptionally long land border with the states concerned by the monitoring activities of the Mechanism and that the border does not contain any artificial physical barriers to prevent the entry to the state territory (wall, wire, etc.). Another particularity is the configuration of the terrain and a number of mine-suspected areas. Most preliminary findings of the Mechanism are based on the circumstance that border control is predominantly personal in nature. This demonstrates the importance of reviewing the existing human and professional resources within the system. In this respect, the Mechanism makes certain recommendations, which are set out in Chapter 5 below, aimed at improving border security and surveillance, while fully respecting the rights of irregular migrants and applicants for international protection.

a. EFFECTIVENESS OF THE LEGAL FRAMEWORK

- **Identification and identity of irregular migrants**

The identity of irregular migrants is determined on the basis of their declaration. Even after the Republic of Croatia issues them with a “refugee card”, during their stay and their free movement on the Croatian territory, their identification is still based on their declaration, in particular because the refugee card is not an identity document. Therefore, one of the key challenges to the effectiveness of the legal framework is the identification and identity of irregular migrants, as in most cases the persons found do not have any personal document on the basis of which they could be identified. Persons often provide false information about themselves, creating false identities. This is apparent from perceived inconsistencies in statement made by irregular migrants, which are the basis for determining identity and other relevant facts. This certainly raises the question of the credibility of declarations of identity.

- **EURODAC and police exchanging data relevant for identification**

Insufficient cooperation was noted between border police stations, both in the Republic of Croatia and especially with the neighbouring countries in terms of information exchange (e.g. in the form of a fingerprint database and other data relevant for identification) in relation to persons who do not express their intention to initiate a procedure for asylum/international protection in the Republic of Croatia, and who have been served with an order instructing them to leave the territory of the Republic of Croatia on their own. The problem is that only persons seeking asylum/international protection and those caught in illegal crossing (persons who cannot be removed) are entered in EURODAC, but not those who have been returned.

- **Enforcement of return orders, difficulties in determining migrants’ identity and preventing recurrence of illegal migration (recidivism)**

If a migrant does not lodge an application for asylum/international protection, a return order shall be adopted in accordance with Article 184 of the Foreigners Act setting a time limit for voluntary departure. The problem arises when the migrant fails to comply with the return order and remains on the territory of the Republic of Croatia. In such situations, refoulement is carried out (Article 203 of the Foreigners Act) under police escort. However, if migrants lose or destroy the return order, it is extremely difficult to carry out removals from the Republic of Croatia because it is not possible to establish their identity. In addition, difficulties have been noted in

identifying and distinguishing repeated irregular migration (recidivism) from primary irregular migration.

- **Short stay and outflow of asylum seekers/applicants for international protection**

According to the primary data collected, most migrants “continue their journey” to the countries of Western Europe, while 80 % of those who have initiated procedures for asylum/international protection in the Republic of Croatia and are therefore accommodated in Porin Reception Centre do not return there so the procedures are terminated. However, secondary data sources (see item 2.2), on the other hand, indicate a somewhat weaker “outflow”, so it is difficult to estimate the real “outflow”. The fact is that there is an “outflow” and that this is a problem. In most cases, these persons continue to travel illegally to the countries of Western Europe. In principle, they seek international protection in other EU countries under a different identity. In these cases, the administrative procedure for asylum in the Republic of Croatia is terminated. According to the data collected during monitoring sessions, more than 90 % of migrants at the time of reception do not have any documents or material means to continue their journey.

- **Keeping records/files**

In terms of legislation, keeping records/files is not controversial as regards compliance with European standards, but there are shortcomings in terms of implementation. Specifically, the results of the monitoring point to the existence of several files relating to the same case, which is why it is necessary to consolidate the case files for a more effective tracking. During the monitoring activities, it was found that the Foreigners Sector and Border Police have separate files for the same person, which is problematic for a number of reasons and may ultimately undermine the rights of the person concerned and the regularity and fairness of the procedure. Consolidation of files of the Foreigners Sector and Border Police should therefore be undertaken. Individual cases should be grouped together for each person, i.e. from all services that have any record or that have dealt with the irregular migrant in question.

b. MOI'S RULES OF PROCEDURE, CHALLENGES IN THE PRACTICE OF POLICE CONDUCT, DETECTED IRREGULARITIES AND EXAMPLES OF GOOD PRACTICE

- **Combating crime related to migration and human trafficking**

The noted challenges in the practice of police activity should include dealing with sometimes armed migrants as well as smugglers and human traffickers. Consideration should be given to the creation of an EU database on persons convicted with the force of *res judicata* for human smuggling (cf. Croatian criminal legislation, Art. 326 of the Criminal Code) and human trafficking (cf. Croatian criminal legislation, Art. 106 of the Criminal Code) in order to harmonise and tighten the criminal policy in the EU for particularly severe incidences and recidivists.

- **Insufficient capacities and work overload of police officers**

- Police officers have been tackling the migrant crisis for years and are under great pressure given the fact that they have to guard the border while at the same time being the first to cope with the distress faced by irregular migrants. It has been detected that the border police system is understaffed, which results in the need to send tactical police units to aid. Adequate personal but also reinforced technical equipping of the border police system would, on the one hand, reduce the overload of existing personnel and, in all likelihood, prevent the possible unlawful conduct of the “external” aid units.
- Police officers encounter different culture-related patterns within the migrant population. This includes, for instance, a different culture of raising and treating small children or different

approaches to medical care for children within the migrant population, which are in clear conflict with the domestic culture/approach, and which in everyday police practice creates major challenges for the staff and requires additional work effort from police officers (making sure that children left unattended are not injured, etc.).

▪ **Detected irregularities in police conduct**

- Through monitoring, the Mechanism found that the police are conducting illicit deterrence (pushbacks) and are not recording deterrence permissible under Article 13 of the Schengen Borders Code. Such conduct is controversial for a number of reasons, in particular three: (1) First, illicit deterrence (pushbacks) occurring when or immediately before irregular migrants enter Croatian territory prevent them from applying for asylum and may undermine their right to seek international protection if they do not have the opportunity to apply for asylum elsewhere. The purpose of the deterrence permissible under Article 13 of the Schengen Borders Code (prevention and discouragement) should be to refer refugees to a legal procedure for entering the receiving country, which, according to international law, later facilitates their position in the asylum procedure and gives them a wider range of rights as “legally present refugees” (so-called “de jure refugees”). It must under no circumstances result in a violation of the right to apply for asylum by providing effective and efficient access to the means of legal entry, in particular border procedures, or in a violation of the principle of non-refoulement, which must not, in any situation, be infringed pursuant to the provisions of international and European law and the judgements by the Court of Justice of the European Union and the European Court of Human Rights. Adherence to this principle is binding on the state not only in situations occurring in the territory of the state, but also in extraterritorial situations falling within the jurisdiction and effective control of that state. (2) Second, enforcement of deterrence prevents the registration of irregular migrants who are unable to express their intention for asylum/international protection, which makes it impossible to determine where they entered the European Union and whether they have previously applied for asylum, in order to allow for the application of the Dublin Regulation and the EURODAC Regulation. (3) Third, given that in the event of any dispute, the burden of proof with regard to the permissibility of deterrence lies with the state, failure to register permissible deterrence makes it difficult or even impossible to establish whether a specific situation involved permissible or illicit deterrence.
- The Mechanism found that the MoI misinterprets the relevant regulations in situations where irregular migrants know that police officers do not carry out physical surveillance over mine-suspected areas and take advantage of this circumstance to cross the border in these dangerous/(potentially) mined locations. After having crossed and being caught by the police, they point out that they entered Croatian territory and seek asylum. However, the interpretation of the border police is that the migrants have not actually entered Croatian territory, since these areas are not “under the de facto authority of the Republic of Croatia”, and that they are deterring them from crossing/entering, by returning them through non-hazardous locations, without determining whether these are indeed refugees protected from refoulement from the moment they come under the jurisdiction of the Republic of Croatia, let alone on its territory, as is undoubtedly the case here.
- By conducting unannounced monitoring sessions and analysing other primary and secondary data sources in connection with the footage broadcast on RTL television on 6 October 2021, the Mechanism found that members of the tactical police force had acted unlawfully by returning irregular migrants from the Republic of Croatia to Bosnia and Herzegovina outside the framework permitted by national and international law, as was also confirmed by the MoI. This case gave rise to disciplinary proceedings against police officers and criminal

proceedings before the competent state attorney's office.

▪ **Examples of good practice**

- During the monitoring, it was found that in most cases police officers treat migrants in accordance with the regulations, respecting the highest standards (e.g., taking into account migrants' nutrition with regard to religious practice, helping vulnerable migrant groups, pregnant women, unaccompanied minors, etc.).
- A specific example of good practice worth mentioning is border police cooperation with medical facilities: emergency medical services, hospitals, regular COVID checks, and the examination of medical records where necessary, including cooperation with nursing homes (e.g., case of placement of a migrant in Srećko Badurina Nursing Home in Ogulin at the initiative of BPS Cetingrad).
- Police officers act with the aim of protecting national security and public order, as well as protecting the fundamental rights of migrants guaranteed by the conventions. When dealing with migrants, police officers must respect the key principles of which we single out the principle of non-discrimination, prohibition of punishment and non-refoulement. It is important to highlight here Article 32 of the Convention and Protocol Relating to the Status of Refugees, under which a contracting state shall not forcibly expel ("refoule") a refugee legally residing in its territory, unless national security or public order is at risk. Refoulement of such a refugee may take place only pursuant to an order complying with the law. During monitoring sessions in police stations, the Mechanism received information that police officers are acquainted with the fundamental human rights at the beginning of their training in order to treat migrants properly and to protect their guaranteed rights. There are also new trainings for border police multipliers who are trained in the field of human rights. The training of members of special police unit assisting border police has also been brought to the attention of the Mechanism. The monitoring sessions, both announced and unannounced, suggest that police officers are familiar with the fundamental rights of migrants. This primarily refers to the right to apply for international protection using the prescribed forms in a language which the applicants understand, the right to an interpreter, the right to free legal aid and, in particular, the right to medical assistance, which we were able to ascertain by consulting the available files kept by the police stations. The police stations subject to monitoring had forms in a minimum of 10 languages.

c. DIFFICULTIES ENCOUNTERED BY IRREGULAR MIGRANTS

▪ **Criminal victimisation**

Migrants are exposed to human traffickers/smugglers on both sides of the border, some of whom are also foreign nationals (e.g., British national found and prosecuted by the competent state authorities). Migrants are subjected to abuses by smugglers and "agents" who guarantee them to cross the border. Likewise, unlawful conduct by members of the Croatian police (e.g. the use of force) towards migrants was reported, with the aim of forced return outside the framework permissible by positive and international law. In interviews with persons caught illegally crossing the Croatian border, the direct implementing partners noticed that in most cases these were persons without any documents, whom "agents" (smugglers, including third-country nationals) transfer from Bosnia and Herzegovina across the border for a large sum of money to a designated place in the territory of the Republic of Croatia, where they are supposed to wait for a transport connection to their final destination in the Western European countries. Irregular migrants are left in uninhabited, hard-to-reach, cold and humid places, without food and water, which impacts their health, and the "transport connection" does not arrive. In such

cases, irregular migrants reach out to international organisations or Croatian associations whose contacts they have in order to receive protection. In the cases subject to monitoring, irregular migrants reported that on their way from BiH to Croatia they had faced unfulfilled promises by “agents” that they would be transited to the countries of their final destination (but the “connection” did not arrive), as well as unlawful use of force and seizure of documents, money and mobile phones. In describing cases of unlawful use of force, irregular migrants stated that force had been used by persons in dark unmarked uniforms, wearing balaclavas and equipped with batons.

- **Migration trauma**

- Long journey, general exhaustion and diseases that often require medical treatment and care.
- Different culture-related relations and language barrier.
- Disorientation in time and space.
- The problem of family separation and associated uncertainty.
- Exposure to joint criminal activities of organised groups of smugglers and traffickers from several countries.

- **(Potential) self-victimisation and putting vulnerable persons at risk**

Exposure to distress due to attempts to cross the border even in mine-suspected areas, the problem of putting vulnerable groups (children, pregnant women, sick or elderly people) at risk.

- **Reception/accommodation**

One of the major problems encountered by migrants is the fact that police stations do not always have adequate facilities for their temporary accommodation. Indeed, the high number of migrants currently makes it impossible in some stations to provide adequate premises in which they can spend a certain period of time until they have been identified. These premises must comply with the conditions laid down in Article 13(2) of the Ordinance on the treatment accorded to third-country nationals. Persons who apply for international protection are sent to the reception centre for asylum seekers which the members of the Mechanism have visited and which has appropriate conditions for the accommodation of migrants.

5. RECOMMENDATIONS

Below are the Mechanism's recommendations based on the preliminary findings of the first six months of monitoring action. It can be reasonably assumed that their acceptance and implementation would significantly reduce the risk of unlawful conduct by police officers in the field of irregular migration. In addition, accepting and implementing the recommendations would undoubtedly raise the quality of the Mol's work in this challenging sector. Finally, a prompt implementation of these recommendations would allow the Mechanism to carry out a preliminary evaluation of the implemented measures in the following six months in order to determine possible corrections required and the effectiveness of individual measures. Regardless of the timing and extent of the implementation of specific measures on the basis of the recommendations set out below, it is necessary to conceive appropriate evaluation tools and procedures even before the individual measures are implemented, during their design phase.

- 1) **Improve the way irregular migrants are identified**, for both asylum seekers/applicants for international protection and those who do not seek asylum/international protection, e.g., by using modern facial recognition software tools that can be applied on smartphones. In the future, launch an initiative to create an EU biometric database in the field of irregular migration. Although this does not address the challenges of establishing the true identity of irregular migrants without valid documents, it would allow such a registered person to be "linked" to the same identity throughout the migration journey.
- 2) **Improve cooperation between border police stations in relation to migrants caught illegally crossing the border**. If they do not express their intention to seek asylum/international protection in the Republic of Croatia, these persons are hand-delivered an order once the administrative procedure has been concluded to leave the territory of the Republic of Croatia on their own within seven days, instead of being immediately formally handed over in agreement with the BiH police (as is the case if the police catches them in the Republic of Croatia after the expiry of the above period). Their fingerprints are taken, but allegedly not entered into the EURODAC system, so the next time they can try the same thing in the territory of another BPS, since the exchange of information between different BPSs in this regard is insufficient.
- 3) **Register all persons who enter the territory of the Republic of Croatia irregularly**. The problem also arises when implementing the decision to leave the European Economic Area for persons who have not applied for international protection/asylum. Their fingerprints are not taken to be entered into EURODAC, but they are only photographed. As they usually do not have any documents, it is impossible to identify such persons when attempting to illegally enter Croatia again, and among them there may be "agents" (smugglers and/or traffickers) who are scouting the area in this way. It is recommended to examine the possibility of taking fingerprints in BPSs (and not in reception centres) of all persons trying to enter the Republic of Croatia irregularly, whether or not they have applied for international protection/asylum.
- 4) **Improve international legal aid as well as police cooperation** with countries with which this is possible and which are on the route of irregular migration, and in particular with neighbouring countries from where migrants transit to the Republic of Croatia (Bosnia and Herzegovina), and make use of the diplomatic and consular network and other available sources of information in obtaining identity data on persons found illegally crossing without compromising the guaranteed human rights and privacy of such persons.

- 5) **Pay particular attention in the conduct to the various obligations under international law related to the status of persons as *refugees* or *migrants*.** With regard to the first category, the non-refoulement obligation (with the rare exceptions provided for in international law) is unquestionable and is part of general customary international law, whereas international migration law does not contain such an obligation. The states are obliged not to implement illicit deterrence (pushbacks) regardless of whether the persons in question are refugees or migrants.
- 6) **Record GPS coordinates of police patrol movements at the green border.** It is proposed that GPS coordinates become an integral part of the report submitted by border police patrols following conducted border control. The recording of GPS data should be arranged in such a way that it automatically generates “tracking” rather than creating an additional administrative burden for police officers. On the one hand, it allows for the subsequent personal identification of all police officers if irregular migrants report irregular/unlawful conduct, while at the same time the measure would also have a preventive effect in view of the awareness of police officers that they can subsequently be personally identified — both in terms of exculpatory absence and potentially incriminating presence at the scene of the event.
- 7) **Draw up and distribute an internal written instruction requiring police officers to act on written instructions in the field of border surveillance and irregular migration, while they are not obliged to carry out oral instructions deviating from or contradicting them, but are obliged to inform the General Police Directorate and the Mechanism about them in writing without delay .** On the one hand, this prevents the irregular/unlawful conduct of police officers who are following irregular/unlawful oral instructions/orders while on the other hand it prevents senior police officers from issuing such instructions/orders. It also clearly defines the procedure and contact point for reporting violations of such internal written instructions of the MoI, which guarantees timely internal and external (Mechanism) oversight.
- 8) **Improve the case/file tracking system with the aim of consolidating all information** in one place and consolidate files on asylum seekers/applicants for international protection of the Foreigners Sector and Border Police.
- 9) **Draw up a collection of good practices in police conduct in the irregular migration sector.** The Mechanism was informed or familiarised during the field visit with cases where border guards rescued or arranged transport and medical assistance to migrants. Another positive example includes transporting migrants to a reception centre in unmarked police vans, and the continued availability of translators in almost all the languages used by migrants. As an example of good practice, we also note the conduct of female police officers in BPS Slavonski Brod towards vulnerable groups: women and children, and their transport by unmarked vehicles to Porin Reception Centre in Zagreb.
- 10) **Request/use budgetary and/or EU funds to standardise the quality of accommodation in all border police stations,** as it was found during the monitoring sessions that the accommodation capacities of certain border police stations did not meet the minimum standards.
- 11) **Draw up a manual with a precise description of the standard operating procedures** and a clear distinction between the procedures for border surveillance permitted under national law and international and European law and unauthorised procedures violating the human rights of migrants and applicants for international protection, and ensure that all relevant employees of the MoI (regular police, border police, tactical police force) are familiar with the content of the manual.¹³

- 12) **Improve the source of information for irregular migrants** regarding e.g. the list of border crossing points at which migrants can apply for asylum in Croatia, create a website in all languages with instructions on how to apply for asylum in Croatia, list contacts, present uniforms of the border police and other units carrying out border control in a transparent manner (what they look like, what markings they have) and provide a contact point for reporting in the event of noticing persons in the border area wearing different uniforms.
- 13) **Adopt the practice that in case the Mol becomes aware of irregularities/incidents in the police conduct towards irregular migrants, it must promptly report to the Mechanism** both the event and actions taken and planned. This measure would allow the Mol to strengthen and speed up the dialogue with the Mechanism and provide it with the opportunity to make the most of the expertise of the Mechanism in such situations.
- 14) **Analyse, in consultation with the Advisory Committee and the Mol, the expectations and needs of relevant stakeholders in relation to the tasks of the Mechanism which clearly go beyond its existing tasks (and thus its powers, structure and work).** On the basis of such an analysis, which would be carried out in the second phase of work over the next six months, the Mechanism, in cooperation with the Mol, may prepare a proposal for its expansion, in terms of the tasks, the duration and the regulatory framework necessary for that purpose.

List of sources used

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- ² Croatia/EU: Strengthen Border Monitoring System - Effective Mechanism Needed: Independent, Broad Mandate, Adequate Resources, Human Rights Watch (02.08.2021.), available at <https://www.hrw.org/news/2021/08/02/croatia-eu-strengthen-border-monitoring-system> [22/11/2021].
- ³ New Pact on Migration and Asylum, European Commission, available at https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en [22/11/2021].
- ⁴ Byrne, J. & Priestley, W. (September 2015, updated February 2017), Report on Police Oversight in the Council of Europe Countries, Council of Europe Publishing, available at <https://rm.coe.int/police-oversight-mechanisms-in-the-coe-member-states/16807175dd> [22/11/2021].
- ⁵ European Partners Against Corruption/European contact-point network against corruption (November 2011), Police Oversight Principles, available at https://www.epac-eacn.org/fileadmin/Documents/Recommendations/Police_Oversight_Principles.pdf [22/11/2021].
- ⁶ Among other key international recommendations/standards guiding the Mechanism's formation, the following should be highlighted:
Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions (Adopted by the Committee of Ministers on 31 March 2021 at the 1400th meeting of the Ministers' Deputies), available at <https://rm.coe.int/0900001680a1f4da> [22/11/2021]; Guidelines on National Preventive Mechanisms: UN. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (12th sess., 2010, Geneva), available at https://digitallibrary.un.org/record/695890/files/CAT_OP_12_5-EN.pdf [22/11/2021]; Principles relating to the Status of National Institutions (The Paris Principles), available at <https://www.un.org/ruleoflaw/files/PRINCI~5.PDF> [22/11/2021].
- ⁷ European Partners Against Corruption/European contact-point network against corruption (November 2011), Police Oversight Principles, p. 5, available at https://www.epac-eacn.org/fileadmin/Documents/Recommendations/Police_Oversight_Principles.pdf [22/11/2021].
- ⁸ European Partners Against Corruption/European contact-point network against corruption (November 2011), Police Oversight Principles, p. 10, available at https://www.epac-eacn.org/fileadmin/Documents/Recommendations/Police_Oversight_Principles.pdf [22/11/2021].
- ⁹ European Partners Against Corruption/European contact-point network against corruption (November 2011), Police Oversight Principles, p. 11 and 11, available at https://www.epac-eacn.org/fileadmin/Documents/Recommendations/Police_Oversight_Principles.pdf [22/11/2021].
- ¹⁰ Violence against migrants: Commissioner Johansson praises Croatia's reaction: "They took it extremely seriously; the Minister is shocked!" 'Johansson held meetings on Thursday evening with Minister Božinović and Greek Minister for Migration and Asylum Notis Mitarachi, HINA (8/10/2021), available at <https://www.jutarnji.hr/vijesti/svijet/povjerenica-johansson-zadovoljna-reakcijom-hrvatske-uzeli-su-to-iznimno-ozbiljno-ministar-je-sokiran-15108412> [22/11/2021].
- ¹¹ The Mechanism has access to files following complaints about alleged unlawful conduct towards irregular migrants and applicants for international protection, as well as to reports of the General Police Directorate. It is also possible to interview police officers who participated in the selected file, as well as the complainant if they are in the territory of the Republic of Croatia and agree to the interview. During the visit to Porin Reception Centre, for example, an interview was conducted with an asylum seeker who complained about the work of police officers in her testimony.
Direct implementing partners of the Mechanism's activities receive almost daily data on migrants found in the territory of the Republic of Croatia, which allows them to track the situation on their movements.
- ¹² Access to data depends on the legal effectiveness of the case/file and the confidentiality/classification of data.
- ¹³ Cf. FRA (2020), Practical guidance: Border controls and fundamental rights at external land borders, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-guidance-border-controls-and-fundamental-rights-pocket-edition_hr.pdf [29/11/2021]

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Professor Iris Goldner Lang, [REDACTED], [REDACTED], OIB: [REDACTED];

on 8 June 2021 concluded the following

**COOPERATION AGREEMENT FOR THE IMPLEMENTATION OF AN INDEPENDENT
MECHANISM FOR MONITORING THE CONDUCT OF POLICE OFFICERS OF THE
MINISTRY OF THE INTERIOR IN THE FIELD OF IRREGULAR MIGRATION AND
INTERNATIONAL PROTECTION**

**Article 1
PURPOSE**

The Agreement establishes an independent mechanism for monitoring the conduct of police officers of the Ministry of the Interior in the field of irregular migration and international protection (hereinafter: Independent Monitoring Mechanism).

**Article 2
TERMS**

For the purposes of this Agreement, the term "irregular migrant" refers to a third-country national or stateless person who has crossed or attempted to cross the national border of the Republic of Croatia at places other than border crossing points or at a border crossing point at times other than the opening hours of the border crossing point, or a person who evades border checks or leaves the area of the border crossing point before the border check has been carried out.

Article 3

IMPLEMENTING PARTNERS OF THE INDEPENDENT MONITORING MECHANISM

The implementing partners of the Independent Monitoring Mechanism (hereinafter: implementing partners) shall appoint, within 15 days of the signature of this Agreement, two representatives each to directly carry out the activities of the Independent Monitoring Mechanism (hereinafter: direct implementing partners) and one representative each to participate in the Coordination Committee.

When implementing activities, the implementing partners shall comply with the positive regulations of the Republic of Croatia and the European acquis.

Logistical and administrative support to the operation of the Independent Monitoring Mechanism shall be provided by the Mol who shall, within 15 days of the signature of this Agreement, appoint a liaison officer to ensure a smooth and timely exchange of information and the implementation of other tasks enabling the activities of the Mechanism to be carried out.

Article 4

PLACES OF IMPLEMENTATION OF THE ACTIVITIES OF THE INDEPENDENT MONITORING MECHANISM

The activities of the Independent Monitoring Mechanism shall be carried out in border areas (border crossing points/police stations/police departments) between the Republic of Croatia and Bosnia and Herzegovina, the Republic of Montenegro and the Republic of Serbia, and in reception centres for foreigners.

Article 5

ACTIVITIES OF THE INDEPENDENT MONITORING MECHANISM

Direct implementing partners shall carry out the following activities:

- monitoring the conduct of police officers towards migrants and applicants for international protection in the implementation of the regulations governing border control and the provision of international protection (hereinafter: monitoring police conduct);
- announced visits to the green border;
- examination of case files concluded with the force of *res judicata* pursuant to filed complaints regarding allegedly unlawful conduct towards irregular migrants and applicants for international protection and examination of activities and reports of the General Police Directorate regarding alleged unlawful conduct towards irregular migrants and applicants for international protection (hereinafter: examination of files);

In carrying out the activities of the Independent Monitoring Mechanism referred to in paragraph 1 of this Article, the implementing partners shall be provided with the professional

assistance of translators and/or interpreters where necessary.

When carrying out the activities referred to in paragraph 1 of this Article, the implementing partners shall comply with the regulations on personal data protection and data confidentiality.

Article 6

MONITORING POLICE CONDUCT

The direct implementing partners will carry out a total of 20 monitoring sessions for the duration of this Agreement.

The monitoring sessions referred to in paragraph 1 of this Article may also include announced visits to the green border.

By the 10th day of the month, a representative of the Mol shall provide the implementing partners with statistical reports for the previous month containing information on all irregular migrants and applicants for international protection.

On the basis of the statistical reports received, the implementing partners select individual cases for monitoring pursuant to previously established criteria.

Monitoring sessions may be announced or unannounced.

Direct implementing partners will be provided access to the case file selected for monitoring, they will be able to attend the hearing of the irregular migrant and the applicant for international protection, to examine the detention facilities and to interview the irregular migrant and the applicant for international protection, provided that the person consents to it. Direct implementing partners shall conduct announced visits to the green border accompanied by authorised Mol personnel, whose instructions they are obliged to follow.

Direct implementing partners shall comply with the instructions given by authorised Mol personnel regarding restrictions of movement in protected areas (e.g., border crossing points, reception centres for foreigners, etc.).

Within seven days of each session, the direct implementing partners shall jointly compile a report and submit it to the Coordination Committee. The report shall also include information on the announced visit to the green border.

Article 7

EXAMINATION OF FILES

Direct implementing partners will be given access to files following complaints about alleged unlawful conduct towards irregular migrants and applicants for international protection concluded with the force of *res judicata* within the year preceding the signature of this Agreement, or to the activities and reports of the General Police Directorate regarding alleged unlawful conduct towards irregular migrants and applicants for international protection.

The powers of the direct implementing partners referred to in paragraph 1 of this Article shall not include access to the information system of the Mol.

The Mol's liaison officer shall provide the direct implementing partners within 15 days of the signature of this Agreement with a list of files referred to in paragraph 1 of this Article concluded with the force of *res judicata*.

Direct implementing partners will be able to interview police officers who participated in the selected file as well as the complainant if they are in the territory of the Republic of Croatia and previously agree to the interview.

Within seven days of the examination of each file, the direct implementing partners shall jointly compile a report and submit it to the Coordination Committee.

Article 8

COORDINATION COMMITTEE

The Coordination Committee (hereinafter: Committee) professionally guides and manages the activities of the Independent Monitoring Mechanism, draws up a final report on the conduct of police officers of the Mol in the field of irregular migration and international protection on the basis of individual reports from the direct implementing partners and performs other tasks relating to the management of the Independent Monitoring Mechanism.

The Committee shall be composed of one representative of each of the implementing partners. The Committee shall hold its meetings at least once every three months.

The members of the Committee shall elect among themselves the Head of the Committee, their Deputy and the Secretary by a majority vote.

The Head of the Committee represents the Committee, coordinates the activities of the Independent Monitoring Mechanism, organises and convenes meetings of the Committee and presents the activities of the Independent Monitoring Mechanism once every six months to the Advisory Committee as an informal body.

In the event of being prevented from fulfilling their duties, the Head shall be replaced by their Deputy.

The Secretary of the Committee shall carry out administrative tasks related to the implementation of the activities of the Independent Monitoring Mechanism.

On the basis of individual reports compiled by direct implementing partners, the Committee shall draw up a half-year and a final report. The final report shall be drawn up within 30 days of the last activity of the Independent Monitoring Mechanism. The summary of the final report shall be published on the Ministry of the Interior's website.

Article 9

FINANCING

The implementation of the activities of the Independent Monitoring Mechanism is funded from European Commission resources, which shall be disbursed to the State Budget of the Republic of Croatia.

An indicative financial plan for the costs of implementing the Independent Monitoring Mechanism forms an integral part of this Agreement.

Half of the costs provided for in the indicative financial plan referred to in paragraph 2 of this Article shall be paid into the account of the implementing partners within 15 days of the date of payment of the funds from the European Commission to the State Budget of the Republic of Croatia and the other half within six months of the signature of this Agreement.

Article 10

FINAL PROVISION

The Independent Monitoring Mechanism shall be established for a period of one year with the possibility of extension.

The activities of the Independent Monitoring Mechanism shall commence on the date of the last signature of this Agreement.

The signatories of the Agreement may withdraw from it by giving written notice to the other signatories.

The withdrawal decision shall take effect within 15 days of the date of the notice referred to in paragraph 3 of this Article.

The Agreement shall be concluded in six (6) identical copies, of which each party shall retain one.

For THE MINISTRY OF THE INTERIOR

Deputy Prime Minister and Minister

Davor Božinović /signature/

Place and date: Zagreb, 08/06/2021

CLASS: 018-01/19-01/607

REG.NO. 511-01-131-21-602

For the Association CROATIAN ACADEMY OF MEDICAL SCIENCES

President

Professor Alemka Markotić /signature/

Place and date: Zagreb, 08/06/2021

Number: 01-15-1/2021

For the Association CROATIAN ACADEMY OF LEGAL SCIENCES

President

Professor Davor Derenčinović /signature/

Place and date: Zagreb, 08/06/2021

Number:

For the Association CENTRE FOR CULTURAL DIALOGUE

President

Aziz Hasanović /signature/

Place and date: Zagreb 08/06/2021

Number: 21 00-D1/21-83

For the Association CROATIAN RED CROSS

Chief Executive Officer

Robert Markt /signature/

Place and date: Zagreb 08/06/2021

Number: 1004634-02-1-59-21/06-1

Professor Iris Goldner Lang

/signature/

Place and date: Zagreb 08/06/2021

Number: