

ENNHRI's updated common position on establishing independent Monitoring Mechanisms under the EU Pact on Migration & Asylum

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While ENNHRI welcomes the publication of the European Commission's [Common Implementation Plan](#) and the nomination of the national implementation coordinators, ENNHRI urges EU Member states to ensure that human rights safeguards are put at the front and centre throughout the process, including when setting up the envisaged independent monitoring mechanisms. Building on its previous [position](#), ENNHRI advances updated recommendations emphasising the essential role of National Human Rights Institutions (NHRIs) to guarantee the Pact is implemented with respect for the human rights of migrants.

On 14 May 2024, the [European Union \(EU\) Pact on Migration and Asylum](#) (hereinafter referred to as "the Pact") was adopted. One of the objectives of the Pact is to strengthen the EU's external border security through, amongst others, enhanced border control measures, more harmonised national legislations on asylum and border procedures, and the development of an effective and equitable solidarity system between EU Member States.

In June 2024, the European Commission presented a [Common Implementation Plan for the Pact](#), together with a [checklist](#) to operationalise the vast and complex legislation. The Common Implementation Plan provides a template for the EU Member states National Implementation Plans. This provides a concrete roadmap for EU Member states on the implementation of the Pact. EU Member states have to submit their National Plans by the end of December 2024 and within two years (by May 2026) need to put in place legal instruments and infrastructures to implement the Pact at the national level.

National Monitoring Mechanisms under the Pact and NHRIs' relevance

A key positive novelty of the Pact are provisions related to the establishment of national independent mechanisms for the monitoring of the respect of fundamental rights in the [Screening](#) and [Asylum Procedures](#) Regulations (APR)¹ (hereinafter referred to as "Monitoring Mechanisms"). NHRIs, Ombudspersons and National Preventive Mechanisms (NPMs) are included as key actors who shall participate in its proceedings. According to Article 10(2) of the Screening Regulation²:

"National Ombudspersons and National Human Rights Institutions, including national preventive mechanisms established under the OPCAT³, shall participate in the operation of the independent monitoring mechanism and may be appointed to carry out all or part of the tasks of the independent monitoring mechanism. The independent monitoring mechanism may also involve relevant international and non-governmental organisations and public bodies independent from the authorities carrying out the screening. Insofar as one or more of those institutions, organisations or bodies are not directly involved in the independent monitoring mechanism, the independent monitoring mechanism shall establish and maintain close links with them"

NHRIs are key actors in monitoring human rights and ensuring accountability for violations of migrants' human rights. They have a special standing as state institutions, but independent of government, with a broad constitutional or legal mandate to promote and protect all human rights, including those of migrants. NHRIs possess extensive expertise and experience in pursuing compliance of national laws and practices with international and regional human rights norms, including access to the asylum procedure, the principle of non-refoulement, the best interests of the child and the relevant rules on detention. That is, those areas to be covered by Monitoring Mechanisms.

¹ While in our common position we give particular attention to the text enshrined in art.10 of the Screening Regulation, a monitoring mechanism should be also established in relation to the asylum border procedures as per art. 43(4) of the Asylum Procedure Regulation (OJ L, 2024/1348, 22.5.2024)

² Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

This common position builds upon ENNHRI's 2021 [opinion on Independent human rights monitoring mechanisms at borders under the EU pact on migration and asylum](#), in which ENNHRI presented several recommendations calling, among others, for the Monitoring Mechanisms to be truly independent, adequately resourced and equipped with appropriate powers and expertise. Several concerns remain regarding the impact of the legislative provisions of the Pact on the rights of migrants and asylum seekers, including the wide application of border procedures, which will likely prolong waiting times and increase detention.

The aim of this updated position is to inform and support EU Member states on key provisions and safeguards that must be put in place to ensure the effective establishment and functioning of Monitoring Mechanisms, with particular attention to the role of NHRIs.

ENNHRI's key recommendations

Against this background, ENNHRI submits that the following recommendations should receive particular attention and be followed up by EU Member states while they implement the Pact, including in the development and implementation of their national implementation plans.

1. NHRIs should be consulted and their mandate respected when establishing and implementing the Monitoring Mechanisms
2. Monitoring Mechanisms must be independent
3. Monitoring Mechanisms should be adequately resourced and possess the necessary skills and expertise
4. The Monitoring Mechanism's *scope* should be defined to effectively encompass fundamental rights violations in the context of all border governance activities
5. The Monitoring Mechanism's *powers* should be defined to effectively encompass fundamental rights violations in the context of all border governance activities
6. Cooperation among monitoring bodies is essential, including those from non-EU countries

1. NHRIs should be consulted and their mandate respected when establishing and implementing the Monitoring Mechanisms

In accordance with article 10(2) of the Screening Regulation, ENNHRI strongly recommends EU Member states consult effectively at an early stage with NHRIs, Ombudspersons, National Preventive Mechanisms (NPMs) and Civil Society Organisations (CSOs) already monitoring the human rights of migrants. Especially, ENNHRI emphasises the need for EU Member states to consult with NHRIs before allocating a potential additional mandate to them under the Pact. If they are allocated with such a mandate, EU Member states should commit to equipping NHRIs with adequate human and material resources needed to effectively fulfill the additional mandate in an independent manner in compliance with the [UN Paris Principles](#) and the [Venice Principles](#), which are referenced in the Screening Regulation.

While some EU Member states have proactively initiated discussions with NHRIs, in some cases including them as observers of working groups responsible for the implementation of the Pact, ENNHRI regrets that some NHRIs have not yet been consulted on discussions over the establishment of the Monitoring Mechanisms during the drafting of the national implementation plans. Moreover, ENNHRI regrets that there is no obligation for EU Member states to publish their national implementation plans. To ensure transparency and facilitate stakeholders' involvement, ENNHRI encourages EU Member States to make these plans public or, if sensitive information prevents full disclosure, to provide summaries of the plans, including the actors and processes involved in establishing and operating the Monitoring Mechanism.

When establishing the Monitoring Mechanisms, EU Member states should take into consideration the state's existing human rights infrastructure and legal framework. Numerous NHRIs have already undertaken extensive monitoring of the rights of migrants, including at borders and meet the independence and the mandate requirements to perform the duties defined in the Pact. ENNHRI reiterates the need for Monitoring Mechanisms to develop, formalise and maintain working relationships, as appropriate, with other national and international organisations established for the promotion and protection of human rights, including NHRIs when they are not assigned as the Monitoring Mechanism. This is recommended throughout all the phases of the Pact's implementation, particularly when assessing human rights implications of the Pact and when calling for consultations on draft legislation. This is in line with the [FRA guide on Monitoring Mechanisms](#) and its recommendation on fostering synergies with existing monitoring mechanisms, including NHRIs.

2. Monitoring Mechanisms must be independent

According to article 10(2) of the Screening Regulation, EU Member states shall put in place adequate safeguards to guarantee the independence of Monitoring Mechanisms. Human rights bodies, such as NHRIs, Ombudspersons and NPMs should be consulted during the drafting of laws and provisions necessary to create the institutional and legal framework to ensure the Monitoring Mechanisms' independence. ENNHRI recalls that independence of the Monitoring Mechanisms, both in their formal framework and functioning, will be a precondition for their effectiveness in monitoring, tackling, and preventing human rights violations at the borders.

If NHRIs are designated or involved in the Monitoring Mechanisms, ENNHRI emphasises that potential changes brought to the NHRI's national legal framework should align with existing international and regional standards on the NHRI's independence. Accordingly, ENNHRI welcomes the clear reference in the text of the Screening Regulation to already existing standards for NHRIs, Ombudspersons and NPMs, such as the [UN Paris Principles](#), the [Council of Europe Venice Principles](#) and the [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT). Moreover, ENNHRI welcomes the further clarification of applicable standards as outlined in the the [FRA guide on Monitoring Mechanisms](#), with references to the [GANHRI SCA General Observations](#), the [Council of Europe Recommendation 2021\(1\) on establishing and strengthening effective, independent and pluralist NHRIs](#) and the OPCAT related [guidelines on NPMs](#).

3. Monitoring Mechanisms should be adequately resourced and possess the necessary skills and expertise

As indicated in the Screening Regulation, it is imperative for EU Member states to ensure that the Monitoring Mechanisms have sufficient funding and adequate human resources for implementing their activities.

ENNHRI urges EU Member states to allocate adequate funding well in advance of the Monitoring Mechanisms becoming operational in mid-2026. As emphasised in [ENNHRI's reporting](#), more than two thirds of NHRIs in Europe face challenges in relation to adequate funding, including the allocation of additional mandates without providing adequate resources. Allocating an additional mandate under the Screening Regulation, without additional resources, would likely undermine NHRIs' carrying out their pre-existing core mandate(s).

Adequate funding should ensure that the Monitoring Mechanisms are continuously provided with sufficient staff with relevant knowledge and expertise, as well as allowing for the development of

relevant procedures such as robust monitoring methodologies to assess fundamental rights compliance throughout the screening and asylum border procedures. Funding is also crucial for institutions tasked with supporting the Monitoring Mechanisms, enabling them to prepare the Monitoring Mechanism before it becomes fully operational. This includes providing effective training on human rights frameworks, including the principles of non-refoulement, the best interests of the child, identification of persons in vulnerable situation as well as training on ensuring fundamental rights compliance during screening and asylum procedures.

When allocating resources to the Monitoring Mechanisms, it is crucial that the EU and its Member states fully respect their formal and functional independence. If the NHRI is appointed as the Monitoring Mechanism, either alone or jointly with other human rights bodies, the [Paris Principles](#) and the [SCA General Observations](#) requirements need to be taken into account. This includes ensuring funding is allocated by EU Member states to a separate budget line item applicable only to the NHRI.

In case EU funds are made available under the current and next programming period for the establishment, strengthening and/or training of the personnel of the Monitoring Mechanisms, the EU and its Member states should explore avenues under the current and next funding framework to make it possible for Monitoring Mechanisms to benefit from EU funding while ensuring their independence and effective functioning.

Mirroring current standards on NHRIs, EU Member states should ensure that, if NHRIs are appointed, they continue having the power to allocate funding according to their priorities within the scope of their human rights monitoring work at borders and without prejudice to their existing work. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management, and retention of staff.

4. The Monitoring Mechanism's scope should be defined to effectively encompass fundamental rights violations in the context of all border governance activities

Under the Screening Regulation, the Monitoring Mechanism shall monitor compliance with the EU and international law, including the [EU Charter of Fundamental Rights](#), particularly with regard to the access to the asylum procedure, the principle of non-refoulement, the best interests of the child and the relevant rules on detention. While ENNHRI welcomes that the scope of the mechanism has been extended also to parts of the asylum border procedures under the Asylum Procedures Regulation (APR), ENNHRI strongly recommends that EU Member states interpret the Regulations broadly to ensure that it covers all human rights violations and leads to better human rights accountability. As previously recommended, the scope of the Monitoring Mechanism

should be clearly defined from its establishment, without prejudice to its ability to carry out its mandate effectively.

In light of the Monitoring Mechanisms' power to issue annual recommendations which will feed into already existing reporting processes at the EU and national levels, the clarity of the mandate will also be important to ensuring complementarities with other reporting processes, such as the annual national asylum and migration strategies and reports, [the Schengen evaluation mechanism](#) and the [EUAA Common European Asylum System \(CEAS\) mechanism](#).

ENNHRI reiterates the importance for EU Member states to ensure that the scope of the Monitoring Mechanisms' mandate includes the monitoring of pushbacks and violence at the borders beyond the scope of the APR and the Screening Regulations. Thus, ENNHRI suggests extending the scope of the Monitoring Mechanism to monitoring return border procedures and border management activities where appropriate and advisable considering the national circumstances and operational situation. This will ensure more effective monitoring and reporting of human rights violations, transparency and accountability on violations of migrants' rights. Several NHRIs already play a key role in monitoring forced return operations, allowing them to develop targeted recommendations to authorities for a human rights compliant border governance.

5. The Monitoring Mechanism's *powers* should be defined to effectively encompass fundamental rights violations in the context of all border governance activities

ENNHRI welcomes the provisions in the Screening Regulation that the Monitoring Mechanisms have "a mandate to carry out its tasks on the basis of on-the-spot checks and random and unannounced checks", and oblige EU Member states to "provide the independent monitoring mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the independent monitoring mechanism to fulfil the obligations". In the Regulation a reference is also made to the possibility of the Monitoring Mechanisms to trigger investigations into allegations of failure to respect fundamental rights.

ENNHRI recalls that the Monitoring Mechanisms will have to ensure complementarities with existing bodies working to promote and protect human rights at the national and regional levels. NHRIs and other human rights bodies have been facing significant restrictions and undue obstacles in monitoring migrants' rights at borders. In some countries, authorities have imposed or extended state of emergency laws that explicitly exclude independent observers from these areas. Against this background, ENNHRI underscores the need for EU Member states to ensure

unhindered access to documents, information facilities, border areas and places where fundamental rights violations may occur and/or victims of such violations may be found. This should be granted also in situations of crisis and force majeure, when human rights obligations remain applicable while violations tend to increase.

6. Cooperation among monitoring bodies is essential, including from non-EU countries

In order to ensure effective monitoring of migrants' rights, cooperation with already existing actors conducting monitoring and reporting at borders, including NHRIs, is crucial. Thus, ENNHRI welcomes the recognition in the Screening Regulation of the need for Monitoring Mechanisms to maintain close links with other regional and national actors monitoring fundamental rights at the borders, even if they are not included as part of the Monitoring Mechanisms foreseen by the Pact.

ENNHRI also reiterates the need for the EU to cooperate and support independent human rights bodies, such as NHRIs, in the EU's neighboring countries to strengthen human rights safeguards in the context of the European border management system. Only through effective cooperation with EU neighboring countries it is possible to effectively investigate and tackle violations that may have a cross-border nature, including violations of the principle of non-refoulement.

Looking ahead

As EU Member states will now work towards the implementation of the EU Pact, ENNHRI would welcome initiatives from the EU institutions in close cooperation with FRA related to providing platforms to exchange on good practices and challenges in the establishment and operations of Monitoring Mechanisms, with the aim to ensuring synergies and coordinated efforts. As emphasised above, such initiatives should also include EU's neighbouring countries.

Moreover, ENNHRI recommends EU institutions develop initiatives in cooperation with the Fundamental Rights Office at Frontex, the European Union Asylum Agency (EUAA) and other relevant actors for the development of monitoring methodologies and capacity-building initiatives to support newly appointed Monitoring Mechanisms. As adequate funding is crucial for the effective functioning of Monitoring Mechanisms, ENNHRI recommends that EU institutions explore opportunities within the current and upcoming funding frameworks to ensure these mechanisms can access EU funding, while safeguarding their independence and ensuring their overall effectiveness.

ENNHRI stands ready to provide expertise and further information to support NHRIs' diverse roles in relation to the EU Pact on Asylum and Migration, including in cooperation with relevant EU counterparts. ENNHRI will continue to provide a platform for peer exchange amongst NHRIs, and to support the work of its members on monitoring human rights at borders, within the EU and wider Europe.

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