

FIRST SEMIANNUAL REPORT

**OF THE INDEPENDENT MECHANISM OF MONITORING THE ACTIONS
OF POLICE OFFICERS OF THE MINISTRY OF THE INTERIOR IN THE AREA
OF ILLEGAL MIGRATION AND INTERNATIONAL PROTECTION**

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1. INTRODUCTION

The Independent mechanism of monitoring the actions of police officers of the Ministry of the Interior in the area of illegal migration and international protection (hereinafter: Mechanism) was established by the Agreement of 8 June 2021 (hereinafter: Agreement) which was signed by the Ministry of the Interior of the Republic of Croatia (hereinafter: Mol) on one side and the Croatian Academy of Medical Sciences (hereinafter: CAMS), Croatian Academy of Legal Sciences (hereinafter: CALS), Centre for Cultural Dialogue (hereinafter: CCD), Croatian Red Cross (hereinafter: CRC) and prof. dr. sc. Iris Goldner Lang on the other side. The Agreement determines the purpose and basic terms, activity providers, types of activities (see Chapter 2), their implementation locations, structure and funding of the Mechanism. The implementation period of the Agreement is one year (with the possibility of extension). Within that period, the Mechanism will implement 20 observations (announced and unannounced) of actions taken by police officers. The Mechanism consists of the Coordination Board (5 members, one each from CAMS, CALS, CCD and CRC and prof. dr. sc. Iris Goldner Lang), which independently from the Mol (whose officers are not present in the Board meetings) decides on the implementation of activities and it also consists of direct activity providers (8 members, two each from CAMS, CALS, CCD and CRC) who, based on the decision of the Coordination Board implement observations in the field (police stations, border crossing points, green border, reception centres for aliens, etc.).

The Head of the Coordination Board is prof. dr. sc. Davor Derenčinović (CALS) and the members are doc. dr. sc. Krunoslav Capak, dr. med. (CAMS), mr. sc. Nermin Botonjić (CCD), prim. Josip Jelić, dr. med. (CRC) and prof. dr. sc. Iris Goldner Lang. Direct activity providers are prof. dr. sc. Nadan Rustemović, dr. med. and prof. dr. sc. Mario Starešinić, dr. med. (CAMS), prof. dr. sc. Davorin Lapaš and assist. prof. dr. sc. Damir Primorac (CALS), Samir Ilijazi, mag. iur., Mr Admir Muhić (CCD), Mr Robert Markt and Mr Branislav Tomić (CRC). The logistical and administrative support for the work of the Mechanism is provided by the Mol which, in accordance with the Agreement, appointed a contact officer in order to ensure the uninterrupted and timely exchange of information as well as the facilitation of other activities which enable the implementation of monitoring and other Mechanism activities.

The broader national and European socio-political, geopolitical, geostrategic, security, human rights, but also media context¹, in which the Mechanism was created and established is very important, especially in the context of rushed/premature and unfounded criticism of individual civil society organisations at the expense of its establishment, the expertise of its members and the independence of its actions.² However, even more important in that context is the fact that nowhere else in Europe has a comparable *specialised* mechanism of (civil) monitoring of actions of the police in the area of irregular migration been established, although the new Pact on Migration and Asylum foresees the establishment of such mechanisms in all Member States of the European Union (hereinafter: EU).³ In that sense, there are no European examples according to which the Mechanism could have been established, nor could the guidelines and/or recommendations of best practice have been elaborated which the Mechanism could have used when implementing its activities. Nevertheless, there are European examples as well as expert studies of best practice of *general* (civil) mechanisms for monitoring police actions on the basis of which the Mechanism was established and it initiated operational activities quickly after its establishment.⁴

Precisely because of the previously mentioned criticism and possible doubts concerning

the independence and functionality of the Mechanism, basic terms relevant for its functioning are summarised and clarified below as well as the key principles of operation, which are fully in accordance with all key principles of operation of a police oversight body stated in the so-called *Police Oversight Principles*⁵ in the area in which they are responsible for their tasks and competences, as well as the powers of the Mechanism (see note next to 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 police oversight body contains 3 key elements. (1) Firstly, it is an organisation, which is legally responsible for the monitoring of certain aspects of police work (e.g. actions taken by police officers of the MoI in the area of illegal migration and international protection). (2) Secondly, there is no standardised organisational form of such a supervisory body - the independence of its actions is crucial. (3) Thirdly, such an organisation should aspire to achieve the principles stated below, although it does not necessarily have to fully achieve all of them.

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:	✓	Art. 3(3), Art. 4, Art. 5, Art. 6 and Art. 7
(i)	serious incidents resulting from the actions of police officers;	✓	
(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 financed and it has the appropriate resources, whereby the condition of state financing is met because, although EU funds are used to finance the Mechanism, they are also indirectly controlled by the MoI, which would therefore represent indirect state financing; **The Mechanism functions within the framework of its legally determined task and competence. It is equipped precisely with the powers which allow it the implementation of unbiased, independent and effective monitoring, whereby it is important to keep in mind that the Mechanism is neither a 'complaint' nor 'internal affairs' supervisory body, since such bodies already exist in the Republic of Croatia

(State Attorney's Office, Ombudsman, Internal Control of MoI); ***The Mechanism meets the stated condition, whereby it is necessary to point out again that the Mechanism is neither a 'complaint', nor 'internal affairs' supervisory body.

Having in mind that the above-mentioned key principles of operation refer to *general* police supervisory mechanisms (primarily 'complaint' and 'internal affairs' supervisory bodies), it is necessary to understand them, as well as other key principles which govern⁹ the Mechanism within the context of the following:

- a) lack of comparable mechanisms,
- b) *specificity* of the purpose and objective of precisely a *civil* monitoring mechanism in the *area of irregular migration* (which are neither 'complaint' nor 'internal affairs' purposes/objectives) as well as
- c) legal competence and powers of *existing state and civil mechanisms for monitoring the police in Croatia*.

In that sense, the request for full range of police powers should be connected with adequate powers to carry out its functions and it is necessary to value the accomplishment of both key principles of the Mechanism as a *civil* monitoring mechanism in a *specific area* of irregular migration, as well as one stakeholder in the entire *general* system of police monitoring in Croatia whose competences and powers do not overlap, but are rather complementary to the competences and powers of other bodies (MoI, State Attorney's Office, Office of the Ombudswoman, etc.). The Mechanism is therefore a body of limited competence, whereby precisely the competences of other stakeholders in the general system of police monitoring condition the competence of the Mechanism. The focus of the work of the Mechanism lies in its field-administrative actions in which the analysis of primary and secondary data sources is combined (see below under 2).

The Mechanism is not a static and one-time or even final answer to all challenges of civil monitoring of the police in the area of irregular migration in Croatia. Its establishment is the start of an unbiased, independent and expert dialogue with the MoI, which is not led with the exclusive objective of detecting and processing individual illegal actions of police officers, but rather with the purpose of determining normative, institutional, systematic, operational, technical as well as human factors, which contribute or even cause such illegal actions. It is clear that leading such a dialogue must conform to the requirements of dynamics and adaptability and it should have the potential of longevity, which also opens the possibility for the evaluation of proposed and implemented measures as well as their timely corrections (*evidence-based policy*). In that sense, the Mechanism implements its mandate in accordance with the Agreement and positive regulations of the Republic of Croatia and it is guided in its work by the vision of a direct, unbiased, independent and expert dialogue with the MoI. A broad circle of stakeholders is indirectly involved in the dialogue through the Advisory Board, as well as the public from which the Mechanism receives certain information and to which it transparently communicates the findings of its work.

2. CONTROL ACTIVITIES OF THE MECHANISM

The monitoring activities of the mechanism, as well as the manner and location of their implementation are defined by the Agreement. The activities of the Mechanism which are implemented at the border with Bosnia and Herzegovina, Montenegro and Serbia (border police stations) and in reception centres for aliens, include the observing of actions taken by police officers towards migrants and applicants for international protection in enforcing the regulations governing state border control and the provision of international protection as well as gaining insight into the files of finally disposed cases on the received petitions on the alleged illegal treatment of irregular migrants and applicants for international protection as well as insight into the activities of the General Police Directorate regarding the alleged illegal treatment of the stated categories of persons. Monitoring activities of the Mechanism are also implemented at the green border. Although the Agreement defines those visits as “announced”, in practice the Mechanism also implemented unannounced observations at the green border with the consent of the Mol (see below under 2.1).

The work methodology of the Mechanism is based on two different groups of actions (analysis of primary and analysis of secondary data sources) and depending on the type and source of data, type of procedure and the specificity of individual actions, but also on the observed phenomena, it uses the following methods: *in vivo* observation, semi-structured interview, normative analysis, statistical analysis and case studies. The groups of Mechanism activities are the following:

- 2.1. analysis of primary data sources based on the implementation of:
 - 2.1.a. observations (announced and unannounced) and
 - 2.1.b. interviews with persons (irregular migrants, police officers, other persons who have direct knowledge of possible illegal actions of police officers),
- 2.2. analysis of secondary data sources (files and complaints, statistical data, normative framework, rules and practices of actions taken by police officers etc.).

When sampling cases/observations/files/complaints, the key selection criteria of the Mechanism are vulnerability of a person/group, urgency of action, scale/level of potential illegality and geographically unified distribution in correlation with the incidence and prevalence of irregular migration.

2.1. Analysis of primary data sources

The fundamental activity of the Mechanism in relation to the analysis of primary data sources is realised through observations of police actions (hereinafter: observations). In accordance with the Agreement, direct activity providers will conduct a total of 20 observations within one year. The observations are implemented on the basis of the provisions of the Agreement, the Procedure Protocol (internal document) and *ad hoc* agreed guidelines. An individual report form was made for the needs of the observations. Direct activity providers submit it to the Head and members of the Coordination Board as soon as possible after completing an observation.

The decision on implementing observations is adopted by the Coordination Board on the basis of submitted statistical reports which are submitted each month by a representative of the Mol to the Mechanism. These reports contain information on all irregular migrants and applicants

for international protection per police administration, i.e. border police stations (hereinafter: BPS). Besides on the basis of statistical reports, the Coordination Board adopts decisions also on the basis of other available information sources. For example, two observations have been implemented on the basis of media reports on actions taken by police officers towards irregular migrants. Both observations were conducted in BPS Cetingrad. The first observation was also conducted in Porin Reception Centre, whereas the second (unannounced) observation was quickly implemented by visiting the field and locations where illegal actions of police officers towards irregular migrants have been determined which were documented in a report by RTL Television which was broadcast on 6 October 2021. Besides an on-site visit, in that particular case an emergency meeting was held in the General Police Directorate with the Head of the Border Police Directorate, Mr Zoran Ničeno. The speed and appropriateness of the response of the Mechanism is confirmed by the fact that these activities were carried out even before the Mol confirmed that the persons in the recording were riot police officers against whom disciplinary procedures were initiated and who were suspended from duty. The importance of the timely reaction of the Mechanism was confirmed for the media by both the highest-ranking officials of the Mol, as well as the Commissioner of the European Commission for Home Affairs, Ms Ylva Johansson.¹⁰

In addition to the stated sources of information on the basis of which the Mechanism acts, the representative of the Mol informs the Head of the Coordination Board in real time about the encountered irregular migrants, their transport to the competent BPS and the conducted procedure. The Head forwards this information without delay to the members of the Coordination Board and a decision on conducting observations is made on the basis of carried out consultations. One of the observations was carried out urgently (within several hours after receiving the information, a field observation report was received) at BPS Slavonski Brod and a day later at Porin Reception Centre.

While conducting observations, direct activity providers determine whether fundamental human rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention and Protocol Relating to the Status of Refugees, which has a central role for 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 observations of police officers, it is determined whether they acted in accordance with the Police Duties and Powers Act and the Aliens Act. Recognizing the purpose of Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of Protocol No. 4, which is to prevent states from expelling aliens before individually examining their personal circumstances and whether the aliens had the opportunity to apply for asylum, and to allow them to present their arguments against expulsion, competent police officers were asked how they interact with irregular migrants when encountering them in the territory of the Republic of Croatia. Thus, the observation determines whether migrants are allowed to apply for asylum or international protection, whether they have the right to an interpreter, the possibility of using forms in their language to express the intention of applying for international protection, the right to free legal aid and the right to medical assistance (especially concerning vulnerable groups of persons). Observations also include an inspection of the premises where migrants are detained, inspections of vehicles in which they are transported, as well as visits to the green border, while files and applications for international protection and lists of persons which provide free legal aid are inspected in police stations.

Upon arrival to the location of an observation, direct activity providers equipped with

official accreditations and noticeable vests introduce and identify themselves using the application form of individual border police stations of the MoI. Direct activity providers then conduct an interview with the authorised persons of the BPS, gain insight into the files of individual cases, check the accommodation capacities and perform an on-site visit of the border area. In the event that there are persons in the BPS who were encountered while attempting to enter the Republic of Croatia illegally, direct activity providers interview them with the help of an interpreter. Police officers are questioned in detail about procedure rules in situations when they encounter irregular migrants, whereby special attention is given to vulnerable groups. Direct activity providers interview persons only with their consent, taking into account the protection and confidentiality of personal data, especially when it comes to vulnerable groups and/or sensitive topics of conversation and/or traumatic events.

The observations can be announced and unannounced. Concerning unannounced observations in 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, the observation is carried out on the basis of the decision of the Coordination Board without informing the representatives of the MoI that the observation will be carried out as well as where and when it will be carried out. Based on the decision of the Coordination Board, the selected direct activity providers conduct an on-site visit after preparatory consultations. They arrive at the selected border police station in their own personal vehicle without prior notice, where they begin the observation procedure, which includes all of the above-mentioned actions. According to the second model, the Head of the Coordination Board informs the representative of the MoI that the Mechanism will conduct an observation, but does not specify when and where. In this sense, the observations conducted in this way are *de facto* also unannounced because the MoI does not know when and where the observations will be conducted. The first unannounced observations were conducted according to the second model. The reason for that is the text of the Agreement according to which the observations on the so-called green border can be carried out only when accompanied by employees of the MoI, whose escort serves only to protect direct activity providers in high-risk areas (e.g. mined or mine-suspected areas, danger of possible encounters of smugglers, human traffickers, poachers, etc.). The last two observations conducted by the Mechanism were observations according to the first model, which was quite successfully tested, given that after the unannounced arrival to the BPS, direct activity providers were allowed access to the so-called green border accompanied by police officers.

In the first six months of operation, the Mechanism conducted 8 observations, out of which 2 announced observations, 4 unannounced observations according to the second model and 2 unannounced observations according to the first model. When sampling cases/locations of observations, the Mechanism was guided by the key selection criteria of the size of the group and the degree of vulnerability of groups/persons of migrants, estimated urgency of the observation, assessment of the scale/severity of potential illegalities and geographically unified distribution of observations in correlation with incidence and prevalence of irregular migrations in individual locations (the observations included BPSs Cetingrad, Slavonski Brod, Donji Lapac, Dvor, Stara Gradiška and Trilj). In addition to aggregate statistical data and reports of the MoI, the Mechanism also based the sampling of cases/locations of observations on daily notifications of the MoI on persons encountered as irregular migrants (location, number of people in the group, presence of vulnerable persons in the group, origin of group members, etc.).

After the observation, direct activity providers compile a report on the individual observation as soon as possible, which is discussed at the earliest forthcoming meeting of the Coordination Board, which shall adopt the report. Individual reports of direct activity providers

are not available to the public; however, the Coordination Board informs the public in a timely and appropriate manner about the content of the semi-annual and annual reports. Exceptionally, when there is special interest of the public, the Mechanism issues a press release immediately after the implemented observation, as was the case with the announcement of 8 October 2021 concerning the report broadcast on RTL Television in the programme "Potraga" on 6 October 2021. This announcement informed the public about the urgent implementation of an unannounced observation in connection with the incidents documented in the above-mentioned broadcast. In addition to this information, the Mechanism expressed in a statement its *"regret that the recording was not published much earlier and submitted to the relevant state bodies, primarily the State Attorney's Office of the Republic of Croatia, as it would have certainly contributed to a much earlier clarification of the event and the collection of evidence, protection of migrants and the initiation of appropriate proceedings against those who are responsible, as well as the prevention of possible comparable incidents, which are warned against in the broadcast."*

Observations are very important but not the only monitoring power and activity of the Mechanism. The findings of field observations primarily serve to verify and determine the possible gap between the normatively envisaged and institutionally conceived rules of conduct of police officers with everyday practice in the field. Accordingly, the observations complement the overall 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 work of the Mechanism. The finding of the Mechanism on the wrong interpretation of the Mol concerning the moment and location of encountering irregular migrants in the territory of the Republic of Croatia can serve as an illustrative example, which according to circumstances does (not) guarantee the right to apply for asylum, i.e. international protection (see more below). This is one of the key findings of the Mechanism, which is not the result of observation, but of an impartial and expert dialogue with the Mol. Finally, the above-mentioned finding of the Mechanism also clarifies the causes, and thus indicates solutions to the issue of illegal actions arising from such a wrong interpretation.

2.2. Analysis of secondary data sources

The work methodology of the Mechanism, in addition to primary data sources (observations), also includes the analysis of secondary data sources. The findings of the Mechanism are based on knowledge gained through the analysis of files and complaints¹¹, statistical data, relevant normative framework, rules and practices of the conduct of police officers and other persons involved in receiving and/or providing assistance to irregular migrants, media reports, reports of relevant stakeholders, etc.¹² It is important to emphasize that the Mechanism does not act on the basis of complaints because it does not have the properties of the so-called *complaint based mechanism*. In this way, possible conflicts of competence with other responsible bodies that are established and which act, *inter alia*, on the basis of received complaints (e.g. Office of the Ombudswoman) are avoided. However, the Mechanism can also forward the received complaints to the competent state bodies.

The analysis of secondary data sources also includes the use of monthly statistical reports submitted by a representative of the Mol to the Mechanism. These reports contain information on all irregular migrants and applicants for international protection per police administration, i.e. border police stations, country of origin, sex, etc. In addition, the Mol provides real-time notifications to the Mechanism about ongoing actions taken towards irregular migrants. According to the Mol data submitted to the Mechanism on a regular basis concerning the manner in which the actions were carried out, in the period from 29 July to 16 November 2021, the police

conducted a total of 41 actions towards persons encountered while illegally crossing the state border. These actions refer to a total of 329 persons from 9 countries - Afghanistan, Iraq, Iran, Syria, Turkey, Cuba, Pakistan, India, Nepal. The largest number of irregular migrants affected by police actions are from Afghanistan (more than 70%). The actions were implemented in the area of 10 BPSs - Novska, Stara Gradiška, Trilj, Dvor, Gvozd, Glina, Slunj, Korenica, Cetingrad and Slavonski Brod. Actions towards the largest number of persons were implemented in the area of BPS Slavonski Brod (119 persons or 36%) and BPS Cetingrad (84 persons or 25%).

In most cases (over 90%), irregular migrants expressed their intention to apply for asylum/international protection. Two irregular migrants, despite expressing their intention, did not submit an application. In relation to 14 persons who did not express their intention to apply for asylum/international protection, a decision on expulsion was issued. On 20 November 2021, 245 applicants for asylum/international protection whose applications were being processed since 29 July 2021 are still in a reception centre for aliens (around 75%), while the procedure for most other irregular migrants was suspended pursuant to Article 39(2)(3) of the Act on International and Temporary Protection (Official Gazette 70/15, 127/17) because they left the reception centre.

3. OTHER ACTIVITIES

A constitutive meeting of the Coordination Board was held soon after the Agreement was signed on 8 June 2021, in which the Head of the Board was elected (prof. dr. sc. Davor Derenčinović). So far, the Coordination Board has held three official meetings and a series of ad hoc unofficial meetings by using videoconference tools. Regulations governing the operation of the Mechanism (Protocol on procedure) were adopted in the meetings of the Board and after the discussion and contribution of all members of the Mechanism, the text of the form for conducting direct observations was also adopted.

On 16 September 2021, on the premises of the General Police Directorate, the Head of the Board met with the members of the Committee of the US Department of Homeland Security in relation to the decision on the abolition of visas for Croatian nationals. On that occasion, he presented the functioning of the Mechanism and answered a series of their questions regarding the independence of the Mechanism, its methodology, relation and cooperation with the MoI etc.

At the invitation of the Advisory Board which held its constitutive meeting on 17 September 2021, the Head of the Board briefly presented the activities of the Mechanism and announced the adoption of the first semiannual report at the end of November, i.e. at the beginning of December 2021. Operationalisation of the Mechanism, importance of its independence in theory and in practice as well as the expertise of its members were assessed positively in the meeting in which participated the representatives of DG HOME, UNHCR, Office of the Ombudswoman, Office of the Ombudswoman for Children, FRA, FRONTEX and EASO. The importance of the corresponding funding of the Mechanism's activities was also emphasised as well as the avoidance of duplication, i.e. overlapping of competence with the existing institutions for human rights protection (e.g. Office of the Ombudswoman).

On 1 October 2021, the Head of the Board participated in the webinar *"Migration and asylum: Council of Europe standards and channels for practical cooperation"* which was jointly organised by the Council of Europe and the Ministry of the Interior of the Republic of Croatia.

On 29 October 2021, the members of the Mechanism, prof. dr. sc. Davor Derenčinović, prof. dr. sc. Iris Goldner Lang, mr. sc. Nermin Botonjić and Mr Robert Markt participated in the work of the Schengen Scrutiny Working Group of the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee in Brussels in which they presented the establishment and functioning of the Mechanism and participated in the discussion with the members of the European Parliament, the representative of the European Commission (DG HOME), the Ombudswoman and the invited members of Croatian and international non-governmental organisations (Centre for Peace Studies, Danish Refugee Council, Border Violence Monitoring Network).

4. PRELIMINARY FINDINGS

Preliminary findings of the Mechanism are divided into several categories: effectiveness of the legal framework, rules of procedure of the MoI, challenges in procedural practices of police officers, established irregularities and good practice as well as difficulties faced by irregular migrants. When assessing and interpreting preliminary findings, it should be taken into account that they are the result of the fact that the Republic of Croatia has an extremely long land border with countries to which monitoring activities of the Mechanism refer and that there are no artificial physical obstacles for entering the state territory (a wall, wire etc.). The specificity of it is also the configuration of the border terrain as well as a lot of mine-suspected areas. Most preliminary findings of the Mechanism are based on the fact that state border control is largely personal in character. This indicates the importance of revising the existing human and professional resources within the system. Related to this, the Mechanism gives certain recommendations listed below under 5 which are aimed at improving the protection and security of the state border while ensuring the maximum respect of 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 based on their statement. Even after the Republic of Croatia issues a "refugee card" to them for the duration of their stay and free movement in the state territory, identification is based on their statement, especially because the refugee card is not an identification document. Therefore, one of the key challenges regarding the effectiveness of the legal framework is identification and issue of irregular migrants' identities, as the persons encountered in most cases do not have any personal documents which allow for their identification. Persons often give false information about themselves thus creating fake identities which is demonstrated by the detected inconsistencies in the statements of irregular migrants which are the basis for determining identities and other relevant facts. This certainly raises the question of the credibility of identity statements.

- **EURODAC and police exchange of data important for identification**

Insufficient cooperation between border police stations has been noticed both in the Republic of Croatia and with the neighbouring countries as regards the exchange of information (e.g. in the form of fingerprint databases and other data relevant for identification) regarding persons who do not express the intention to initiate the procedure of applying for asylum/international protection in the Republic of Croatia who are served the decision with the instruction to leave the territory of the Republic of Croatia on their own. The problem is that only data of persons applying for asylum/international protection and of persons encountered in illegal crossing (persons who cannot be removed) are entered into EURODAC, but not of persons who have been returned.

- **Execution of decisions on return, difficulties in identifying migrants and prevention of repeated illegal migration (recidivism)**

If a migrant does not apply for asylum/international protection, a decision on return is issued in line with Article 184 of the Aliens Act determining the time limit for voluntary departure.

The issue arises when a migrant does not comply with the decision on return but stays in the territory of the Republic of Croatia. In such situations, forcible removals are conducted (Article 203 of the Aliens Act) with police escort. However, if a migrant lost or destroyed the decision on return, then it is extremely difficult to remove them from the Republic of Croatia due to

the impossibility to establish their identity. Furthermore, difficulties in identifying and separating repeated illegal migration (recidivism) from primary illegal migration have been established.

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

According to the collected primary data, the majority of migrants “continue their journey” towards the countries of Western Europe, while approximately 80% of persons who applied for asylum/international protection in the Republic of Croatia and are therefore accommodated in Porin do not return to the Reception Centre and the proceedings are suspended. On the other hand, the secondary sources of data (see 2.2.) indicate that the ‘outflow’ is somewhat lower, so it is difficult to estimate the real ‘outflow’. It is a fact that the ‘outflow’ exists and that it presents a problem. In most cases, the stated persons continue their illegal journey towards Western countries of the European Union. In principle, these persons apply for international protection in other countries of the European Union under other identities. In those cases, the administrative procedure of applying for asylum in the Republic of Croatia is suspended. According to the observation data, at the time of reception, more than 90% of migrants did not have any documents nor material resources to continue their journey.

- **Record-keeping and managing cases**

Record-keeping and managing cases are undisputed in terms of legislation and compliance with European standards; however, there are deficiencies in terms of implementation. The results of the monitoring indicate that there are multiple files in the same case which is why case files should be consolidated for more effective monitoring. During the monitoring, it was established that the Aliens Sector and the border police keep separate files relating to the same person which is problematic for a number of reasons and can ultimately endanger the rights of the person in question as well as the fairness and accuracy of the procedure. Therefore, case files of the Aliens Sector and the border police should be consolidated. Individual case files should be consolidated for every person, i.e. records from all services in which irregular migrant(s) were the subject of proceedings.

b. RULES OF PROCEDURE OF THE MINISTRY OF THE INTERIOR, CHALLENGES IN PROCEDURAL PRACTICES OF POLICE OFFICERS, ESTABLISHED IRREGULARITIES AND GOOD PRACTICE EXAMPLES

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

Actions taken towards migrants who are sometimes armed, smugglers and human traffickers should also be included in the challenges that police officers are faced with in practice. It would be worth considering the forming of an EU database on persons who have been finally convicted for human smuggling (cf. Croatian criminal legislation, Art. 326 of the Criminal Code) and trafficking in human beings (cf. Croatian criminal legislation, Art. 106 of the Criminal Code) in order to harmonise and tighten the criminal policy in the EU for particularly serious manifestations and repeat offenders.

- **Capacities and workload of police officers**

- Police officers have been handling migration crisis for years and they are under great pressure considering the fact that they need to protect the border while being the first to endure the pressure of troubles faced by irregular migrants. In spite of significant strengthening of border police capacities, due to continuous migratory pressure in certain border police stations, it was observed that riot police units were deployed as relief forces in the areas affected by migratory pressure. On the one hand, the overburdening of the

existing personnel would be reduced by adequate staffing as well as the continuation of technical equipping of the border police system which would most likely prevent possible irregularities of actions taken by 'external' units deployed as relief forces.

- Police officers face different cultural relations in the migrant population. For example, a different culture of raising and treating children or a different approach to child healthcare within the migrant population shows an obvious discrepancy with domestic culture/approach and creates great challenges in the everyday practice of police officers requiring their additional work engagement (making sure that children left unattended do not hurt themselves etc.).

▪ **Irregularities established in the actions of police officers**

- By monitoring, the Mechanism established that the police conducts permissible deterrence in line with Article 13 of the Schengen Borders Code, although they are not registered, as well as illicit deterrence in mine-suspected areas in isolated cases. Such conduct is at issue for multiple reasons and particularly for the following three: (1) Firstly, illicit deterrence occurring upon entering the state territory of the Republic of Croatia prevents individuals from lodging applications for asylum in these cases and can jeopardize their right to apply for international protection if they are unable to lodge the application for asylum somewhere else. The purpose of permissible deterrence under Article 13 of the Schengen Borders Code (prevention and discouragement) should be to refer refugees to legal procedure for entering the receiving state which, according to international law, facilitates their position later in the procedure of granting asylum and provides them with a larger scope of rights as the so-called "legally present refugees" (the so-called "*de iure* refugees"). This must in no way lead to the violation of rights to apply for asylum by enabling real and effective access to means of legal entry, particularly to border procedures and the violation of the non-refoulement principle which must in no way be violated on the basis of the standards of European and international law as well as the judgements of the Court of Justice of the European Union and the European Court of Human Rights. Respecting this principle obliges the state not only in situations which occur in the state territory, but also in extraterritorial situations falling under the jurisdiction and effective control of that state. (2) Secondly, the implementation of deterrence disables the registration of irregular migrants who cannot express their intention for asylum/international protection which makes it impossible to determine where they had entered the European Union and whether they previously lodged an application for asylum in order to enable the application of the Dublin Regulation and EUODAC Regulation. (3) Thirdly, considering that, in the case of any dispute, the burden of proof regarding the permissibility of deterrence is on the state, an omission in registering permissible deterrence makes it difficult and even impossible to determine whether the deterrence in that concrete situation was permissible or not.
- The mechanism established that the Mol misinterprets relevant regulations in situations when irregular migrants know that police officers do not conduct physical control of mine-suspected areas, take full advantage of that circumstance by crossing the state border in these dangerous/(potentially) mined locations and upon crossing and being encountered by police officers claim that they entered the Croatian territory and apply for asylum. However, the interpretation of the border police is that these persons did not in fact enter the Croatian territory as the stated areas are not "under the actual control of the Republic of Croatia", but that they are deterred from crossing/entering in a way that they are returned in harmless locations without determining whether they are indeed refugees protected from refoulement from the moment they come under the jurisdiction of the Republic of Croatia, let alone on its territory, which is definitely the case here.

- By conducting unannounced monitoring and analysing other primary and secondary data sources relating to the video recording broadcast on RTL television on 6 October 2021, the Mechanism established that the members of the riot police acted illicitly by returning irregular migrants from the Republic of Croatia to Bosnia and Herzegovina outside the scope of permitted national and international law, which was also confirmed by the MoI. On the basis of this case, disciplinary proceedings as well as criminal proceedings have been initiated against police officers before the competent state's attorney office.
- **Examples of good practice**
 - During the monitoring, it was established that police officers mostly treat migrants in accordance with regulations by respecting the highest standards (e.g. taking into account the diet of migrants with regard to religious regulations, assisting vulnerable groups of migrants, pregnant women, unaccompanied minors etc.).
 - As examples of good practice, the cooperation of the border police and the following healthcare institutions should be particularly cited: emergency medical services, hospitals, regular COVID testing and reviews of medical records when necessary, as well as the cooperation with nursing homes (e.g. in the case of accommodating a migrant in "Srećko Badurina" Nursing Home in Ogulin at the initiative of employees of BPS Cetingrad).
 - Police officers act in order to protect the national security and public order as well as fundamental rights of migrants guaranteed by conventions. When treating migrants, police officers must respect fundamental principles from which we single out the principles of non-discrimination, prohibition of punishment and non-refoulement. It is important to emphasise Article 32 of the Convention and the Protocol relating to the Status of Refugees according to which the Contracting State will not forcibly remove a refugee lawfully staying in its territory, unless national security or public order is compromised. Such refugees can be forcibly removed only after a decision that is in accordance with the law is issued. In order to properly treat migrants and protect their guaranteed rights, upon conducting observations at police stations, the Mechanism was informed that police officers are familiarised with fundamental human rights at the beginning of their training. There are also new trainings of border police multipliers who are taught on the protection of human rights. The Mechanism was also informed of the training of the members of the special police assisting the border police. Upon observations, both announced and unannounced, it can be concluded that police officers are familiarised with fundamental rights of migrants. Above all, this refers to the right to lodge the application for international protection using prescribed forms in languages that applicants understand, the right to an interpreter, the right to free legal assistance and especially the right to medical assistance which we were convinced of by inspecting the available files kept in police stations. Police stations subject to observations had forms available in at least 10 languages.

c. DIFFICULTIES FACED BY IRREGULAR MIGRANTS

- **Criminal victimisation**

Migrants are exposed to human traffickers/smugglers from both sides of the border, some of whom are foreigner nationals (e.g. a British national encountered and prosecuted by competent national authorities). Migrants are subjected to abuse by smugglers and "agents" who guarantee their border crossing. Likewise, illegal conduct of Croatian police officers towards migrants were registered (e.g. use of force) aimed at their forcible return beyond the limits allowed by positive regulations and international law. Interviewing the persons encountered in illegal crossing of the border of the Republic of Croatia, direct activity providers

noticed that in most cases these are persons without any documents transferred by “agents” (smugglers, including third-country nationals) for a large sums of money across the border from Bosnia and Herzegovina to a certain location in the Republic of Croatia where their connection for transport to their final destination in the countries of Western Europe should wait for them. Irregular migrants are left in uninhabited, hard-to-reach, cold and damp places, without food and water which reflects on their health and the “connection” does not arrive. In such cases, irregular migrants contact international or Croatian organisations whose contact information they have in order to receive protection. In observed cases, irregular migrants stated that they had been faced with unfulfilled promises of “agents”, illegal use of force, seizure of documents, money and mobile phones while on their way from Bosnia and Herzegovina to the Republic of Croatia in order to pass towards the countries of their final destination (because “the connection” had not arrived). When describing the cases of illegal use of force, irregular migrants stated that force had been used by persons in dark uniforms without insignia, wearing balaclavas and equipped with batons.

- **Migration-related trauma**

- Years of travel, general exhaustion and illness that often require medical treatment and care.
- Different relations of cultural nature and language barrier.
- Disorientation in time and space.
- Issue of separation of family members and related uncertainty.
- Exposure to joint criminal activities of organised groups of smugglers and human traffickers from several countries.

- **(Potential) self-victimisation and endangering vulnerable persons**

Exposure to danger due to attempts to cross the border even in mine-suspected areas, issue of endangering vulnerable groups (children, pregnant women, ill persons, the elderly).

- **Reception/accommodation**

One of the greater issues migrants face is the fact that police stations still do not have adequate rooms for their temporary accommodation. Due to a large number of migrants, it is currently not possible to ensure an adequate room in some stations for migrants to spend a certain amount of time until their identification is completed. The room needs to meet the conditions stipulated in Article 13(2) of the Ordinance on the treatment of third-country nationals. If an application for international protection is lodged, such persons are referred to the Reception Centre for Asylum Seekers which the members of the Mechanism visited and which has adequate conditions for the accommodation of migrants.

5. RECOMMENDATIONS

Listed below are the recommendations of the Mechanism for which there are reasonable grounds to assume that their accepting and implementing would significantly reduce the risk of illegal actions of police officers in the field of irregular migration based on the preliminary finding of the first six months of monitoring. In addition, accepting and implementing the recommendations would undoubtedly raise the work quality of the MoI in this challenging sector. In conclusion, by urgently implementing the said recommendations, the Mechanism could, in the following 6 months, perform a preliminary evaluation assessment of the implemented measures aimed at determining possible necessary corrections and effectiveness of certain measures. Regardless of the moment and scope of the implementation of concrete measures based on the stated recommendations, it is necessary to design the corresponding evaluation instruments and procedures already during the development and before the implementation of individual measures.

- 1) **Improve the manner of identifying irregular migrants**, both applicants for asylum/international protection and those who do not apply for asylum/international protection, e.g. by using modern software tools for face recognition, which can be applied using smartphones. Launch an initiative in the future to form an EU base of biometric data in the field of irregular migration. Although this does not solve the challenges of establishing a real identity of irregular migrants without valid documents, it would allow a person thus registered to be 'linked' to the same identity throughout the entire migration journey.
- 2) **Improve the cooperation of border police stations related to migrants in irregular crossing**. Namely, if they do not express the intention to initiate the procedure of applying for asylum/international protection in the Republic of Croatia, these persons are handed a decision upon completion of the administrative procedure on leaving the territory of the Republic of Croatia independently within 7 days, instead of being immediately handed over in agreement with the police of Bosnia and Herzegovina (as is the case if the police encounters them in the Republic of Croatia after the deadline expires). Their fingerprints are taken on that occasion, but they are allegedly not entered into the EURODAC system, so next time they can attempt to do the same in the area of another border police station since the exchange of information between various border police stations is insufficient in that sense.
- 3) **Register all persons who enter the state territory of the Republic of Croatia irregularly**. The problem also occurs in the implementation of decisions to leave the European Economic Area for persons who have not applied for asylum/international protection. The fingerprints of these persons are not taken beforehand to be entered into EURODAC, but rather, they are only photographed. Since they do not have any documents in principle, such persons are impossible to identify when they try to illegally enter the Republic of Croatia again and "agents" (smugglers and/or human traffickers) could be among them scouting the terrain in this way. It is recommended to examine the possibility of taking fingerprints in border police stations (and not in reception centres) of all persons who attempt to illegally enter the Republic of Croatia irrespective of whether they applied for international protection/asylum or not.
- 4) **Improve international legal assistance as well as police cooperation** with countries with which such a cooperation is possible and which are located on irregular migration routes and particularly with the neighbouring countries from which migrants cross to the Republic

of Croatia (Bosnia and Herzegovina) and use the diplomatic and consular network and other available sources of information in obtaining data on the identity of persons encountered irregularly crossing without challenging protected human rights and privacy of these persons.

- 5) **Pay particular attention in the procedure to various obligations under international law related to persons' status as *refugees* or *migrants*.** As regards the first category, the obligation of non-refoulement is beyond doubt (apart from rare exceptions provided under international law) and is a part of general international customary law, while international migration law does not contain such an obligation. It is the country's obligation not to apply illicit deterrence irrespective of whether it concerns refugees or migrants.
- 6) **Record the GPS coordinates of movement of police patrols at the green border.** It is proposed for GPS coordinates to become an integral part of the report submitted after border control by border police patrols. Recording GPS data should be regulated so that tracking is automatically generated without creating further administrative burden for police officers. On the one hand, this will enable subsequent personal identification of all police officers if irregular migrants report improper/illegal conduct, while the measure would also have a preventive effect having in mind the awareness of police officers that they can be subsequently personally identified – both in terms of exculpatory absence and in terms of potentially incriminating presence at the scene.
- 7) **Draft and distribute internal written instructions ordering police officers to act on written instructions when performing state border surveillance in the field of irregular migration, while they are not obliged to follow verbal instructions deviating from or contradicting written instructions, but they need to immediately report this to the General Police Directorate and the Mechanism in writing.** On the one hand, this prevents improper/illegal conduct of police officers following irregular/illegal verbal instructions/orders, while preventing managing police officers from issuing such instructions/orders. This also clearly defines the procedure and contact for reporting violations of such internal written instruction of the MoI, which guarantees timely internal and external (Mechanism) monitoring.
- 8) **Improve the system of tracking cases/files aimed at consolidating all information** in one place and consolidating the files on applicants for asylum/international protection of the Aliens Sector and the border police.
- 9) **Build a collection of good practice of the conduct of police officers in the sector of irregular migration.** The Mechanism was notified or was familiarised with the cases during the on-site visit in which the members of the border police saved migrants or organised transportation and medical assistance for them. Furthermore, positive examples include transporting migrants to the reception centre in unmarked police vans as well as continuous availability of interpreters into almost all languages used by migrants. Another example of good practice is the conduct of female police officers in BPS Slavonski Brod towards vulnerable groups – women and children and their transportation in unmarked vehicles to Porin Reception Centre in Zagreb.
- 10) **Request/use budgetary and/or EU funds to harmonise the quality of accommodation conditions in all border police stations** because it was determined during the observation that accommodation capacities of certain border police stations do not meet the minimum standards.

- 11) **Create a handbook containing precise description of standard operating procedures** and clear distinction of actions in state border surveillance which are allowed under national, European and international legislation and those that are not allowed and which violate human rights of migrants and applicants for international protection as well as ensure that all relevant employees of the Mol are familiar with the content of the handbook (uniformed police, border police, riot police).¹³
- 12) **Improve the source of information for irregular migrants** on e.g. the list of border crossing points in which migrants can apply for asylum in the Republic of Croatia, design a website in all languages with the instruction on how to apply for asylum in the Republic of Croatia and contact information, present the uniforms of the border police and other units performing border surveillance in a transparent manner (their appearance and insignia) and specify a contact for notifying/reporting in case of detecting persons moving in the border area in different uniforms.
- 13) **Adopt the practice according to which the Mol should urgently report to the Mechanism** on the event and actions undertaken and planned **in case of finding out about irregularities/incidents in the treatment of irregular migrants by police officers**. This is a measure that would encourage the Mol to strengthen and accelerate the dialogue and enable it to make the most of the expertise of the Mechanism in such situations.
- 14) **Analyse the expectations and needs of relevant stakeholders in consultation with the Advisory Board and the Mol in relation to the tasks of the Mechanism which clearly exceed its existing assigned tasks (including its powers as well as the organisation and functioning)**. Based on such an analysis that would be conducted in the second stage of work over the next six months, the Mechanism may prepare a proposal for the extension of the Mechanism in cooperation with the Mol as regards both its tasks and duration and the normative framework necessary for this.

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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 that the Mechanism was governed by in its establishment, the following should be particularly emphasised: 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 12, available at https://www.epac-eacn.org/fileadmin/Documents/Recommendations/Police_Oversight_Principles.pdf [22.11.2021].
- ¹⁰ Violence against migrants: Commissioner Johansson satisfied by Croatian reaction: 'They took it seriously, the minister is shocked!' Johansson held meetings on Thursday evening with Minister Božinović and Greek Minister of 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 been given insight into the files regarding the received petitions on the alleged illegal treatment of irregular migrants and applicants for international protection as well as the reports of the General Police Directorate. Moreover, it was made possible to interview police officers who participated in the selected file as well as petitioners if they are located in the area of the Republic of Croatia and if they agree to it. For example, when visiting Porin Reception Centre, an applicant for asylum was interviewed and in her statements, she complained about the work of police officers. Almost on a daily basis, activity providers of the Mechanism receive information on migrants encountered in the area of the Republic of Croatia which enables them to monitor their movement.
- ¹² Accessing data depends on the finality of the case/file and 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_en.pdf [29.11.2021]



P/2574503

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Prof. dr. sc. Iris Goldner Lang, [REDACTED], [REDACTED], Personal Identification Number: [REDACTED]

concluded on 8 June 2021, the following

**COOPERATION AGREEMENT TO IMPLEMENT AN INDEPENDENT MECHANISM OF
MONITORING THE ACTIONS OF POLICE OFFICERS OF THE MINISTRY OF THE INTERIOR
IN THE AREA OF ILLEGAL MIGRATION AND INTERNATIONAL PROTECTION**

**Article 1
PURPOSE**

The Agreement establishes an independent mechanism of monitoring the actions of police officers of the Ministry of the Interior in the area of illegal 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 crosses or attempts to cross the state border of the Republic of Croatia outside a border crossing point or across a border crossing point outside operating hours, i.e. who circumvents border checks or leaves the area of a border crossing point while border checks have not yet been carried out.

**Article 3
PROVIDERS OF INDEPENDENT MONITORING MECHANISM ACTIVITIES**

Within 15 days after signature of the Agreement, providers of independent monitoring mechanism activities (hereinafter: providers) shall appoint two representatives each who will directly conduct the Independent

Monitoring Mechanism activities (hereinafter: direct activity providers) and one representative each for participation in the Coordination Board.

In the implementation of activities, providers are obliged to comply with positive regulations of the Republic of Croatia and the European *acquis*.

The logistic and administrative support to the Independent Monitoring Mechanism shall be ensured by the Ministry of the Interior, which shall appoint a contact officer in order to ensure smooth and timely exchange of information and performance of other tasks enabling the implementation of Independent Monitoring Mechanism activities.

Article 4

LOCATION OF INDEPENDENT MONITORING MECHANISM ACTIVITIES

Independent Monitoring Mechanism activities shall be conducted at the border (border crossing points / police stations / police administrations) of the Republic of Croatia with Bosnia and Herzegovina, Montenegro and the Republic of Serbia as well as in reception centres for aliens.

Article 5

INDEPENDENT MONITORING MECHANISM ACTIVITIES

Direct activity providers shall implement the following activities:

- Observing the actions of police officers in locations referred to in Article 4 of this Agreement towards irregular migrants and applicants for international protection in enforcing the regulations governing state border control and the provision of international protection (hereinafter: observing police actions);
- Conducting announced visits to the green border;
- Gaining insight into the files of finally disposed cases on the received petitions on the alleged illegal treatment of irregular migrants and applicants for international protection and into the activities and reports of the General Police Directorate regarding the alleged illegal treatment of irregular migrants and applicants for international protection (hereinafter: insight into files).

In the implementation of the Independent Monitoring Mechanism activities referred to in paragraph 1 of this Article, the professional assistance of a translator / an interpreter shall be made available for the providers if necessary.

In the implementation of the activities referred to in paragraph 1 of this Article, the providers are obliged to comply with the regulations on personal data protection and data confidentiality.

Article 6

OBSERVING POLICE ACTIONS

Direct activity providers shall conduct a total of 20 observations for the duration of this Agreement.

Observations referred to in paragraph 1 of this Article may include announced visits to the green border.

The representative of the Ministry of the Interior shall deliver statistical reports for the previous month to the providers by the 10th day of the month containing information on all irregular migrants and applicants for international protection.

Based on the received statistical reports and previously established criteria, the providers select individual cases to observe.

Observations can be announced or unannounced.

Direct activity providers shall be enabled access to the case file selected for observation, attendance at the hearing of irregular migrants and applicants for international protection as well as the inspection of premises for detention, interview with irregular migrants and applicants for international protection provided that they agree to it.

Direct activity providers shall conduct announced visits to the green border accompanied by authorised employees of the Ministry of the Interior whose instructions they are obliged to follow.

Direct activity providers are obliged to comply with the instructions of authorised employees of the Ministry of the Interior on restricted movement in secured areas (e.g. border crossing points, reception centres for aliens etc.).

Within seven days of conducted observations, direct activity providers shall jointly draft an individual report and deliver it to the Coordination Board. The report shall also contain information on the conducted announced visit to the green border.

Article 7 INSIGHT INTO FILES

Direct activity providers shall be enabled insight into files on received petitions on the alleged illegal treatment of irregular migrants and applicants for international protection who became final within one year before signing the Agreement, i.e. in activities and reports of the General Police Directorate regarding the alleged illegal treatment of irregular migrants and applicants for international protection.

The authorisations of direct activity providers referred to in paragraph 1 of this Article do not include the insight into the Information System of the MoI.

The contact officer of the MoI shall submit to direct activity providers the list of files of finally disposed cases referred to in paragraph 1 of this Article within 15 days from signing the Agreement.

Direct activity providers shall be enabled to interview police officers in charge of specific cases and, with the prior consent, complainants if they are available in the territory of the Republic of Croatia and if they agree to it.

Within seven days from gaining insight into the case file, direct activity providers shall jointly draft an individual report and submit it to the Coordination Board.

Article 8 COORDINATION BOARD

The Coordination Board (hereinafter: the Board) shall give expert advice, manage the Independent Monitoring Mechanism activities, draft the final report on the actions of police officers of the MoI in the area of irregular migration and international protection based on individual reports of direct activity providers and perform other tasks regarding the management of the Independent Monitoring Mechanism.

The Board is comprised of one representative of the activity providers.

The Board shall meet at least once in three months.

The head of the Board, their Deputy and Secretary are chosen by the members of the Board between themselves by a majority of votes.

The head of the Board shall represent the Board, coordinate the Independent Monitoring Mechanism activities, organise and convene the meetings of the Board and once in six months present the Independent Monitoring Mechanism activities to the Advisory Board as an informal body.

If the head is prevented from attending, they are replaced by the deputy.

The secretary of the Board shall perform administrative tasks regarding the implementation of the Independent Monitoring Mechanism activities.

Based on individual reports of the direct activity providers, the Board shall draft the biannual and final report. The final report shall be drafted within 30 days from the last Independent Monitoring Mechanism activity. The summary of the final report shall be publicly disclosed on the website of the MoI.

Article 9 FUNDING

The implementation of Independent Monitoring Mechanism activities shall be funded by the European Commission and shall be paid into the State Budget of the Republic of Croatia.

The indicative financial plan of the implementation costs of the Independent Monitoring Mechanism shall form an integral part of this Agreement.

One half of the costs foreseen by the indicative financial plan referred to in paragraph 2 of this Article shall be paid into the accounts of providers within 15 days from the day of payment of the funds by the European Commission to the State Budget of the Republic of Croatia and the other half within six months from the signing of this Agreement.

Article 10 FINAL PROVISIONS

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

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

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

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

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

FOR THE MINISTRY OF THE INTERIOR

Deputy Prime Minister and Minister

Dr. sc. Davor Božinović, _____

Place and date: Zagreb, 8 June 2021

CLASS: 018-01/19-01/607

REG. No.: 511-01-131-21-602

For the Association of CROATIAN ACADEMY OF MEDICAL SCIENCES

President

Prof. dr. sc. Alemka Markotić, _____

Place and date: Zagreb, 8 June 2021

No.: 01-15-1/2021

For the Association of CROATIAN ACADEMY OF LEGAL SCIENCES

President

Prof. dr. sc. Davor Derenčinović, _____

Place and date: Zagreb, 8 June 2021

No.: _____

For the Association of CENTRE FOR CULTURAL DIALOGUE

President

Aziz Hasanović, _____

Place and date: Zagreb, 8 June 2021

No.: 21.00-D1/21-83

For the Association of CROATIAN RED CROSS

Executive President

Robert Markt, _____

Place and date: Zagreb, 8 June 2021

No.: 1004634-02-1-59-21/06-1

Prof. dr. sc. Iris Goldner Lang

Place and date: Zagreb, 8 June 2021

No.: _____

Acknowledgements

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1. POLUGODIŠNJE IZVJEŠĆE

NEZAVISNOG MEHANIZMA NADZORA
POSTUPANJA POLICIJSKIH SLUŽBENIKA MINISTARSTVA UNUTARNJIH POSLOVA
U PODRUČJU NEZAKONITIH MIGRACIJA I MEĐUNARODNE ZAŠTITE
Lipanj-Prosinac 2021.

Zagreb, prosinac 2021.

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Prilog:	Sporazum o suradnji radi provedbe Nezavisnog mehanizma nadzora postupanja policijskih službenika Ministarstva unutarnjih poslova u području nezakonitih migracija i međunarodne zaštite od 8. lipnja 2021. godine

1. UVOD

Nezavisni mehanizam nadzora postupanja policijskih službenika Ministarstva unutarnjih poslova u području nezakonitih migracija i međunarodne zaštite (dalje u tekstu: Mehanizam) osnovan je Sporazumom od 8. lipnja 2021. godine (dalje u tekstu: Sporazum) kojeg su potpisnici Ministarstvo unutarnjih poslova Republike Hrvatske (dalje u tekstu: MUP) s jedne strane i Akademija medicinskih znanosti Hrvatske (dalje u tekstu: AMZH), Akademija pravnih znanosti Hrvatske (dalje u tekstu: APZH), Centar za kulturu dijaloga (dalje u tekstu: CKD), Hrvatski Crveni križ (dalje u tekstu: HCK) i prof. dr. sc. Iris Goldner Lang s druge strane. Sporazum definira svrhu i temeljne pojmove, provoditelje aktivnosti, vrste odnosno tipove aktivnosti (vidi poglavlje 2.), mjesta njihove provedbe, strukturu i financiranje Mehanizma. Vrijeme primjene Sporazuma je godina dana (uz mogućnost produljenja). Unutar tog vremena Mehanizam provodi 20 promatranja (najavljenih i nenajavljenih) nad postupanjem policijskih službenika. Mehanizam se sastoji od Koordinacijskog odbora (5 članova, po jedan ispred AMZH, APZH, CKD i HCK te prof. dr. sc. Iris Goldner Lang), koji neovisno od MUP-a (čiji službenici nisu nazočni sastancima Odbora) odlučuje o provođenju aktivnosti i Neposrednih provoditelja (8 članova, po 2 člana ispred AMZH, APZH, CKD i HCK) koji temeljem odluke Koordinacijskog odbora provode promatranja na terenu (policijske postaje, granični prijelazi, zelena granica, prihvatilišta za strance itd.).

Voditelj Koordinacijskog odbora je prof. dr. sc. Davor Derenčinović (APZH), a članovi su doc. dr. sc. Krunoslav Capak, dr. med. (AMZH), mr. sc. Nermin Botonjić (CKD), prim. Josip Jelić, dr. med. (HCK) i prof. dr. sc. Iris Goldner Lang. Neposredni provoditelji su prof. dr. sc. Nadan Rustemović, dr. med. i prof. dr. sc. Mario Starešinić, dr. med. (AMZH), prof. dr. sc. Davorin Lapaš, izv. prof. dr. sc. Damir Primorac (APZH), Samir Ilijazi, mag. iur., g. Admir Muhić (CKD), g. Robert Markt i g. Branislav Tomić (HCK). Logističku i administrativnu potporu u radu Mehanizma osigurava MUP koji je, u skladu sa Sporazumom, imenovao službenika za kontakt radi osiguravanja nesmetane i pravovremene razmjene informacija i obavljanja drugih poslova kojima se omogućava izvršavanje nadzornih i ostalih aktivnosti Mehanizma.

Širi domaći i europski društveno-politički, geopolitički, geostrateški, sigurnosni, ljudskopravni, ali i medijski kontekst¹ u koji je smješten postupak osmišljavanja i osnivanja Mehanizma iznimno je važan, posebice u kontekstu ishitrenih/preuranjenih i neosnovanih kritika pojedinih organizacija civilnog društva na račun njegova osnivanja, stručnosti članova i neovisnosti djelovanja.² No, još je važnija upravo u tom kontekstu činjenica kako trenutno nigdje u Europi ne djeluje usporediv *specijalizirani* mehanizam (civilnog) nadzora postupanja policije u području iregularnih migracija, iako je Novim paktom o migracijama i azilu predviđena uspostava takvih mehanizama u svim državama članicama Europske unije (dalje u tekstu: EU).³ U tom smislu ne postoje europski uzori po kojima je Mehanizam mogao biti ustrojen, pa slijedom toga niti razrađene smjernice i/ili preporuke najbolje prakse (engl. *best practice*) kojima se Mehanizam mogao voditi pri svom djelovanju. Međutim, postoje europski uzori kao i ekspertne studije najbolje prakse *općih* mehanizama (civilnog) nadzora postupanja policije te je temeljem istih Mehanizam i osmišljen i ubrzo nakon osnivanja započeo s operativnim djelovanjem.⁴

Upravo zbog netom spomenutih kritika i mogućih dvojbi o neovisnosti i funkcionalnosti Mehanizma u nastavku su sažeto pojašnjeni osnovni pojmovi relevantni za razumijevanje njegova funkcioniranja te navedena temeljna načela njegova rada (engl. *key principles of operation*), a koja u potpunosti udovoljavaju svim temeljnim načelima rada tijela za nadzor policijskog postupanja

(engl. *key principles of operation of a police oversight body*) navedenim u tzv. *Police Oversight Principles*⁵ u onom dijelu u kojem su mjerodavna za zadaću i nadležnosti te ovlasti Mehanizma (vidi opširnije napomenu uz tablicu 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

Netom navedena definicija tijela nadzora policije sadrži 3 ključna elementa. (1) Prvo, radi se o organizaciji koja ima statutarno određenu **odgovornost nadzora određenih aspekata policijskog postupanja** (npr. postupanja policijskih službenika MUP-a u području nezakonitih migracija i međunarodne zaštite). (2) Drugo, ne postoji standardiziran organizacijski oblik takvog tijela nadzora - **presudna je neovisnost** u postupanju. (3) Treće, takva organizacija **treba težiti ostvarivanju u nastavku navedenih principa**, iako ih ne mora nužno sve i u punoj mjeri ostvariti.

Tablica 1: Temeljna načela rada tijela za nadzor policijskog postupanja

Key principles: Operation of a police oversight body ⁸		NMN	Sporazum
1.	The body should be sufficiently separated from the hierarchy of the police that are subject to its remit.	✓	čl. 8.
2.	It should be governed and controlled by persons who are not current serving police officers.	✓	čl. 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.	✓	čl. 8. praksa NMN
4.	To perform its functions effectively it should be provided with adequate finance and resources, and should be funded by the state.	✓*	čl. 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.	✓	Sporazum
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.	✓**	čl. 3. st. 3., čl. 4., čl. 5., čl. 6. i čl. 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.	✓***	praksa NMN
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:	✓	čl. 3. st. 3., čl. 4., čl. 5., čl. 6. i čl. 7.
i.	serious incidents resulting from the actions of police officers;	✓	
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.	✓	

Napomena: *Mehanizam je adekvatno financiran te posjeduje odgovarajuće resurse, pri čemu se uvjetu državnog financiranja utoliko udovoljava što, iako se radi o sredstvima EU iz kojih se Mehanizam financira, istima posredno upravlja MUP, a što bi stoga predstavljalo posredno državno financiranje; **Mehanizam je u okvirima svoje statutarne određene zadaće i nadležnosti opremljen upravo onim ovlastima koje mu omogućavaju provedbu nepristranog, neovisnog i učinkovitog nadzora, pri čemu je važno imati na umu kako Mehanizam nije niti 'complaint' niti 'internal affairs' nadzorno tijelo obzirom u RH takva tijela već postoje (DORH, Pučki pravobranitelj, Unutarnja kontrola MUP-a); ***Mehanizam ispunjava navedeni uvjet pri čemu valja ponovno istaknuti kako Mehanizam nije niti 'complaint' niti 'internal affairs' nadzorno tijelo.

Imajući na umu kako se netom navedena temeljna načela rada (engl. *key principles of operation*) odnose na *opće* mehanizme nadzora policije (prvenstveno 'complaint' i 'internal affairs' nadzorna tijela), nužno je ista, ali i druga temeljna načela kojima se Mehanizam rukovodi,⁹ vrednovati u svjetlu:

- a) nepostojanja usporedivih mehanizama,
- b) *specifičnosti* svrhe i cilja upravo *civilnog* mehanizma nadzora u području *iregularnih migracija* (koje nisu niti 'complaint' niti 'internal affairs' svrhe/ciljevi) te
- c) zakonskih nadležnosti i ovlasti *postojećih državnih i civilnih mehanizama nadzora policije u Hrvatskoj*.

U tom smislu zahtjev za „*full range of police powers*“ valja dovesti u vezu s „*adequate powers to carry out its functions*“ te vrednovati ostvarenje oba temeljna načela rada Mehanizma kao *civilnog* mehanizma nadzora u *specifičnom području* iregularnih migracija i kao jednim od aktera u čitavom *općem* sustavu nadzora policije u Hrvatskoj čije nadležnosti i ovlasti nisu konkurirajuće već komplementarne nadležnostima i ovlastima drugih tijela (MUP-a, Državnog odvjetništva, Ureda Pučke pravobraniteljice itd.). Mehanizam je stoga tijelo ograničene nadležnosti, pri čemu upravo nadležnosti ostalih aktera u općem sustavu nadzora policije uvjetuju samu nadležnost Mehanizma. Težište u radu Mehanizma je u terensko-administrativnom postupanju u kojem se kombinira analiza primarnih i sekundarnih izvora podataka (v. infra 2.).

Mehanizam nije statičan i jednokratni ili pak konačan odgovor na sve izazove civilnog nadzora policije u području iregularnih migracija u Hrvatskoj. Njegovo je osnivanje početak nepristranog, neovisnog i ekspertnog dijaloga s MUP-om koji se ne vodi s isključivim ciljem detektiranja i procesuiranja pojedinačnih nezakonitosti postupanja policijskih službenika, nego sa svrhom utvrđivanja normativnih, institucionalnih, sistemskih, operativnih te tehničkih, a naposljetku i ljudskih faktora koji doprinose ili čak uzrokuju takva nezakonita postupanja. Jasno je kako vođenje takvog dijaloga mora udovoljiti zahtjevima dinamičnosti i adaptabilnosti te imati potencijal dugoročnosti kojim se ujedno otvara mogućnost za evaluaciju predloženih i implementiranih mjera kao i pravovremene korekcije istih (engl. *evidence-based policy*). U tom smislu, Mehanizam ostvaruje svoj mandat u skladu sa Sporazumom i pozitivnim propisima RH te se u svom radu vodi vizijom neposrednog, nepristranog, neovisnog i ekspertnog dijaloga s MUP-om, a u koji je dijalog posredno uključen širok krug dionika putem Savjetodavnog odbora, ali i javnost iz koje Mehanizam crpi određene spoznaje te u koju transparentno komunicira nalaze svoga rada.

2. AKTIVNOSTI NADZORA MEHANIZMA

Nadzorne aktivnosti mehanizma kao i način i mjesto njihova provođenja definirani su Sporazumom. Aktivnosti Mehanizma provode se na granici s Bosnom i Hercegovinom, Crnom Gorom i Srbijom (postaje granične policije) te u prihvatnim centrima za strance, a obuhvaćaju promatranje postupanja policijskih službenika prema migrantima i tražiteljima međunarodne zaštite u provedbi propisa koji reguliraju nadzor državne granice i pružanje međunarodne zaštite i uvid u pravomoćno okončane spise po podnesenim pritužbama na navodno nezakonito postupanje prema iregularnim migrantima i tražiteljima međunarodne zaštite i uvid u aktivnosti i izvješća Ravnateljstva policije glede navodnog nezakonitog postupanja prema navedenim kategorijama osoba. Nadzorne aktivnosti mehanizma provode se i na zelenoj granici. Premda Sporazum te posjete definira kao „najavljene“, u praksi je Mehanizam, uz suglasnost MUP-a, provodio i nenajavljena promatranja na zelenoj granici (v. infra 2.1.).

Metodologija rada Mehanizma temelji se na dva različita skupa djelovanja (analiza primarnih te analiza sekundarnih izvora podataka) te ovisno o vrsti i izvorima podataka, vrsti postupanja i specifičnostima pojedinih aktivnosti, ali i promatranih fenomena koristi sljedeće metode: opservacija *in vivo*, polustrukturirani intervjui, normativna analiza, statistička analiza i studija slučaja. U odnosu na skupove djelovanja Mehanizma razlikuju se:

- 2.1. analiza primarnih izvora podataka koja se temelji na provedbi:
 - 2.1.a. promatranja (najavljena i nenajavljena) i
 - 2.1.b. razgovora s osobama (iregularnim migrantima, policijskim službenicima, drugim osobama koje imaju neposrednih saznanja o mogućim nezakonitostima postupanja policijskih službenika)
- 2.2. analiza sekundarnih izvora podataka (spisa i pritužbi, statističkih podataka, normativnog okvira, pravila i prakse postupanja policijskih službenika i sl.)

Pri uzorkovanju slučajeva/promatranja/spisa/pritužbi ključni selekcijski kriteriji Mehanizma su ranjivost osobe/skupine, žurnost postupanja, razmjeri/težina potencijalnih nezakonitosti te geografski ujednačena distribucija u korelaciji s incidencijom i prevalencijom iregularnih migracija.

2.1. Analiza primarnih izvora podataka

Temeljna aktivnost Mehanizma u odnosu na analizu primarnih izvora podataka realizira se kroz promatranja policijskog postupanja (dalje u tekstu: promatranja). Sukladno Sporazumu, Neposredni provoditelji aktivnosti izvršavaju ukupno 20 promatranja unutar godine dana. Promatranja se provode temeljem odredaba Sporazuma, Protokola postupanja (interni dokument) i *ad hoc* dogovorenih smjernica. Za potrebe promatranja sastavljen je obrazac pojedinačnog izvješća kojeg u najkraćem roku po obavljenom promatranju Neposredni provoditelji dostavljaju Voditelju i članovima Koordinacijskog odbora.

Odluku o provođenju promatranja donosi Koordinacijski odbor na temelju dostavljenih statističkih izvješća koja svakog mjeseca predstavnik MUP-a dostavlja Mehanizmu. Ta izvješća sadrže informacije o svim iregularnim migrantima i tražiteljima međunarodne zaštite prema policijskim upravama odnosno postajama granične policije (dalje u tekstu: PGP). Osim na temelju statističkih izvještaja, Koordinacijski odbor donosi odluke i na temelju drugih dostupnih izvora

informacija. Tako su, primjerice, dva promatranja provedena na temelju medijskih izvješća o postupanju policije prema iregularnim migrantima. Oba promatranja su provedena u PGP Cetingrad. Prvo je uz to provedeno i u prihvatilištu „Porin“, s tim da je drugo (nenajavljeno) promatranje provedeno u najkraćem vremenu obilaskom terena i lokacija na kojima su utvrđena nezakonita postupanja policijskih službenika prema iregularnim migrantima koja su dokumentirana u prilogu RTL televizije emitiranom 6. listopada 2021. godine. U tom je predmetu, uz terenski obilazak, održan i žurni sastanak u Ravnateljstvu policije s načelnikom Uprave za granicu g. Zoranom Ničenom. Brzinu i prikladnost reakcije Mehanizma potvrđuje i okolnost da su ove aktivnosti provedene i prije no što je MUP potvrdio da su osobe na snimci djelatnici interventne policije protiv kojih je pokrenut stegovni postupak i koji su suspendirani s dužnosti. Važnost pravovremene reakcije Mehanizma potvrdili su za medije kako najviši dužnosnici MUP-a tako i Povjerenica Europske komisije za unutarnje poslove gđa. Ylva Johansson.¹⁰

Uz navedene izvore informacija na temelju kojih Mehanizam postupao, predstavnik MUP-a u realnom vremenu obavještava Voditelja Koordinacijskog odbora o zatečenim iregularnim migrantima, njihovu dovođenju u nadležnu PGP i provedenom postupku. Voditelj tu informaciju bez odgode prosljeđuje članovima Koordinacije i na temelju provedenih konzultacija donosi se odluka o provođenju promatranja. Jedno od provedenih promatranja realizirano je žurno (**unutar** nekoliko sati nakon primitka informacije **prispjelo je izvješće nadzora s terena**) u PGP Slavonski Brod i dan kasnije u prihvatilištu za strance „Porin“.

Neposredni provoditelji aktivnosti prilikom promatranja utvrđuju jesu li u odnosu na iregularne migrante i tražitelje međunarodne zaštite poštivana temeljna ljudska prava koja su zajamčena Konvencijom za zaštitu ljudskih prava i temeljnih sloboda kao i Konvencijom i protokolom o statusu izbjeglica koja ima središnje mjesto u međunarodnoj zaštiti izbjeglica te se temelji na članku 14. Opće deklaracije o ljudskim pravima. Prilikom nadzora policijskih službenika utvrđuje se jesu li oni postupali sukladno Zakonu o policijskim poslovima i ovlastima i Zakonu o strancima. Uvažavajući svrhu članka 4. Konvencije o zaštiti ljudskih prava i temeljnih sloboda Protokola br. 4, a to je spriječiti države da protjeraju strance prije nego su pojedinačno ispitali njihove osobne prilike i da li su stranci imali mogućnost traženja azila, te im omogućile da iznesu svoje argumente protiv protjerivanja, postavljena su pitanja nadležnim policijskim službenicima na koji način se postupalo prema iregularnim migrantima u trenutku njihovog zaticanja na teritoriju Republike Hrvatske. Dakle, prilikom promatranja utvrđuje se da li je migrantima omogućeno podnošenje zahtjeva za azil odnosno međunarodnu zaštitu, zajamčeno pravo na prevoditelja, mogućnost korištenja obrazaca na njihovom jeziku kojim se izražava namjera traženja međunarodne zaštite, pravo na besplatnu pravnu pomoć te pravo na liječničku pomoć (posebice kod ranjivih skupina osoba). Promatranja, osim toga, obuhvaćaju i pregled prostorija u kojima se zadržavaju migranti, preglede vozila kojima se isti prevoze, kao i obilaske na zelenoj granici, dok se u policijskim postajama provodi uvid u spise kao i obrasce na kojima se traži međunarodna zaštita te liste osoba koje pružaju besplatnu pravnu pomoć.

Neposredni provoditelji opremljeni službenim akreditacijama i uočljivim prslucima, se pri dolasku na mjesto promatranja predstavljaju i identificiraju na prijavnici pojedine postaje granične policije MUP-a. Potom neposredni provoditelji obavljaju razgovor s ovlaštenim osobama PGP, ostvaruju uvid u spise pojedinih predmeta, provjeravaju smještajne kapacitete te obavljaju terenski obilazak graničnog područja. U slučaju da se u PGP nalaze osobe zatečene u pokušaju nezakonitog ulaska u RH, neposredni provoditelji obavljaju razgovor s njima uz pomoć

prevoditelja. Policijske službenike se detaljno ispituje o pravilima postupanja u situacijama kada zateknu iregularne migrante, pri čemu se posebna pažnja posvećuje ranjivim skupinama. Neposredni provoditelji razgovore s osobama obavljaju isključivo uz njihov pristanak vodeći računa o zaštiti i povjerljivosti osobnih podataka, posebice kada su u pitanju ranjive skupine i/ili osjetljive teme razgovora i/ili traumatični događaji.

Promatranja mogu biti najavljena i nenajavljena. Kod nenajavljenih promatranja na čitavom području Republike Hrvatske (uključujući i tzv. zelenu granicu) Mehanizam primjenjuje dva modela postupanja. Prema prvom, promatranje se provodi na temelju odluke Koordinacijskog odbora bez obavještanja predstavnika MUP-a o tome da će promatranje biti provedeno te gdje i kada će ono biti provedeno. Na temelju odluke Koordinacijskog odbora, odabrani Neposredni provoditelji nakon provedenih pripremni konzultacija izlaze na teren. Vlastitim osobnim vozilom bez prethodne najave dolaze u odabranu postaju granične policije gdje započinje postupak promatranja koji uključuje sve gore navedene radnje. Prema drugom modelu, Voditelj Koordinacijskog odbora obavještava predstavnika MUP-a o tome da će Mehanizam provesti promatranje, ali ne precizira kada i gdje. U tom su smislu i na ovaj način provedena promatranja *de facto* nenajavljena jer MUP ne zna kada će se i gdje promatranje provesti. Prva nenajavljena promatranja provedena su prema drugom modelu, a razlog za to je tekst Sporazuma prema kojem promatranja na tzv. zelenoj granici mogu biti provedena samo u pratnji djelatnika MUP-a, a koja pratnja služi isključivo zaštiti Neposrednih provoditelja aktivnosti u rizičnim područjima (npr. minirana ili minsko sumnjiva područja, opasnost od mogućeg susretanja krijumčara, trgovaca ljudima, krivolovaca i sl.). Posljednja dva promatranja koje je Mehanizam proveo bila su promatranja prema prvom modelu koji je vrlo uspješno testiran s obzirom da je nakon nenajavljenog dolaska u PGP Neposrednim provoditeljima osiguran pristup tzv. zelenoj granici u pratnji policijskih službenika.

Mehanizam je u prvih šest mjeseci rada proveo 8 promatranja od čega 2 najavljena promatranja, 4 nenajavljena promatranja prema drugom modelu i 2 nenajavljena promatranja prema prvom modelu. Pri uzorkovanju slučajeva/lokacija promatranja Mehanizam se kao ključnim selekcijskim kriterijima vodio veličinom skupine te stupnjem ranjivosti skupina/osoba migranata, procijenjenom žurnošću nadzora, procjenom razmjera/težine potencijalnih nezakonitosti te geografski ujednačenom distribucijom promatranja u korelaciji s incidencijom i prevalencijom iregularnih migracija na pojedinim lokacijama (promatranjima su obuhvaćene PGP Cetingrad, Slavonski Brod, Donji Lapac, Dvor, Stara Gradiška i Trilj). Pored agregiranih statističkih podataka i izvješća MUP-a, Mehanizam je uzorkovanje slučajeva/lokacija promatranja temeljio i na dnevnim obavijestima MUP-a o osobama zatečenim u iregularnim migracijama (lokacija, broj osoba u skupini, prisutnost ranjivih osoba u skupini, porijeklo pripadnika skupine i sl.).

Nakon provedenog promatranja, Neposredni provoditelji u najkraćem roku sastavljaju izvješće o provedenom pojedinačnom promatranju koje se raspravlja na prvoj sljedećoj sjednici Koordinacijskog odbora koje to izvješće usvaja. Pojedinačna izvješća Neposrednih provoditelja aktivnosti nisu dostupna javnosti, no Koordinacijski odbor o sadržaju polugodišnjeg i godišnjeg izvješća na odgovarajući način pravovremeno obavještava javnost. Iznimno, kad za to postoji poseban interes javnosti, Mehanizam donosi priopćenje za medije odmah po provedenom promatranju kao što je to bio slučaj s priopćenjem od 8. listopada 2021. godine povodom priloga emitiranog na RTL televiziji u emisiji „Potraga“ 6. listopada 2021. godine. Tim je priopćenjem javnost obaviještena o žurnoj provedbi nenajavljenog promatranja vezano uz incidente

dokumentirane u navedenom prilogu. Uz ovu obavijest, Mehanizam je u priopćenju izrazio „žaljenje što navedena snimka nije već i znatno prije objavljena i dostavljena mjerodavnim državnim tijelima, prvenstveno Državnom odvjetništvu Republike Hrvatske, jer bi to svakako pridonijelo daleko ranijem rasvjetljavanju samog događaja te prikupljanju dokaza, zaštiti migranata i pokretanju odgovarajućih postupaka protiv odgovornih kao i sprječavanju mogućih usporedivih incidenata na koje se upozorava u prilogu.“

Promatranja su vrlo važna no ne i jedina nadzorna ovlast i aktivnost Mehanizma. Spoznaje proizašle iz promatranja na terenu primarno služe provjeri i utvrđivanju mogućeg raskoraka između normativno predviđenih i institucionalno zamišljenih pravila postupanja policijskih službenika sa svakodnevnom praksom na terenu. Sukladno tome promatranja dopunjuju ukupnost metodologije rada Mehanizma i vrijedan su izvor spoznaja, no bilo bi pogrešno zaključiti kako su ona jedini izvor spoznaja u radu Mehanizma. Kao ilustrativan primjer može poslužiti nalaz Mehanizma o pogrešnom shvaćanju MUP-a o trenutku i lokaciji zaticanja iregularnih migranata na teritoriju RH koje istima, ovisno o okolnostima, (ne) jamči pravo na podnošenje zahtjeva za azil odnosno međunarodnu zaštitu (vidi opširnije *infra*). Radi se o jednom od ključnih nalaza Mehanizma, a koji nije rezultat promatranja, već upravo nepristranog i ekspertnog dijaloga s MUP-om. Konačno, navedeni nalaz Mehanizma ujedno pojašnjava uzroke, a samim time indicira i rješenja po pitanju nezakonitih postupanja koja proizlaze iz takvog pogrešnog shvaćanja.

2.2. Analiza sekundarnih izvora podataka

Metodologija rada Mehanizma, uz primarne (promatranje), podrazumijeva i analizu sekundarnih izvora podataka. Mehanizam svoje nalaze temelji na spoznajama dobivenim kroz analizu spisa i pritužbi¹¹, statističkih podataka, relevantnog normativnog okvira, pravila i prakse postupanja policijskih službenika i drugih osoba koje su uključene u prihvata i/ili pružanje pomoći iregularnim migrantima, medijske izvještaje te izvještaje relevantnih dionika i sl.¹² Važno je naglasiti da Mehanizam ne postupa na temelju pritužbi jer ono nema svojstva tzv. *complaint based mechanism*. Time se izbjegava mogući sukob nadležnosti s drugim mjerodavnim tijelima koja su ustrojena i postupaju, između ostalog, na temelju zaprimljenih pritužbi (npr. Ured Pučke pravobraniteljice). Međutim, Mehanizam može eventualno zaprimljene pritužbe proslijediti nadležnim državnim tijelima.

Analiza sekundarnih izvora podataka obuhvaća i korištenje mjesečnih statističkih izvješća koje predstavnik MUP-a dostavlja Mehanizmu. Ta izvješća sadrže informacije o svim iregularnim migrantima i tražiteljima međunarodne zaštite prema policijskim upravama odnosno postajama granične policije, državi porijekla, spolu itd. Osim toga, MUP u realnom vremenu dostavlja Mehanizmu obavijesti o postupanjima prema iregularnim migrantima koja su u tijeku. Prema podacima Ministarstva unutarnjih poslova koji su dostavljani Mehanizmu redovito kako su se provodila postupanja, u razdoblju od 29.7. do 16.11.2021. godine policija je provela ukupno 41 postupanje prema osobama zatečenim u nezakonitom prelasku državne granice. Tim su postupanjima obuhvaćene ukupno 329 osobe iz 9 država - Afganistan, Irak, Iran, Sirija, Turska, Kuba, Pakistan, Indija, Nepal. Najveći broj iregularnih migranata obuhvaćenih postupanjima policije je iz Afganistana (više od 70%). Postupanja su provedena na području 10 PGP - Novska, Stara Gradiška, Trilj, Dvor, Gvozd, Glina, Slunj, Korenica, Cetingrad i Slavonski Brod. Postupanja

prema najvećem broju osoba provedena su na području PGP Slavonski Brod (119 osoba ili 36%) i PGP Cetingrad (84 osobe ili 25%).

U velikoj većini slučajeva (preko 90%) iregularni migranti izrazili su namjeru traženja azila/međunarodne zaštite. Dvoje iregularnih migranata, unatoč izraženoj namjeri, nisu podnijeli zahtjev. U odnosu na 14 osoba koje nisu izrazile namjeru traženja azila/međunarodne zaštite doneseno je rješenje o protjerivanju. Na dan 20.11.2021. godine 245 tražitelja azila/međunarodne zaštite koji su u postupku od 29.7.2021. godine i dalje se nalazi u prihvatilištu za strance (oko 75%), dok je prema većini ostalih iregularnih migranata postupak obustavljen temeljem članka 39. stavak 2. točka 3. Zakona o međunarodnoj i privremenoj zaštiti (Narodne novine 70/15, 127/17) jer su napustili prihvatilište.

3. OSTALE AKTIVNOSTI

Ubrzo nakon potpisivanja Sporazuma 8. lipnja 2021. godine, održan je konstituirajući sastanak Koordinacijskog odbora na kojem je izabran Voditelj Odbora (prof.dr.sc. Davor Derenčinović). Dosad je Koordinacijski odbor održao tri službena sastanka i niz *ad hoc* neslužbenih sastanaka korištenjem videokonferencijskih alata. Na sastancima Odbora usvojeni su propisi koji reguliraju djelovanje Mehanizma (Protokol postupanja), a nakon rasprave i doprinosa svih članova Mehanizma usvojen je i tekst obrasca za provođenje neposrednog promatranja.

Voditelj Odbora se 16. rujna 2021. godine sastao u prostorijama Ravnateljstva policije sa članovima Povjerenstva Ministarstva domovinske sigurnosti SAD-a vezano uz odlučivanje o ukidanju viza za građane Republike Hrvatske. Tom je prigodom nazočne upoznao s funkcioniranjem Mehanizma i odgovorio na niz njihovih pitanja u vezi njegove neovisnosti, metodologiji djelovanja, odnosu i suradnji s Ministarstvom unutarnjih poslova itd.

Na poziv Savjetodavnog odbora koji je održao svoju konstituirajuću sjednicu 17. rujna 2021. godine, Voditelj Odbora ukratko je predstavio aktivnosti mehanizma i najavio donošenje prvog polugodišnjeg izvješća krajem studenog odnosno početkom prosinca 2021. godine. Na sastanku na kojem su sudjelovali predstavnici DG Home, UNHCR-a, Ureda pučke pravobraniteljice, Ureda Pravobraniteljice za djecu, FRA, FRONTEXA, EASO dana je pozitivna ocjena operacionalizacije Mehanizma, važnost njegove nezavisnosti u teoriji i u praksi kao i stručnost članova. Istaknuta je i važnost odgovarajućeg financiranja aktivnosti Mehanizma kao i izbjegavanje dupliciranja odnosno preklapanja nadležnosti s postojećim institucijama za zaštitu ljudskih prava (npr. Uredom pučke pravobraniteljice).

Dana 1. listopada 2021. godine Voditelj Odbora sudjelovao je s izlaganjem na webinaru „*Migration and asylum: Council of Europe standards and channels for practical cooperation*” kojeg su zajednički organizirali Vijeće Europe i Ministarstvo unutarnjih poslova Republike Hrvatske.

Članovi Mehanizma prof.dr.sc. Davor Derenčinović, prof.dr.sc. Iris Goldner Lang, mr.sc. Nermin Botonjić, g. Robert Markt sudjelovali su 29. listopada 2021. godine u Bruxellesu u radu Schengen Scrutiny Working Group Odbora za građanske slobode, pravosuđe i unutarnje poslove Europskog parlamenta (LIBE) na kojem su predstavili osnivanje i funkcioniranje Mehanizma i sudjelovali u raspravi sa zastupnicima u Europskom parlamentu, predstavnikom Europske komisije (DG HOME), Pučkom pravobraniteljicom i pozvanim članovima hrvatskih i međunarodnih nevladinih udruga (Centar za mirovne studije, Danish Refugee Council, Border Violence Monitoring Network).

4. PRELIMINARNI NALAZI

Preliminarni nalazi Mehanizma podijeljeni su u nekoliko kategorija: učinkovitost pravnog okvira, pravila postupanja MUP-a, izazovi u praksi postupanja policijskih službenika, utvrđene nezakonitosti i dobre prakse te poteškoće s kojima se susreću iregularni migranti. U ocjeni i tumačenju preliminarnih nalaza treba imati u vidu da su oni rezultat činjenice da Republika Hrvatska ima iznimno dugu kopnenu granicu s državama na koje se odnose nadzorne aktivnosti Mehanizma i da na toj granici nema umjetnih fizičkih prepreka za ulazak na državni teritorij (zid, žica i sl.). Specifičnost je i konfiguracija terena na granici kao i niz minske sumnjivih područja. Većina preliminarnih nalaza Mehanizma temelji se na okolnosti da je nadzor nad državnom granicom pretežito personalnog karaktera. To ukazuje na važnost preispitivanja postojećih ljudskih i profesionalnih kapaciteta unutar sustava. S tim u vezi Mehanizam daje određene preporuke koji su izložene *infra* pod 5, a kojima je svrha poboljšanje zaštite i sigurnosti državne granice uz maksimalno poštivanje prava iregularnih migranata i tražitelja međunarodne zaštite.

a. UČINKOVITOST PRAVNOG OKVIRA

- **Identifikacija i identitet iregularnih migranata**

Identitet iregularnih migranata se utvrđuje temeljem njihove izjave. I nakon što im je RH izdala „izbjegličku iskaznicu“, znači za vrijeme njihova boravka, pa i slobodnog kretanja na području RH, identifikacija se temelji na izjavi, posebno stoga što izbjeglička iskaznica nije identifikacijski dokument. Stoga je jedan od ključnih izazova učinkovitosti pravnog okvira identifikacija i pitanje identiteta iregularnih migranata, budući da zatečene osobe u većini slučajeva nemaju niti jedan osobni dokument temeljem kojeg je moguće izvršiti njihovu identifikaciju. Nerijetko osobe daju lažne podatke o sebi pa tako nastaju lažni identiteti, a što proizlazi iz detektiranih nekonzistentnosti u izjavama koje daju iregularni migranti, a temelj su za utvrđivanje identiteta i ostalih relevantnih činjenica. To svakako otvara pitanje vjerodostojnosti izjava o identitetu.

- **EURODAC i policijska razmjena podataka važnih za identifikaciju**

Uočena je nedostatna suradnja između policijskih graničnih postaja, kako u RH tako posebno i sa susjednim zemljama u pogledu razmjene informacija (npr. u obliku baze otisaka prstiju i drugih podataka važnih za identifikaciju) vezano uz osobe koje ne izraze namjeru za pokretanjem postupka azila/međunarodne zaštite u Republici Hrvatskoj, a kojima se uručuje rješenje s uputom da samostalno napuste područje RH. Problem je u tome što se u EURODAC unose podaci samo onih osoba koje zatraže azil/međunarodnu zaštitu kao i onih koji su zatečeni u nezakonitom prijelazu (osobe za koje se ne može izvršiti udaljenje), ali ne i onih koji su vraćeni.

- **Izvršenje rješenja o povratu, poteškoće utvrđivanja identiteta migranata i sprječavanja ponovljenih nezakonitih migracija (recidiva)**

Ukoliko migrant ne podnese zahtjev za azil/međunarodnu zaštitu donosi se sukladno članku 184. Zakona o strancima Rješenje o povratku u kojem se određuje rok za dragovoljan odlazak. Problem nastaje kada migrant ne postupi po rješenju o povratku već ostane na teritoriju Republike Hrvatske. U takvim situacijama provodi se prisilno udaljenje (članak 203. Zakona o strancima) uz pratnju policije. Međutim, ukoliko bi migranti izgubili ili pak uništili Rješenje o povratku, onda je zbog nemogućnosti utvrđivanja njihovog identiteta izuzetno teško provesti udaljenje iz Republike Hrvatske. Također, utvrđene su i poteškoće u identifikaciji i razgraničenju ponovljenih nezakonitih migracija (recidiva) od primarnih nezakonitih migracija.

- **Kratko zadržavanje i odljev tražitelja azila/međunarodne zaštite**

Prema prikupljenim primarnim podacima, najveći dio migranata „nastavlja put“ prema zemljama Zapadne Europe, dok se od osoba koje su pokrenule postupak za odobrenjem azila/međunarodne zaštite u RH te su stoga smještene u „Porinu“, oko 80% ne vraća u Prihvatni centar te se postupci obustavljaju. No, s druge strane sekundarni izvori podataka (vidi 2.2.) indiciraju nešto slabiji 'odljev', tako da je teško procijeniti realni 'odljev'. Činjenica je kako 'odljev' postoji te da navedeno predstavlja problem. U većini slučajeva navedene osobe nastavljaju nezakonito putovanje prema zapadnim zemljama Europske unije. U pravilu te osobe u drugim zemljama Europske unije traže međunarodnu zaštitu pod drugim identitetom. U tim se slučajevima upravni postupak traženja azila u RH obustavlja. Prema podacima prikupljenim tijekom promatranja, više od 90% migranata u trenutku prihvata nema nikakve dokumente niti materijalna sredstva za nastavak putovanja.

- **Vođenje evidencija/spisa**

U smislu zakonodavstva, vođenje evidencija/spisa nije sporno po pitanju usklađenosti s europskim standardima, no ima nedostataka u provedbenom smislu. Naime, rezultati nadzora ukazuju na postojanje više spisa o istom predmetu zbog čega bi trebalo provesti objedinjavanje spisa predmeta radi učinkovitijeg praćenja. Tijekom nadzora je utvrđeno da Sektor za strance i granična policija imaju odvojene spise za istu osobu što je problematično iz niza razloga, a u konačnici može ugroziti prava dotične osobe te pravilnost i pravičnost postupanja. Trebalo bi stoga poduzeti objedinjavanje spisa Sektora za strance i granične policije. Pojedinačni predmeti bi trebali biti objedinjeni za svaku osobu, odnosno iz svih službi koji imaju bilo koju zabilježbu ili kojih su iregularni migrant(i) bili predmetom postupanja.

b. PRAVILA POSTUPANJA MUP-A, IZAZOVI U PRAKSI POSTUPANJA POLICIJSKIH SLUŽBENIKA, UTVRĐENE NEPRAVILNOSTI I PRIMJERI DOBRE PRAKSE

- **Suzbijanje kriminala povezanog s migracijama i trgovanjem ljudima**

Među izazove u praksi policijskih službenika treba ubrojiti postupanje policijskih službenika ponekad i prema naoružanim migrantima kao i krijumčarima te trgovcima ljudima. Valjalo bi razmotriti formiranje EU baze podataka o pravomoćno osuđenim osobama za krijumčarenje ljudi (usp. hrvatsko kazneno zakonodavstvo, čl. 326. KZ-a) i trgovanje ljudima, (usp. hrvatsko kazneno zakonodavstvo, čl. 106. KZ-a) radi ujednačavanja i pooštavanja kaznene politike u EU za posebno teške pojavne oblike i za povratnike.

- **Kapaciteti i opterećenje policijskih službenika**

- Policijski službenici se s migrantskom krizom nose već godinama i pod velikim su pritiskom s obzirom na činjenicu da moraju čuvati granicu, a istovremeno prvi podnijeti pritisak nevolje s kojom se susreću iregularni migranti. Unatoč znatnom jačanju kapaciteta granične policije, zbog kontinuiranog migracijskog pritiska u pojedinim postajama granične policije uočena je ispomoć interventnih jedinica na područjima ugroženim migracijskim pritiskom. Adekvatnim personalnim, ali i nastavkom tehničkog opremanja sustava granične policije s jedne bi se strane smanjilo preopterećenje postojećeg kadra, a vrlo vjerojatno prevenirale i moguće nepravilnosti postupanja 'vanjskih' jedinica koje dolaze na ispomoć.
- Postoje različiti odnosi kulturološke naravi u migrantskoj populaciji s kojima se susreću policijski djelatnici. Npr. drugačija kultura odgoja i ophođenja s malom djecom ili pak drugačiji pristupi medicinskoj skrbi djece unutar migrantske populacije koji su u očitoj

raskoraku s domaćom kulturom/pristupom, a što u svakodnevnoj praksi policijskih djelatnika stvara velike izazove te od policijskih službenika zahtjeva dodatan radni angažman (paziti da se djeca ostavljena bez nadzora ne ozlijede i sl.).

▪ **Utvrđene nepravilnosti u postupanju policijskih službenika**

- Mehanizam je kroz nadzor utvrdio da policija provodi dopuštena odvrćanja po članku 13. Zakonika o schengenskim granicama iako ih ne bilježi, a u minski sumnjivim područjima u izoliranim slučajevima i nedopuštena odvrćanja. Takva su postupanja sporna iz više razloga, a prije svega iz tri: (1) Prvo, nedopušteno odvrćanje koje se događa ulaskom na državni prostor RH u tim slučajevima onemogućuje pojedincima podnošenje zahtjeva za azil i može im ugroziti pravo na traženje međunarodne zaštite ako nemaju mogućnost na drugom mjestu podnijeti zahtjev za azil. Svrha dopuštenog odvrćanja po članku 13. Zakonika o schengenskim granicama (sprječavanje i obeshrabrivanje – engl. *prevention and discouragement*) trebala bi biti upućivanje izbjeglica na zakoniti postupak ulaska u državu prihvata što im, prema međunarodnom pravu, kasnije u postupku odobravanja azila olakšava položaj i daje veći opseg prava kao tzv. "legalno prisutnim izbjeglicama" (tzv. "izbjeglicama *de iure*"). Ono nipošto ne smije dovesti do povrede prava na podnošenje zahtjeva za azil omogućavanjem stvarnog i učinkovitog pristupa sredstvima zakonitog ulaska, posebno graničnim postupcima te do povrede načela *non-refoulementa* koje se ni u kojoj situaciji ne smije povrijediti na temelju normi međunarodnog i europskog prava i presuda Suda Europske unije i Europskog suda za ljudska prava. Poštivanje toga načela obvezuje državu ne samo u situacijama koje se događaju na teritoriju države, već i u ekstrateritorijalnim situacijama koje potpadaju pod jurisdikciju i stvarnu kontrolu te države. (2) Drugo, provođenje odvrćanja onemogućava registraciju iregularnih migranata koji ne mogu izraziti namjeru za azilom/međunarodnom zaštitom što, onemogućava utvrditi gdje su ušli u Europsku uniju i jesu li prethodno podnijeli zahtjev za azil, kako bi se omogućila primjena Dublinske uredbe i EUODAC uredbe. (3) Treće, s obzirom da je u slučaju eventualnog spora teret dokazivanja u odnosu na dopuštenost odvrćanja na državi, propust u registriranju dopuštenih odvrćanja otežava pa i onemogućava utvrđivanje da li se u konkretnoj situaciji radilo o dopuštenom ili nedopuštenom odvrćanju.
- Mehanizam je utvrdio da MUP pogrešno tumači relevantne propise u situacijama kada iregularni migranti znaju da policijski službenici ne provode fizički nadzor nad minski sumnjivim područjima te iskorištavajući upravo tu okolnost na tim opasnim/(potencijalno) miniranim lokacijama prelaze državnu granicu, a po prelasku i zaticanju od strane policijskih službenika ističu kako su ušli na hrvatski teritorij i traže azil. No, tumačenje je granične policije kako zapravo nisu ušli u hrvatski teritorij, obzirom da navedena područja nisu "pod faktičnom vlašću RH", već ih se odvrća od prelaska/ulaska, a na način da ih se vraća nazad na bezopasnim lokacijama, a bez utvrđivanja radi li se doista o izbjeglicama zaštićenima od *refoulementa* već od trenutka kada se izbjeglica nađe pod jurisdikcijom RH, a kamoli na njezinu teritoriju što je ovdje nedvojbeno slučaj.
- Provođenjem nenajavljenog promatranja i analizom ostalih primarnih i sekundarnih izvora informacija povodom snimke objavljene na RTL televiziji 6.10.2021. godine Mehanizam je utvrdio da su pripadnici interventne policije postupili nezakonito vraćanjem iregularnih migranata iz RH u Bosnu i Hercegovinu izvan okvira dopuštenim nacionalnim i međunarodnim pravom, a što je i potvrđeno od strane MUP-a. Radi se o slučaju na temelju kojeg je pokrenut stegovni postupak protiv policijskih službenika kao i kazneni postupak pred nadležnim državnim odvjetništvom.

- **Primjeri dobre prakse**

- Za vrijeme provođenja nadzora utvrđeno je da policijski službenici u većini slučajeva postupaju prema migrantima sukladno propisima uvažavajući najviše standarde (npr. vode računa i o prehrani migranata s obzirom na vjerske propise, pomažu ranjivim skupinama migranata, trudnicama, maloljetnicima bez pratnje itd.).
- Kao primjere dobre prakse treba posebno navesti suradnju granične policije sa zdravstvenim ustanovama: službama hitne medicinske pomoći, bolnicama, redovite kontrole na COVID, te pregleda medicinske dokumentacije prema potrebi, pa i suradnju s ustanovama za starije i nemoćne osobe (npr. slučaj smještaja migranta na inicijativu djelatnika PGP Cetingrad, u Dom „Srećko Badurina“ u Ogulinu).
- Policijski službenici postupaju s ciljem zaštite nacionalne sigurnosti i javnog reda kao i zaštite temeljnih prava migranata koja su zajamčena konvencijama. Policijski službenici prilikom postupanja prema migrantima moraju poštivati osnovna načela od kojih izdvajamo načelo zabrane diskriminacije, kažnjavanja i protjerivanja. Ovdje je važno naglasiti članak 32. Konvencije i protokola o statusu izbjeglica prema kojem država ugovornica neće prisilno udaljiti izbjeglicu koja zakonito boravi na njenom teritoriju, osim ako je ugrožena nacionalna sigurnost ili javni red. Prisilno udaljenje takve izbjeglice može se provesti samo nakon odluke koja je sukladna zakonu. Poradi pravilnog postupanja prema migrantima i zaštite njihovih zajamčenih prava prilikom promatranja u policijskim postajama Mehanizam je dobio informaciju da se policajci na početku obuke upoznaju s temeljnim ljudskim pravima. Postoje i nove obuke multiplikatora granične policije koji se podučavaju iz područja zaštite ljudskih prava. Mehanizmu je ukazano i na obuku pripadnika specijalne policije koji pomažu u radu granične policije. Prilikom promatranja, i to kako najavljenog tako i nenavljenog, može se zaključiti da su policijski službenici upoznati sa temeljnim pravima migranata. Tu se prije svega misli na pravo podnošenja zahtjeva za međunarodnu zaštitu na propisanim obrascima na jeziku kojeg podnositelj zahtjeva razumiju, pravo na prevoditelja, pravo na besplatnu pravnu pomoć, a posebno prava na liječničku pomoć u što smo se mogli uvjeriti uvidom u dostupne spise koje vode policijske postaje. Policijske postaje koje su bile predmetom promatranja imale su obrasce na minimalno 10 jezika.

c. POTEŠKOĆE S KOJIMA SE SUSREĆU IREGULARNI MIGRANTI

- **Kriminalna viktimizacija**

Migranti su izloženi postupanju „trgovaca ljudima“/krijumčara s obje strane granice, od kojih su neki i strani državljani (npr. britanski državljaniin zatečen i procesuiran od strane nadležnih državnih tijela). Migranti su podvrgnuti zlouporabama od strane krijumčara i „agenata“ koji im jamče prelazak granice. Isto tako, zabilježena su nezakonita postupanja pripadnika hrvatske policije prema migrantima (npr. upotreba sile) s ciljem prisilnog povrata izvan granica dopuštenih pozitivnim propisima i međunarodnim pravom. Neposredni provoditelji su u razgovoru s osobama zatečenim u nezakonitom prelasku granice RH uočili da se u većini slučajeva radi o osobama bez ikakvih dokumenata, koje „agenti“ (krijumčari ljudima, među kojima su i državljani trećih zemalja) za velike iznose finansijskih sredstava prebacuju iz Bosne i Hercegovine preko granice na određeno mjesto na području Republike Hrvatske, gdje bi ih trebala čekati veza za prijevoz na krajnje odredište u zemljama zapadne Europe. Iregularni migranti budu ostavljeni na nenaseljenim, teško dostupnim, hladnim i vlažnim mjestima, bez hrane i vode što se odražava na njihovo zdravlje, a „veza“ ne dolazi. U takvim slučajevima

iregularni migranti se javljaju međunarodnim organizacijama ili hrvatskim udrugama čijim kontaktima raspolažu kako bi ostvarili zaštitu. U promatranim slučajevima iregularni migranti su navodili da su se na putu iz BiH prema RH suočavali s neispunjenim obećanjima „agenata“ za prolaz prema zemljama krajnjeg odredišta, (jer „veza“ nije došla), nezakonitom primjenom sile, oduzimanjem dokumenata, novca i mobitela. U opisivanju slučajeva nezakonite primjene sile, iregularni migranti su navodili da su silu primjenjivale osobe u tamnim odorama bez oznaka, s fantomkama na glavi, opremljene palicama.

- **Migracijska traumatiziranost**

- Dugogodišnja putovanja, opća iscrpljenost te bolest koje nerijetko zahtijevaju medicinsku obradu i skrb.
- Različiti odnosi kulturološke naravi te jezična barijera.
- Dezorijentacija u vremenu i prostoru.
- Problem razdvojenosti obitelji i s time povezane neizvjesnosti.
- Izloženost zajedničkim kriminalnim djelovanjima organiziranih skupina krijumčara i trgovaca ljudima iz više država.

- **(Potencijalna) samoviktimizacija i dovođenje u opasnost ranjivih osoba**

Izloženost pogibelji zbog pokušaja prelaska granice čak i na minski sumnjivim područjima, problem dovođenja u opasnost ranjivih skupina (djece, trudnica, bolesnika, starijih osoba).

- **Prihvat/smještaj**

Jedan od većih problema migranata predstavlja okolnost da policijske postaje nemaju uvijek adekvatne prostorije za njihov privremeni smještaj. Naime, zbog velikog broja migranata u nekim je postajama trenutno nemoguće osigurati adekvatnu prostoriju u kojoj migranti provode određeno vrijeme dok se ne provede njihova identifikacija. Prostorija mora ispunjavati uvjete iz stavka 2. članka 13. Pravilnika o postupanju prema državljanima trećih zemalja. Ukoliko se zatraži međunarodna zaštita onda se takve osobe upućuju u Prihvatilište za tražitelje azila koje su članovi Mehanizma posjetili i koje ima odgovarajuće uvjete za smještaj migranata.

5. PREPORUKE

U nastavku su navedene preporuke Mehanizma za koje se temeljem preliminarnog nalaza prvih šest mjeseci nadzornog djelovanja može osnovano pretpostaviti da bi njihovim prihvaćanjem te implementacijom bio znatno smanjen rizik od nezakonitih postupanja djelatnika policije u području iregularnih migracija. Pored toga bi se prihvaćanjem i implementacijom preporuka nedvojbeno podigla kvaliteta rada MUP-a u ovom izazovnom sektoru. Konačno, žurnom implementacijom navedenih preporuka, Mehanizmu bi se omogućilo da u sljedećih 6 mjeseci izvrši preliminarnu evaluacijsku procjenu implementiranih mjera s ciljem utvrđivanja moguće potrebnih korekcija i utvrđivanja učinkovitosti pojedinih mjera. Neovisno o trenutku i opsegu implementiranja konkretnih mjera temeljem nastavno navedenih preporuka, nužno je već pri osmišljavanju i prije same implementacije pojedinih mjera dizajnirati odgovarajuće evaluacijske instrumente i postupke.

- 1) **Unaprijediti način utvrđivanja identiteta iregularnih migranata**, kako tražitelja azila/međunarodne zaštite, tako i onih koji ne traže azil/međunarodnu zaštitu, npr. korištenjem modernih softverskih alata za prepoznavanje lica (engl. *face recognition*) koji se mogu aplicirati pametnim telefonima. U perspektivi pokrenuti inicijativu za formiranje EU baze biometrijskih podataka u području iregularnih migracija. Iako navedeno ne rješava izazove utvrđivanja pravog identiteta iregularnih migranata bez valjanih dokumenata, navedeno bi omogućilo da se jednom tako registrirana osoba 'veže' uz isti identitet tijekom čitavog migracijskog puta.
- 2) **Poboljšati suradnju policijskih graničnih postaja vezano uz migrante u iregularnom prelasku**. Naime, ne izraze li namjeru za pokretanjem postupka traženja azila/međunarodne zaštite u Republici Hrvatskoj, te osobe dobivaju „u ruke” rješenje po okončanju upravnog postupka o samostalnom napuštanju područja Republike Hrvatske u roku 7 dana, umjesto da budu, u dogovoru s policijom BiH odmah službeno predani (kao što je slučaj zatekne li ih policija nakon isteka roka u RH). Pritom se njihovi otisci prstiju uzimaju, no navodno se ne unose u sustav EURODAC, pa već sljedeći put mogu pokušati istu radnju na području druge PGP, budući da je i razmjena informacija između različitih PGP-ova u tom smislu nedovoljna.
- 3) **Provoditi registraciju svih osoba koje iregularno uđu na državni prostor Republike Hrvatske**. Problem nastaje i pri provedbi rješenja o napuštanju Europskog gospodarskog prostora osoba koje nisu zatražile međunarodnu zaštitu/azil. Tim osobama se prethodno ne uzimaju otisci prstiju za unos u EURODAC, već se samo fotografiraju. Kako u načelu nemaju nikakve dokumente, takve osobe je nemoguće identificirati pri ponovnom pokušaju nezakonitog ulaska u RH, a među njima se mogu nalaziti i „agenti” (krijumčari i/ili trgovci ljudima) koji na taj način izviđaju teren. Preporuka je ispitati mogućnost uzimanja otisaka prstiju u PGP-ovima (a ne u prihvatnim centrima) svih osoba koje pokušavaju nezakonito ući u Republiku Hrvatsku, bez obzira jesu li zatražile međunarodnu zaštitu/azil ili ne.
- 4) **Poboljšati međunarodnu pravnu pomoć kao i policijsku suradnju s državama s kojima je to moguće i koje se nalaze na ruti iregularnih migracija**, a posebno sa susjednim državama iz kojih migranti prelaze u Republiku Hrvatsku (Bosna i Hercegovina) te koristiti diplomatsko-konzularnu mrežu i druge dostupne izvore informacije u pribavljanju podataka o identitetu osoba zatečenih u iregularnom prelasku bez da se dovode u pitanja zaštićena ljudska prava i privatnost tih osoba.

- 5) **Posvetiti osobitu pozornost u postupku različitim međunarodnopravnim obvezama vezanima uz status osoba kao *izbjeglica* ili *migranata*.** U pogledu prve kategorije, obveza na *non-refoulement* je (uz rijetke iznimke predviđene međunarodnim pravom), neupitna i dijelom je općeg običajnog međunarodnog prava, dok međunarodno migracijsko pravo takvu obvezu ne sadrži. Obveza je države ne primjenjivati nedopuštena odvrćanja bez obzira radi li se o izbjeglicama ili migrantima.
- 6) **Evidentirati GPS koordinate kretanja policijskih ophodnji zelene granice.** Predlaže se da GPS koordinate postanu sastavni dio izvještaja kojeg ophodnje granične policije podnose nakon obavljenog nadzora granice. Evidentiranje GPS podataka treba urediti na način da se automatski generira „tracking“, a ne da se stvara dodatno administrativno opterećenje za policijske djelatnike. Navedeno s jedne strane omogućuje naknadnu osobnu identifikaciju svih policijskih djelatnika ukoliko bi iregularni migranti prijavili nepravilno/nezakonito postupanje, dok bi mjera istovremeno imala i preventivni učinak imajući u vidu svijest policijskih djelatnika da ih se može naknadno osobno identificirati – kako u smislu ekskulpirajuće neprisutnosti, tako i u smislu potencijalno inkriminirajuće prisutnosti na mjestu događaja.
- 7) **Izraditi i distribuirati interni pisani naputak kojim se policijskim djelatnicima nalaže da u poslovima zaštite državne granice i području iregularnih migracija moraju postupati po pisanim naputcima, dok usmene naputke koji od istih odstupaju ili im proturječe nisu dužni provoditi, već su dužni o istima bez odgode pisanim putem obavijestiti Ravnateljstvo policije i Mehanizam.** Time se s jedne strane sprječava nepravilno/nezakonito postupanje djelatnika policije po nepravilnim/nezakonitim usmenim naputcima/nalozima dok se s druge strane sprječava rukovodeće policijske službenike da takve naputke/naloge izdaju. Time se ujedno jasno definira procedura i kontakt za prijavljivanje kršenja takvog internog pisanog naputka MUP-a, što jamči pravovremeni interni i eksterni (Mehanizam) nadzor.
- 8) **Unaprijediti sustav praćenja predmeta/spisa s ciljem objedinjavanja svih informacija** na jednom mjestu i objediniti spise o tražiteljima azila/međunarodne zaštite Sektora za strance i granične policije.
- 9) **Izraditi zbirku dobre prakse postupanja policijskih službenika u sektoru iregularnih migracija.** Mehanizam je obaviješten ili se prilikom terenskog obilaska upoznao sa slučajevima u kojima su pripadnici granične policije spašavali ili organizirali transport i medicinsku pomoć migrantima. Također, pozitivan je i primjer prijevoza migranata do prihvatnog centra neoznačenim policijskim „kombi-vozilima“, a dobra je praksa i stalna raspoloživost prevoditelja na gotovo sve jezike kojima se migranti služe. Kao primjer dobre prakse navodimo i odnos policijskih službenika u PGP Slavonski Brod prema ranjivim skupinama: ženama i djeci, te njihov prijevoz neoznačenim vozilima u Prihvatilište „Porin“ u Zagrebu.
- 10) **Zatražiti/koristiti proračunska i/ili EU sredstva za ujednačavanje kvalitete smještajnih uvjeta u svim postajama granične policije** jer je tijekom promatranja utvrđeno da smještajni kapaciteti pojedinih postaja granične policije ne zadovoljavaju minimalne standarde.

- 11) **Izraditi priručnik s preciznim opisom standardnih operativnih procedura** i jasnim razgraničenjem postupanja u zaštiti državne granice koja su dopuštena prema nacionalnom zakonodavstvu i međunarodnom te europskom pravu od nedopuštenih postupanja kojima se krše ljudska prava migranata i tražitelja međunarodne zaštite i osigurati da su sa sadržajem priručnika upoznati svi relevantni djelatnici MUP-a (temeljna policija, granična policija, interventna policija).¹³
- 12) **Unaprijediti izvor informacija za iregularne migrante** o npr. popisu graničnih prijelaza na kojima migranti mogu zatražiti azil u RH, napraviti web stranicu na svim jezicima s uputom kako u RH zatražiti azil, navesti kontakte, transparentno predstaviti uniforme granične policije i drugih jedinica koje obavljaju poslove zaštite granice (kako izgledaju, koje oznake imaju) te navesti kontakt za dojavu/prijavu u slučaju uočavanja osoba koje se kreću u (po)graničnom području u drugačijim uniformama.
- 13) **Usvojiti praksu da MUP u slučaju saznanja za nezakonitosti/incidente u postupanju policijskih djelatnika s iregularnim migrantima mora žurno izvijestiti Mehanizam** o događaju i poduzetim te planiranim radnjama. Radi se o mjeri kojom bi MUP prema Mehanizmu pojačao i ubrzao dijalog te imao mogućnost u takvim situacijama maksimalno iskoristiti ekspertizu Mehanizma.
- 14) **U konzultacijama sa Savjetodavnim odborom i MUP-om analizirati očekivanja i potrebe relevantnih dionika u odnosu na zadaće Mehanizma koje jasno nadilaze njegove postojeće zadane zadaće (a time i ovlasti te ustroj i rad).** Temeljem takve analize koja bi se provela u drugom stadiju rada kroz sljedećih 6 mjeseci, Mehanizam u suradnji s MUP-om može pripremiti prijedlog za proširenje Mehanizma, kako u pogledu zadaće i trajanja, tako i u pogledu normativnog okvira koji je za to nužan.

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- ⁶ Među drugim ključnim međunarodnim preporukama/standardima kojima se pri svom formiranju vodio Mehanizam valja posebno istaknuti sljedeće: 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), dostupno na <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), dostupno na 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), dostupno na <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, str. 5, dostupno na 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, str. 10, dostupno na 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, str. 11 i 12, dostupno na https://www.epac-eacn.org/fileadmin/Documents/Recommendations/Police_Oversight_Principles.pdf [22.11.2021.].
- ¹⁰ Nasilje nad migrantima: Povjerenica Johansson zadovoljna reakcijom Hrvatske: 'Uzeli su to iznimno ozbiljno, ministar je šokiran!' Johansson je održala sastanke u četvrtak navečer s ministrom Božinovićem i grčkim ministrom za migracije i azil Notisom Mitarachijem, HINA (08.10.2021.), dostupno na <https://www.iutarnji.hr/vijesti/svijet/povjerenica-johansson-zadovoljna-reakcijom-hrvatske-uzeli-su-to-iznimno-ozbiljno-ministar-je-sokiran-15108412> [22.11.2021.].
- ¹¹ Mehanizam ima uvid u spise po podnesenim pritužbama na navodno nezakonito postupanje prema iregularnim migrantima i tražiteljima međunarodne zaštite kao i Izvješća Ravnateljstva policije. Također, omogućen je razgovor s policijskim službenicima koji su sudjelovali u odabranom spisu, kao i sa podnositeljem pritužbe ako se isti nalazi na području Republike Hrvatske i ako na to pristane. Prilikom posjeta Prihvatilištu „Porin“ je tako primjerice obavljen je razgovor sa tražiteljicom azila koja je u svojem iskazu imala pritužbu na rad policijskih službenika. Provođitelji aktivnosti Mehanizma gotovo svakodnevno dobivaju podatke o zatečenim migrantima na području Republike Hrvatske čime im se omogućava praćenje situacije o njihovim kretanjima.
- ¹² Pristup podacima ovisan je o pravomoćnosti predmeta/spisa te povjerljivosti/klasifikaciji podataka.
- ¹³ Usp. FRA (2020), Praktični priručnik: Granične kontrole i temeljna prava na vanjskim kopnenim granicama, dostupno na 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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zaključili su dana 8. lipnja 2021. godine

**SPORAZUM O SURADNJI RADI PROVEDBE NEZAVISNOG MEHANIZMA NADZORA
POSTUPANJA POLICIJSKIH SLUŽBENIKA MINISTARSTVA UNUTARNJIH POSLOVA U
PODRUČJU NEZAKONITIH MIGRACIJA I MEĐUNARODNE ZAŠTITE**

Članak 1.

SVRHA

Sporazumom se uspostavlja Nezavisni mehanizam nadzora postupanja policijskih službenika Ministarstva unutarnjih poslova u području nezakonitih migracija i međunarodne zaštite (dalje: Nezavisni mehanizam nadzora).

Članak 2.

POJMOVI

U smislu ovoga Sporazuma, pojam „neregularni migrant“ odnosi se na državljana treće zemlje ili osobu bez državljanstva koja je prešla ili je pokušala prijeći državnu granicu Republike Hrvatske izvan graničnog prijelaza ili preko graničnog prijelaza izvan radnog vremena graničnog prijelaza, odnosno koja izbjegne graničnu kontrolu ili napusti područje graničnog prijelaza dok granična kontrola još nije obavljena.

Članak 3.

PROVODITELJI AKTIVNOSTI NEZAVISNOG MEHANIZMA NADZORA

Provoditelji aktivnosti Nezavisnog mehanizma nadzora (dalje: Provoditelji aktivnosti) imenovat će u roku od petnaest dana od potpisivanja ovog Sporazuma po dva predstavnika koji će neposredno provoditi aktivnosti Nezavisnog mehanizma nadzora (dalje: Neposredni provoditelji aktivnosti) te po jednog predstavnika za sudjelovanje u Koordinacijskom odboru.

Provoditelji aktivnosti dužni su u provedbi aktivnosti pridržavati se pozitivnih propisa Republike Hrvatske i europske pravne stečevine.

Logističku i administrativnu potporu Nezavisnom mehanizmu nadzora osigurava MUP, koji će u roku od petnaest dana od potpisivanja ovog Sporazuma imenovati službenika za kontakt radi osiguravanja nesmetane i pravovremene razmjene informacija i obavljanja drugih poslova kojima se omogućava izvršavanje aktivnosti Nezavisnog mehanizma nadzora.

Članak 4.

MJESTA PROVEDBE AKTIVNOSTI NEZAVISNOG MEHANIZMA NADZORA

Aktivnosti Nezavisnog mehanizma nadzora provodit će se na granici (graničnim prijelazima/polijskim postajama/polijskim upravama) Republike Hrvatske s Bosnom i Hercegovinom, Republikom Crnom Gorom i Republikom Srbijom te u prihvatnim centrima za strance.

Članak 5.

AKTIVNOSTI NEZAVISNOG MEHANIZMA NADZORA

Neposredni provoditelji provodit će sljedeće aktivnosti:

- promatranje postupanja policijskih službenika u mjestima iz članka 4. ovoga Sporazuma prema neregularnim migrantima i tražiteljima međunarodne zaštite u provedbi propisa koji reguliraju nadzor državne granice i pružanje međunarodne zaštite (dalje: Promatranje policijskog postupanja);
- najavljene posjete zelenoj granici;
- uvid u pravomoćno okončane spise po podnesenim pritužbama na navodno nezakonito postupanje prema neregularnim migrantima i tražiteljima međunarodne zaštite i uvid u aktivnosti i izvješća Ravnateljstva policije glede navodnog nezakonitog postupanja prema neregularnim migrantima i tražiteljima međunarodne zaštite (dalje: Uvid u spise).

Provoditeljima aktivnosti u ostvarivanju aktivnosti Nezavisnog mehanizma nadzora iz stavka 1. ovoga članka bit će po potrebi osigurana stručna pomoć prevoditelja i/ili tumača.

U provedbi aktivnosti iz stavka 1. ovoga članka, Provoditelji aktivnosti dužni su pridržavati se propisa o zaštiti osobnih podataka i tajnosti podataka.

Članak 6.

PROMATRANJE POLICIJSKOG POSTUPANJA

Neposredni provoditelji aktivnosti izvršit će ukupno 20 promatranja za vrijeme trajanja ovoga Sporazuma.

Promatranja iz stavka 1. ovoga članka mogu uključivati i najavljene posjete zelenoj granici.

Predstavnik MUP-a do 10. dana u mjesecu dostavlja Provoditeljima aktivnosti statističke izvještaje za prethodni mjesec koji sadrže informacije o svim neregularnim migrantima i tražiteljima međunarodne zaštite.

Na osnovi zaprimljenih statističkih izvještaja Provođitelji aktivnosti, temeljem prethodno utvrđenih kriterija, odabiru pojedinačne slućajeve za promatranje.

Provedba promatranja moće biti najavljena ili nenajavljena.

Neposrednim provođiteljima aktivnosti omogućit će se uvid u spis predmeta odabranog za promatranje, nazoćnost saslućanju neregularnog migranta i traćitelja međunarodne zaćtite te pregled prostorija za zadrćavanje i razgovor s neregularnim migrantom i traćiteljem međunarodne zaćtite pod uvjetom da ta osoba na to pristane.

Najavljene posjete zelenoj granici Neposredni provođitelji aktivnosti provodit će u pratnji ovlaćtenih djelatnika MUP-a ćijih su se uputa dućni pridćržavati.

Neposredni provođitelji aktivnosti obvezni su pridćržavati se uputa ovlaćtenih djelatnika MUP-a o ogranićenju kretanja u zaćtićenim podrućjima (npr. granićni prijelazi, prihvatni centar za strance i dr.).

Neposredni provođitelji aktivnosti u roku od sedam dana od provedenog promatranja zajednićki sastavljaju pojedinaćno izvjećće i dostavljaju ga Koordinacijskom odboru. Izvjećće sadrći podatke i o izvrćenoj najavljenoj posjeti zelenoj granici.

Ćlanak 7.

UVID U SPISE

Neposrednim provođiteljima aktivnosti bit će omogućen uvid u spise po podnesenim pritućbama na navodno nezakonito postupanje prema neregularnim migrantima i traćiteljima međunarodne zaćtite koji su postali pravomoćni unutar godine dana prije potpisivanja ovog Sporazuma odnosno u aktivnosti i izvjećća Ravnateljstva policije glede navodnog nezakonitog postupanja prema neregularnim migrantima i traćiteljima međunarodne zaćtite.

Ovlaćti Neposrednih provođitelja aktivnosti iz stavka 1. ovoga ćlanka ne obuhvaćaju uvid u Informacijski sustav MUP-a.

Slućbenik za kontakt MUP-a dostavit će Neposrednim provođiteljima aktivnosti u roku od petnaest dana od potpisivanja ovog Sporazuma popis pravomoćno okonćanih spisa iz stavka 1. ovoga ćlanka.

Neposrednim provođiteljima aktivnosti bit će omogućen razgovor s policijskim slućbenicima koji su postupali u odabranom spisu, te uz prethodnu suglasnost, i s podnositeljem pritućbe ako se isti nalazi na podrućju Republike Hrvatske i ako na to pristane.

Neposredni provođitelji aktivnosti u roku od sedam dana od ostvarenog uvida u spis zajednićki sastavljaju pojedinaćno izvjećće i dostavljaju ga Koordinacijskom odboru.

Ćlanak 8.

KOORDINACIJSKI ODBOR

Koordinacijski odbor (dalje: Odbor) strućno usmjerava i upravlja aktivnostima Nezavisnog mehanizma nadzora, na osnovi pojedinaćnih izvjećća Neposrednih provođitelja aktivnosti izraćuje zavrćno izvjećće o postupanju policijskih slućbenika MUP-a u podrućju nezakonitih migracija i međunarodne zaćtite te obavlja druge poslove u vezi upravljanja Nezavisnim mehanizmom nadzora.

Odbor ćini po jedan predstavnik Provođitelja aktivnosti.

Odbor odrćava sastanke najmanje jednom u tri mjeseca.

Voditelj Odbora, njegovog zamjenika i tajnika biraju izmeću sebe ćlanovi Odbora većinom glasova.

Voditelj Odbora predstavlja i zastupa Odbor, usklaćuje aktivnosti Nezavisnog mehanizma nadzora,

organizira i saziva sastanke Odbora i jednom u šest mjeseci predstavlja aktivnosti Nezavisnog mehanizma nadzora Savjetodavnom odboru kao neformalnom tijelu.

U slučaju spriječenosti, voditelja zamjenjuje zamjenik.

Tajnik Odbora obavlja administrativne poslove u vezi provedbe aktivnosti Nezavisnog mehanizma nadzora.

Na osnovi pojedinačnih izvješća Neposrednih provoditelja aktivnosti, Odbor izrađuje polugodišnje i završno izvješće. Završno izvješće izrađuje se u roku od trideset dana od posljednje aktivnosti Nezavisnog mehanizma nadzora. Sažetak završnog izvješća bit će javno objavljen na mrežnim stranicama MUP-a.

Članak 9.

FINANCIRANJE

Provedba aktivnosti Nezavisnog mehanizma nadzora financirana je sredstvima Europske komisije koja se uplaćuju u Državni proračun Republike Hrvatske.

Okvirni financijski plan troškova provedbe Nezavisnog mehanizma nadzora sastavni je dio ovoga Sporazuma.

Polovina iznosa troškova predviđena Okvirnim financijskim planom iz stavka 2. ovoga članka, bit će uplaćena na račun Provoditelja aktivnosti u roku od petnaest dana od dana uplate sredstava Europske komisije u Državni proračun Republike Hrvatske, a druga polovina u roku od šest mjeseci od potpisivanja ovoga Sporazuma.

Članak 10.

ZAVRŠNA ODREDBA

Nezavisni mehanizam nadzora uspostavlja se na vrijeme od jedne godine s mogućnošću produljenja.

Aktivnosti Nezavisnog mehanizma nadzora započinju danom zadnjeg potpisa ovog Sporazuma.

Potpisnici Sporazuma mogu istupiti iz istoga uz pisanu obavijest ostalim potpisnicima.

Odluka o istupanju stupa na snagu u roku od petnaest dana od dana upućivanja obavijesti iz stavka 3. ovoga članka.

Sporazum se zaključuje u šest (6) istovjetnih primjeraka od kojih svaka strana zadržava po jedan.

ZA MINISTARSTVO UNUTARNJIH POSLOVA

Potpredsjednik Vlade i ministar

Dr. sc. Davor Božinović

Mjesto i datum: Zagreb, 1. 6. 2021.

KLASA: 018-01/19-01/607

URBROJ: 511-01-131-21-602

Za Udrugu AKADEMIJA MEDICINSKIH ZNANOSTI HRVATSKE

Predsjednica

Prof. dr. sc. Alemla Markotić

Mjesto i datum: Zagreb, 08.06.2021.

Broj: 01-15-1/2021



Za Udrugu AKADEMIJA PRAVNIH ZNANOSTI HRVATSKE

Predsjednik

Prof. dr. sc. Davor Derenčinović, D. Derenčinović

Mjesto i datum: Zagreb, 08.06.2021.

Broj: _____



Za Udrugu CENTAR ZA KULTURU DIJALOGA

Predsjednik

Aziz Hasanović, Aziz Hasanović

Mjesto i datum: Zagreb, 8.6.2021.

Broj: 21.00-DI/21-83



Za Udrugu HRVATSKI CRVENI KRIŽ

Izvršni predsjednik

Robert Markotić

Mjesto i datum: Zagreb, 08.06.2021.

Broj: 1004934-02-1-53-20/06-1



Prof. dr. sc. Iris Goldner Lang

Iris Goldner Lang

Mjesto i datum: ZAGREB, 8/6/2021.

Broj: _____