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NOTE

From:	Presidency
To:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject:	Implementation of the Screening regulation: Setting up an independent national fundamental rights monitoring mechanism

The Pact on Migration and Asylum has recently been adopted by the European Parliament and the Council. As part of this legislative package, the new Screening Regulation provides common rules to ensure that all persons subject to screening are swiftly referred to the relevant procedure (asylum or return) at the border or within the territory. The Regulation also calls for an **independent fundamental rights monitoring mechanism** to be established in each Member State to monitor compliance with Union and international law of all activities carried out by Member States during the screening.

According to Article 10 of the Screening Regulation, the monitoring mechanism serves two main purposes. Firstly, it should monitor compliance with Union and international law, including the Charter (notably access to the asylum procedure, the principle of non-refoulement, the best interests of the child and relevant rules on detention). Additionally, it should ensure that substantiated allegations of non-compliance with fundamental rights are dealt with effectively, and Member States launch investigations into such allegations and monitor their progress.

Member States are responsible for establishing this mechanism at national level. They must guarantee its independence, provide adequate financial resources and ensure it has unhindered access to all relevant locations and documents (after obtaining the appropriate security clearance). Existing national mechanisms for the monitoring of fundamental rights may be used, provided they meet the requirements set out in the Regulation. This may help to make best use of available resources and avoid duplication.

Furthermore, this independent body must be able to conduct on-the-spot, random and unannounced inspections and to issue annual recommendations to Member States. Cooperation with international and non-governmental organisations, independent public bodies and national and European data protection authorities is also envisaged. National ombudspersons, national human rights institutions, and the national preventive mechanisms under the Optional Protocol to the UN Convention Against Torture (OPCAT) will actively participate in monitoring activities and may carry out all or part of its tasks in the spirit of the relevant general principles¹.

The Regulation also mandates the EU Agency for Fundamental Rights (FRA) to draw up general guidance to assist Member States in setting up and operating independent national monitoring mechanisms. Member States may request assistance from the FRA on methodology and appropriate training measures.

In line with the Commission's proposal for a Screening Regulation of 23 September 2020, the FRA had developed general guidelines to assist Member States in setting up national independent mechanisms to monitor compliance with fundamental rights at the EU's external borders. The draft guidance was presented at the meetings of the Working Party on Frontiers on 14 December 2021 and 8 July 2022. In October 2022 the FRA published its guidance.² The Agency is currently updating its guidance to ensure full alignment with the recently adopted Screening Regulation. An advanced draft is circulated to delegations together with this note.

¹ Paris Principles, the Venice Principles and the UN General Assembly Resolution of 28 December 2020 on the role of the Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law (recital (27) of the Screening Regulation), Optional Protocol to the UN Convention Against Torture, Part IV – National preventive mechanisms.

² <https://fra.europa.eu/en/publication/2022/border-rights-monitoring>

Work has already started at various levels to prepare for the operationalisation of the newly adopted Pact. As set out in the Regulation, Member States have two years to establish and prepare for the implementation of their monitoring mechanism. The Presidency considers that an exchange of views on this matter could prove beneficial to all and suggests holding a discussion on the following questions:

- *Do you intend to establish a new independent monitoring mechanism or are you considering using or building on an existing institutional framework to fulfil the obligations set out in Article 10 of the Screening Regulation? If the latter, what specific criteria will you use to assess the suitability and adequacy of these existing bodies?*
- *What are the main challenges anticipated in setting up the monitoring mechanism, and what could help overcome them? How do you plan to equip the mechanism with the necessary powers, expertise and resources to effectively monitor compliance with fundamental rights? What is your planned timeline for setting up the mechanism?*
- *How do you assess the draft guidance developed by FRA and how do you envisage using it? What role do you see for the FRA in assisting Member States in the preparation and actual operation of the monitoring mechanism? What additional support do you need?*