



## Pushbacks at Europe's borders: a continuously ignored crisis

Pushback data confirms that rights violations continue to be widespread and systematic at Europe's borders, while accountability becomes further out of reach as mechanisms are set up to fail and responsibility pushed away.



Protecting Rights  
at Borders

**JANUARY 2024**

**Pushbacks** are “various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement”.

– United Nations Office of the High Commissioner for Human Rights<sup>1</sup>

## Summary

Testimony collected from a group of five citizens of Moroccans in **Bosnia and Herzegovina**, recorded 11 September 2023<sup>2</sup>:

*At 6:00 a.m. they tried for the second time to pass the border and entered the territory of Croatia for about 3.5 KM, where 2 border police officers in dark-colored uniforms, with GP markings, stopped them. And they said to get into the van. After 10 minutes, they parked on the border with Bosnia and Herzegovina, there were already 2 more white vans with the inscription "police" at the location, and in total there were 6-7 policemen and 3 vans. As they got out of the van, 4 policemen started to verbally and physically hit and shout one by one and said "Go Back" "Why you are in Croatia" followed by beating with hands and feet and with police batons. Each person was beaten for approximately 5 minutes in front of the others and after that they say "Next One" and they start again for 5 minutes, they also took away all their belongings and broke their mobile phones, everyone was asked to take off their shoes and be barefoot, where after the end they were lined up on their stomachs side by side and beaten and asked to run and run away towards the territory of Bosnia and Herzegovina.*

**Pushbacks at Europe's borders: a continuously ignored crisis** is the eighth report in the series published by Protecting Rights at Borders (PRAB)<sup>3</sup>, an initiative aiming to document evidence of the use of illegal pushbacks in the context of border management in Europe. The initiative, through its collaborative efforts, also serves to advance strategic litigation across borders for people affected by widespread and systematic pushbacks and other rights violations at Europe's doorstep. Data is gathered by non-governmental organisations (NGOs) and grassroots initiatives across Europe, who have joined forces in the PRAB initiative to create a solid evidence-base, anchored in direct observation and interviews with persons on the move.

This report covers the period from 1 September to 31 December 2023. Data collected directly by PRAB partners or obtained from Government sources document a total of **8,403** pushback instances during the reporting period. As part of the documentation, **1,448** persons were interviewed by PRAB partners. They were asked about the details of their demographics, migration routes, and the rights violations they reported being exposed to. While the **8,403** pushbacks reported during the past four months constitute a high number, it is evident that these represent only a small sample of the actual number of illegal pushbacks at European borders.

The vast majority (over 70%) of interviewees reporting having been pushed back were adult males, and 16% were children. Of particular significance are the pushbacks of 65 unaccompanied and separated children. Numerous reports of violence and degrading treatment were collected, particularly about incidents in Belarus, Bosnia and Herzegovina, Lithuania, and Poland. Lack of access to asylum procedures was also documented in several of the countries covered by PRAB. The report further includes testimonies and analyses current policy developments and practices linked with violence at Europe's borders relevant to the last quarter of 2023.

<sup>1</sup> [www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea](https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea)

<sup>2</sup> This is a testimony from the account collected by civil society organisations, as part of their work done directly with persons affected by pushbacks.

<sup>3</sup> See: <https://pro.drc.ngo/what-we-do/core-sectors/protection/pushback-protecting-rights-at-borders/>

The PRAB initiative gathers partner organisations operating across eight countries in Europe: Belarus ([Human Constanta](#)); Bosnia and Herzegovina ([Danish Refugee Council \(DRC\) Bosnia and Herzegovina](#)); Greece ([Greek Council for Refugees \(GCR\)](#) and [DRC Greece](#)); Italy ([Associazione per gli Studi Giuridici sull'Immigrazione \(ASGI\)](#), [Diaconia Valdese \(DV\)](#) and [DRC Italy](#)); Lithuania ([Diversity Development Group](#) and [Sienos Grupė](#)); North Macedonia ([Macedonian Young Lawyers Association \(MYLA\)](#)); Poland ([Stowarzyszenie Interwencji Prawnej \(SIP\)](#)); and Belgium ([DRC Brussels](#)).



\*All references to Kosovo shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo



The PRAB project has been supported by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations (NEF). The sole responsibility for the project lies with the organisers and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

## OPEN SOCIETY FOUNDATIONS

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## List of Acronyms

ASGI	Associazione per gli Studi Giuridici sull'Immigrazione
DRC	Danish Refugee Council
DV	Diaconia Valdese
EPIM	European Programme for Integration and Migration
EU	European Union
FRONTEX	European Border and Coast Guard Agency
GCR	Greek Council for Refugees
IBMM	Independent Border Monitoring Mechanism
IOM	International Organization for Migration
MoU	Memorandum of Understanding
MYLA	Macedonian Young Lawyers Association
NEF	Network of European Foundations
NGO(s)	Non-Governmental Organisation(s)
PRAB	Protecting Rights At Borders
SIP	Stowarzyszenie Interwencji Prawnej
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## 1. Pushbacks, business as usual in Europe?

### 1.1. Overview of pushback numbers and trends

**8,403 instances of pushbacks** at European borders were documented by the PRAB initiative and/or via Governments' procedures between 1 September and 31 December 2023.<sup>4</sup> The **total number of pushbacks documented in 2023 amounts to 28,609** while, **since the start of the PRAB initiative in January 2021, 46,275 pushbacks have been documented.**

**1,448 persons from those reporting being pushed back underwent a thorough interview process by a PRAB partner** using the joint PRAB data collection tool to record their demographics, migration routes, and the rights violations they reported being exposed to. The infographics in this report refer to this cohort. **In 2023, a total 5,081 persons were interviewed, while the total since the start of the PRAB initiative is 22,776.**

The numbers reported by the PRAB initiative represent a fraction of the people who are pushed back at Europe's borders. The nature of European border areas and the methods utilised for crossing (at official border crossing points or patrolled spots, in remote areas, etc.), coupled with lack of access to some border areas, make it difficult to reach all people who experience pushbacks and related violations. Additionally, pushback recording depends on the time of the event and the willingness of the victims to report. As documented by PRAB partners, many pushback victims are afraid to report the incident, fearing that this will negatively impact their possibility to enter or stay in an EU Member State.

The numbers here reported refer to pushback cases witnessed first-hand by PRAB partners - at times thoroughly detailed with the help of the victims - substantiated by numbers reported by Government agencies from the start of September until the end of December 2023. They provide concrete testimonies on deviations from national legal frameworks and EU directives at EU internal and external borders. To preserve the integrity of the data collection process, the numbers in the PRAB report do not include secondary sources such as information available from other NGOs and UN Agencies working at borders. In this light, they should be interpreted as representative of a comparatively small sample in relation to the magnitude of the phenomenon.

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<sup>4</sup> The 8,403 instances were documented as follows: 1,190 at the border between Bosnia and Herzegovina and Croatia; 85 in Greece; 3,180 at the border between Italy and France; 1,046 at Lithuanian borders; 2,634 in North Macedonia; 268 at the border between Belarus and Poland. The number does not include persons fleeing Ukraine.



5

Access to data on **Belarus** was challenging during the reporting period, in the midst of the border crisis with the EU that has been ongoing since mid-2021. Based on informal accounts, as well as trends observed by PRAB in Lithuania, it appears that border control between Belarus and Lithuania has tightened on the Belarusian side. Main migration routes between September and December 2023 were thus those towards Poland and Latvia. The Belarus State Border Committee reported that at least 10 people had lost their life at the borders between Belarus and EU countries. Nationality was not established or publicly disclosed for all of them, but some were citizens of Afghanistan and Iran. PRAB partner operating in Belarus reported that, since summer 2021, at least 94 lives were lost within the border areas of Belarus, Poland, Lithuania, and Latvia.

In **Bosnia and Herzegovina**, PRAB reached **1,190 persons** who declared having been pushed back during the reporting period. While the majority of them were adult males, of particular concern is the pushback of **151 children**, among whom were **36 unaccompanied minors**. Almost 50% of persons reporting pushbacks were citizens of Afghanistan. The announced involvement of FRONTEX in border management has not yet been implemented at the time of writing (January 2024).

In **Greece**, challenges in accessing areas such as the militarised Evros border with Türkiye, and thus collecting data on pushbacks, continued during the reporting period. PRAB reached **85 persons** between September and December 2023, mostly from Syria, including **30 children**, who were supported in Greece to submit a request for Interim Measures under Rule 39 before the European Court of Human Rights, regarding pushbacks at the border with Türkiye.<sup>6</sup> These legal procedures also include Turkish citizens who fled for fear of persecution and have been imprisoned upon pushback to Türkiye. Further, data was published by the Recording Mechanism of Informal Forced Returns operating under the Greek National Commission for Human Rights.<sup>7</sup> While data refers to the period between 2020 and 2022, observations on the ground indicate that the situation has not substantially deviated from what the report contains. The report is based on testimonies collected directly from alleged victims of rights violations at borders, denouncing 50 incidents of informal forced return, involving at least 2,157 persons, including children, women, persons with disability or special needs, and targeting mostly individuals from non-safe countries of origin.<sup>8</sup>

<sup>5</sup> Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back.

<sup>6</sup> As mentioned throughout this report, numbers refer only to pushbacks recorded by PRAB partners and do not reflect the magnitude of the phenomenon. In this specific case, this number refers exclusively to persons who were supported for legal procedures. For further information on case supported before the ECtHR see <https://www.gcr.gr/el/news/press-releases-announcements/item/1984-information-note>

<sup>7</sup> <https://nchr.gr/en/reports.html>

<sup>8</sup> [https://www.nchr.gr/images/pdf/RecMechanism/\\_fin.pdf](https://www.nchr.gr/images/pdf/RecMechanism/_fin.pdf)

In **Italy**, PRAB recorded the pushback of **3,180 persons** in the Oulx and Ventimiglia areas (in the North-West of the country at the border with France). Of particular concern is the presence of **737 children**, of whom **519 were unaccompanied minors** and represent 16% of the total population reporting pushbacks. Of note, the practice of pushing back minors based on erroneous registration as adults upon disembarkation continued during the reporting period on both sides of the border between Italy and France. The majority of the persons recorded by PRAB as having experienced pushback were from Ethiopia, Ivory Coast, Morocco, and Sudan, with almost 40% of them declaring having reached Italy via Tunisia.

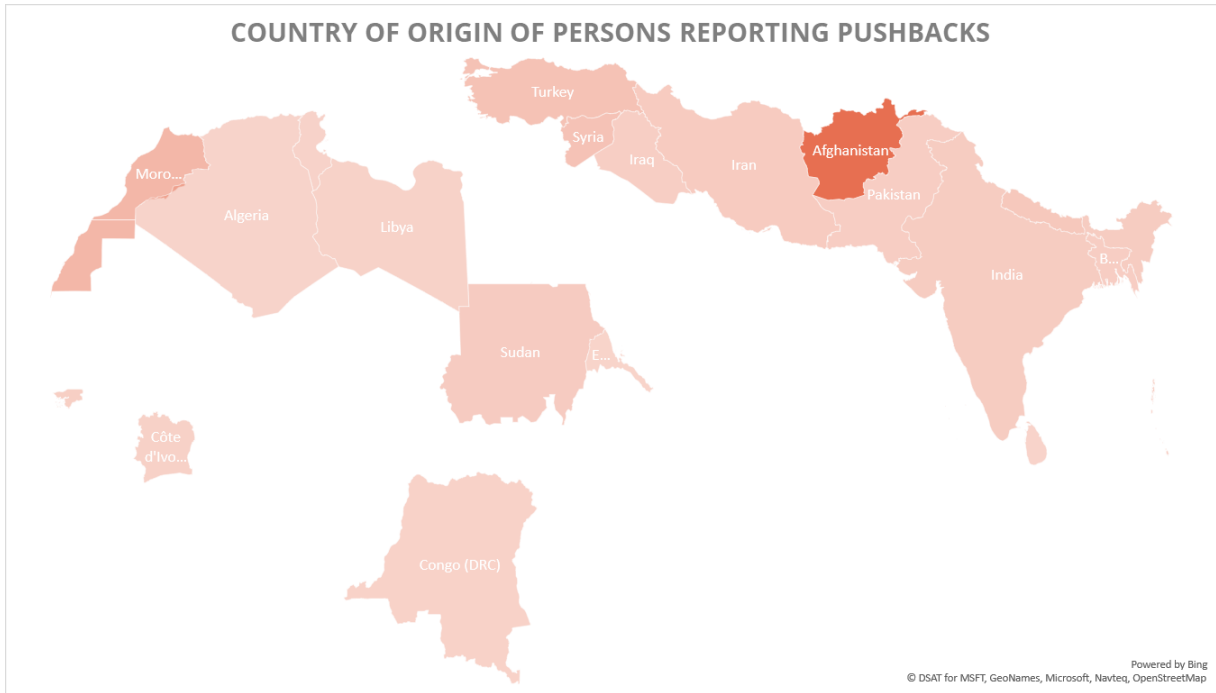
In **Lithuania**, the State Border Guard Service reported having turned away **1,046 persons** during the reporting period, while 25 requests for international protection were lodged at border crossing points during the same months. PRAB reached persons hosted in camps or who had been hospitalised and collected testimonies of repeated pushbacks experienced in Latvia and Lithuania. Based on data published by the authorities, it appears that the route from Latvia to Lithuania became much more active, with a marked increase noted in 2023 of foreign nationals trying to enter Latvia from Belarus , who then proceeded to attempt to cross the Latvia-Lithuania border.

In **North Macedonia**, PRAB reached **2,634 persons** in the Tabanovce and Vinojug areas, where Transit Centres are located near the border with Serbia and Greece, respectively. The majority of these persons came from Syria, in line with a long-standing trend observed in North Macedonia. However, a marked increase in arrivals from Nepal, Türkiye and several African Countries was noticed. Pushbacks mainly occurred at the southern border with Greece. According to their accounts, the persons thus intercepted were transported to Transit Centres for registration and fingerprints collection first, and then, unless they sought asylum, they were either pushed back to Greece (for those in Vinojug) or voluntarily left the Centre (for those in Tabanovce). It must be noted that almost every person reached by PRAB declared that they expressed the wish to be returned to Greece, probably to try to cross into North Macedonia once again, in the hope of not being intercepted by the police. PRAB further observed that those declaring their intention to seek asylum continued to be mostly brought to the Vinojug Transit Centre, where they could remain for a few days, before being transported to the Reception Centre for Asylum Seekers in Skopje. A few pushbacks occurred at the border with Serbia, and they affected those who attempted to cross into North Macedonia from Serbia, while those attempting to enter from Bulgaria further crossed into Greece, either voluntarily or forcibly.

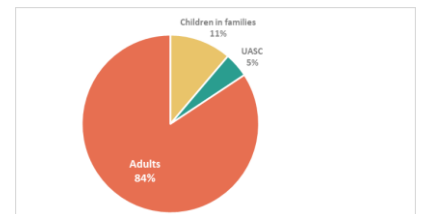
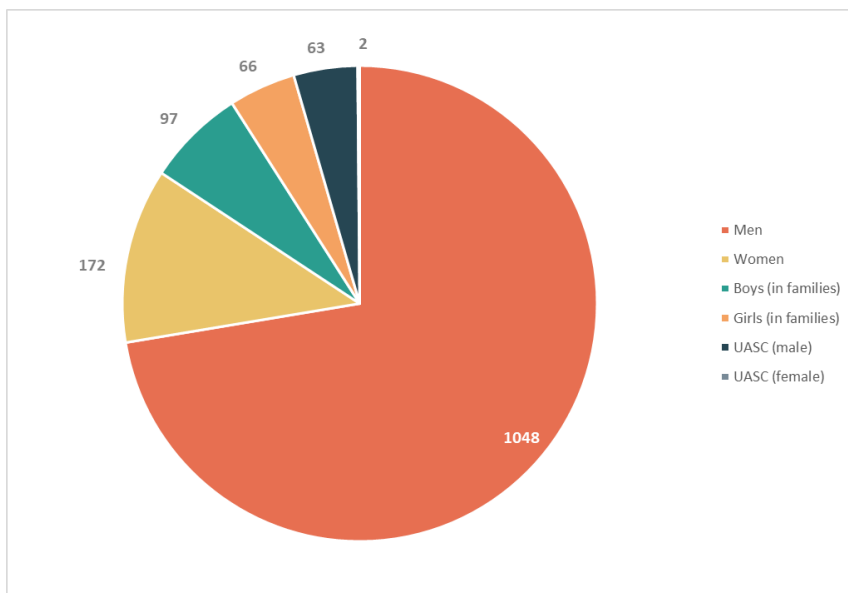
In **Poland**, civil society organisations recorded the pushback of **268 persons** between September and December 2023. Among them were **11 children**, of whom **three were unaccompanied minors**, as well as 61 persons who reported having been pushed back more than once. The majority of these persons came from Syria. Government data refer to 73 third-country nationals ordered to leave the country after being apprehended at the Polish-Belarusian border, including 47 from Syria or Iran. No changes took place during the reporting period in the situation at the border with Belarus, increasingly militarised since June 2023. Violence, including via the use of firearms and the introduction of pepper-spray launchers, and degrading treatment continued to be reported, along with loss of life. Cases of family separation also continued to be reported. Restrictions of humanitarian space also continued, while legislation legalising pushbacks remained in force despite open criticism within Polish politics as well as from international stakeholders.

## 1.2. Pushbacks from 1 September to 31 December 2023

The following demographics relate to the 1,443 individuals PRAB thoroughly interviewed during the reporting period. This data – as is elaborated in the report – only represents a small sample of the people who were pushed back during the reporting period.



### AGE AND GENDER BREAKDOWN OF PERSONS REPORTING PUSHBACKS



16% of all recorded pushbacks between September and December 2023 involved children

Children travelling with family members			Unaccompanied and separated children		
0-4	5-12	13-17	5-12	13-17	



20

44

2

0

2





19

47

31

1

56

### 1.3. Reported human rights violations at borders and in-country.

Persons on the move in the countries covered by PRAB reported experiencing a plethora of human rights violations including, but not limited to, denied access to international protection procedures, violence, and degrading treatment. In the absence of direct access to data for PRAB, accounts collected in neighbouring countries on pushback practices in **Belarus** were considered, and they refer to the **use of force at borders** to prevent entry. Records publicly disclosed by Belarusian authorities (and observations by PRAB partner in Belarus) on loss of lives at borders validate the notion of inadequate conditions encountered by, and abusive practices being directed at, persons on the move.

Violence was reportedly experienced at borders also by persons reached by PRAB in:

- **Bosnia and Herzegovina**, where 653 individuals (55%) claimed having been subjected to physical abuse or assault, and 990 individuals (83%) claimed having been subjected to abusive and degrading treatment.

*Testimony collected from a group of six citizens of Sierra Leone in **Bosnia and Herzegovina**<sup>9</sup>*

*A group crossed the border with the Republic of Croatia near the village of Šmrekovac in Velika Kladuša. Shortly after crossing the border (within a few minutes), they were apprehended by the Croatian police. The officers, five in number, were clad in dark uniforms without any identifiable insignia and did not notice any nearby vehicles. They immediately began assaulting them with punches, batons, and one of the officers used the butt of a pistol to strike them in the head. Following the assault, their phones, money, and all jewellery they had on them were taken. They were pushed back to Bosnia and Herzegovina around 4 am.*

- **Lithuania**, where testimonies referred to having been subjected to violence and having endured extreme hardship at borders.
- **Poland**, where the situation at the border with Belarus, which continued to be increasingly militarised, was noted as particularly alarming. Testimonies collected by civil society organisations refer to persons being subjected to verbal and physical violence, confiscation of their property and other degrading treatment. The use of violence was reported as including the use of pepper-spray launchers and firearms, which resulted in one Syrian national suffering a serious firearm wound in the back, which is under investigation at the time of writing (January 2024). While not necessarily connected to the use of force, instances of family separation and persons going missing were also reported at the border between Poland and Belarus. While access to legal remedy against alleged rights violations at borders is available, processing times are lengthy, with a criminal case from 2021 being considered in October 2023.

*Testimony (part 1) collected from a person from Syria in **Poland**, who suffered pushbacks and was beaten up.<sup>10</sup>*

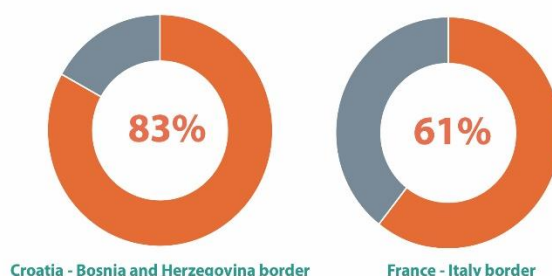
*“They found us and they were beating us and spraying us at the same time. (...) And they beat the lady, woman. They were trying to attack kids, but we didn’t let them. (...) They were beating us*

<sup>9</sup> This is a testimony from the account collected by civil society organisations, as part of their work done directly with persons affected by pushbacks.

<sup>10</sup> This is a testimony from the account collected by civil society organisations, as part of their work done directly with persons affected by pushbacks.

*because we were defending the kids and they used rubber bullets, and they took us back to the border.”*

### % of people who reported experiencing inhuman and degrading treatment



11

Challenges were reportedly experienced in accessing the **right to international protection**. In **Bosnia and Herzegovina**, PRAB collected testimonies of 412 individuals (35% of the total persons reached) having been denied access to asylum procedures. While the online platform, the only channel to access asylum procedures on the Greek mainland, resumed operating again in summer 2023, lawyers who wanted to book appointments for the asylum seekers reported a risk of detention<sup>12</sup> and in Southern **Greece**, lengthy procedures. A legislative development in **Italy** foresees that, as of August 2023, asylum seekers who receive a positive response to their claim may no longer be accommodated at first-level reception centres. Given the need to receive the physical permit at a specified address, recognised refugees are unable to do so after being obliged to leave reception centres. In **Lithuania**, a trend of deportations to Latvia was observed. Based on testimonies collected by PRAB, persons apprehended in Lithuania are deported without being granted access to legal counselling or asylum procedures. In **North Macedonia**, persons intercepted by Police are transferred to the closest Transit Centre, where they have access to shelter, food, health care including psycho-social support, and legal aid (provided by PRAB partner). If they apply for asylum, they are transferred to the Reception Centre for Asylum Seekers, while the others are unofficially deported back to Greece. This notwithstanding, once they learn of the lengthy procedure to access international protection, most people decide to leave. From September to December 2023, a total of 75 applications for international protection were submitted.

*Testimony collected from a Syrian citizen in North-Macedonia*<sup>13</sup>

*“I left Syria 4 months and 3 weeks ago. I am walking all the way to here; I didn’t use any kind of transportation modes. The first country I entered after leaving Syria, was Turkey. I stayed in Urfa for 2 months. I found there a Syrian family and stayed in their house. After, I spent two and a half months in Thessaloniki, Greece. I entered in Macedonia three days ago, I was planning to continue with my journey, and I headed toward Serbia. Unfortunately, the Serbian police caught me, beat me with*

<sup>11</sup> Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back. During the reporting period PRAB partners collected 1,189 testimonies of people reporting pushbacks at the border between Croatia and Bosnia and Herzegovina, of whom 989 reported having experienced inhuman and degrading treatment. Similarly, at the border between France and Italy, PRAB partners recorded 183 pushbacks, of which 111 of persons claiming to have received inhuman or degrading treatment.

<sup>12</sup> Asylum seekers who have booked an appointment and are holders of the documents are (despite their appointment and documents) considered irregular migrants by the police and they are consequently arrested and detained. GCR - Administrative courts: The detention of asylum seekers pending full registration, to whom the Ministry of Immigration & Asylum does not recognize the status of applicant, <https://www.gcr.gr/en/news/press-releases-announcements/item/2121-detention-of-asylum-seekers-whose-status-as-an-applicant-is-not-recognized-by-the-department-of-immigration-asylum-is-again-illegal> is illegal

<sup>13</sup> This is a testimony from the account collected by civil society organisations, as part of their work done directly with persons affected by pushbacks.

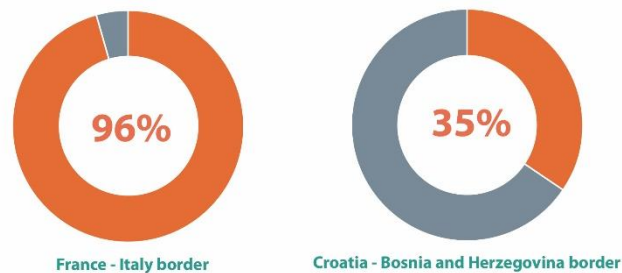
*baton and gun's handle. Then, they pushed me back in North Macedonia. When I entered Greece from Turkey the police in Greece. They caught me, beat me, took everything from me and pushed me back to Turkey. They even undressed me; I was fully naked."*

In **Poland**, despite access to asylum procedures being available in theory at the only open border crossing point with Belarus, reports reached PRAB of de facto lack of opportunities to submit a claim for several years. Once in Poland, requests for international protection appear to also be ignored, as per testimonies collected by PRAB during and prior to the reporting period.

*Testimony collected from a Sudanese man in **Belarus**, who was handcuffed and beaten, despite his request for asylum in **Poland**. Following the treatment of the Polish border guards, he was hospitalized for 25 days.<sup>14</sup>*

*"(...) when they took us to the forest, to the point where no one could see us except us, they started beating us, used a stun gun and pepper spray on us and then threw us into the forest. We couldn't walk for three days because of the pain, and we had vision problems. (...) They took our phones, destroyed our phones, they took the SIM Card and broke it. (...) And they also took power banks. (...) On the other side [of the wall], (...) some people helped me, took me all the way to the asphalt road. They left me there. I passed out later, someone took me to the hospital. Possibly military or police. I woke up when I was already in hospital."*

### % of people who have reported being denied access to asylum



15

Additional challenges were reported in terms of:

- **Restrictions on freedom of movement.** In **Belarus**, as noted above, PRAB did not obtain direct access to persons on the move; however, IOM<sup>16</sup> reported that 28% of the population they surveyed in 2023 declared being accommodated in detention centres. In **Greece**, conditions in Reception and Identification Centres as well as Closed Controlled Access Centres were observed as inadequate. The conditions resulted in *de facto* detention, and have been acknowledged as inadequate by the European Court of Human Rights in cases represented by the PRAB partner in Greece. In **Lithuania**, a trend was noticed of detaining persons awaiting deportation for quarantine reasons. Deportations were also experienced by persons who suffered pushbacks at the Polish-Belarusian border.

<sup>14</sup> This is a testimony from the account collected by civil society organisations, as part of their work done directly with persons affected by pushbacks.

<sup>15</sup> Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back. During the reporting period, PRAB partners collected 183 testimonies of people reporting pushbacks at the border between France and Italy, of whom 175 reported having been denied access to asylum procedures. Similarly, at the border of Croatia and Bosnia and Herzegovina, 1189 pushbacks were recorded, of which 412 related to people reportedly not granted access to asylum procedures.

<sup>16</sup> See [https://belarus.iom.int/sites/g/files/tmzbd11266/files/documents/2023-09/dtm2023\\_belarus\\_migrants\\_mar-apr\\_2023\\_eng.pdf](https://belarus.iom.int/sites/g/files/tmzbd11266/files/documents/2023-09/dtm2023_belarus_migrants_mar-apr_2023_eng.pdf).

- **Lack of access to healthcare.** In **Belarus**, it must be noted that IOM reported that 60% of the individuals they surveyed in 2023 declared having experienced challenges in accessing healthcare. In **Bosnia and Herzegovina**, PRAB found that, despite first-aid and standard health care (including psycho-social support) being available, the high number of people in need challenged the delivery of assistance to all. In **Poland**, basic medical assistance is provided at the border with Belarus by NGOs, but PRAB observed that, despite being diagnosed with conditions requiring treatment, people were subjected to pushback. In two cases, people were pushed back after their admission to hospital.
- **Lack of access to information.** In **Belarus**, according to IOM data, 73% of those surveyed reported having experienced language barriers. In **Lithuania**, challenges were reported to PRAB in relation to communication and translation/interpretation affecting access to information on rights.

In addition to the above, the continued **criminalisation of humanitarian assistance at the border between Poland and Belarus** must be highlighted, with actors such as [Human Rights Watch](#) and [Amnesty International](#) drawing attention to the treatment of NGOs and activists. In **Greece**, a hostile narrative and incrimination of NGOs and human rights defenders remains a matter of concern.<sup>17</sup>

#### *Involvement of organised crime*

A pattern seems to have emerged which indicates the involvement of organised crime affecting persons on the move in Europe. As documented by PRAB, a Turkish citizen reported being part of a group mistreated by Afghans in Greece – with whom the Greek police were allegedly cooperating. According to their account<sup>18</sup>, Greek Border Police systematically apprehend persons attempting to cross and, without allowing them to lodge a claim for international protection, hand them over to Afghan gangs who steal their possessions and use violence.

This phenomenon is consistent with the exposure of the [involvement of organised crime](#) (and collusion by police) in Serbia by the Balkan Investigative Reporting Network, and suggests a pattern across the Western Balkans that further exacerbates already important protection risks faced by persons on the move.

## 2. (II)legal tricks to prevent arrivals and/or access to asylum procedures within the European Union’s territory

### 2.1. Temporary re-introduction of border controls, a ‘useful’ tool to keep third country nationals out?

The Schengen Borders Code<sup>19</sup> foresees that EU Member States can temporarily reintroduce border control at the **internal borders** in the event of a threat to internal security or public policy. Those re-introductions must, however, be applied as a last resort, in exceptional situations and respecting the proportionality principle. The scope and duration of reintroduced border control should be restricted to the bare minimum needed to respond to the threat in question.

<sup>17</sup> In September 2023, the Bar Association of Athens issued an opinion, clarifying that lawyers providing legal advice and assistance to persons arriving in Greece and wishing to apply for international protection – as well as interpreters used to enable communication – can in no way be construed as facilitating irregular entry or stay, in line with CJEU case law. Greece in Institutional Decline, Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report, January 2024, paras. 124-129.

<sup>18</sup> This is an excerpt from the account collected by PRAB. The conversation took place in English between non-native English speakers, and the excerpt is paraphrased to ensure the original meaning is retained.

<sup>19</sup> Schengen Borders Code, Chapter II, Temporary reintroduction of border control at internal borders, Regulation - 2016/399 - EN - Schengen borders code - EUR-Lex (europa.eu)

In practice, **temporary re-introduction of border control is common in the European Union's Schengen zone**. At the time of writing, nine EU Member States (and Norway) have re-introduced border control and informed the European Commission of this measure.<sup>20</sup> Seven of these nine Member States provide increased migration pressure as the reason, while the other two refer to terrorist threats or the risk of terrorists infiltrating into mixed flows as the pretext. Except for two out of nine, the proposed border closures were introduced for five or six months. The proportionality, and whether used as a last resource, can be questioned, as they yield implications for people in search of safety.

PRAB partners present at the internal borders of Poland and Italy, **have closely monitored the human impact of the re-introduction of these border closures**. **Poland**, which re-initiated border controls at the Polish-Slovakian border, justified the measure by the increased migration pressure along the Balkan route.<sup>21</sup> The decision to re-initiate borders was followed by media reports of third-country nationals stuck at the Polish-Slovakian border. For example, a group of 34 persons, including women and children, was **camping outdoors for days** in Slovakia, near the Polish border.<sup>22</sup> The same happened to a group of 50 persons, mostly from Syria, including one woman and four children, who managed to reach as far as Osadnica in Slovakia.<sup>23</sup> Further, some third-country nationals faced unexpected border controls at the militarized Polish-Belarusian border. Some persons attempted to **enter Poland irregularly; some** were refused entry, including 46 Syrians.<sup>24</sup> For example, a group of 14 Kurds, including nine children (five to 14 years old) crossed the border through the Tatra mountains, where the temperature drops to zero or less at night.<sup>25</sup> They were apprehended by the Border Guard in Dolina Chocholowska on 15 October 2023. **One woman and one child were hospitalized**. **Italy** for the first time also decided to re-introduce border controls with Slovenia, linking a security threat (following the "attack on Israel") with the increased risk of possible terrorist infiltration into irregular migration flows.<sup>26</sup> The Italian government openly declared that it intends to resume pushbacks of asylum seekers, in violation of national and international law. The pushback practices at the Italy-Slovenia border have previously also been contested, as an informal readmission agreement between both EU Member States resulted in chain-pushbacks; a practice which was declared illegitimate and ended following a ruling by the Court of Rome in 2021.<sup>27</sup> The re-introduction of border control again equals the **inability of persons searching safety to ask for international protection** in Italy, a measure which violates national, European and international law. Press reports describe that also persons who have already crossed the border area are rejected on the basis of the re-introduction of the border control, contrary to the Schengen Borders Code.<sup>28</sup> The press also report that those asking for international protection at the Slovenian-Italian border are rejected, however, to date it is unclear whether written administrative measures have been issued and which legal procedures should be applied in these cases.

In addition to the re-introduction of border controls, PRAB partners are also witnessing the **ongoing or newly proposed closures of EU's external borders**. First, while in **Lithuania** the diminishing relevance of a complete border closure was recognized, following a significant decrease in the number of people arriving irregularly from Belarus<sup>29</sup>, the intention to build a border fence in Marshes (the largest bog in

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<sup>20</sup> Temporary Reintroduction of Border Control - European Commission (europa.eu) The nine EU Member States re: France, Sweden; Austria\*, Germany\*, Denmark\*, Slovakia\*, Italy\*, Poland\* and Czechia\*. Those indicated with an asterisk\* have provided migration pressure as the reason for the border closure.

<sup>21</sup> <https://www.gov.pl/web/mswia/konferencja-kierownictwa-mswia-dotyczaca-tymczasowego-przywrocenie-kontroli-na-granicy-polsko-slowackiej>;

<sup>22</sup> <https://gazetakrakowska.pl/grupa-uchodzcow-koczowala-przy-polskiej-granicy-w-tatrzańskiej-jaworzynie-na-slowacji/ar/c1-17955469>

<sup>23</sup> <https://balkaninsight.com/2023/10/31/poland-slovakia-border-in-and-out-of-control/50-migrants>

<sup>24</sup> <https://bielskobiala.wyborcza.pl/bielskobiala/7,88025,30281668,pod-sklepem-na-slowacji-spotkalismy-uchodzcow-z-aleppo-ktorych.htm>

<sup>25</sup> <https://turysci.pl/dziewiecioro-dzieci-w-nocy-w-dolinie-chocholowskiej-do-akcji-wkroczyla-straz-graniczna-kz-kz-161023>

<sup>26</sup> [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/temporary-reintroduction-border-control\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/temporary-reintroduction-border-control_en)

<sup>27</sup> <https://en.asgi.it/readmissions-italy-slovenia-are-illegitimate/>

<sup>28</sup> [https://medea.asgi.it/wp-content/uploads/2023/11/Schengen-Area\\_From-Free-Movement-Zone-to-Labyrinth.pdf](https://medea.asgi.it/wp-content/uploads/2023/11/Schengen-Area_From-Free-Movement-Zone-to-Labyrinth.pdf)

<sup>29</sup> <https://www.lrt.it/en/news-in-english/19/2069753/closing-border-with-belarus-is-no-longer-relevant-lithuanian-president>

the country) has been re-expressed. A working group is looking into the feasibility of installing physical barriers, as well as calculating options and costs.<sup>30</sup> Further, there is also a plan to re-establish the coast guard frontier district, a unit which will operate along the borders with Russia and Latvia, in territorial waters, along the coastline, in seaports, in airports located within its operational area, and in the Curonian Lagoon.<sup>31</sup> Second, border crossings between the EU and **Belarus** also remain closed, since June 2023. The Belarusian authorities publicly declared having approached their neighboring EU Member States, to discuss the migration crisis with constructive proposals, to no avail.<sup>32</sup> Third, Finland has since mid-December fully closed its Eastern land border.<sup>33</sup>

These practices, at the EU external border, are a preview of what can be expected under the proposed reform of the Schengen Borders Code by the European Parliament, as also adopted in the Council of the EU's general approach<sup>34</sup> on the Schengen Borders Code. The proposal suggests limiting the number of crossing points at the external border or limiting their opening hours. It also proposes intensifying border surveillance, in situations where a third country or a non-state actor encourages or facilitates the movement of third-country nationals towards the EU's external borders or to a member state to destabilise the EU or a member state. This practice, also known as 'instrumentalization' of migrants, limits the possibilities to apply for international protection in the EU. The multitude of concerns that this proposal brings has been highlighted by the civil society organisations<sup>35</sup>, but is also stressed in the European Parliament's substitute impact assessment.<sup>36</sup> As people seeking protection do not have equally increased access to other safe and legal pathways, it **leaves no other option to those searching for safety in the EU than to use more dangerous routes** and to put their lives at risk. These practices risk violating the right to seek asylum, which EU Member States should effectively maintain, irrespective of the number of arrivals.

## 2.2. Do agreements with third countries continue to be perceived as a holy grail to fix EU's migration challenges?

The Memorandum of Understanding<sup>37</sup> (MoU) signed between Albania and **Italy**, on 6 November 2023, is **another example of so-called 'cooperation' between EU Member States and third countries to control the arrival of those seeking safety** on Italy's shores. The MoU aims to transfer migrants rescued by Italian ships to Albania, excluding minors, pregnant women, and other vulnerable individuals. Italian nationals will handle landing and identification procedures in the port of Shengjin (in Albania), and a dedicated reception centre for initial screening and a separate area for further detention – prior to repatriation procedures – will be constructed as part of the agreement. Whether the agreement will be operationalized is pending the judgement of the Albanian Constitutional Court, who is currently assessing whether the MoU is in line with the country's constitution.<sup>38</sup>

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<sup>30</sup> <https://www.lrt.lt/en/news-in-english/19/2079447/lithuania-wants-to-build-border-fence-even-in-marshes>

<sup>31</sup> <https://www.lrt.lt/en/news-in-english/19/2078130/lithuania-to-re-establish-coast-guard-unit>

<sup>32</sup> <https://belsat.eu/en/news/25-11-2023-the-lukashenka-regime-is-signaling-its-willingness-to-strike-a-deal-poland-in-belarusian-propaganda>

<sup>33</sup> Finland: Concern over right to seek asylum and need for human rights safeguards after full closure of Eastern land border - Commissioner for Human Rights (coe.int); EU backs Finland border closure as Russia conscripts migrants (euobserver.com)

<sup>34</sup> Schengen borders code: Council adopts its general approach - Concilium (<https://www.consilium.europa.eu/en/press/press-releases/2022/06/10/schengen-area-council-adopts-negotiating-mandate-reform-schengen-borders-code/> uropa.eu)

<sup>35</sup> See for instance: Policy Note: A Step Too Far: Introducing "Instrumentalization" In EU Law | European Council on Refugees and Exiles (<https://ecre.org/policy-note-a-step-too-far-introducing-instrumentalisation-in-eu-law/> CRE)

<sup>36</sup> <https://www.ceps.eu/ceps-publications/proposal-for-a-regulation-addressing-situations-of-instrumentalisation-in-the-field-of-migration-and-asylum/>

<sup>37</sup> English translation available here: <https://odysseus-network.eu/wp-content/uploads/2023/11/Protocol-between-the-Government-of-the-Italian-Republic-and-the-Council-of-Minister-of-the-Albanian-Republic-1-1.pdf>

<sup>38</sup> <https://www.theguardian.com/world/2024/jan/18/albanian-court-to-rule-on-migration-deal-with-italian-government>

**Human rights experts**, including the Council of Europe’s Commissioner for Human Rights, Dunja Mijatović, have highlighted important **questions on the MoU’s implementation and its impact on the fundamental rights of refugees, migrants, and asylum-seekers**.<sup>39</sup> The risks of prolonged detention; the absence of legal remedies; the challenges to implement, respect and enforce basic human rights, including the right to an effective procedure and legal assistance, of people residing in an extraterritorial context; and the difficulties to ensure access to asylum in an extraterritorial context are often pointed out. Surprisingly, and contradicting the Commission’s earlier positioning<sup>40</sup> on the legal and practical feasibility of setting up external processing of asylum applications and/or the return procedure in a third country, the **European Commission has tacitly approved of the MoU by stating that it falls ‘outside’ of EU law**.<sup>41</sup>

This MoU should be seen in the broader context and the EU and its Member States’ **intensified cooperation with third countries**, relying on them to control and manage migration. Future similar agreements are expected with Egypt topping the EU’s wish list.<sup>42</sup> The explicit mentioning of the introduction of the external dimension to migration management, in the political agreement on the EU Pact on Asylum and Migration, reached on 20 December 2023, indicates a further legalization of reliance on third countries to support the EU policy objectives.<sup>43</sup> The specificities of future agreements should be analysed: whether it falls ‘outside’ or ‘inside’ of EU law and whether it qualifies an agreement providing legal obligations or merely non-binding commitments. Analysis, based on inputs from civil society and human rights actors<sup>44</sup>, has pointed **towards a multitude of challenges that characterize the EU’s external asylum and migration policies across different countries**.<sup>45</sup> Including: human rights violations of the people affected, third countries hesitancy to cooperate, lack of perceived legitimacy of cooperation focused on asylum and migration, the non-transparency of the decision-making surrounding the agreements, and last but not least violations of the rule of law.

**A shift in the EU and its Member States’ approach to cooperation with third countries is required**<sup>46</sup> and should ensure that:

1. The protection of people affected by displacement is placed at the centre of any EU-Third country cooperation on asylum and migration.
2. Protection and assistance for refugees and migrants through partnerships and policy dialogue with third countries is expanded without conditionalities on restricting mobility.
3. A conflict-sensitive and rights-based approach to all EU supported actions related to forced displacement and migration is applied.
4. The effects of extraterritorial migration cooperation are monitored, documented, and evaluated in order to improve policy responses and address adverse protection implications.

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<sup>39</sup> <https://www.coe.int/en/web/commissioner/-/italy-albania-agreement-adds-to-worrying-european-trend-towards-externalising-asylum-procedures>; see also: <https://ecre.org/ecre-preliminary-comments-on-the-italy-albania-deal/>; <https://www.arci.it/italia-albania/>; [https://cdn.ceps.eu/wp-content/uploads/2023/12/ASILE\\_Italy-Albania-MoU-Extraterritorial-Migration-Management.pdf](https://cdn.ceps.eu/wp-content/uploads/2023/12/ASILE_Italy-Albania-MoU-Extraterritorial-Migration-Management.pdf); <https://www.amnesty.org/en/documents/eur30/7587/2024/en/>; and <https://www.amnesty.org/en/documents/eur30/7587/2024/en/>.

<sup>40</sup> <https://www.statewatch.org/media/documents/news/2018/jul/eu-council-com-paper-disembarkation-options.pdf>

<sup>41</sup> <https://www.euronews.com/my-europe/2023/11/15/italy-albania-migration-deal-falls-outside-eu-law-says-commissioner-ylva-johansson>  
Note that the Commission has further shared that it will only be able to conduct the final legal assessment once the relevant national law has been adopted.

<sup>42</sup> <https://www.politico.eu/article/eu-von-der-leyen-endorses-migration-aid-deal-egypt-israel-hamas/>

<sup>43</sup> [https://home-affairs.ec.europa.eu/news/historic-agreement-reached-today-european-parliament-and-council-pact-migration-and-asylum-2023-12-20\\_en](https://home-affairs.ec.europa.eu/news/historic-agreement-reached-today-european-parliament-and-council-pact-migration-and-asylum-2023-12-20_en)

<sup>44</sup> For instance, the research consortium ASILE, funded under the European Union’s Horizon 2020 research and innovation program, examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. The ASILE research project is a collaboration between think tanks, led by CEPS, academics, civil society organisations and UNHCR. More information can be found here: <https://www.ceps.eu/ceps-projects/asile/>

<sup>45</sup> [https://www.asileproject.eu/wp-content/uploads/2023/11/ASILE-POLICY-BRIEF-WP5\\_MODIF-1.pdf](https://www.asileproject.eu/wp-content/uploads/2023/11/ASILE-POLICY-BRIEF-WP5_MODIF-1.pdf).

<sup>46</sup> [https://www.asileproject.eu/wp-content/uploads/2023/11/Addressing-protection-implications-of-extraterritorial-migration-cooperation\\_updated-27-October-2023-FINAL\\_MODIF-1.pdf](https://www.asileproject.eu/wp-content/uploads/2023/11/Addressing-protection-implications-of-extraterritorial-migration-cooperation_updated-27-October-2023-FINAL_MODIF-1.pdf)

5. Accountability for violations of international law in third countries as result of the EU's extraterritorial migration cooperation and direct engagement is increased.

### 3. Moving further away from accountability at EU borders

#### 3.1. Delayed, sanitized or absent reports from existing national mechanisms further question the ambition to increase transparency regarding rights violations at borders.

Independent border monitoring mechanisms (IBMM) aim to protect migrants whose rights are at risk and to prevent new violations. Following political pressure, certain EU Member States, at borders with widespread and systematic rights violations, have set up mechanisms that aim to serve as an IBMM. It remains nevertheless contested whether those mechanisms are worthy of its name. Existing **mechanisms either lack the independent mandate, the adequate scope, or the necessary resources to fully carry out their work**. Consequently, the impact on accountability of the police is limited and access to justice for victims of human rights violations at borders is extremely rare. Many border areas remain in the shadow; and there is tremendous room for improvement in transparent reporting on rights violations .

The final reporting from **Croatia's** border monitoring mechanism happened in June 2022, since then, there is **no clarity on whether the mechanism is *de facto* operating**, whether it has taken on board the recommendations shared by its advisory board after the completion of the initial one-year cycle of the mechanism or how the continuous high number of pushbacks committed by the Croatian border guards are assessed and which steps are taken to ensure justice for victims and accountability towards perpetrators of the violence. In **Greece**, the establishment of the **Fundamental Rights Task Force/Fundamental Rights Officer** within the Ministry of Migration and Asylum has not led to increased accountability, nor has the FRO published any data or reports.<sup>47</sup> In a Resolution adopted by the European Parliament in December 2023, the EP "*expresses severe concern regarding the serious and persistent allegations made against Greek authorities in relation to pushbacks and violence against migrants*" and that said, "*regrets that the Agency [FRONTEX] has so far refrained from scaling down or repurposing its operations in Greece*".<sup>48</sup>

These **newly established mechanisms/set-ups** have also **failed to provide effective pathways to justice** and the use of previous existing mechanisms remains essential to hold perpetrators accountable. In **Greece**, the unwillingness of the authorities to effectively examine potential violations by the Hellenic Coast Guard personnel became apparent with regard to the case of the Pylos shipwreck. In November 2023, the Greek Ombuds announced the launch of its own examination of the case, following the refusal of the Hellenic Coast Guard to carry out a disciplinary investigation into its operations relating to the Pylos shipwreck.<sup>49</sup> In **Croatia**, the monitoring mechanism does not have the mandate to investigate pushback cases, nor to ensure that pathways to justice are facilitated. Victims are only left with already existing mechanisms as viable legal remedies, which often have limitations, It should be

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<sup>47</sup> It is important to repeat that the Recording Mechanism of Informal Returns is not an independent border monitoring mechanism. This mechanism's first report (covering pushback cases in 2021 and 2022 was recently published). Note that this report also includes recommendations towards the Greek government, including the need to set up an independent and efficient national mechanism for the monitoring of the fundamental rights at the borders in line with the FRA's Guidelines. You can find the report in English here: <https://nchr.gr/en/reports.html>

<sup>48</sup> European Parliament resolution of 14 December 2023 on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny (2023/2729(RSP), <https://www.europarl.europa.eu/doceo/document/TA-9-2023> European Parliament resolution of 14 December 2023 on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny (2023/2729(RSP), [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0483\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0483_EN.html), para. 13. -0483\_EN.html, para. 13.

<sup>49</sup> <https://www.synigoros.gr/el/category/default/post/deltio-typoy-or-o-synhgoros-toy-polith-ereyna-to-nayagio-ths-pyloy>



noted that, for instance, the mandate of the Croatian Ombuds is often impeded with regards to border violence, not allowing her to *de facto* complete the role that is granted by the constitution.

The EU Member States that have been notorious for severely violating the rights of some of the most vulnerable at its borders, have attempted to set up mechanisms, however, the mandate, scope, and independence of those mechanisms falls short. The **effective implementation of article 7 under the proposed pre-entry screening<sup>50</sup> of the EU Pact on Asylum and Migration brings momentum for monitoring rights violations at borders**. However, only if lessons are learned. An OSCE report<sup>51</sup>, from October 2023, concludes that there is a wealth of knowledge and monitoring experience on the side of international organizations, NHRIs and NGOs, and that they stand ready to contribute to the success of independent border police monitoring mechanisms. The onus is on participating States to provide the necessary political support and leadership to work on the development of such mechanisms through a transparent and genuinely inclusive process. This is the missing link that currently impedes these processes from really taking off, as shown by the case studies on Croatia and Greece.

### 3.2. EU agreed upon mechanism to ‘monitor border violence’ unable to monitor borders or rights violations during border crossings.

The proposed ‘independent monitoring mechanism’ to investigate allegations of fundamental rights violations at borders, proposed in article 7 of the pre-entry screening under the EU Asylum and Migration Pact, does **not seem to be able to effectively deliver on what its name proclaims**. The proposed monitoring mechanism had the potential to address violations but only if it was expanded in scope; independence was ensured; accountability for violations was strengthened; and suitable consequences follow governments’ non-compliance foreseen.<sup>52</sup>

While the exact text of the political agreement reached between the European Parliament and the European Council on 20 December 2023 has not been published, it has been shared by the negotiating parties that a compromise was found, allowing the **mechanism to only monitor the screening process**.<sup>53</sup> The limited geographic scope of the mechanism will *de facto* not prevent pushbacks and alleged fundamental rights violations being monitored, as the vast majority of unlawful practices takes place outside of official border crossings, police facilities or formal procedures. The fact that the agreed upon mechanism will only monitor in agreed-upon places, will create blind spots and enable violations to continue.

The negotiating parties, the European Parliament, and Council of the EU, must still agree on the exact legal text of the mechanism. This equals a small window of opportunity to minimize damage and ensure that the mechanism can still be effective. Needed changes are:

- Broaden the scope of the mechanism to prevent the existence of places where border management or law enforcement authorities can act outside the functioning mechanism. Safeguard that the monitoring mechanism covers all instances of pushbacks, from the moment there is (or has been) contact between border enforcement authorities and people on the move.
- Make unannounced and random check an obligation, not merely a possibility.

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<sup>50</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A612%3AFIN>

<sup>51</sup> [https://www.osce.org/files/f/documents/0/5/556554\\_0.pdf](https://www.osce.org/files/f/documents/0/5/556554_0.pdf)

<sup>52</sup> <https://pro.drc.ngo/resources/news/turning-rhetoric-into-reality-new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability/>

<sup>53</sup> <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>

- Specify how EU Member States must investigate allegations to put an end to abuse, guarantee access to justice and ensure transparency.
- Obligate the triggering of legal investigations by the monitoring mechanism, to safeguard effective and diligent pathways to legal remedies.
- Require the involvement of independent national authorities and civil society organizations to support the mechanism, funded by the EU.
- Build in obligatory political and financial costs if EU Member States fail to cooperate with the mechanism, do not set it up or ignore its findings.

Finally, a proposed monitoring mechanism under the new Asylum Procedures Regulation can possibly be positive and contribute to improve asylum procedures in EU Member States – on the condition that the mechanism is meaningfully transposed from EU to national law. The scope and aim of that mechanism should however not be confused with a dedicated mechanism for right violations when people cross borders.

#### 4. EU Pact on Asylum and Migration: can legal texts still ensure an end to rights violations and pushbacks at Europe’s borders?

*Testimony (part 2) collected from a person from Syria in Poland, who suffered pushbacks and was beaten up.*<sup>54</sup>

*“They took us back to the forbidden area. (...) At that time we were so thirsty and hungry, and we asked the Polish soldiers. We asked them for a drink or a little food. And there was a woman, a soldier and she gave us a bottle of water and while we drunk it, we wished we did not drink that, but we already did, but before the children. We realized that she put pepper spray inside the water. After we drank it, me, and another guy – our stomach got burned and it was so painful.”*

The political agreement on the EU’s Pact on Asylum and Migration, concluded on 20 December 2023, is unlikely to end or even limit the widespread and systematic use of pushbacks and rights violations at EU internal or external borders, or ensure accountability for the victims. The high-level political

compromise between the European Parliament and EU Member States remains top line, clarifying the direction with the detailed legal framework still subject to further negotiations. During the Pact’s negotiations political will, courage, and realism to protect the rights of people before managing borders appeared absent from the high-level political agreement – at least that which is publicly<sup>55</sup> available.

The final negotiations of the Pact’s legal texts as well as the discussions on implementation of the political compromise and the pending legal frameworks cannot become a missed opportunity to end the rights violations at Europe’s borders. It must be ensured that these legal frameworks are in line with European and international human rights law as well as the EU’s moral and legal obligations with regards to asylum and migration. PRAB partners call to:

<sup>54</sup> This is a testimony from the account collected by civil society organisations, as part of their work done directly with persons affected by pushbacks.

<sup>55</sup> European Commission: [https://home-affairs.ec.europa.eu/news/historic-agreement-reached-today-european-parliament-and-council-pact-migration-and-asylum-2023-12-20\\_en](https://home-affairs.ec.europa.eu/news/historic-agreement-reached-today-european-parliament-and-council-pact-migration-and-asylum-2023-12-20_en); Council of the EU: <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>; and European Parliament: <https://www.europarl.europa.eu/news/en/press-room/20231220IPR16016/asylum-and-migration-pact-press-conference-with-president-metsola-and-lead-meeps>

1. **Broaden the border monitoring mechanism's scope, ensuring that monitoring can take place where pushbacks are happening (outside police stations, official border crossings or the agreed upon pre-entry screening facilities) and obligate unannounced and random monitoring visits.** The political agreement of a border monitoring mechanism that only monitors, with prior announcement, the screening process leaves the other parts of the border – where pushbacks mainly take place – out of sight and accountability.
2. **Provide safe and legal pathways to protection and ensure that those at Europe's borders have access to fair and efficient asylum procedures, including access to legal assistance and legal remedies.** The political agreement includes screening/border facilities where certain groups are prevented to access procedures of international protection while limiting people's right to freedom of movement – due to the *de facto* detention. Further, the political agreement lacks clarity on procedural and legal safeguards for those whose asylum claim is inadmissible or unconsidered, risking violations of the principle of non-refoulement and people ending in so-called no-man's lands at Europe's borders as safeguards for protection elsewhere are not requested.
3. **Limit derogations to the right to asylum in case of increased arrivals, irrespective of the reason for the increased number of arrivals, as this *de jure* legitimizes pushbacks.** The political agreement has put a focus on protecting borders instead of people by allowing EU Member States to limit the fundamental right of access to asylum in case of crisis or instrumentalization of migrants by third countries neighboring the EU. Further, the political agreement falls short to stress the European Commission's role, as given in the guardian of the treaties, to ensure compliance with the EU's legal framework, including the EU's Charter for Fundamental Rights.

If the legal text does not ensure these changes, people searching for safety in the EU will be faced with severe restrictions and likely violations of their rights and the EU will set a precedent that is likely to (further) negatively impact migration policies – and the EU's image - globally. The scope of arrivals of refugees and migrants to the EU is entirely manageable, and Europe cannot neglect its responsibility towards those fleeing war, conflict, man-made and natural disasters in which the role, historically or still today, of the European Union can neither be forgotten.



**DRC** DANISH  
REFUGEE  
COUNCIL

