

The Monitoring of Fundamental Rights: Implications of the Proposed Screening Regulation of the New Pact on Migration and Asylum

Jessica Kearney-Touhey

Editorial Note

This 2022 paper critiques the Proposed Screening Regulation,¹ noting significant revisions to the proposal since the writing of this piece. On 8 February 2024, the Council's Permanent Representatives Committee finalized a compromise text, introducing key amendments. Approved in April 2024 by the European Parliament and adopted in May 2024 by the Council, the New Pact on Migration and Asylum includes 10 legislative measures, including the finalized Screening Regulation. The Pact will take effect in mid-2026, marking a significant shift in EU migration governance.

Acknowledgements

I would like to express my appreciation for the feedback provided by Professor Dr. Anthony Valcke.

Introduction

The New Pact on Migration and Asylum (New Pact) introduces several new policy instruments to strengthen Europe's approach to migration management. This essay will focus on the Proposed Screening Regulation (Screening Regulation), in particular, Articles 3, 7, and 9. The adoption of the Screening Regulation would impact the fundamental rights of irregular migrants and potential asylum-seekers who reach the European Union (EU). The duration, location, applicability, and possible outcomes of the screening process may result in *de facto* detention and refusal of entry for those seeking international

¹Commission 'Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817' [Proposed Screening Regulation] COM (2020) 612 final, 23 September 2020

protection. The independent monitoring mechanism could be strengthened by establishing an individual complaint mechanism and requiring the participation of an EU-body, such as the EU Agency for Fundamental Rights (FRA), or civil society, such as human rights or equality bodies, in the monitoring of the screening process. This could increase impartiality and safeguard the right to effective remedy. Additionally, the Screening Regulation would introduce a more exhaustive list of vulnerable groups of irregular migrants who enter the EU, which may lead to the provision of adequate support and considerations for special procedural or reception needs during the screening process.

Background on the New Pact on Migration and Asylum

The New Pact was proposed by the European Commission in September 2020 with the purpose of creating a robust and reliable migration management system.² The New Pact intends to provide a comprehensive approach to migration and asylum policy, border management, and strengthen governance by introducing a package of ten new instruments, guidelines, proposed regulations, and amendments to improve the current system.³ The approach intendeds to improve procedures, create a common framework for migration practices, and foster solidarity amongst EU Member States.⁴ The New Pact aims to create a more effective legal framework, enhance strategic planning, and improve operational support. This would be done by streamlining procedures on asylum and return, creating stronger crisis preparedness and response practices, improving screening checks, and introducing new mechanisms for search and rescue operations.⁵ Additionally, the New Pact aims to improve external border guard capabilities, adopt a new integration and inclusion action plan, and introduce new sustainable pathways with non-EU countries to match EU labour demands.⁶ The New Pact advocates for a whole-of-government approach by promoting the integration of policy-making in the

²Commission 'Communication on a New Pact on Migration and Asylum' COM (2020) 609 final, 23 September 2020

³Commission 'Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020' (2020) <https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en> Accessed 8 February 2025

⁴ Commission (n 1) 1. Introduction: A New Pact on Migration and Asylum

⁵Ibid

⁶Ibid

areas of migration, external border control, asylum, return, the combat against human smuggling, and sustaining partnerships with key third-countries.⁷

Overview of the Proposed Screening Regulation

The Screening Regulation⁸ of the New Pact introduces a new pre-entry screening system applicable to all third-country nationals⁹ seeking entry into the EU who do not fulfil entry requirements.¹⁰ This is applicable at the external border, after disembarkation following a search and rescue mission, after internal apprehension, and at airports.¹¹ This proposed regulation introduces uniform procedures of pre-entry assessments to evaluate the individual needs of entrants including the screening of health and vulnerability checks,¹² identity checks,¹³ security checks,¹⁴ and biometric data registration.¹⁵ The Screening Regulation additionally sets out rules on the duration of screening,¹⁶ collection of relevant information,¹⁷ and monitoring of the screening process.¹⁸ The Screening Regulation proposes a uniform process for the EU to ensure the prompt identification of those needing international protection, who would be channelled into the asylum procedure, and those who are not in need of protection, who would be channelled into the return procedure.¹⁹ The intention

⁷Commission (n 1) 1. Introduction: A New Pact on Migration and Asylum

⁸Commission 'Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817' [Proposed Screening Regulation] COM (2020) 612 final, 23 September 2020, Explanatory Memorandum, 1. Context of The Proposal

⁹A third-country national is 'Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the European Union right to free movement' as defined in Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders [Schengen Borders Code] (2016) OJ L 77/1, art 2(5)(b)

¹⁰Entry conditions include a valid travel document issued within the last ten years that is valid for at least six months, an entry visa, a justification of the purpose and conditions of the intended stay and means of subsistence, no prior issuance of a Schengen Information System alert, and be considered a non-threat to public policy, internal security, public health, or the international relations of Member States, as defined in the Schengen Borders Code art 6(1)

¹¹Proposed Screening Regulation, art 3

¹²Ibid, art 9

¹³Ibid, art 10

¹⁴Ibid, art 11

¹⁵Ibid, art 14(6)

¹⁶Ibid, art 6

¹⁷Ibid, art 8

¹⁸Ibid, art 7

¹⁹Proposed Screening Regulation, Explanatory Memorandum, 1. Context of the Proposal

is to create a pre-entry stage to improve the use of the relevant policy instruments.²⁰ By doing so, it aims to strengthen ‘synergies between external border controls, asylum, and return procedures’.²¹ Thus, the aim is to manage the increase of mixed migration flows²² and create a tool to identify, at the earliest possible period, persons who are unlikely to qualify for international protection.²³

Applicability

The Screening Regulation introduces a mandatory screening procedure that Member States must conduct on all third-country nationals in the following scenarios. Those who: 1) are apprehended at the external land, air, or sea border in connection with an unauthorized crossing;²⁴ 2) disembark in a Member State following a search and rescue mission;²⁵ and 3) apply for international protection at the external border or in transit zones²⁶ and who do not fulfill the entry conditions set out in Regulation 2016/399/EU (Schengen Borders Code).²⁷ The above-mentioned categories tend to cover all irregular migrants presented or apprehended at the border who do not fulfill entry requirements.²⁸

Screening Duration and Location

Article 6 *Requirements concerning the screening* indicates that screening should take place at an appropriate location in the territory of the Member State within proximity of the external border.²⁹ The procedure is to be completed without delay and take a maximum of five days upon presentation or apprehension at the external border or sea disembarkation. In case of

²⁰Ibid, 1.4.4. Compatibility and possible synergy with other appropriate instruments

²¹Ibid, Explanatory Memorandum, 1. Context of the Proposal

²²The proportion of migrants arriving from countries with less than a 25% recognition rate has risen from 14% in 2015 to 57% in 2018 as cited in the Commission ‘Amended Proposal for the establishment of Eurodac’ COM (2020) 614 final, 23 September 2020, Explanatory Memorandum, 1. Context of the Proposal

²³Proposed Screening Regulation, Explanatory Memorandum, 1. Context of the Proposal

²⁴Ibid, art 3(1)(a)

²⁵Ibid, art 3(1)(b)

²⁶Proposed Screening Regulation, art 3(2)

²⁷Schengen Borders Code, art 6

²⁸European Council on Refugees and Exiles (ECRE), ‘Reception, detention and restriction of movement at EU external borders’ (2021) <<https://ecre.org/wp-content/uploads/2021/07/ECRE-Heinrich-Boll-StiftungReception-Detention-and-Restriction-of-Movement-at-EU-External-Borders-July-2021.pdf>> Accessed 8 February 2025, 39

²⁹Proposed Screening Regulation, art 6(1) and (2)

exceptional circumstances, such as a disproportionately high number of entrants who are subject to screening, the timeline may be extended by an additional five days.³⁰ Those apprehended within a Member State's territory must be screened without delay within 3 days, and no mention of an extension is indicated.³¹ The Screening Regulation does not specify which authority is to conduct the screening.³² Thus, it may be managed by various state bodies. For example, in the airport procedure of the German border procedure, the initial interview is carried out by the Federal Police, not the asylum authorities.³³ Staff must be competent and possess the appropriate skills to conduct health and vulnerability checks. The EU Agency for Asylum (EUAA) should add a specific module on screening to its training catalogue in order to ensure the responsible authorities possess the skills to conduct these checks.³⁴

Those undergoing screening at the external border are not authorised entry into the Member State's territory.³⁵ This implies that almost all persons seeking international protection would be detained at centres by the external border, presumably without the possibility to leave their accommodation.³⁶ The European Council on Refugees and Exiles (ECRE) argues that this leads to 'de facto detention in degrading conditions', further questioning how the Screening Regulation will avoid ongoing failures of current operations in hotspots,³⁷ such as Italy and Greece, in order to 'operationalise the Commission's promise of "no more Morias"'.³⁸ Amendments proposed by the European Parliament

³⁰Ibid, art 6(3)

³¹Ibid, art 5 and 6(5)

³²Ibid, art 6(7)

³³Wiebke Judith, 'Der »New Pact on Migration and Asylum« Übersicht zur geplanten Reform des Gemeinsamen Europäischen Asylsystems' (2021) *Asylmagazin* 1-2/2021, 7, 8

³⁴European Union Agency for Asylum (formerly the European Asylum Support Office), 'Training Catalogue: Training and Professional Development Centre' (2021)

<[https://euaa.europa.eu/sites/default/files/2021-](https://euaa.europa.eu/sites/default/files/2021-11/EASO_Training_Curriculum_Catalogue_2021.pdf)

11/EASO_Training_Curriculum_Catalogue_2021.pdf> Accessed 8 February 2025

³⁵Proposed Screening Regulation, art 3(1) and (2) in conjunction with art 4(1)

³⁶Judith (n 31) 8

³⁷For information on hotspots see Asylum in Europe's report on Italy

<<https://asylumineurope.org/reports/country/italy/asylum-procedure/access-procedure-and-registration/hotspots/>> and Greece

<<https://asylumineurope.org/reports/country/greece/overview-main-changes-previous-report-update/>> Accessed 8 February 2025

³⁸ECRE (n 26) 39

suggest that vulnerable applicants should not be subject to detention³⁹ and should be channelled directly into the regular asylum or return procedure.⁴⁰ This is especially relevant to ending the practice of detaining children for the purpose of determining their immigration status, as upholding the best interests of the child should always be primary consideration.⁴¹

Possible Outcomes

ECRE indicates that '[a]lthough the [Screening] Regulation frequently refers to there being two possible outcomes of the screening – asylum or return procedure – there are in fact four possible outcomes: 1) refusal of entry, 2) return, 3) asylum, or 4) relocation'.⁴² The proposed regulation does not mention detention.⁴³ Directive 2011/95/EU (Recast Qualification Directive)⁴⁴ outlines the asylum procedure and Directive 2008/115/EC (Return Directive)⁴⁵ outlines the return procedure. Relocation may occur if families separated in different EU countries apply for family reunification during the processing of their asylum claims, as per Regulation 604/2013/EU (Dublin III).⁴⁶

³⁹Committee on Civil Liberties, Justice and Home Affairs, 'Draft Report Introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817: Amendments 445-807' (2022) 2020/0278 (COD) <https://www.europarl.europa.eu/doceo/document/LIBE-AM-703277_EN.pdf> Accessed 8 February 2025, Amendment 645

⁴⁰Ibid, Amendment 648

⁴¹United Nations General Assembly (UNGA), 'New York Declaration for Refugees and Migrants' (3 October 2016) UN Doc A/RES/71/1, para 33

⁴²ECRE, 'Screening out rights? Delays, detention, data concerns and the EU's proposal for a pre-entry screening process' (2020) <<https://ecre.org/wp-content/uploads/2020/12/Policy-Note-30.pdf>> Accessed 8 February 2025, 3

⁴³ECRE (n 40)

⁴⁴Commission 'Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)' (2011) OJ L 337/9

⁴⁵Commission 'Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals' [Return Directive] (2008) OJ L 348/98

⁴⁶Commission 'Regulation EU 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)' (2013) OJ L 180/31, art 10

Though refusal of entry is outlined in the Schengen Border Code, it is intended to be without prejudice concerning the right to seek international protection.⁴⁷ Case law has proven that this has been violated. This can be seen from the cases dealing with the refusal of entry at the land border,⁴⁸ push-backs at sea,⁴⁹ and forced removals from Member States to third countries⁵⁰ of potential international protection applicants. Within these procedures, some Member States also use the ‘so-called legal fiction of non-entry’, stating that a person did not formally enter the territory due to their unauthorized entry. These entrants will likely be subject to restrictions of movement or detention.⁵¹ Thus, it is important to ensure a robust monitoring mechanism in the screening procedure in order to ensure fundamental rights are being respected, and the right to claim international protection can be exercised. This will be further explored in section 4.

Extension of Vulnerabilities

High importance is placed on the protection of human rights of persons who have been rendered vulnerable, including eliminating discrimination against them.⁵² The Screening Regulation outlines instances in which vulnerability and health checks must be performed. This regulation complements the rules of external border control in the Schengen Borders Code, particularly the responsibility to prevent unauthorized admission and to carry out border control measures without prejudice to the rights of those seeking international protection.⁵³ The Schengen Borders Code, which regulates the entry of third-country nationals and potential asylum-seekers, provides a non-exhaustive list of vulnerable persons: unaccompanied minors and victims of trafficking.⁵⁴ The Screening Regulation expands the concept of vulnerability by linking it to Article

⁴⁷Schengen Borders Code, art 14(1)

⁴⁸*R.A. and Others v. Poland* App no 42120/21 (ECHR, 28 September 2021); *D.A. and Others v. Poland* App no 51246/17 (ECHR, 8 July 2021)

⁴⁹*Hirsi Jamaa and Others v. Italy* App no 27765/09 (ECHR, 23 February 2012)

⁵⁰*N.D. and N.T. v. Spain [GC]* App no 8675/15 and 8697/15 (ECHR, 13 February 2020)

⁵¹ECRE (n 26) 22. Austria, Belgium, France, Germany, Greece, Hungary, Italy, Netherlands, Portugal, Romania, and Spain rely on this construct

⁵² World Conference on Human Rights ‘Vienna Declaration and Programme of Action’ (25 June 1993) I. art 24

⁵³Proposed Screening Regulation, Explanatory Memorandum, 1. Context of the Proposal

⁵⁴Schengen Borders Code, art 16(1)

21 of Directive 2013/33/EU (Recast Reception Conditions Directive), which includes:

minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.⁵⁵

Suggestions include to add those who have suffered inhuman or degrading treatment, are stateless, at risk of statelessness, or have special procedural or reception needs.⁵⁶ Additional EU legislation, such as in the Return Directive, use a narrower definition of a vulnerable group.⁵⁷ The Recast Reception Conditions Directive is the most comprehensive definition of vulnerability found in EU law; thus, the adoption of the Screening Regulation would recognize more vulnerable groups of irregular migrants who enter the EU. When there are signs of vulnerabilities or special procedural or reception needs during the screening process, concerned persons should receive adequate support.⁵⁸ These support mechanisms address the specific needs and promote the effective protection of the fundamental freedoms and human rights of migrants in vulnerable situations.⁵⁹ However, there are concerns as to whether this can be carried out sufficiently within the allocated time period for vulnerabilities that are unapparent or associated with shame. It is often necessary to build up trust with the concerned person in order to identify said vulnerabilities.⁶⁰

Independent Monitoring

The Screening Regulation proposes the implementation of an independent monitoring mechanism established by the Member State in which the screening

⁵⁵Commission 'Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast)' [Recast Reception Conditions Directive] (2013) OJ L 180/96, art 21

⁵⁶Committee on Civil Liberties, Justice and Home Affairs (n 37) Amendment 639 and 640; Recast Reception Conditions Directive, art 22

⁵⁷Return Directive, art 3(9) defines vulnerable persons as 'minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence'

⁵⁸Proposed Screening Regulation, art 9(3)

⁵⁹UNGA (n 39) Annex II, III. Content, para 8(i)

⁶⁰Judith (n 31) 8

is being completed. Article 7 *Monitoring of fundamental rights* sets out the requirement to ensure fundamental rights are respected during the screening process.⁶¹ It shall ensure compliance with EU and international law.⁶² This should be further extended to ensure compliance with national law. The establishment of an independent monitoring mechanism is necessary to ensure fundamental rights are safeguarded throughout the screening procedure.

EU-Level Mechanism

The establishment of an independent monitoring mechanism for the screening process is welcomed, however, Article 7 provides the monitoring body discretionary powers to 'invite relevant national, international, and non-governmental organisations and bodies to participate in the monitoring'.⁶³ The lack of participation of external organizations in the monitoring process may result in impunity or a lack of impartiality and objectivity. Although the monitoring mechanism is intended to be independent, Member States are in charge of creating and implementing the mechanism within their territories, and have complete freedom to determine what this body will be. For example, the case *Rahimi v. Greece* brought to the European Court of Human Rights involved an unaccompanied Afghan minor seeking asylum who was placed in an adult detention facility without adequate care. He was arrested for irregular entry and put into detention prior to the registration of his asylum application. The asylee was given an information pamphlet outlining available remedies, including the possibility of submitting a complaint to the chief of police, however, it did not outline the process or if they were obligated to respond. The case summary indicates that '[t]he Court further questioned whether the chief of police represented an authority satisfying the requirements of impartiality and objectivity necessary to make the remedy effective'.⁶⁴ Furthermore, the Court determined that 'the Applicant undoubtedly came within the category of highly vulnerable members of society, and it had been incumbent on the Greek State to protect and care for him' resulting in violations of Articles 3, 13, 5 § 1(f) and

⁶¹Proposed Screening Regulation, Explanatory Memorandum, 5. Other Elements

⁶²Ibid, art 7(2)

⁶³Ibid

⁶⁴*Rahimi v. Greece* App no 8687/08 Summary (ECHR 5 July 2011), para 4

5 § 4 of the European Convention on Human Rights.⁶⁵ This case demonstrates the importance of having a monitoring mechanism for the period prior to the asylum or return procedure.

It is essential that the monitoring body is independent from the screening body. In discussing the Forced Return Monitoring Systems, the FRA indicates that,

[a]ll EU Member States have some form of return monitoring by law. But in practice, gaps remain. For example, in Germany and in Sweden the main monitoring entity is closely connected to the authority responsible for returns. Without sufficient separation between the two, a monitoring system cannot be entirely effective.⁶⁶

This is applicable to the screening procedure as well. The proposal indicates that the European Border and Coast Guard Agency (Frontex) and the EUAA may support authorities in the screening process.⁶⁷ It further indicates that the independent monitoring mechanism should be without prejudice to the monitoring of fundamental rights by Frontex.⁶⁸ Regulation 2019/1896/EU indicates that Frontex must 'monitor compliance with fundamental rights in all of its activities'.⁶⁹ However, there is no mention of an independent entity to monitor that these rights are being safeguarded, and merely states that it is a task Frontex shall perform. Thus, it is unclear which entity would be monitoring the screening process if Frontex is involved in the screening.

Any authority completing the screening procedure must be subject to an independent monitoring mechanism. The European Parliament has called on the European Commission to establish an independent and transparent monitoring mechanism for all operations conducted by Frontex, 'in addition to the internal complaint mechanism in place', in order to comply with human

⁶⁵Ibid para 6

⁶⁶European Union Agency for Fundamental Rights 'Forced return monitoring systems 2021 update' (13 December 2021) <<https://fra.europa.eu/en/publication/2021/forced-return-monitoring-systems-2021-update>> Accessed 8 February 2025.

⁶⁷Proposed Screening Regulation, art 6(7)

⁶⁸Ibid, Recital (23)

⁶⁹Commission 'Regulation (EU) 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624' (2019) OJ L 295/1, art 10(1)(e)

rights while implementing external migration policies.⁷⁰ Therefore, the Screening Regulation should outline that the monitoring must be performed by a body which is functionally separate from the authority completing the screening process. Additionally, complaints against EU bodies can be heard by the European Ombudsman, adding an additional layer of legal remedy.

Article 7 outlines the supporting role the FRA has in the monitoring mechanism. The FRA is to provide general guidance on the establishment and functioning of the independent monitoring mechanism, including advisory assistance to Member States upon request.⁷¹ The FRA does not play a large enough role to ensure the system operates fairly and in accordance with human rights law as it is only tasked to provide guidance and support to the functioning of the monitoring system, and not participate in the monitoring process directly. The New Pact intends to foster solidarity and responsibility-sharing amongst EU Member States; thus, it would be logical to create an EU-body to safeguard the monitoring process or enhance the FRA's role. The FRA's involvement could be strengthened by tasking it with regular reporting on national monitoring and presenting annual reports on its findings to the EU institutions, European Ombudsman, EUAA, and Frontex.

The creation of a national monitoring body ultimately adds additional pressure on external EU states who are facing delays in the registration of asylum claims,⁷² have difficulties maintaining adequate reception conditions,⁷³ and have deficiencies in the appeals procedure.⁷⁴ The possibility of bias or partiality in the independent monitoring system creates further opportunities for potential unlawful actions to occur and risks insufficient oversight throughout the monitoring process. Establishing an EU entity, or enhancing the FRA's role, could safeguard the system's operational integrity.

⁷⁰European Parliament 'Resolution of 19 May 2021 on human rights protection and the EU external migration policy' (2021) 2020/2116(INI), para 14

⁷¹Proposed Screening Regulation, art 7(2)

⁷²ECRE, 'The length of asylum procedures in Europe' (October 2016)
<<https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf>>
accessed 1 March 2022, 4

⁷³*M.S.S. v. Belgium and Greece [GC]* App no 30696/09 (ECHR 21 January 2011); *R.R. and others v. Hungary* App no 36037/17 (ECHR 2 March 2021)

⁷⁴Council of Europe 'H46-9 M.S.S. and Rahimi groups v. Greece (Application No. 30696/09) Supervision of the execution of the European Court's judgments' (2019)
CM/Del/Dec(2019)1348/H46-9

Civil Society and Human Rights Defenders

States, in cooperation with international organizations and NGOs, must create favourable conditions to ensure the full enjoyment of human rights and eliminate any obstacles that prevent the enjoyment of these rights.⁷⁵ In the absence of an EU-level mechanism to assist in the monitoring process, an alternative, and perhaps even stronger solution, would be to engage with civil society and human rights defenders. The importance of civil society and governmental bodies in the participation of monitoring is invaluable to safeguarding the procedure. Non-governmental organizations play a fundamental role in supporting national institutions in protecting and promoting human rights of all, and particularly of vulnerable persons.⁷⁶ In order to ensure the integrity and independence of the monitoring mechanism, human rights organizations, equality bodies, ombudspersons, NGOs, and international organizations should work in collaboration with the monitoring mechanism and the FRA.⁷⁷ Their participation may involve collaboration in the monitoring process, but additionally, in the creation and implementation of the mechanism and its responsibilities.⁷⁸ Moreover, the monitoring mechanism should be granted unhindered access to all the potential screening and detention areas such as police stations, detention centres, and reception facilities, as well as access to all documents and recordings of relevance.⁷⁹ Full access to detention and holding centres housing irregular migrants undergoing screening can ensure the protection against torture and other cruel, inhuman, or degrading treatment or punishment by public authorities.⁸⁰

Safeguards guaranteeing the independence of the monitoring mechanism must also comply with the *Paris Principles* on 'composition and guarantees of

⁷⁵World Conference on Human Rights (n 50) I. art 13

⁷⁶UNGA 'National institutions for the promotion and protection of human rights' [Paris Principles] (20 December 1993) UN Doc A/RES/48/134, Annex: Methods of operation (g)

⁷⁷Committee on Civil Liberties, Justice and Home Affairs (n 37) Amendment 551

⁷⁸Ibid, Amendment 562

⁷⁹Committee on Civil Liberties, Justice and Home Affairs (n 37) Amendment 550

⁸⁰Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006) 2375 UNTS 237, art 4(1) and (2)

independence and pluralism',⁸¹ particularly that there is pluralist representation in the mechanism⁸² and that there are sufficient resources to carry out the mandate so it is not subject to government financial control, which can impact its independence.⁸³ Moreover, the incorporation of the national Ombudsman in the monitoring mechanism, in accordance with the *Venice Principles*,⁸⁴ can promote independence, fairness, transparency, and impartiality.⁸⁵ The incorporation of an ombudsperson and other relevant institutions can result in the promotion and protection of fundamental freedoms and human rights, promote good governance, bolster respect for the rule of law, and address the power imbalance between public service providers and individuals.⁸⁶ Thus, incorporating civil society and human rights institutions in the monitoring mechanism would strengthen the protection of fundamental rights and assist in an efficient and independent exercise of the monitoring mandate.

Individual Complaints

The Screening Regulation does not establish the possible legal remedies if fundamental rights have been violated. An effective framework of remedies to redress rights violations should be provided by States in conformity with applicable human rights instruments.⁸⁷ The establishment of an individual complaint mechanism⁸⁸ could ensure that those undergoing the screening process can bring forward any allegations of misconduct and rights violations in order to access effective legal remedies.⁸⁹ The *Paris Principles* recommend that within the institution's operational framework, it shall '[h]ear any person and obtain any information and any documents necessary for assessing situations falling within its competence'.⁹⁰ A system in which complaints and petitions may

⁸¹Paris Principles, Annex: Composition and guarantees of independence and pluralism, art 2

⁸²Ibid, art 1

⁸³Paris Principles, Annex: Composition and guarantees of independence and pluralism, art 2

⁸⁴European Commission for Democracy through Law 'Principles on the protection and promotion of the ombudsman institution' [Venice Principles] (3 May 2019) CDL-AD(2019)005

⁸⁵Ibid

⁸⁶UNGA 'The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law' (28 December 2020) UN Doc A/RES/75/186, para 8

⁸⁷World Conference on Human Rights (n 50) I. art 27

⁸⁸Committee on Civil Liberties, Justice and Home Affairs (n 37) Amendment 550

⁸⁹European Parliament (n 68), para 11

⁹⁰Paris Principles, Annex: Methods of operation (b)

be brought by individuals, their representatives, and civil society can ensure the institutional promotion and protection of human rights.⁹¹

By establishing a comprehensive procedure in which individual complaints can be launched, the right to effective remedy⁹² can be safeguarded. The institutional process to enable individual complaints to achieve redress for their grievances can improve governance and provide incentives for accountability and transparency in the public institution. This can have particular benefits for vulnerable groups.⁹³ It is essential that the complaint system has sufficient institutional capacity, clarity, and efficient processes. This includes the government commitment of creating an enabling environment to access the mechanism, receive a timely response, and have no fear of reprisal.⁹⁴ This would also require the opportunity to engage with free legal services to ensure comprehension of their rights, explore possible avenues to submit a complaint, and have access to the appeal procedure.⁹⁵ In discussing human rights compliance during the implementation of external migration policies, the European Parliament notes with,

great concern the absence of operational, reporting, monitoring, evaluation and accountability mechanisms for individual cases which track and respond to potential violations, as well as the lack of effective judicial remedies for persons whose rights are allegedly violated as a consequence of informal EU agreements and financial cooperation.⁹⁶

The possibility for individuals or third parties to submit complaints can reaffirm a high quality of standards in the monitoring process. The Screening Regulation mentions that Member States must ensure that their national law ensures the proper investigation of allegations breaching fundamental rights and that

⁹¹Paris Principles, Annex: Composition and guarantees of independence and pluralism, art 2

⁹²European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS 5, art 13; Charter of Fundamental Rights of the European Union (declared 18 December 2000, entered into force 1 December 2009) 2012/C 326/02, art 47

⁹³Suchi Pande, 'Towards effective and inclusive grievance redress mechanisms in education' (2022) <<https://etico.iiep.unesco.org/en/towards-effective-and-inclusive-grievance-redress-mechanisms-education>> Accessed 23 February 2022

⁹⁴Ibid, para 4

⁹⁵Committee on Civil Liberties, Justice and Home Affairs (n 37) Amendment 448

⁹⁶European Parliament (n 68), para 6

complaints will be dealt with promptly and in an appropriate manner.⁹⁷ However, it does not indicate the procedure to investigate allegations and the punitive measures taken in the event of violations occurring during the screening process. An important amendment suggestion is to include clear and proportionate disciplinary measures under national law for violations of fundamental rights.⁹⁸

Conclusion

The New Pact on Migration and Asylum intends to strengthen Europe's approach to migration management, however, there are shortcomings to this achievement. The Screening Regulation warrants amendments to the proposed text in order to better safeguard unauthorized third-country nationals entering the EU. The independence of the monitoring mechanism is crucial to protect the fundamental rights of irregular migrants and seekers of international protection. An impartial mechanism that operates in collaboration with EU agencies and civil society can ensure the objectivity and transparency required by institutions that promote and protect fundamental rights. The opportunity for individuals to submit complaints would allow for the investigation of allegations and secure the right to legal remedy. The recognition of additional vulnerable groups can ensure adequate support is granted to persons of concern. It is pertinent that authorities undertaking the screening process are competent in identifying vulnerabilities and provide support to those that have special procedural and reception needs. With necessary improvements to the proposed migration framework, the EU can strengthen its efforts in protecting the most vulnerable.

⁹⁷Proposed Screening Regulation, Explanatory Memorandum, 3. Results of Ex-Post Evaluations, Stakeholder Consultations and Impact Assessments, Fundamental Rights

⁹⁸Committee on Civil Liberties, Justice and Home Affairs (n 37) Amendment 508

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