

# Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms

Monitoring compliance with fundamental rights in the context of state activities carried out at or in proximity of borders is a key fundamental rights protection tool.

An effective and independent fundamental rights monitoring system is preventative, as it reduces the risk of fundamental rights violations. It also enhances the protection of victims of fundamental rights violations, by strengthening the application of fundamental rights safeguards already in place and providing expert advice when needed. It also supports domestic investigations of allegations against public authorities by providing objective, evidence-based and unbiased analysis and reporting. This improves transparency and accountability, and thus enhances trust in public authorities.

Article 10 of the Screening Regulation (**Regulation (EU) 2024/1356**) and Article 43(4) of the Asylum Procedure Regulation (**Regulation (EU) 2024/1348**) require Member States to provide for an independent mechanism to monitor compliance with fundamental rights during the screening of new arrivals and when assessing asylum claims at external borders. They will enter into force in mid-2026 and their key provisions are shown in a box on the next pages.

The European Union Agency for Fundamental Rights (FRA) prepared this guidance as required by Article 10(2) of the Screening Regulation.

**This practical guidance assists EU Member States in setting up or designating national independent mechanisms to monitor compliance with fundamental rights during screening of third-country nationals and when examining asylum claims in border procedures.**

# Screening Regulation (OJ L, 2024/1356, 22.5.2024)

## Article 1

[..]

This Regulation also provides for an independent mechanism in each Member State to monitor compliance with Union and international law, including the Charter of Fundamental Rights of the European Union (the 'Charter'), during the screening.

[..]

## Article 10

1. Member States shall adopt relevant provisions to investigate allegations of failure to respect fundamental rights in relation to the screening.

Member States shall ensure, where appropriate, referral for the initiation of civil or criminal justice proceedings in cases of failure to respect or to enforce fundamental rights, in accordance with national law.

2. Each Member State shall provide for an independent monitoring mechanism in accordance with the requirements set out in this Article, which shall:

- a) monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening; and
- b) ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations.

The independent monitoring mechanism shall cover all activities undertaken by the Member States in implementing this Regulation.

The independent monitoring mechanism shall have the power to issue annual recommendations to Member States.

Member States shall put in place adequate safeguards to guarantee the independence of the independent monitoring mechanism. National Ombudspersons and national human rights institutions, including national preventive mechanisms established under the OPCAT, shall participate in the operation of the independent monitoring mechanism and may be appointed to carry out all or part of the tasks of the independent monitoring mechanism. The independent monitoring mechanism may also involve relevant international

and non-governmental organisations and public bodies independent from the authorities carrying out the screening. Insofar as one or more of those institutions, organisations or bodies are not directly involved in the independent monitoring mechanism, the independent monitoring mechanism shall establish and maintain close links with them. The independent monitoring mechanism shall establish and maintain close links with the national data protection authorities and the European Data Protection Supervisor.

The independent monitoring mechanism shall carry out its tasks on the basis of on-the-spot checks and random and unannounced checks.

Member States shall provide the independent monitoring mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the independent monitoring mechanism to fulfil the obligations set out in this Article. Access to relevant locations or classified information shall be granted only to persons acting on behalf of the independent monitoring mechanism and having received the appropriate security clearance issued by a competent authority in accordance with national law.

The Fundamental Rights Agency shall issue general guidance for Member States on the

establishment of a monitoring mechanism and its independent functioning. Member States may request the Fundamental Rights Agency to support them in developing their independent monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.

The Commission shall take into account the findings of the independent monitoring mechanisms in its assessment of the effective application and implementation of the Charter in accordance with Article 15(1) and Annex III of Regulation (EU) 2021/1060 of the European Parliament and of the Council.

3. The independent monitoring mechanism referred to in paragraph 2 of this Article shall be without prejudice to the monitoring mechanism for the purpose of monitoring the operational and technical application of the Common European Asylum System as set out in Article 14 of Regulation (EU) 2021/2303 and to the role of the fundamental rights monitors in monitoring respect for fundamental rights in all activities of the European Border and Coast Guard Agency as set out in Article 80 of Regulation (EU) 2019/1896.

4. Member States shall equip the independent monitoring mechanism referred to in paragraph 2 with appropriate financial means.

## Asylum Procedure Regulation (OJ L, 2024/1348, 22.5.2024)

### Article 43(4)

Without prejudice and complementary to the monitoring mechanism laid down in Article 14 of Regulation (EU) 2021/2303, each Member State shall provide for a monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in Article 10 of Regulation (EU) 2024/1356.

# BUILDING BLOCKS FOR AN INDEPENDENT NATIONAL MONITORING MECHANISM AND ITS EFFECTIVE FUNCTIONING

In accordance with the Screening Regulation and the Asylum Procedure Regulation, the monitoring system should examine fundamental rights compliance for persons subject to screening and when their asylum claims are examined in border procedures.

When monitoring, attention should be paid to all fundamental rights guaranteed under the **EU Charter of Fundamental Rights**. Monitoring should look at, for example, whether people subject to these procedures are being treated with dignity, whether particular attention is being paid to people in vulnerable situations, whether children are adequately protected, whether living conditions in initial reception facilities and immigration detention centres respect fundamental rights, and whether procedural safeguards are duly respected and people have access to effective remedies. It should also look at the fundamental rights implications of implementing contingency plans.

This practical guidance presents elements intended to assist Member States when discussing parameters and safeguards for establishing or designating an independent national monitoring mechanism. They are grouped into nine building blocks for effective mechanisms. These non-binding recommendations cover the screening process and the examination of asylum claims at external borders, including in the exceptional situations of crisis and *force majeure* under applicable EU legislation. Member States may also use this guidance, if they so wish, to extend, by a piece of national law, the scope of the monitoring to border management in general and/or to the return border procedure.

The recommendations of national monitoring mechanisms to address shortcomings should be followed up adequately and regularly.

The building blocks of the guidance incorporate:

- the legal obligations stemming from Article 10 of the Screening Regulation;
- recommendations based on the key United Nations and Council of Europe soft law instruments listed in recital (27) of the Screening Regulation; and
- suggestions for possible further Member State action, using the term 'may' or similar formulations.

Each point of the guidance is drawn from one or more legal sources listed at the bottom of each building block.

Annex I sets out the applicable fundamental rights safeguards and standards.

Annex II lists material to assist in the proper application of these safeguards and standards.

# 1

## INDEPENDENCE AND OPERATIONAL AUTONOMY

### 1.1

The national entity monitoring fundamental rights ('mechanism') should be defined and designated by national legislation in line with EU law, which should regulate its mandate.

### 1.2

National ombudspersons and national human rights institutions, including national preventive mechanisms under the **United Nations (UN) Optional Protocol to the United Nations Convention against Torture (OPCAT)**, should participate in the operation of the mechanism and should be prioritised when considering who to appoint for the monitoring.

### 1.3

National legislation should guarantee that the mechanism can be free of any undue external influence and operate without seeking or taking external instructions. This requires a high degree of independence and operational autonomy, which draws from the safeguards set out in the **OPCAT** and the related **guidelines on national preventive mechanisms**, the **UN Paris Principles** for national human rights institutions as interpreted by the **Global Alliance of National Human Rights Institutions**, the **UN General Assembly Resolution A/RES/77/224** on the role of Ombudsman and mediator institutions, the Council of Europe **Venice Principles** and the Council of Europe Committee of Ministers **Recommendation CM/Rec(2021)1**.

### 1.4

The mechanism should be free of any institutional affiliation with the authorities responsible for asylum, border and migration management.

### 1.5

The mechanism should have operational autonomy and the authority to take action on its own initiative, including during national emergencies and in situations of crisis and *force majeure* as defined in EU law.

### 1.6

The mechanism should establish its own working procedures and methods within the scope of its mandate.

### 1.7

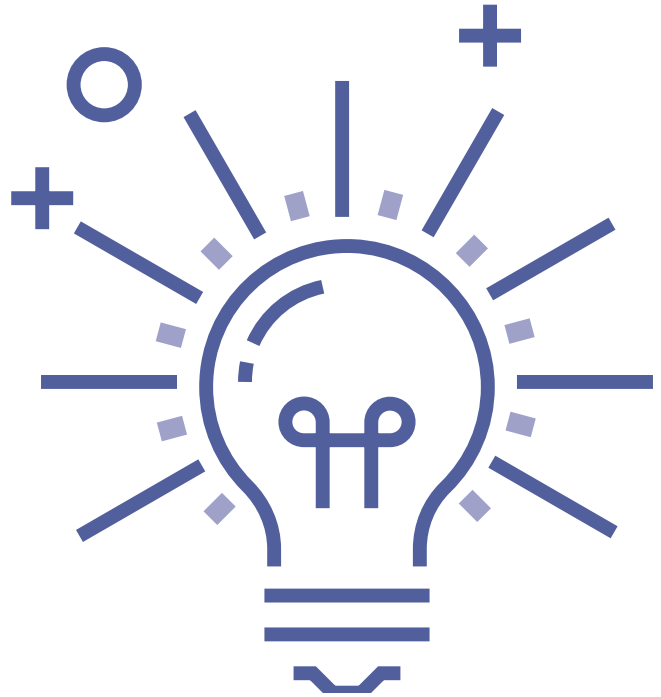
The staff of the mechanism should be recruited through transparent and merit-based procedures, such as those used for the staff of statutory independent state authorities.

## 1.8

There should be particular emphasis on avoiding conflicts of interest. Staff should not engage in political, administrative or professional activities incompatible with their independence and impartiality.

## 1.9

National law should protect staff from legal liability for professional activities carried out in good faith within the scope of the mechanism's mandate, also after the staff leave the monitoring entity.



### Sources:

- › *Screening Regulation, Art. 10(2);*
- › *United Nations (UN), Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), adopted by UN General Assembly Resolution 48/134, 20 December 1993, Competence and responsibilities, para. 2;*
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation (21 February 2018), G.O. 1.1 and G.O 2.4;*
- › *UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law, adopted by UN General Assembly Resolution 77/224, 15 December 2022, para. 2 (b), (e);*
- › *UN, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, Art. 18;*
- › *Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles), adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, principles 2, 7, 9, 14, 23;*
- › *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 30th General Report of the CPT, May 2021, paras. 20–21;*
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021, Appendix, paras. 2, 4, 11, 13.*

# 2

## THEMATIC COVERAGE

### 2.1

The mechanism should be mandated to monitor all activities relating to third-country nationals subject to screening, regardless of where the screening occurs.

### 2.2

The mechanism should also be mandated to monitor all activities relating to third-country nationals whose asylum applications are examined under the border procedure.

### 2.3

Where appropriate and advisable considering the national circumstances and operational situation, Member States may decide to extend the mechanism to cover related border management activities, including border surveillance; and/or to the return border procedure without prejudice to Article 8(6) of the Return Directive (**Directive 2008/115/EC**).

### 2.4

The mechanism should monitor the actual implementation of all relevant EU fundamental rights standards. Attention should be paid in particular to access to the asylum procedure, the principle of *non-refoulement*, the best interests of the child and relevant standards and safeguards on deprivation and restriction of liberty. Adherence to procedural safeguards and dignified treatment and living conditions, in terms of the provision of food, clothing, temporary shelter and healthcare and the treatment of people in vulnerable situations should be equally monitored.

#### Sources:

- › *Screening Regulation*, Art. 10(2)(a);
- › **Directive 2008/115/EC** of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, pp. 98–107, Art. 8(6);
- › **UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)**, adopted by UN General Assembly Resolution 48/134, 20 December 1993; *Competence and responsibilities*, para. 2;
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation* (21 February 2018), G.O. 1.2;
- › **UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**, adopted by UN General Assembly Resolution 77/224, 15 December 2022, para. 1 (b);
- › *Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles)*, adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, principle 16;
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions*, 31 March 2021, Appendix, para. 3.

# 3

## POWERS OF THE MONITORING MECHANISM

### 3.1

The mechanism should have the necessary configuration and level of power to conduct periodic on-the-spot checks as well as random and unannounced checks – based on a fundamental rights risk assessment or reports about alleged rights violations.

### 3.2

Responsible authorities should facilitate the operation of the mechanism without any geographical or procedural limitations.

### 3.3

The mechanism, without prejudice to point 3.11, should have unhindered access to observe all activities during the screening and the asylum border procedures at any time.

### 3.4

The mechanism should be allowed to resort to duly certified external experts to monitor specific technical aspects of the above activities, which require specific technical expertise.

### 3.5

Persons acting on behalf of the mechanism, without prejudice to point 3.11, should have unrestricted access to all relevant locations, individuals and documents at any time, including in situations of crisis and *force majeure* as regulated in EU law. Relevant locations include reception and detention facilities and all areas where procedures covered by the mandate of the mechanism take place.

### 3.6

Access to documents should include files, registers, records, videos and all electronic systems and records relevant to the mandate of the mechanism. Medical files should only be consulted by qualified health personnel.

### 3.7

The mechanism should have the right to speak to all organisations and people concerned in a confidential setting, with the help of interpreters, if deemed necessary.

### 3.8

The mechanism should have the right to observe by shadowing the screening, fingerprinting, registration and asylum processing procedures with due precautions to confidentiality, protection of personal data, the 'do no harm' principle and safety and security of all persons involved.

### 3.9

The mechanism should have the right to record (photo, video and/or sound recording) its activities in any place and at any time, with due respect to privacy, the 'do no harm' principle, safety and security.

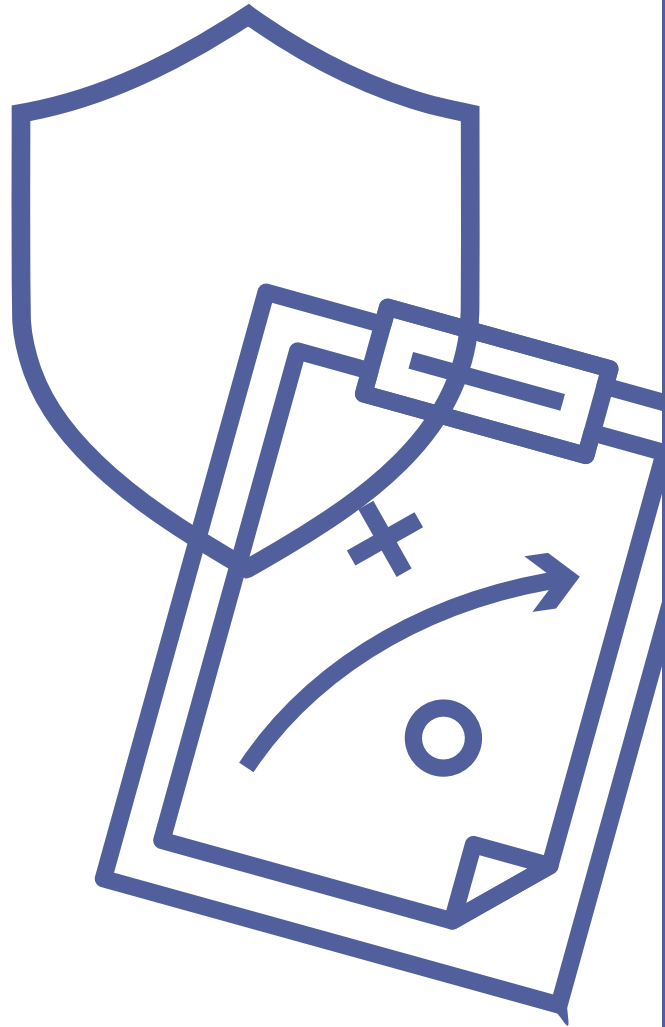


### 3.10

Persons acting on behalf of the mechanism need to comply with national legislation of the Member State, as long as this is in harmony with EU law and does not undermine the exercise of their tasks.

### 3.11

Persons acting on behalf of the mechanism who need to consult classified information or enter locations where access is restricted for public security reasons should be eligible to receive the appropriate security clearance.



#### Sources:

- › *Screening Regulation, Art. 10(2);*
- › *UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), adopted by UN General Assembly Resolution 48/134, 20 December 1993, Methods of operation, para. 1 (b);*
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation (21 February 2018), G.O. 2.6;*
- › *UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law, adopted by UN General Assembly Resolution 77/224, 15 December 2022, para. 1 (b);*
- › *UN, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, Art. 20 (a)–(d);*
- › *Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles), adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, principle 16;*
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021, Appendix, para. 3.*

# 4

## FACILITATING INVESTIGATIONS

### 4.1

The mechanism should have a system to record allegations of fundamental rights violations it collects during the monitoring. Where appropriate, it should also gather the necessary information and evidence which could enable the initiation of investigations.

### 4.2

It should have the right to receive complaints from all people concerned – alleged victims, witnesses and other informed actors – and to refer these to other actors handling complaints, as appropriate.

### 4.3

Persons acting on behalf of the mechanism should respect the confidentiality of the information received and of the sources consulted.

### 4.4

When it finds substantiated allegations of fundamental rights violations, the mechanism should be entitled to communicate directly with competent investigative authorities, to trigger prompt and effective investigations by internal disciplinary bodies and/or prosecutors. This possibility should also concern substantiated reports of rights violations which may have occurred outside the screening and the asylum border procedure, particularly when these concern criminally relevant conduct.

### 4.5

The mechanism should monitor and report on the progress of the investigations it triggered drawing on information it receives from the investigative authorities.

### 4.6

In case the mechanism has its own investigative powers, investigations into substantiated allegations of fundamental rights violations or investigations following individual complaints should be internally activated, based on the monitoring entity's own mandate and procedures.

#### Sources:

- › *Screening Regulation, Art. 10(2)(b);*
- › **UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)**, adopted by UN General Assembly Resolution 48/134, 20 December 1993, *Additional principles concerning the status of commissions with quasi-judicial competence;*
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation (21 February 2018), G.O. 2.9;*
- › *Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles)*, adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, *principle 15;*
- › *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 30th General Report of the CPT, May 2021, para. 21;*
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021, Appendix, para. 14.*

# 5

## STAFFING AND EXPERTISE

### 5.1

The mechanism should be appropriately staffed for its mission.

### 5.2

The mechanism should seek to use a multidisciplinary approach by including, as much as possible, lawyers, health professionals, psychologists, forensic experts, child protection specialists and interpreters/cultural mediators in monitoring teams. These teams should be diverse in gender and background. Health professionals should have experience in evaluating physical or psychological injuries and signs of ill treatment and trauma.

### 5.3

Staff with monitoring tasks should have relevant knowledge of and experience in human and fundamental rights standards as laid down in international, EU and national law and in relevant case law. They should also have theoretical knowledge of and practical experience in fundamental rights monitoring, with sound knowledge of monitoring principles, procedures and techniques. They should also have practical experience in assessing the proportionality of use of force and in working with law enforcement actors.

### 5.4

Staff with monitoring tasks should have solid EU law knowledge in the fields of asylum, screening, border management and return, including the special needs of people in vulnerable situations and trafficking in human beings.

### 5.5

The mechanism should provide training to its staff, including on-the-job training.

### 5.6

Member States are encouraged to request FRA's assistance for developing monitoring methodologies and for the training of monitors.

### 5.7

The mechanism should pool knowledge from other human rights-monitoring mechanisms, non-governmental organisations and other actors working in the field of fundamental rights and migration, as well as academic and other qualified experts, without jeopardising the mechanism's independence.

#### Sources:

- › *Screening Regulation, Art. 10(2);*
- › **UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)**, adopted by UN General Assembly Resolution 48/134, 20 December 1993, *Competence and responsibilities, para. 3 (e) and Composition and guarantees of independence and pluralism, para. 1;*
- › **Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation (21 February 2018), G.O. 1.7;**
- › **UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**, adopted by UN General Assembly Resolution 77/224, 15 December 2022, *paras. 2 (b) and 10 (a);*
- › **UN, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, Art. 18 (2);**
- › *Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles)*, adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, *principle 8.*

# 6

## RESOURCES AND FUNDING

### 6.1

Member States should equip the mechanism with appropriate financial means.

### 6.2

The funding of the monitoring mechanism should comply with the principle of independence and should have its own budget line. This can be achieved by modelling resource allocation on the funding of other independent statutory bodies, such as ombudsman institutions, equality bodies and human rights institutions. The mechanism should be meaningfully consulted on its draft budget for the coming financial year.

### 6.3

The funding of the mechanism should be sufficient and sustainable for its monitoring tasks, the employment of suitably qualified staff, including administrative and finance support and the acquisition of appropriate equipment, in addition to regular training activities and other tasks.

### 6.4

The mechanism should be allowed to access relevant EU funds.

#### Sources:

- › *Screening Regulation, Recital (28) and Art. 10(4)*;
- › **Regulation (EU) 2021/1148** of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy, OJ L 251, 15.7.2021, pp. 48–93;
- › **Regulation (EU) 2021/1147** of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, OJ L 251, 15.7.2021, pp. 1–47;
- › **UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)**, adopted by UN General Assembly Resolution 48/134, 20 December 1993, *Composition and guarantees of independence and pluralism*, para. 2;
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation* (21 February 2018), G.O. 2.4;
- › **UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**, adopted by UN General Assembly Resolution 77/224, 15 December 2022, paras. 2 (b) and 5;
- › **UN, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**, 18 December 2002, Art. 18 (3);
- › *Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles)*, adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, principle 21;
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions*, 31 March 2021, Appendix, para. 6.

# 7

## REPORTING, TRANSPARENCY AND ACCOUNTABILITY

### 7.1

The mechanism should present its findings and recommendations to the competent state authorities and the national parliament.

### 7.2

The mechanism should publish a dedicated annual public report on its monitoring work, including key findings and recommendations, and be allowed to address public opinion directly or through the press.

### 7.3

The report should be shared with all relevant actors, such as pertinent national authorities and public bodies, those responsible to manage EU funds, those in charge of preparing national asylum and migration strategies as well as the European Commission, the European Border and Coast Guard Agency (Frontex), the European Union Agency for Asylum and FRA.

### 7.4

The mechanism should report on remedial actions that the competent state authorities take in response to its recommendations.

### 7.5

The mechanism should regularly evaluate its core activities, based on forecasts (*ex ante*) and actual results (*ex post*).

### 7.6

The operation of the mechanism should be periodically evaluated as regards its efficiency, effectiveness and independence. This evaluation should be based on objective indicators, standards and criteria drawn from the **periodical accreditation procedure** for national human rights institutions. It should be carried out with a view to increasing transparency, assessing the mechanism's independence and informing decisions on funding.

#### Sources:

- › *Screening Regulation*, Art. 10(2);
- › **Regulation (EU) 2024/1351** of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No. 604/2013, OJ L 2024/1351, 22.5.2024, Arts. 7(1)(c) and 9(3)(e);
- › **UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)**, adopted by UN General Assembly Resolution 48/134, 20 December 1993, *Competence and responsibilities*, para. 3 (a); and *Methods of operation*, para. 1 (c);
- › **Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation** (21 February 2018), G.O. 1.6 and G.O. 2.5;
- › **UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**, adopted by UN General Assembly Resolution 77/224, 15 December 2022, paras. 6 and 10 (c);
- › **UN, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**, 18 December 2002, Arts. 19 (b) and 23;
- › **Council of Europe, Venice Commission, Principles on the protection and promotion of the Ombudsman institution (the Venice Principles)**, adopted by Venice Commission Opinion No. 897/2017, 15–16 March 2019, principle 20.

# 8

## SYNERGIES WITH EXISTING MONITORING MECHANISMS

### 8.1

The mechanism should ensure coherence and complementarity with national ombudspersons and national human rights institutions, including national preventive mechanisms under the **OPCAT**, and maintain cooperation schemes and working relationships with them, when they have not been appointed as or participate in the mechanism.

### 8.2

The mechanism should take into account, in the programming of its work, information from third parties, including statutory national human rights bodies, non-governmental organisations, EU entities and international organisations, and maintain cooperation schemes and working relationships with them to maximise synergies and reinforce fundamental rights protection.

### 8.3

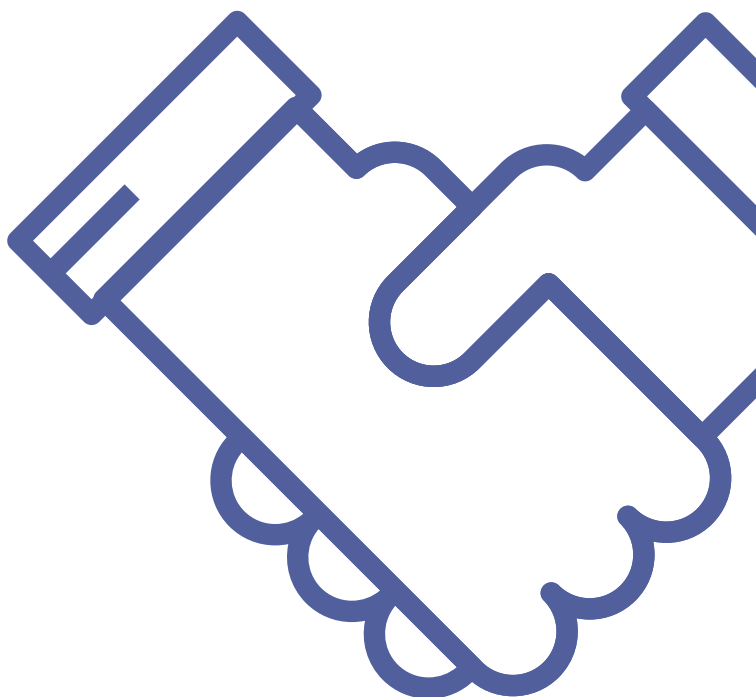
In order to avoid duplication, the tasks and activities of the mechanism should be designed to build on existing monitoring mandates at the national (e.g. national human rights and ombuds institutions, national preventive mechanisms and forced return monitoring systems set up under the Return Directive (**Directive 2008/115/EC**)), regional (e.g. Council of Europe) and international (e.g. UN) levels.

### 8.4

The mechanism should communicate its findings and recommendations to the European Commission for the **Schengen evaluation and monitoring mechanism**, to Frontex for the vulnerability assessments carried out under **Regulation (EU) 2019/1896**, to the European Union Agency for Asylum for the monitoring mechanism on the operational and technical application of the Common European Asylum System under **Regulation (EU) 2021/2303**, and to the national monitoring committees in charge of ensuring the conditionality requirements for all relevant EU funds, in particular the EU migration and border management funds.

## 8.5

The tasks and activities of the mechanism should be without prejudice to and support the activities of the Frontex Fundamental Rights Officer under **Regulation (EU) 2019/1896**; and the mechanism to monitor the operational and technical application of the Common European Asylum System under **Regulation (EU) 2021/2303** (the EU Asylum Agency Regulation), including the use of each other's findings and recommendations as sources of information. To achieve this, the mechanism should seek to maximise synergies with the above, among others, through exchange of information.



### Sources:

- › *Screening Regulation, Recital (27) and Art. 10(3)*;
- › **Council Regulation (EU) 2022/922** of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No. 1053/2013, OJ L 160, 15.6.2022, pp. 1–27, Art. 11;
- › **Regulation (EU) 2019/1896** of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019, pp. 1–131;
- › **Regulation (EU) 2021/2303** of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010, OJ L 468, 30.12.2021, pp. 1–54;
- › **Directive 2008/115/EC** of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, pp. 98–107, Art. 8(6);
- › **UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)**, adopted by UN General Assembly Resolution 48/134, 20 December 1993, *Methods of operation*, para. 3 (f);
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation* (21 February 2018), G.O. 1.5;
- › **UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**, adopted by UN General Assembly Resolution 77/224, 15 December 2022, para. 10 (d);
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1* of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021, *Appendix*, paras. 12, 15 (a).

# 9

## COOPERATION WITH OTHER AUTHORITIES AND ACTORS

### 9.1

Legislation on the national monitoring mechanism should include reference to the duty of national asylum, border and migration management authorities to cooperate, where appropriate, with the mechanism, including through regular exchange of information, as Article 3(1)(e) of **Regulation (EU) 2019/1896** stipulates.

### 9.2

National legislation should underline that national bodies in charge of asylum, border and migration management have a duty to respect the mandate of the monitoring mechanism and that they should stay informed of any guidance that the monitoring body issues, as part of a constructive and cordial working relationship.

### 9.3

The mechanism should establish and maintain close links and regularly consult with the **national data protection authorities** and the **European Data Protection Supervisor**.

### 9.4

The mechanism should also consider cooperating, where appropriate, with other relevant EU entities, international organisations, non-governmental organisations and other statutory public bodies independent from the authorities carrying out the screening and the asylum border procedures. This cooperation should respect the principle of confidentiality.

### 9.5

Mechanisms in the EU should explore ways of establishing platforms for exchange of experiences.

#### Sources:

- › *Screening Regulation, Art. 10(2);*
- › *European Border and Coast Guard Regulation (EU) 2019/1896, Art. 3(1)(e);*
- › *Asylum and Migration Management Regulation (EU) 2024/1351, Arts. 7(1)(c) and 9(3)(e);*
- › *European Union Agency for Asylum, Management Board Decision No 161 of 13 March 2024 establishing a common methodology for the monitoring mechanism on the operational and technical application of the Common European Asylum System, EUAA/MB/2024/070;*
- › *UN, Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), adopted by UN General Assembly Resolution 48/134, 20 December 1993, Competence and responsibilities, para. 3 (e);*
- › *Global Alliance of National Human Rights Institutions, General Observations of the Sub-Committee on Accreditation (21 February 2018), G.O. 1.9;*
- › *UN, The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law, adopted by UN General Assembly Resolution 77/224, 15 December 2022, para. 10 (d);*
- › *Council of Europe, Committee of Ministers, Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021, Appendix, para. 15.*



# ANNEX I

## APPLICABLE SAFEGUARDS AND STANDARDS: FUNDAMENTAL AND HUMAN RIGHTS FRAMEWORK

### CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The **Charter of Fundamental Rights of the European Union** (hereafter 'Charter'), which has the same legal value as the EU founding treaties, is the core instrument under primary EU law for fundamental rights monitoring. The Charter applies to all EU institutions, agencies and bodies and to EU Member States when they implement EU law (Article 51(1) of the Charter). EU law, including the Charter, takes priority over conflicting national legislation. The FRA report ***Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level – Guidance*** (October 2018) provides further guidance on the application of the Charter.

The Charter spells out rights and principles which frame the monitoring. The most relevant for the screening and the asylum border procedures include:

- human dignity (Article 1);
- the right to life (Article 2);
- the right to integrity of the person (Article 3);
- the prohibition of torture and inhuman or degrading treatment or punishment (Article 4);
- the prohibition of trafficking in human beings (Article 5);
- the right to liberty and security (Article 6);
- the right to private and family life (Article 7);
- the protection of personal data (Article 8);
- the right to property (Article 17);
- the right to asylum and protection in the event of removal, expulsion or extradition (Articles 18 and 19);
- non-discrimination (Article 21);
- the rights of the child (Article 24);
- the right to good administration (Article 41 – it is binding on Member States as a general principle of EU law); and
- the right to an effective judicial remedy (Article 47).

Under Article 52(3) of the Charter, those Charter rights which correspond to rights in the European Convention on Human Rights (ECHR) must be interpreted as having the same meaning and scope. Under Article 15 of the ECHR, some rights are non-derogable, even in emergency situations, such as the right to life, the prohibition of torture and other forms of ill-treatment, and the prohibition of *refoulement*.

Extensive case law by the **Court of Justice of the European Union** (CJEU) interpreted these rights in the context of borders, migration and asylum – see the cases listed in the ***Handbook on European law relating to asylum, borders and immigration*** (December 2020).

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Charter rights that are included in the **European Convention on Human Rights** (ECHR) – and its protocols – must be interpreted in the same way as the equivalent rights in the ECHR, in accordance with Article 52(3) of the Charter. This means that the **case law of the European Court of Human Rights** (ECtHR) must be duly taken into account when determining the meaning and content of rights set forth in both the Charter and the ECHR. This is the case for many Charter rights.

## INTERNATIONAL LEGAL INSTRUMENTS

Next to EU law, Member States must comply not only with the rights protected by the ECHR, but also other **regional and international human rights law and refugee law instruments**, along with other **international instruments** to which they are party. For an overview of these instruments – both universal and regional – and their ratification by EU Member States, see the FRA, ECtHR and Council of Europe ***Handbook on European law relating to asylum, borders and immigration*** (December 2020), Annexes 2–4.

To guide their implementation, the UN and the Council of Europe issued non-legally binding **recommendations, tools and standards**. The following may be particularly useful for the monitoring work in the context of screening and asylum border procedures:

- ***UN basic principles on the use of force and firearms by law enforcement officials*** (1990);
- Office of the High Commissioner for Human Rights (OHCHR), ***Recommended principles and guidelines on human rights at international borders*** (2014);
- OHCHR, ***Guidance on less-lethal weapons in law enforcement*** (2020);
- OHCHR, ***Manual on human rights monitoring – Chapter 26, Monitoring and protecting human rights in the context of migration*** (2022);
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) **standards in respect of immigration detention**.

# RELEVANT EU LAW

The general framework for EU action in this area is set out in Title V (Area of Freedom, Security and Justice) of the **Treaty on the Functioning of the European Union**. In the field of borders, asylum and immigration, the EU has adopted many legal instruments. Table 1 lists those which are most relevant for fundamental rights monitoring in the context of screening and asylum border procedures. Monitors should have good knowledge of these instruments and, in particular, of the fundamental rights protection clauses contained therein.

A specific area of EU law governs **large-scale IT systems** in the field of border and migration management. The EU has set up six of them. Monitors should have a reasonable level of knowledge of the relevant IT systems and how they support the screening and asylum border procedures. The use of such databases has implications for various fundamental rights, such as the right to the protection of personal data, the right to respect for private life, the right to asylum, the rights of the child, the right to good administration and the right to an effective judicial remedy. Chapter 2 of the **Handbook on European law relating to asylum, borders and immigration – Edition 2020** (December 2020) gives further information on these IT systems and their fundamental rights implications. The **Handbook on European data protection law – 2018 edition** explains relevant data protection standards.

**Table 1: Relevant EU law instruments**

EU law instrument	Subject matter (selected)	Not applicable to (Member States)
Screening Regulation (Regulation (EU) 2024/1356)	Lays down common rules for identity, security, health, and vulnerability checks of new arrivals and migrants in an irregular situation	Ireland
Asylum Procedure Regulation (Regulation (EU) 2024/1348)	Duty to identify and refer asylum claims; establishing a procedure to process asylum claims at the external borders	Denmark and Ireland
Crisis and Force Majeure Regulation (Regulation (EU) 2024/1359)	Special rules (derogations) under the asylum acquis for large-scale arrivals and in case of ‘instrumentalisation’ of migrants	Denmark and Ireland
Return Directive (Directive 2008/115/EC)	Duty to issue a return decision to third-country nationals without permission to stay	Ireland
Return Border Procedure Regulation (Regulation (EU) 2024/1349)	Setting out common procedures and standards for returning those whose asylum claim was rejected in the asylum border procedure; special rules (derogations) in a situation of crisis	Ireland
Amended Eurodac Regulation (Regulation (EU) 2024/1358)	Duty to process data, including biometric data of asylum applicants and irregular migrants	–
Reception Conditions Directive (Directive (EU) 2024/1346)	Common rules on treatment of asylum applicants, including when detained; penalties for asylum applicants who move across the EU without authorisation	Denmark and Ireland
Anti-trafficking Directive (Directive 2011/36/EU)	Duty to identify suspected victims of trafficking in human beings (Article 11)	Ireland
Qualification Regulation (Regulation (EU) 2024/1347)	Common rules on who is entitled to international protection; harmonised rights and duties of international protection beneficiaries	Denmark and Ireland

EU law instrument	Subject matter (selected)	Not applicable to (Member States)
Regulation on Asylum and Migration Management ( <b>Regulation (EU) 2024/1351</b> )	Common framework to manage asylum and migration; determining the Member State responsible for examining asylum applications; detention during transfer procedures; solidarity rules	Denmark and Ireland
Schengen Borders Code ( <b>Regulation (EU) 2016/399</b> )	Regulates conduct of border checks and border surveillance (border control)	Cyprus (border with British Overseas Territory of the Sovereign Base Areas of Akrotiri and Dhekelia) and Ireland
European Border and Coast Guard Regulation ( <b>Regulation (EU) 2019/1896</b> )	Establishes a European Border and Coast Guard, including Frontex, to ensure European integrated border management, and regulates the framework for information exchange between Member States, and between Member States and Frontex	Ireland
Sea Borders Regulation ( <b>Regulation (EU) No 656/2014</b> )	Regulates Frontex-coordinated maritime border surveillance operations, including rules on disembarkation and provisions on search and rescue	Ireland
Facilitation Directive ( <b>Council Directive 2002/90/EC</b> ) and related Framework Decision ( <b>2002/946/JHA</b> )	Duty to impose sanctions on migrant smugglers	Ireland
Entry/Exit System Regulation ( <b>Regulation (EU) 2017/2226</b> )	As of the end of 2024, requires electronic recording of entry and exit of all third-country nationals coming for short-term stays in the EU	Cyprus and Ireland
Schengen Information System Regulation ( <b>Regulation (EU) 2018/1862, (EU) 2018/1861 and (EU) 2018/1860</b> )	Requires verifying if there are any alerts concerning a third-country national and adding alerts in certain cases	Cyprus and Ireland
Visa Information System ( <b>Regulation (EC) No 767/2008</b> )	Requires checking visa-holders upon entry and, if necessary, exit	Cyprus and Ireland
European Criminal Records Information System for Third-country Nationals ( <b>Regulation (EU) 2019/816</b> )	Sharing information on previous convictions of third-country nationals	Denmark and Ireland
<b>Convention Implementing the Schengen Agreement</b> , 22 September 2000	Regulates measures to take to enable intra-Schengen free movement (text largely amended by subsequent EU law instruments)	Ireland

*NB: The text in the 'Subject matter' column is not comprehensive. It includes selected issues relevant to this guidance. The table does not include information on the applicability of these instruments to French and Dutch overseas territories.*

Source: FRA, 2024.

The applicability of the **Return Directive (Directive 2008/115/EC)** at external borders is subject to an exception. The directive regulates the procedure to follow when an EU Member State apprehends a migrant in an irregular situation who does not apply for asylum. Article 2(2)(a) allows Member States not to apply several of its provisions to people whom competent authorities apprehend or intercept in connection with their irregular border crossing at EU external borders. This opt-out clause cannot be applied at internal borders even if border controls have been reinstated there (see CJEU, **Arib**, C-444/17, 19 March 2019 and CJEU, **ADDE and Others**, C-143/22, 21 September 2023). Most Member States that have an EU external land border have made use of this opt-out clause, as shown below. However, they remain bound by certain provisions and safeguards of the directive under Article 4(4), including the prohibition of *refoulement*.

## USE OF THE RETURN DIRECTIVE'S OPT-OUT CLAUSE IN EXTERNAL BORDER CASES

### EU Member States that have made use of the opt-out clause in Article 2(2)(a) of the Return Directive:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- France
- Germany
- Greece
- Hungary
- Italy
- Latvia
- Lithuania
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovenia
- Spain
- Sweden.

### EU Member States that have *not* made use of the opt-out clause in Article 2(2)(a) of the Return Directive:

- Finland
- Luxembourg
- Slovakia.

Ireland is not bound by the Return Directive.

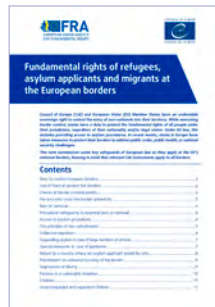
# ANNEX II

## FRA GUIDANCE AND OTHER MATERIALS ON APPLICABLE EUROPEAN STANDARDS

FRA, the ECtHR and the Council of Europe published the third edition of the **Handbook on European law relating to asylum, borders and immigration** in December 2020. The updated handbook, available in many official EU languages, examines relevant law in the field of asylum, borders and immigration stemming from both European legal systems: the EU and the Council of Europe (see especially Chapters 1, 2, 4, 5, 7 and 10). It is intended for use by legal practitioners, judges, prosecutors, immigration officials and non-governmental organisations in EU Member States and Council of Europe member states.



FRA and the Council of Europe summarised **the topics of key European law safeguards for migrants, asylum applicants and refugees as they apply at EU external borders (March 2020); European standards on legal remedies, complaints mechanisms and effective investigations at borders (July 2021); and children in migration: fundamental rights at European borders (December 2023)**. Note that relevant Council of Europe instruments apply to all borders (not only EU external borders). These documents are also available in French.



FRA produced a **report looking into national investigations of incidents of loss of life and alleged ill-treatment which occur during border management** at the EU's external land and sea borders (July 2024). The report formulates 10 points suggesting concrete steps to authorities in charge of judicial and/or disciplinary investigations, to promote effective national investigations. It also presents data on national disciplinary and criminal investigations into rights violations against migrants and refugees allegedly perpetrated during border controls at the EU's external land and sea borders (covering the period between 2020 and 2023).



FRA published a **checklist to act in compliance with fundamental rights when obtaining fingerprints for Eurodac** (October 2015) as part of its focus paper on the fundamental rights implications of the obligation to provide fingerprints for Eurodac. FRA and the Eurodac Supervision Coordination Group developed and published a **leaflet to more effectively provide migrants and asylum applicants with information on fingerprinting in Eurodac** (January 2020). The leaflet helps authorities to comply with their obligation to clearly inform the people concerned why fingerprints are taken and what happens to their biometric data in Eurodac. National data protection authorities translated the leaflet into most official EU languages.



The European Union Agency for Asylum and Frontex developed **practical tools on access to the asylum procedure** (2023) to support practitioners in facilitating access to asylum for those in need. The figure below gives an example.

**euaa** EUROPEAN UNION AGENCY FOR ASYLUM

**FRONTEx** EUROPEAN BORDER AND COAST GUARD AGENCY

### Access to the asylum procedure

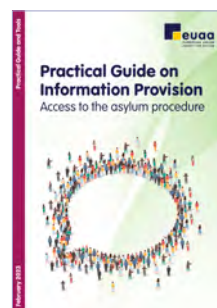
- 1 Anyone can be a refugee
- 2 Everyone is entitled to protection against refoulement
- 3 Vulnerable persons must be identified and adequately supported
- 4 The best interests of the child take precedence in all actions concerning children
- 5 Anyone who may wish to apply for international protection must be informed about their right to do so
- 6 Everyone has the right to apply for international protection
- 7 Any sign or expression of fear if refused entry can be understood as a request for international protection
- 8 Applicants for international protection must not be penalised due to their illegal entry or presence
- 9 Each application must be registered or referred for registration to the responsible authority
- 10 The principle of non-refoulement must be ensured, even where a person who may need protection decides not to apply for asylum.

Every human being must be valued and respected  
Emergency healthcare and basic needs should always be addressed first

European Agency for Asylum  
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Source: European Union Agency for Asylum and Frontex, 'Access to the asylum procedure', available at 'Practical tools for first-contact officials', August 2023.

The European Union Agency for Asylum prepared a **practical guide** (2023) to support Member State officials providing information to applicants during access to the asylum procedure. The guide outlines basic principles for information provision and communication techniques.



The European Union Agency for Asylum developed a **tool to facilitate the timely identification of persons with special procedural and/or reception needs** (2017). It may be used at any stage of the asylum procedure or the reception process. The tool is an interactive online platform which allows Member State authorities to identify special needs by detecting certain indicators that they may observe or come across based on different pieces of evidence.

The FRA note **Initial-reception facilities at external borders: Fundamental rights issues to consider** (March 2021) outlines how to help ensure a dignified stay for non-EU nationals who are apprehended or intercepted at external borders. It identifies 12 points for protection-sensitive and fundamental rights-compliant planning and design of initial reception facilities at such borders. These are based on FRA's work at external borders, including data collection and research activities. The overall purpose of the note is to help prevent the design and setting up of reception facilities that do not provide dignified conditions for migrants and refugees.





FRA produced **practical guidance (10 'dos and don'ts')** for border guards and other staff of competent authorities on how to uphold fundamental rights at external land borders in their daily work (July 2020). The dos and don'ts are available in all official EU languages. They are intended to be an integral part of the training for staff of border-management authorities at different levels. Many of the points in this guidance apply to land, sea and air borders, although it focuses on EU external land borders and land borders with non-Schengen EU Member States. This practical guidance may also help persons acting on behalf of independent national monitoring mechanisms by providing a quick overview of the main fundamental rights safeguards and standards of EU law relating to controls at external land borders.



An online information platform (which will be available at the end of 2024 at <https://e-learning.fra.europa.eu>) describes the **EU large-scale IT systems on borders, visas, asylum and migration**, as well as **their interoperability**. FRA's online platform focuses on the challenges and opportunities that these EU databases pose for the protection of fundamental rights. It explains how the IT systems function in practice, what their legal bases are and how the individual can access remedies if they feel that their rights, in relation to their personal data, are infringed upon.

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