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Addressing the violation of fundamental rights at the external borders of the European Union

Infringement proceedings and conditionality in EU funding instruments

A study by Jorrit Rijpma and Apostolis Fotiadis

This study looks at the Commission's enforcement powers in relation to fundamental rights compliance at the external borders, outlining the context of the infringement proceedings (Part I).

It then looks more specifically at the funding instruments available to Member States for the management of immigration, asylum and the external borders, examining the safeguards and possibilities for conditionality contained in these instruments (Part II).

Violations at EU external borders
Violations of fundamental rights at the external borders, including pushbacks and violence committed towards third country nationals, have been well-reported and documented by journalists and NGOs.

Meanwhile, national courts, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have on various occasions established the existence of pushbacks at the external borders of the European Union.

Compliance with fundamental rights and EU law
Following an inquiry into the way in which the European Commission monitors and ensures respect for fundamental rights by the Croatian authorities in the context of border management operations supported by EU funds, the Ombudsman agreed with the Commission's argument that it "does not have the authority or means to investigate or directly monitor border activities itself", it
also held that the Commission "has the authority and an obligation to ensure that EU funds granted to a

Member State are spent in compliance with fundamental rights and EU law, and to insist on safeguards to this end.”

Why is this important?
For the Asylum and Migration Fund (AMIF), the Internal Security Fund (ISF) and the Border Management and Visa Instrument Fund (BMVI), the Commission has to do mid-term evaluation by March 2024.

After this mid-term review, the Commission will allocate additional funds for the adjustment of the allocations to the Member States’ programmes. This entails EUR 1.045.000.000 under AMIF, EUR 225.000.000 for the ISF and EUR 611.000.000 for the BMVI.

This study finds that these additional allocations can be made conditional on compliance with fundamental rights, which means that Member States who perform pushbacks will not receive this funding.

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Responsible MEPs



Tineke Strik

Member

Contact person



Nina Walch

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Attached documents

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