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To the attention of:

Mrs. Ylva Johansson Commissioner of Home Affairs

Brussels, July 15th 2021

The Commission must take immediate action against the pushbacks and human rights violations committed by Croatia

Dear Commissioner Ylva Johansson,

Following an investigation by a Europe-wide network of journalists from ARD, Lighthouse Reports, SRF, Spiegel and Novosti, new evidence was published on pushbacks by Croatian border guards.¹ Entire families and vulnerable persons are seen being dragged across the EU border through a forest; one case involves an eight months pregnant woman with five small children. The six videos show about 65 people, including 20 children being illegally pushed back from Croatia. Among them is a man with a heart condition walking with crutches.

In some cases, these incidents no longer originate near the EU's external border, but people are being pushed from far within the country of Croatia all the way into Bosnia-Herzegovina. The pushbacks and the violence against refugees in these videos are clear violations of EU law, which have been taking place for years without any serious consequences.

Commissioner Johansson, on January 19th 2021 you stated in the European Parliament that you had been in close contact with the Croatian authorities, and that they should establish a monitoring mechanism, moreover, that the Croatian authorities need to launch investigations into pushbacks. Last October, following the reports of torture and systematic pushbacks by the Danish Refugee Council, you stated that you took these reports as well as the need for border protection carried out with full respect for fundamental rights very seriously. When visiting Bosnia-Herzegovina in February, you said very clearly how "It is not acceptable that people are beaten and pushed back."²

¹ Steffen Lüdke, Nicole Vögele, 25.06.2021, Croatia Conducts Illegal Pushbacks of Vulnerable Migrants, Der Spiegel.

² 19.02.2021, EU Commissioner Johansson visits refugee camp in Bosnia, Deutsche Welle.

After its last visit in November, the Commission urged Croatia to respect fundamental rights; however, the situation has not improved.

We welcome your commitment and words. However, their effect is yet to be seen.

As you know, in the summer of 2020, the Council of Europe's Anti-Torture Committee investigated how the Croatian police treat persons on the move at the border. As you must know, Croatia is now refusing to make this report public. Most likely this refusal is due to the findings of the report, confirming the allegations of torture and systematic mistreatment of refugees.

The Commission, as guardian of the treaties, has the responsibility to ensure that violations of EU law do not remain without consequences. When people are tortured, sexually abused and illegally beaten across borders, the Commission's instruments must be utilized. Furthermore, it is up to the Commission to enforce access to an asylum procedure, if a Member State denies this right.

After the journalists confronted you with the above-mentioned material, you commented that Croatia was ready for Schengen accession and that an independent monitoring mechanism at the border could start soon.

It is not comprehensible that there are no consequences vis a vis Croatia for their systematic breach of EU law, including the Charter of Fundamental Rights. It is even less comprehensible that Croatia should be rewarded with membership in the Schengen Area for breaking European law and the Schengen Borders Code, given the impression that Croatia is being rewarded for its systematic violations of fundamental human rights, for it leads to less people seeking asylum in the EU. This is despite the fact that European law only allows for membership of the Schengen area if systematic breaches of the Schengen Borders Code do not take place.

We also find your reference to the upcoming monitoring mechanism incomprehensible. Croatia has already received about €300,000 for the establishment of a human rights monitoring mechanism and last summer the Croatian Government indicated that UNHCR and the Croatian Law Centre would receive the funds and implement human rights monitoring. However, both organizations clarified that this was not true. According to the Guardian³, the Croatian government used only 102,000€ of the 300,000€ earmarked for the mechanism. An amount of almost 60,000€ went to non-governmental organizations, while 17,500€ was credited to the Ministry of Interior. It is unclear what happened to the rest of the money. An email from the Commission, reported by the Guardian, even indicates that the Commission actively tried to cover up the misuse of funds by Croatia. It is also extremely concerning that the European Parliament was denied access by the Croatian government of documents containing the exchanges between the Commission and them on additional funding for border surveillance and how the need to remedy fundamental rights violations has been discussed. Are you prepared to declare and ensure that EU funding for border management allocated to Croatia is made conditional to compliance with fundamental rights obligations?

Until today, we have not been officially informed of the modalities of the monitoring mechanism still to be established. However, it was reported to us that on Friday, July 2nd, in

³ Lorenzo Tondo, Daniel Bouffey, 15.06.2020, EU 'covered up' Croatia's failure to protect migrants from border brutality, Guardian.

an event organised by the Croatian office of the European Parliament, Croatian State Secretary Terezija Gras announced the independent border monitoring mechanism would involve two NGOs (Centre for Culture of Dialogue and Croatian Red Cross) who are currently implementing integration programs in partnership with the Ministry of Interior and were chosen by the Ministry of Interior in a non-transparent process. It appears that the chosen NGOs have no proven expertise in monitoring violations at the border area and are financially dependent on projects funded through the MoI, which raises alarms about the independence of their monitors. Involvement of the academics from the Law Faculty and Medical Faculty of the University of Zagreb was also announced, despite their lack of expertise in monitoring rights violations in the border areas. We welcome the announced involvement of Croatian Ombudswoman and Ombudswoman for children in the mechanism, but they must be accompanied by NGOs and independent experts that have a proven track record of monitoring rights violations and are not politically or financially dependent on the Croatian government.

We are also concerned about the scope of the monitoring, which would be limited to police stations, detention and reception centres, with no option for unannounced visits to the border areas where violations are actually happening. No cross-border collaboration was mentioned, despite the fact that most victims of pushbacks end up outside of Croatian territory, and therefore never even reach reception centres.

We fear this mechanism, as presented by the Croatian authorities, would neither be independent nor effective, and we urge the Commission to reconsider its proposed format in order to ensure its access to the pushback zones and independence of the monitoring process

Our impression is that while the Commission and Council want to convince the public that human rights violations should be prevented, member states can simply do whatever they want without facing any consequences. This impunity fuels a behaviour that ignores and even deliberately violates the core obligations of the Schengen Borders code including the fundamental rights obligations.

What should make us believe that you are really committed to pursue change in the behaviour of member states, when the situation is getting progressively worse and the Commission is still preventing justice from finally being administered through an infringement procedure? Are you prepared to withdraw your conclusion that Croatia lives up to the Schengen Borders Code obligations and, thus, is ready for accession and to immediately start the process of enforcing compliance by the Croatian government with the current Schengen rules, the Asylum Procedures Directive and the Returns Directive? Are you prepared to ensure an adequate mandate for the Croatian Ombudsman and a transparent and independent investigation of allegations of pushbacks by the Croatian government?

Thank you for taking our concerns into account, we look forward to your swift reply and action.

Yours sincerely,

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