



European Ombudsman calls for reforms in EU border funding, but fails to hold the Commission accountable

On 21 February 2025, the European Ombudsman (EO) [issued](#) a [decision](#) in its inquiry into the European Commission's administration of Greece's EU-Funded Border Operations (case 1418/2023/VS), which it [opened](#) on 7 November 2024 following a [joint complaint](#) by de: border // migration justice collective, Legal Centre Lesvos, HIAS Greece, Equal Rights Beyond Borders, and Mobile Info Team, with the support of several investigative and research partners—including Lena Karamanidou, Border Violence Monitoring Network, Forensic Architecture and Lighthouse Reports.

Despite the EO's critical findings and substantive 'suggestions for improvement', its decision regrettably sidesteps a determination of maladministration and arguably prematurely closes the inquiry. The Commission clearly has and continues to act in bad faith: it not only failed to establish the necessary procedures, guidelines and criteria to ensure that it can effectively monitor and protect the EU budget and legal order when funding MS border operations that involve serious fundamental rights abuses, but it has also directly evaded scrutinising Greece's non-compliance with Charter HEC and likely mismanagement of EU funds. In these circumstances, the EO takes the arguably untenable approach of closing the complaint on the basis that 'no further inquiries' are needed at this stage.

The EO's decision makes four concrete suggestions to the Commission. Most critically, first, the EO urges the Commission to issue "guidelines for assessing compliance with fundamental rights" that would "take into account independent sources of information", and to "establish criteria to determine under what circumstances it will withhold or suspend EU funds for non-compliance with fundamental rights". Secondly, the EO calls on the Commission to properly "[c]onsider whether the Charter HEC continues to be fulfilled" by Greece, given the "credible complaints [I] about potential fundamental rights issues"—a suggestion which implies that the Commission has failed, so far, to take such complaints into account and to properly consider what they mean for Greece's Charter HEC compliance. Thirdly, the EO urges the Commission to enhance its own transparency—given its failure to publish its compliance assessment and information about any relevant complaints. Finally, the EO requires the Commission to ensure that Greece facilitates meaningful participation by civil society in monitoring fundamental rights compliance in the implementation of EU funds. The Commission was given until the end of May 2025 to respond to the EO's suggestions.

Whilst welcoming the EO's findings and suggestions, it bears noting that they consist of what is, in large part, already entailed by the Commission's existing obligations under EU law. Therefore, despite clearly pointing to a series of wrongful (in)actions by the Commission, the outcome of the EO's inquiry appears regressive in its effect: it asks the Commission to do what it is *already* required to do by law. These, and the Commission's failures to comply therewith, should have, therefore, formed the starting point for the EO's assessment of whether the Commission's actions were "manifestly wrong", based on how it has exercised its discretion in following relevant legal limits and procedures.

In sidestepping an analysis of the Commission's many misrepresentations and (in)actions (before and throughout this inquiry), the EO misses a critical opportunity to hold the Commission to account for its role in enabling the violence at the EU's external borders.

Failure to assess Greece's national programme

Since the Commission's approval of Greece's current national programme, the Commission has not had the means—in the absence of guidelines for how Charter HEC should be complied with by a Member State in receipt of EU funding—of reviewing, with suspensive effect, the funding it provides to external border operations. The Commission's drawn out exchanges with the Greek authorities have effectively allowed both parties to hide behind the impression that they are always "in the process of" ensuring compliance, without being required to determine and act on the persisting state of non-compliance for several years (since at least 2021).

Despite exposing and criticising the Commission's wrongful reliance on Greece's faulty monitoring and investigative mechanisms for 'pushbacks', in a manner that clearly abdicates its existing obligations to this effect under EU law, the EO's decision falls short of concluding that the Commission is at fault for manifestly wrongful (in)actions in breach of its obligations under EU law. Instead, the EO concludes that the Commission's failure "to provide its own assessment regarding the compliance of the Greek programme with the Charter HEC" (para. 34) is merely a lack of transparency that it should seek to address in its upcoming reassessment of Greece's programme (para. 35).

The EO appears to agree that there are grounds to believe that the Greek monitoring mechanism is neither effective nor independent—also given the "various credible concerns [] raised by international and EU human rights bodies and by the Greek ombudsman about fundamental rights violations" (para 43). It thus finds that the Commission should have reassessed the mechanism on this basis. Yet, as the complaint alleges and the EO's analysis affirms, the Commission has failed to question the impartiality of the Greek monitoring mechanism, and let alone to consider the implications of its ineffectiveness in its risk analysis in relation to the use of financial controls and audits (para. 47).

The EO finds that the Commission should be more proactive about identifying possible links between fundamental rights violations and EU funded activities. Namely, it should "treat seriously" any credible complaints about fundamental rights violations it receives either through the monitoring committee, Task Force Migration Management or Frontex's Management Board, by a) "assessing whether there is an identifiable link to EU-funded activities" and a "prima facie indication of potential non-compliance with the funding rules" and b) investigate potential non-compliance with the Charter HEC, and c) informing wider deliberations around the MS compliance with EU law (para. 54).

Deferential monitoring of fundamental rights compliance

The EO critically finds that the current lack of guidelines and procedures enables the Commission to continue to wrongfully rely on Member States' own monitoring systems for border operations without oversight or review, even when it becomes abundantly clear that these maintain manifestly unlawful practices and do not comply with EU law.

The EO is critical of the Commission for its unwillingness to conduct its own compliance assessment, unless the forthcoming Greek report "identifie[s] violations of fundamental rights" (para. 55). It states

that the Commission "should carry out its own assessment whether [or not] these reports indicate a breach of the conditions attached to the funding programmes" (para. 58), and that it should "take appropriate action" to address non-compliance in cases where "there is legitimate concerns about fundamental rights violations linked to EU funds" (para. 58). The Commission, however, has continued to rely on the (ineffective) domestic national monitoring and accountability mechanisms to produce "evidence that EU funds are not being used in compliance with the applicable law" (para 28).

The EO thus finds that the Commission failed to conduct its own dedicated, independent assessment of Greece's monitoring mechanism to ensure that it can be relied on to comply with the Charter's Horizontal Enabling Conditions (HEC). It observes that the Commission's exclusive reliance on the mere fact that Greece has "put in place a monitoring mechanism and committee" (para. 33) and on the Greek authorities' self-assessment thereof, is insufficient. The Commission should have independently evaluated whether these systems are "robust", and in effect able to ensure compliance with EU law, *before* reimbursing payments.

The EO further questions the effectiveness of the Commission's financial controls in monitoring and identifying breaches of fundamental rights (para. 38)—especially since none of the on-the-spot visits, audits and evaluation reports overseen by the Commission so far have identified breaches of fundamental rights in the use of EU funds (para 39). Indeed, the Commission itself clarifies that its audits do not investigate whether there are any fundamental rights breaches in the use of EU funds (para 40), and that this role is 'reserved' for Member State's mechanisms.

The EO takes note of the problematic nature of the Commission's deferential approach, and is critical of the Commission's attempts to deflect its responsibility to act when there is a risk of fundamental rights violations on the basis that it is not directly responsible for managing the funds (para. 57). The Greek authorities' views, the EO finds, "should not be seen as determinative", but rather "inform the Commission's own assessment" (para. 56).

The Greek authorities' views are also currently immune from challenge by civil society organisations, whose participation in the Greek monitoring committee is currently thwarted by their inability to vote and weigh in on border operations-linked funding. As the EO finds, it is "imperative that those with actual first-hand knowledge of fundamental rights concerns linked to the use of EU funds are included in the process to inform the Commission's action" (para. 48). This is presently not the case—and is also part of a broader pattern of ways in which civil society efforts to investigate and seek accountability for 'pushbacks', and other forms of border violence, are obstructed and undermined.

In sum, the EO finds that the Commission's current approach to the implementation of EU funding is over-reliant on and deferential to Member States, and thus wrongly externalises and attempts to absolve the Commission of its obligations to ensure that the implementation of EU funds is compliant with EU law.

Premature closure and reforms without accountability

Given the EO's extensive analysis of serious deficiencies and suggestions for reform in the ways that the Commission monitors Charter HEC compliance in Member States' implementation of EU-funded border operations, the decision to close the inquiry, without a finding of maladministration is a missed opportunity to hold the Commission accountable for its failure to comply with its obligations under EU law and for providing material and operational support that enables the gravely violative border enforcement regimes at the EU's external borders, beyond the case-in-point of Greece.

Given the Greek authorities' pending submission, due mid-February 2025, of their first 'accumulation report' to the Commission—"an important step in determining the financial controls [the Commission] will apply and in assessing whether Greece continues to comply with the Charter HEC" (para. 37), and thus to consider whether to reimburse payments—the assertion that there are 'no further inquiries' and decision to close the inquiry in these circumstances appears premature.

This is particularly regrettable given the EO's findings on the unavailability of information that can enable public scrutiny and accountability of the monitoring and assessment of fundamental rights compliance, and appreciation of the exclusive access it has had throughout this inquiry to key documents concerning the Commission's (in)actions. Indeed, the EO is the only independent forum before which civil society can contest the manner in which EU funding for Member States' border operations is allocated and managed (since civil society organisations do not have standing on such matters before the Court of Justice of the European Union). Appreciating this, the EO had itself previously planned an own-initiative inquiry into the Commission's lack of monitoring of EU-funded border operations.

The Commission has been asked to answer the EO's recommendations, including by indicating its plans for their implementation, by the end of May 2025 (at which point it would have reviewed Greece's first 'accumulation report'). While the EO's decision to close the inquiry cannot be appealed, we will continue to monitor the Commission and Greece's responses and actions, considering the potential need for further complaints to the Commission and EO.