



**ECRE Comments**

**on the**

**European Commission Recommendation relating to the  
reinstatement of Dublin transfers to Greece – C(2016) 871**

February 2016

## Background

Almost five years following the *M.S.S. v. Belgium and Greece* ruling of the European Court of Human Rights,<sup>1</sup> the European Commission announced on 23 September 2015 its intention “to prioritise the normalisation of the situation [in Greece] and a return to the Dublin system within the next six months”, through a commitment to “restoring normalcy and taking all measures in Greece needed so that Dublin transfers to Greece can be reinstated within six months”.<sup>2</sup> This was reiterated in a follow-up Communication on 14 October, detailing the Commission’s evaluation process. The Commission would assess the situation in Greece by 30 November 2015 and, if all conditions were met, would recommend a reinstatement of Dublin transfers to the European Council either in December 2015 or in March 2016.<sup>3</sup>

A Recommendation to Greece was adopted on 10 February 2016,<sup>4</sup> setting out urgent measures that should be implemented by Greece in the areas of reception capacity, living conditions, access to the asylum procedure, appeals and staffing of authorities, with a view to the possible resumption of some Dublin transfers. By 4 March 2016, Greece is expected to report on these measures so as to enable Member States’ courts to assess whether the reinstatement of transfers would be lawful.<sup>5</sup> ECRE acknowledges that the reinstatement of transfers is a mid to long-term objective and will be conditional upon the fulfilment of the measures listed in the Recommendation, as well as objective factors such as the volume of arrivals.

As the Recommendation clarifies, national and European judicial authorities remain responsible for assessing the conditions asylum seekers and migrants are exposed to in Greece, with a view to evaluating whether the application of the Dublin Regulation would amount or not to a risk of *refoulement*. From the outset, it is crucial to recall that such a risk needs to be assessed individually, based on the Court’s interpretation of Article 3 of the European Convention on Human Rights (ECHR),<sup>6</sup> rather than on a precondition of “systemic deficiencies” in Greece’s asylum procedure and reception conditions.<sup>7</sup> The latest decision taken by the Committee of Ministers of the Council of Europe overseeing the execution of the *M.S.S. v Belgium and Greece* judgment by the Greek authorities, confirms that there are still substantial shortcomings in the asylum system. Any recommendation issued in relation to reinstating Dublin transfers should fully comply with the decision of the Committee of Ministers, as well as subsequent judgments of the ECtHR such as *Tarakhel v Switzerland*.<sup>1</sup> A fair and objective assessment should also take into consideration the views of the Council of Europe monitoring bodies, UNHCR and NGOs.

These Comments question the assessment of the compliance with EU and international standards in Greece through up-to-date information on the Greek asylum system, by focusing on:

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<sup>1</sup> European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

<sup>2</sup> European Commission, *Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*, COM(2015) 490, 23 September 2015, 11-12.

<sup>3</sup> European Commission, *Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration*, COM(2015) 510, 14 October 2015, 12.

<sup>4</sup> European Commission, *Recommendation addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C(2016) 871, 10 February 2016.

<sup>5</sup> European Commission, *Implementing the European Agenda on Migration: Progress on Priority Actions*, IP/16/271, 10 February 2016.

<sup>6</sup> See to that effect ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>7</sup> The notion of “systemic deficiencies” is reiterated in Recital 1 of the Commission Recommendation.

1. Ongoing obstacles to accessing the procedure, namely concerning registration and the operation of appeals bodies, as well as the likely application of the “safe third country” concept regarding Turkey;
2. The state of Greece’s reception system, with a view to properly assessing its capacity to accommodate asylum seekers and migrants on its territory;
3. The legality and conditions of immigration detention, including new risks of the increased use of detention stemming from nationality-profiling and the establishment of the “hotspots” at main points of arrival; and
4. Ongoing shortcomings in the protection of vulnerable groups of asylum seekers.

## **1. The asylum procedure and protection from *refoulement***

### *1.1. Access to the procedure and registration*

As of 10 February 2016, the Asylum Service had established seven Regional Asylum Offices (RAOs) in Attica, Lesvos, Samos, Northern Evros, Southern Evros, Rhodes and Thessaloniki, while three Asylum Units operated in Amygdaleza, Patra and Xanthi. Remaining offices are yet to be set up, including at main points of arrival such as Chios and Leros, which have witnessed 14,603 and 4,279 arrivals respectively since the beginning of 2016.<sup>8</sup> In that light, access to the asylum procedure is not effectively ensured to all persons entering the Greek territory.

The Regional Asylum Office in Attica, which handles the majority of applications for international protection,<sup>9</sup> faces particular difficulties in guaranteeing swift access to the asylum procedure.<sup>10</sup> In order to improve access to the procedure by minimising queues outside the RAO of Attica, the asylum service inaugurated a new system for granting appointment for registration through Skype. The registration system has encountered shortcomings in practice as persons have reported unsuccessful attempts to book an appointment by Skype. As of February 2016, Skype slots to book registration appointments in Attica are only available three hours per week at best (for relocation, Farsi/Dari speakers) or even one hour per week for certain languages (Bengali, Albanian).<sup>11</sup> It is highly problematic that, for the main languages of asylum seekers concerned (English, Arabic, French, Farsi, Dari, Urdu, Punjabi and Bengali), it is necessary to have successful access to Skype in order to be able to book an appointment to register an asylum application,<sup>12</sup> excluding the possibility to do it in person before the relevant RAO without such prior web appointment. There are serious concerns as to the compatibility of this system with the procedural guarantees set up under the recast Asylum Procedures Directive, and in particular the “effective opportunity” to lodge an asylum application guaranteed under its Article 6(2).

The lack of an effective registration system is all the more problematic since persons in need of international protection who do not manage to lodge their application are not protected from arrest, detention and deportation.<sup>13</sup>

It should be noted that, in its Recommendation of 10 February 2016, the European Commission urges Greece to sufficiently staff the Regional Asylum Offices in order to allow the Asylum Service to reach full capacity to process all asylum applications. The recommendation, however, notes that the

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<sup>8</sup> UNHCR, *Refugees/Migrants Emergency Response: Mediterranean*, 6 February 2016.

<sup>9</sup> In 2015, out of a total of 13,197 applications, 7,835 (almost 60%) were registered in Attica: Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>.

<sup>10</sup> AIDA Country Report Greece: Fourth Update, November 2015, 25-26.

<sup>11</sup> Asylum Service, *Schedule of registration of applications for international protection*, 1 February 2016, available in Greek at: <http://bit.ly/1TelcQ3>.

<sup>12</sup> *Ibid.*

<sup>13</sup> AIDA Country Report Greece: Fourth Update, November 2015, 25.

requisite number of staff should be calculated on the basis of the number of applications made in Greece over 2015.<sup>14</sup> This is arguably an inaccurate indicator of the staffing needs of the Asylum Service, bearing in mind that, out of 856,723 persons arriving by sea in the country in 2015,<sup>15</sup> only 13,197 (about 1.5%) applied for international protection.<sup>16</sup> In view of significant improvements in the fingerprinting of entrants,<sup>17</sup> as well as border control measures taken by its neighbouring countries, the likelihood that migrants arriving in Greece will transit to other countries without filing an asylum application is significantly lower in 2016 compared to 2015. Considerably higher numbers of asylum applicants should be expected in the course of this year, thereby requiring more robust staffing on the part of the Asylum Service.

Finally, push-backs at the Greek-Turkish border continue to be reported, with a number of incidents documented in 2015. There have been testimonies from persons that had actually reached the Greek territory and expressed their intention to seek asylum, but were nonetheless pushed back by the border guards.<sup>18</sup>

**The persisting challenges to accessing the procedure before the Asylum Service leave asylum seekers at serious risk of detention and deportation, in violation of the principle of *non-refoulement* under Article 3 ECHR.**

### *1.2. Returns and the application of the “safe third country” concept in respect of Turkey*

The “safe third country” provisions have not been applied by the Asylum Service so far.<sup>19</sup> However, on 5 February 2016, the Greek government announced its intention to declare Turkey a “safe third country” for applicants for international protection.<sup>20</sup> It is therefore likely that the legal provisions transposing Article 38 of the recast Asylum Procedures Directive will be activated in respect of persons transiting through Turkey.<sup>21</sup> Accordingly, claims from such applicants are likely to be rejected as inadmissible.

Civil society organisations, including the European Council on Refugees and Exiles (ECRE),<sup>22</sup> have strongly condemned the presumption that Turkey is a “safe third country” on the basis of several shortcomings in guaranteeing protection. Beyond its failure to guarantee adequate reception conditions and a well-functioning asylum procedure,<sup>23</sup> due to its geographical limitation to the 1951 Refugee Convention, Turkey does not enable persons coming from non-European countries to apply for and enjoy refugee status in accordance with the Convention, but only to be recognised as “conditional refugees” and thereby benefit from a right of temporary residence, without automatic access to the labour market. Syrian nationals have separate treatment under a temporary protection regime, where however access to the labour market remains to be guaranteed in practice.

<sup>14</sup> European Commission, *Recommendation addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, para 2.

<sup>15</sup> UNHCR, *Refugees/Migrants Emergency Response – Mediterranean*.

<sup>16</sup> Greek Asylum Service, *Asylum Statistics 2015*, available at: <http://bit.ly/1OukycW>.

<sup>17</sup> Eurodac fingerprinting rates have stepped up from 8% in September 2015 to 78% in January 2016: European Commission, *Annex to the Communication on the state of play of implementation of the priority actions under the European Agenda on Migration: Greece – State of play report* (hereafter “2<sup>nd</sup> Hotspot Progress Report on Greece”), COM(2016) 85, 10 February 2016, 3.

<sup>18</sup> AIDA Country Report Greece, 30-33.

<sup>19</sup> *Ibid*, 72.

<sup>20</sup> Kathimerini, ‘Hot spot work intensifies as Greece agrees to recognize Turkey as “safe” country’, 5 February 2016, available at: <http://bit.ly/1PdC2KY>.

<sup>21</sup> Article 20(1) Presidential Decree 113/2013.

<sup>22</sup> ECRE, ‘ECRE strongly opposes legitimising push-backs by declaring Turkey a “safe third country”, 29 January 2016, available at: <http://bit.ly/1OVcmmh>.

<sup>23</sup> For a detailed account, see AIDA Country Report Turkey: First Update, December 2015.

Instances of *refoulement* have been documented recently by organisations including Amnesty International and Human Rights Watch,<sup>24</sup> mainly focusing on reported violations along the Turkey-Syria border, but also occasionally making allegations of unlawful returns at other land borders. These reports, while mainly highlighting the shortcomings of Turkey's "temporary protection" regime for refugees from Syria, also generally indicate alleged practices in detention facilities and border regions that do not comply with the rule of law framework and basic procedural safeguards established by Law on Foreigners and International Protection.<sup>25</sup>

As such, the designation of Turkey as a "safe third country" is not compatible with the requirements set out in Article 38(1)(e) of the recast Asylum Procedures Directive.

**Due to the deficiencies of the Turkish asylum system, the rejection of applications as inadmissible and return of asylum seekers to Turkey based on the "safe third country" concept are not compatible with Article 38 of the recast Asylum Procedures Directive and liable of creating risks of *refoulement* prohibited by Article 3 ECHR.**

Another noteworthy element in the Commission's recent reporting on the implementation of the European Agenda on Migration relates to strengthening return of irregular migrants, where "[s]pecial attention is paid to countries from which irregular entries have significantly increased, such as Afghanistan".<sup>26</sup> This position is accompanied by a specific call on the Greek authorities to focus more on the return *inter alia* of Afghan nationals, rather than that of nationals of Albania or the Former Yugoslav Republic of Macedonia (FYROM).<sup>27</sup> The presumption of Afghanistan as a country whose nationals are not in need of protection is not only at odds with UNHCR's assessment<sup>28</sup> and recent evidence on the deteriorating security situation therein,<sup>29</sup> but also with the rate of success of asylum claims lodged by Afghan nationals in Greece; more than 60% of Afghans received international protection in 2015.<sup>30</sup>

### 1.3. Appeals

At the end of September 2015, the Appeals Committees operating under the Appeals Authority and handling claims under the "new procedure" governed by Presidential Decree 113/2013, ceased their operation due to the expiry of the mandate of the Committees.<sup>31</sup> As a result, no appeals have been examined or decisions issued since November 2015,<sup>32</sup> thereby rendering access to an effective remedy illusory for the time being.

At the same time, the long-standing backlog of appeals under the "old procedure" regulated by Presidential Decree 114/2010 is yet to be resolved. As of 31 August 2015, as many as 23,324

<sup>24</sup> Amnesty International, "Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees in Turkey", 16 December 2015, available at: <http://bit.ly/1NwzIRu>; Amnesty International, 'Fear and Fences: Europe's Approach to Keeping Refugees at Bay", 17 November 2015, available at: <http://bit.ly/1T45UKa>; Human Rights Watch, "Turkey: Syrians Pushed Back at the Border", 23 November 2015, available at: <http://bit.ly/1MwQ6Wo>.

<sup>25</sup> See AIDA Country Report Turkey: First Update, December 2015, 33.

<sup>26</sup> European Commission, *On the state of play of implementation of the priority actions under the European Agenda on Migration*, COM(2016) 85, 10 February 2016, 17-18.

<sup>27</sup> European Commission, *Annex to the Communication on the state of play of implementation of the priority actions under the European Agenda on Migration: Greece – State of play report* (hereafter "2<sup>nd</sup> Hotspot Progress Report on Greece"), COM(2016) 85, 10 February 2016, 6.

<sup>28</sup> UNHCR considers Afghanistan a refugee-producing country: *Refugees/Migrants Emergency Response – Mediterranean*.

<sup>29</sup> See e.g. EASO, *Country of Origin Information Report – Afghanistan Security Situation*, January 2016, available at: <http://bit.ly/1IS2Dm1>.

<sup>30</sup> Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>.

<sup>31</sup> Recital 18 Commission Recommendation to Greece on Dublin transfers.

<sup>32</sup> Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>.

appeals were pending before the Appeals Committees of the “old procedure”.<sup>33</sup> It is therefore highly likely that a significant number of persons who applied for international protection in Greece prior to June 2013, including potential Dublin returnees, continue to face obstacles to exercising their right to an effective remedy.

**Due to ongoing barriers to the operation of the Appeals Committees examining claims under the “new procedure”, as well as persisting delays in the clearance of the backlog of appeals under the “old procedure”, applicants for international protection do not enjoy effective access to an effective remedy in accordance with Article 46 of recast Asylum Procedures Directive, Article 47 of EU Charter of Fundamental Rights and Article 13 ECHR, taken in conjunction with Article 3 ECHR.**

## 2. Reception conditions

The Recommendation recalls the recent commitment of Greece to set up 50,000 reception places.<sup>34</sup> Against the backdrop of an agreed target of 30,000 reception places by the end of 2015, in addition to 20,000 places guaranteed through UNHCR-led rent subsidies, the state of play of reception capacity in Greece requires particular attention. The 30,000 figure was set as a general target at the Western Balkans Leaders’ Meeting of 25 October 2015, without detailing what type of reception facilities should be established in Greece and thus whether the increase in capacity would be aimed at better hosting the newly arrived for brief time-periods (“first-line reception”) or at creating appropriate conditions for asylum seekers staying in the country (“second-line reception”).

The European Commission later explained that the five “hotspots” on the Aegean islands would make up a total of 7,000 places,<sup>35</sup> available to host migrants upon arrival in the country. As of 10 February 2016, the Commission reported an overall capacity of 17,628 places, covering 7,181 places on the hotspots and 10,447 on the mainland.<sup>36</sup>

### 2.1. *What is not reception: detention*

Beyond the aforementioned uncertainty about Greece’s reception capacity vis-à-vis asylum seekers, the distinction between open reception accommodation and detention must also be clarified. Firstly, the Commission’s Hotspot Progress Report includes pre-removal detention facilities in the calculation of reception places, thereby adding 5,707 places to the total count. This amounts to a misrepresentation of reception capacity in Greece, all the more so since the Commission has not done the same for Italy in its respective report.<sup>37</sup> This is also contrary to UNHCR’s method of calculating Greece’s reception capacity.<sup>38</sup>

Moreover, “hotspots” established on the Aegean islands comprise First Reception Centres managed by the First Reception Service (soon Reception and Identification Service), as per their domestic legal basis.<sup>39</sup> These are likely to be modelled on the First Reception Centre (soon Reception and

<sup>33</sup> AIDA Country Report Greece: Fourth Update, November 2015, 6.

<sup>34</sup> Paragraph 6 Commission Recommendation to Greece on Dublin transfers.

<sup>35</sup> European Commission, *Progress Report on the Implementation of the hotspots in Greece* (hereafter “1<sup>st</sup> Hotspot Progress Report Greece”), COM(2015) 678, 15 December 2015, 13.

<sup>36</sup> European Commission, *2<sup>nd</sup> Hotspot Progress Report on Greece*, 10 February 2016, 8.

<sup>37</sup> See European Commission, *Progress Report on the Implementation of the Hotspots in Italy* (hereafter “Hotspot Progress Report on Italy”), COM(2015) 679, 15 December 2015, 10. Under the “reception capacity” heading, the report only mentions the SPRAR, CARA and CAS centres.

<sup>38</sup> UNHCR, *Greece – Reception Capacity 5 February 2016*, available at: <http://bit.ly/1TokSwV>.

<sup>39</sup> Joint Ministerial Decision 2969/2015 “Establishment of First Reception Centres and temporary Accommodation Facilities for asylum seekers and vulnerable groups of third-country nationals”, Official

Identification Centre) of Evros, which has been operational since 2014 and – contrary to its title – hosts migrants and asylum seekers in a state of detention.<sup>40</sup> It should nonetheless be noted that the First Reception Centre of Evros is presented by the Commission and UNHCR as a “first-line reception” rather than detention facility.<sup>41</sup>

In fact, the amended legal framework of first reception procedures clarifies that migrants are subject to restriction of freedom of movement within the premises of these centres.<sup>42</sup> Insofar as they deprive migrants of their liberty, these structures should be viewed as detention rather than reception facilities in both legal and practical terms. In that light, the Commission’s assessment of “reception capacity” in the hotspots, which stood at 7,181 places on 10 February 2016, is therefore inaccurate.<sup>43</sup> In this regard, it should be noted that the Hotspot Progress Report on Greece already specifically refers to detention capacity, as it refers to a “pre-removal [detention] capacity” of 5,707 places in Greece. Under an appropriate understanding of the conditions prevailing in First Reception Centres, capacity in the “hotspots” – as in Evros – is therefore misrepresented as reception capacity since it is not included in the aforementioned detention places.<sup>44</sup>

## *2.2. How is reception capacity counted?*

Beyond the 7,181 places on the hotspots, the Commission mentioned in its Hotspot Progress Report of 10 February 2016 that 10,447 reception places are available on the Greek mainland. When compared to the situation described by the previous report in December, however, these figures reveal concerning discrepancies:

Type of reception	Progress report 15 Dec 2015	Progress report 10 Feb 2016
<i>Hotspots (Lesvos, Chios, Samos, Leros, Kos, Rhodes, Kalymnos, Symi, Tilos, Kastelorizo)</i>		
First reception	4,500	7,181
<i>Mainland Greece</i>		
First-line reception	0	1,840
Second-line reception	2,900 in Athens	1,190
Assisted voluntary return reception (Galatsi)	0	110
Temporary facilities (Eidomeni)	1,500	1,600
Pre-removal (detention)	5,400	5,707
<b>Total</b>	<b>14,300</b>	<b>17,628</b>

Source: European Commission, *Hotspot Progress Report on Greece*, 15 December 2015, 13; *2<sup>nd</sup> Hotspot Progress Report on Greece*, 10 February 2016, 8.

The December 2015 Hotspot Progress Report made reference to 2,900 places in “second line reception capacity”, 1,500 in a rub tent hall in Eidomeni, and 5,400 places in “pre-removal capacity”. Rather surprisingly, “second line reception” has receded to 1,190 places as of February 2016, while

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Gazzette 2602/B/2-12-2015. For Chios and Samos, see also Joint Ministerial Decision 6634/1-147524, Official Gazette 10/B/8-1-2016. See also Article 6 Law 3907/2011, as amended in February 2016.

<sup>40</sup> For a discussion, see ECRE, *What’s in a name? The reality of first “reception” at Evros*, February 2015, available at: <http://bit.ly/1GfXlzk>.

<sup>41</sup> Information provided via email by the Asylum Unit, DG HOME, 16 February 2016; UNHCR, *Greece – Reception Capacity 5 February 2016*.

<sup>42</sup> Article 12(2) Law 3907/2011, as foreseen to be amended in February 2016.

<sup>43</sup> European Commission, *2<sup>nd</sup> Hotspot Progress Report on Greece*, 10 February 2016, 8.

<sup>44</sup> See to that effect AIDA Country Report Greece: Fourth Update, November 2015, 98.

1,840 first-line reception places have been created in the mainland. Since the February report provides no detail whatsoever as to the facilities covered by the aforementioned numbers, the evidence for these figures is lacking in the Commission's assessment. Slight increases in the capacity of the Eidomeni camp (from 1,500 to 1,600 places) and pre-removal detention capacity (from 5,400 to 5,707 places) should also be noted, although details are not provided. The latter was attributed to a change of policy on the part of the Greek authorities entailing use of more places in detention centres,<sup>45</sup> though such a move has not come to the attention of civil society organisations.<sup>46</sup>

Crucially, the 1<sup>st</sup> Hotspot Progress Report on Greece provides questionable figures on "second-line reception" capacity in Greece, mentioning a total of 2,900 places in Elaionas, Elliniko and Palaio Faliro, all located in the wider region of Athens.<sup>47</sup> It need, however, be highlighted that none of the aforementioned structures may properly be considered as a centre apt to secure "second-line" reception of asylum seekers:

- ❖ "Elaionas" refers to a temporary accommodation centre for the newly arrived, established at the end of the summer of 2015 to host approximately 600 persons. Similar to observations on the "hotspots" above, this centre was managed by the First Reception Service and was originally foreseen to operate until 31 December 2015.<sup>48</sup> Under a new Joint Ministerial Decision, the centre will continue to operate as a temporary accommodation facility until 31 March 2016.<sup>49</sup> Following the recent reform of the Greek reception system, it is expected to operate as a Temporary Hosting Facility (Δομή Προσωρινής Φιλοξενίας) for persons who have not applied for asylum.<sup>50</sup>
- ❖ "Palaio Faliro" refers to an Olympic Games Tae Kwon Do stadium which started operating as temporary accommodation centre for refugees and migrants in November 2015.<sup>51</sup> The Palaio Faliro Tae Kwon Do stadium took over from the (now closed) Olympic Games gymnasium in Galatsi (Παλαιά Γαλατσίου).<sup>52</sup> In mid-December, however, plans were made for the transfer of residents to another facility in order for the stadium to be available for sports events.<sup>53</sup> After this transfer, Palaio Faliro stopped operating as an emergency accommodation centre.
- ❖ "Elliniko" refers to an Olympic Games hockey field where migrants and asylum seekers were transferred in mid-December 2015 from the Palaio Faliro stadium.<sup>54</sup> This temporary facility

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<sup>45</sup> Information provided via email by the Asylum Unit, DG HOME, 16 February 2016.

<sup>46</sup> Information provided via email by the Greek Council for Refugees, 16 February 2016.

<sup>47</sup> European Commission, *Hotspot Progress Report Greece*, 15 December 2015, 13.

<sup>48</sup> Joint Ministerial Decision 3/5262 "Establishment of open reception facility for asylum seekers, vulnerable groups of third-country nationals in Elaionas, Attica", Official Gazette 2065/B/18-09-2015.

<sup>49</sup> Joint Ministerial Decision 3/8784 "Extension of operation of open reception facility for asylum seekers, vulnerable groups of third-country nationals in Elaionas, Attica", Official Gazette 2906/B/31-12-2015.

<sup>50</sup> Articles 6 and 8 Law 3907/2011, as foreseen to be amended in February 2016.

<sup>51</sup> See e.g. in.gr, 'Στο γήπεδο του Τάξ Κβον Ντο θα φιλοξενούνται οι πρόσφυγες και μετανάστες', 23 November 2015, available in Greek at: <http://bit.ly/239PW87>.

<sup>52</sup> FRA, *Weekly data collection on the situation of persons in need of international protection: Update 8*, 16-20 November 2015, available at: <http://bit.ly/1lqJ6ZO>, 26.

<sup>53</sup> See e.g. Greek Ministry of Interior and Administrative Reconstruction, 'Joint Statement of Alternate Minister for Migration and Mayors of Elliniko-Argyroupoli, Glyfada and Alimos on the temporary hosting of refugees and migrants', 15 December 2015, available in Greek at: <http://bit.ly/1P6wQlm>; I Efimerida, 'Την Πέμπτη οι πρόσφυγες στο Ελληνικό – έτσι θα είναι οι χώροι', 16 December 2015, available in Greek at: <http://bit.ly/1V1jzCH>.

<sup>54</sup> See e.g. Greek Ministry of Interior and Administrative Reconstruction, 'Joint Statement of Alternate Minister for Migration and Mayors of Elliniko-Argyroupoli, Glyfada and Alimos on the temporary hosting of refugees and migrants', 15 December 2015, available in Greek at: <http://bit.ly/1P6wQlm>; I Efimerida, 'Την Πέμπτη οι πρόσφυγες στο Ελληνικό – έτσι θα είναι οι χώροι', 16 December 2015, available in Greek at: <http://bit.ly/1V1jzCH>.

differs from the former military airport base of Elliniko, the remodelling of which into a reception centre was announced in December and is yet to be implemented.<sup>55</sup>

The classification of Elaionas, Palaio Faliro and Elliniko as second-line reception facilities by the First Hotspot Progress Report, as well as by UNHCR,<sup>56</sup> is undoubtedly a misrepresentation of their function in practice. Regrettably, the Commission failed to explicitly state in its February 2016 assessment that Elaionas and Elliniko have now been revised as first-line facilities, counting reception capacity of 700 and 900 places respectively.<sup>57</sup>

Alongside these makeshift and temporary reception centres, the Commission also mentions the planned establishment of two reception facilities in Schisto and Diavata, able to host 1,500 persons each and planned to be expanded to a capacity of 4,000 each.<sup>58</sup> The Greek government has in fact announced the conversion of two former military bases, Schisto, near Athens, and Diavata, near Thessaloniki, into “relocation centres”. Schisto was inaugurated on 15 February 2015 and currently has capacity to accommodate 1,200 persons, with 950 hosted in tents.<sup>59</sup> Following new bottlenecks on the Greek-Macedonian border, persons arriving in the mainland are transferred to Schisto and Diavata.<sup>60</sup>

These two centres (Schisto and Diavata) are expected to temporarily host asylum seekers awaiting relocation to another Member State,<sup>61</sup> thereby taking the form of Temporary Reception Facilities (Δομές Προσωριμής Υποδοχής) as defined in Greece’s reformed reception framework.<sup>62</sup> As such, these two facilities also differ from second-line reception structures that would be available to persons seeking international protection in Greece. Against that backdrop, the 17,628 figure presented by the 2<sup>nd</sup> Hotspot Progress Report rests on a misleading representation of Greece’s second-line reception capacity. Two further “relocation centres” are being considered by the Greek government, possibly to be established in Volos, Central Greece, and Northern Greece.<sup>63</sup> The exact capacity and function of these centres remains to be clarified.

Similarly, a recent reference to the creation of 8,000 additional reception places through €12.7 million in Asylum, Migration and Integration Fund (AMIF) emergency funding does not contain details on the type of reception capacity aimed to be created.<sup>64</sup>

A detailed breakdown of available reception (and detention) places in Greece as of 10 February 2016, as per additional explanations provided by the Asylum Unit of the European Commission Directorate-General for Migration and Home Affairs (DG HOME), is as follows:<sup>65</sup>

<sup>55</sup> See e.g. CNN Greece, ‘Σχέδιο Μουζάλα για κέντρο φιλοξενίας προσφύγων στο πρώην αεροδρόμιο του Ελληνικού’, 15 December 2015, available in Greek at: <http://bit.ly/1QhEPoy>.

<sup>56</sup> UNHCR, *Greece – Reception Capacity 5 February 2016*, available at: <http://bit.ly/1TokSwV>.

<sup>57</sup> Information provided via email by the Asylum Unit, DG HOME, 16 February 2016.

<sup>58</sup> European Commission, *2<sup>nd</sup> Hotspot Progress Report on Greece*, 10 February 2016, 8.

<sup>59</sup> Ta Nea, ‘Ετοιμο το hot spot στο Σχιστό για τη φιλοξενία 1.200 προσφύγων’, 16 February 2016, <http://bit.ly/1KmFHRd>.

<sup>60</sup> In.gr, ‘Μεταφέρθηκαν οι πρώτοι πρόσφυγες στο Σχιστό’, 23 February 2016, available in Greek at: <http://bit.ly/1L8dhkT>; ‘Εφτασαν στα Διαβατά τα πρώτα λεωφορεία με πρόσφυγες’, 24 February 2016, available in Greek at: <http://bit.ly/1VDBwaZ>.

<sup>61</sup> See e.g. Efsyn, ‘Με μαέστρο το στρατό’, 3 February 2016, available in Greek at: <http://bit.ly/20P93Cs>.

<sup>62</sup> Articles 6 and 8 Greek Law 3907/2011, as foreseen to be amended in February 2016.

<sup>63</sup> See e.g. SKAI, ‘Στα Διαβατά Θεσσαλονίκης μεταφέρονται οι πρόσφυγες από την Ειδομένη’, 24 February 2016, available in Greek at: <http://bit.ly/21gh4E7>; Kathimerini, ‘Εγκλωβισμένοι 12.000 πρόσφυγες’, 24 February 2016, available in Greek at: <http://bit.ly/1S1izQC>.

<sup>64</sup> See European Commission, ‘€12.7 million in emergency funding to Greece for reception facilities for migrants and refugees’, 15 February 2016, available at: <http://bit.ly/1Pzpei5>.

<sup>65</sup> Note that this information contradicts some of the figures presented in the Commission’s Hotspot State of Play Table of 16 February 2016: <http://bit.ly/1MYNCow>. The table mentions a capacity of 2,709 places on Lesvos, 2,250 on Chios, 650 on Samos, 330 on Leros and 290 on Kos. These figures are also at odds with those provided by UNHCR on 5 February 2016.

Type of reception	Location	Capacity
<i>Aegean islands (hotspots)</i>		
First-line reception	Lesvos <i>Moria*</i> <i>Kara Tepe</i> <i>PIKPA</i> <i>Skala Sykamias</i> <i>Mantamados</i> <i>Apanemo</i>	3,020 670 1,100 150 200 600 300
	Chios <i>Souda</i> <i>Tambakika</i> <i>Port</i> <i>Dipethe</i>	2,545 850 800 300 300
	Samos <i>Vathy*</i> <i>Malgari Port</i>	630 230 400
	Leros <i>Port</i> <i>PIKPA</i>	450 330 120
	Kos <i>Archaeological Park</i> <i>Oscar Hotel</i>	300 150 150
	Rhodes	190
	Kalymnos	121
	Symi	50
	Tilos	70
	Kastelorizo	100
	<b>Total open reception</b>	<b>6,281</b>
	<b>Total (incl. detention)</b>	<b>7,181</b>
<i>Mainland Greece</i>		
First-line reception	Various locations <i>Elaionas</i> <i>Elliniko (Hockey)</i> <i>Fylakio, Evros*</i>	1,840 700 900 240
Second-line reception	Various locations	1,190
Assisted voluntary return reception	Attiko Alsos Galatsi	110
Temporary facilities	Eidomeni	1,600
Pre-removal detention	Various locations*	5,707
	<b>Total open reception</b>	<b>4,500</b>
	<b>Total (incl. detention)</b>	<b>10,447</b>
<b>Grand total</b>		<b>17,628</b>

Source: Information provided via email by the Asylum Unit, Directorate-General for Migration and Home Affairs, European Commission, 16 February 2016.

It should be noted that the centre in Tambakika in Chios has now closed, and the Halkeios\* centre has been inaugurated as “hotspot”, with a capacity of 1,095 places. The Schisto centre (1,200 places) should also be added as a first-line reception facility in the mainland.

Centres marked with (\*) designate facilities where persons are *de facto* in detention.

Moreover, as far as the additional 20,000 places in rent subsidies are concerned, UNHCR reported to have secured 1,000 places as of the end of 2015,<sup>66</sup> while an agreement for a further 12,150 places for 2016 was committed to through the establishment of 150 hotel vouchers and 2,400 apartments.<sup>67</sup> As of 10 February 2016, UNHCR reported it had secured 14,950 places through its scheme.<sup>68</sup> These places too, however, seem to be directed towards persons eligible for relocation, who are expected to stay in Greece for short periods of time pending their transfer to another Member State.<sup>69</sup>

Asylum seekers falling outside the scope of the Relocation Decisions are therefore likely to find themselves unable to benefit from either newly established reception places or UNHCR’s rent subsidy programme. In that respect, the figures projected by the Commission run the risk of misrepresenting the reality of reception capacity in Greece. As highlighted by civil society organisations, persons applying for international protection in Greece can find stable accommodation in one of the country’s 17 reception centres, whose total capacity is currently below 1,500 places.<sup>70</sup> Last year, 13,197 asylum applicants were registered, and many more are expected to register this year.

**Under a correct assessment of reception capacity vis-à-vis persons undergoing an asylum procedure in Greece, the number of available reception places remains far short of meeting the accommodation needs of asylum seekers entering the country. Applicants for international protection not qualifying for relocation are therefore at risk of destitution during the asylum procedure, contrary to Article 17 of the recast Reception Conditions Directive, Articles 1 and 4 of the Charter and Article 3 ECHR.**

### 3. Detention

The scale of detention in Greece cannot be fully ascertained on the basis of statistical evidence, as the Hellenic Police does not provide records of detainees for all detention centres.<sup>71</sup> The Asylum Service’s statistics on the number of asylum applications lodged from detention point to a slight decrease in the use of detention, yet one far less substantial than anticipated when the change in detention policy was announced in February 2015. Compared to 2,892 asylum claims lodged in detention in 2014, in 2015 the Asylum Service received 2,524 claims from detainees.<sup>72</sup>

#### 3.1. Legality of detention

<sup>66</sup> European Commission, *Progress following Western Balkans Route Leaders’ Meeting: Eleventh Contact Points Video Conference*, IP/16/30, 8 January 2016.

<sup>67</sup> European Commission, *Progress following Western Balkans Route Leaders’ Meeting: Thirteenth Contact Points Video Conference*, IP/16/148, 22 January 2016.

<sup>68</sup> European Commission, *2<sup>nd</sup> Hotspot Progress Report Greece*, 8.

<sup>69</sup> See to that effect European Commission, ‘Joint Declaration on the support to Greece for the development of the hotspot / relocation scheme as well as for developing asylum reception capacity’, STATEMENT/15/6309, 14 December 2015.

<sup>70</sup> AIDA Country Report Greece: Fourth Update, November 2015, 76-77. As of 30 September 2015, capacity was reported at 1,271 places.

<sup>71</sup> *Ibid*, 6-7. The ambiguity of detention figures is also due to conceptual uncertainty as to which facilities qualify as detention centres, as discussed above.

<sup>72</sup> Asylum Service, *Statistics 2015*, available in Greek at: <http://bit.ly/1OukycW>.

From late 2015 onwards, civil society organisations monitoring detention continue to express concerns as to the dubious legality of detention for a number of reasons.<sup>73</sup>

Firstly, an individualised assessment is still not systematically applied prior to the issuance of detention orders. In fact, following the informal introduction of a nationality-based entry regime on the Greek-FYROM border as of November 2015, whereby only nationals of Syria, Afghanistan and Iraq are allowed entry into Macedonian territory, efforts to evacuate migrants from Idomeni seem to have led to an increase in the use of detention of specific nationalities. A significant number of North African nationals (Moroccans, Algerians and Tunisians) are transferred to the Pre-Removal Detention Centre of Corinth from Athens and the islands. During a visit conducted by the Rights Department (Τμήμα Δικαιωμάτων) of the Syriza political party on 13 January 2016, 383 nationals of these countries were the only persons found in the detention centre, thereby indicating a nationality-based policy of detention.<sup>74</sup> In this regard, it should also be mentioned that persons holding residence permits in Greece have also been reportedly detained upon return from other European countries.<sup>75</sup>

Secondly, as far as asylum seekers are concerned, it should be noted that the grounds for detention,<sup>76</sup> currently exceeding those set out in Article 8(3) of the recast Reception Conditions Directive, are expected to be reformed in line with EU standards.<sup>77</sup> However, certain grounds for detention such as public order considerations are reportedly applied systematically.<sup>78</sup> Alternatives to detention are also not applied in any systematic manner,<sup>79</sup> and no statistical records of alternatives are kept so as to allow for an appropriate evaluation of their use in practice.<sup>80</sup>

Thirdly, the commitment of the Greek government to reduce the maximum duration of detention to 18 months, in line with the time limit set out in the Return Directive, has not been unequivocally complied with, as the Ministerial Decision 4000/4/59-st/2014, allowing for detention beyond 18 months, has not been formally revoked.<sup>81</sup>

The lack of individualised assessment and consideration of grounds, necessity, proportionality and alternatives to detention is further exacerbated by the framework governing the Reception and Identification Centres set up in the “hotspots”. According to the draft amendment to Article 12(2) of Law 3907/2011, migrants, including vulnerable persons, are confined within the premises of the Reception and Identification Centres for an initial period of three days, which may be extended by a further 25 days. Such a rule amounts to a reversal of the principle of only resort to deprivation of liberty under exceptional circumstances. More importantly, as far as procedures taking place on islands are concerned, the necessity of imposing detention seems difficult to justify, as highlighted by the jurisprudence of the European Court of Human Rights.<sup>82</sup>

<sup>73</sup> Aitima, *Monitoring Immigration Detention – Quarterly Report September-December 2015*, available at: <http://bit.ly/1kZDeGB>; AIDA Country Report Greece: Fourth Update, November 2015, 90 et seq. See also Greek Council for Refugees, *Εφαρμόζοντας τα εναλλακτικά μέτρα της διοικητικής κράτησης στην Ελλάδα*, December 2015, available in Greek at: <http://bit.ly/1oAXnoG>.

<sup>74</sup> ERT, ‘Απαράδεκτες οι συνθήκες στο Κέντρο Κράτησης Μεταναστών Κορίνθου’, 14 January 2016, available in Greek at: <http://bit.ly/1o2m8u9>.

<sup>75</sup> On returns from Norway to Greece, see NOAS, *Asylsøkere som returneres fra Norge til Hellas med gyldig oppholdstillatelse i Hellas*, 11 February 2016, available in Norwegian at: <http://bit.ly/1VGnOEr>.

<sup>76</sup> Article 12(4) Presidential Decree 113/2013.

<sup>77</sup> Article 12(2) Draft Presidential Decree on “Procedures for submission and examination of applications for international protection, granting and withdrawal of international protection status”, available at: <http://bit.ly/1ms4X3y>.

<sup>78</sup> Aitima, *Monitoring Immigration Detention – Quarterly Report September-December 2015*, 4; AIDA Country Report Greece: Fourth Update, November 2015, 92; Greek Council for Refugees, *Εφαρμόζοντας τα εναλλακτικά μέτρα της διοικητικής κράτησης στην Ελλάδα*, December 2015, available in Greek at: <http://bit.ly/1oAXnoG>.

<sup>79</sup> *Ibid.*

<sup>80</sup> AIDA Country Report Greece: Fourth Update, November 2015, 93.

<sup>81</sup> *Ibid.*, 90.

<sup>82</sup> See ECtHR, *Louled Massoud v Malta*, Application No 24340/08, Judgment of 27 July 2010, para 68.

**Given that the Reception and Identification Centres will operate under a general regime of detention within the premises, applicable to all entrants indiscriminately, asylum seekers and migrants entering the “hotspots” are liable to be arbitrarily deprived of their liberty under Article 5(1) ECHR.**

Moreover, the amended Article 12(2) of Law 3907/2011 does not allow persons detained in the Reception and Identification Centres to challenge their detention. Such a challenge through the “objections” procedure is only allowed against a prolongation of detention beyond the initial three-day deadline.

**Failure to provide migrants and asylum seekers with the right to challenge their initial three-day detention in the “hotspots” contravenes Article 9 of the recast Reception Conditions Directive, Article 15 of the Return Directive, Article 6 of the Charter and Article 5(4) ECHR.**

### *3.2. Conditions of detention*

Substandard living conditions continue to prevail in several detention centres. Monitoring reports by the Greek Council for Refugees reveal particularly disconcerting conditions in the Vathy Detention Centre of Samos, with severe overcrowding (at times there were 1,000 detainees, while the maximum capacity of the centre is 240), lack of beds, poor sanitation and food provision, including lack of specialised nutrition for diabetics and infants.<sup>83</sup>

The state of detention facilities in the mainland is equally concerning. In Petrou Ralli, sanitary conditions are poor, especially in bathrooms and toilets, while food provision is inadequate.<sup>84</sup> As for the Corinth Pre-Removal Detention Centre, findings of poor food, medical care and clothing provision by the Greek Council for Refugees in late 2014<sup>85</sup> are corroborated by the Syriza Rights Department’s visit in January 2016, which reported that no doctor was present in the centre.<sup>86</sup>

**In view of the substandard detention conditions prevailing in pre-removal centres, the use of detention in Greece continues to expose asylum seekers and migrants to risks of ill-treatment contrary to Article 3 ECHR.**

## **4. The situation of vulnerable groups**

The Commission Recommendation urges Greece to align its mechanisms for identification and treatment of vulnerable asylum seekers to EU standards.<sup>87</sup> The legal framework relating to age assessment of unaccompanied children in First Reception Centres and Mobile Units, Ministerial Decision 92490/2013, has improved as it now refers to a multidisciplinary approach to age assessment in case of doubt as to the age of the third country national. This is a positive development as over the past years, UNHCR has observed inconsistencies in the treatment of unaccompanied minors’ cases by the First Reception Centres and First Reception Mobile Units.<sup>88</sup> However, important gaps remain in age assessment. During a September 2015 visit of the Greek Council for Refugees to the Paranesti pre-removal centre in Drama, two persons claiming to be (and apparently being)

<sup>83</sup> Greek Council for Refugees, *Mission Report Samos*, September 2015, available in Greek at: <http://bit.ly/1muhjID>. The findings are based on a visit carried out between 22 and 24 June 2015.

<sup>84</sup> *Ibid*, 101. Information is based on visits by the Greek Council for Refugees in July and September 2015.

<sup>85</sup> *Ibid*, 100.

<sup>86</sup> ERT, ‘Απαράδεκτες οι συνθήκες στο Κέντρο Κράτησης Μεταναστών Κορίνθου’, 14 January 2016, available in Greek at: <http://bit.ly/1o2m8u9>.

<sup>87</sup> Paragraph 5 Commission Recommendation on Dublin transfers to Greece.

<sup>88</sup> UNHCR, *UNHCR Observations on the current situation of asylum in Greece*, December 2014, 11.

unaccompanied minors were found to be detained. Both had been previously subjected to first reception procedures, after which they had been identified as adults. Noteworthy is the fact that, following the NGO's intervention to the police, the second child underwent a medical examination, the result of which had been that the person was actually a minor and is currently awaiting placement in a hosting facility.<sup>89</sup>

Beyond First Reception Centres, the identification of unaccompanied children and other vulnerable groups remains largely insufficient, according to information conveyed by NGOs.<sup>90</sup> While the recently adopted Joint Ministerial Decision on age assessment procedures is a welcome development, its effective application remains to be seen in practice.<sup>91</sup>

Moreover, the guardianship system for unaccompanied children remains highly dysfunctional, as prosecutors and the Court's office do not have the necessary resources to handle the large number of cases referred to them and as there is no institution or body in place that prosecutors can refer to in order to appoint permanent guardians. In fact, the same Prosecutor usually formally acts as a guardian for several children. It should be noted that a project run by the NGO Metadras for the creation of a Guardianship Network for Unaccompanied Minors,<sup>92</sup> came to an end in November 2015, without clarity as to the next steps to be taken to further this initiative.

**Despite the improvements in the legal framework, the persistent lack of an adequate child protection system raises serious concerns as regards compatibility with the UN Convention on the Rights of the Child, Articles 3 and 5 ECHR and Article 24 of the EU Charter. It is also at variance with the EU asylum *acquis* and in particular Articles 22 of the recast Reception Conditions Directive and Article 25 of the recast Asylum Procedures Directive.**

## 5. Concluding observations

ECRE believes that a reinstatement of Dublin transfers to Greece would prove problematic in more than one respect.

1. The decision taken in March 2015 by the Committee of Ministers of the Council of Europe, overseeing the execution of the *M.S.S. v Belgium and Greece* judgment by the Greek authorities, confirms the existence of substantial shortcomings in the asylum system.<sup>93</sup> Its latest decision of December 2015 reiterates concerns relating to the capacity and standards of reception, as well as the protection of unaccompanied children.<sup>94</sup> As this means that the Committee of Ministers is not satisfied that Greece has remedied the ECHR violations identified in the *M.S.S. v. Belgium and Greece* judgment, this must be duly taken into account by the EU institutions and EU Member States. In that respect, the absence of any reference to the Council of Europe monitoring process or the role of the European Court of Human Rights in the Commission's Recommendation is regrettable, though this is mentioned in the Communication published on the same day.<sup>95</sup> It is of most importance for the debate at EU level regarding the reinstatement of Dublin transfers to Greece that the body responsible for monitoring the execution of European Court of Human Rights judgments in the Council of

<sup>89</sup> AIDA Country Report Greece: Fourth Update, November 2015, 67-69.

<sup>90</sup> For an overview of field mission reports on the Greek islands, see AIDA, 'Greece: Reports on the islands by the Greek Council for Refugees', 18 February 2016, available at: <http://bit.ly/24bPGGe>.

<sup>91</sup> Joint Ministerial Decision 1982/2016, Official Gazette 335/B/16-2-2016.

<sup>92</sup> See [www.epitropeia.org](http://www.epitropeia.org).

<sup>93</sup> CoE Committee of Ministers, CM/Del/Dec(2015)1222/7 / 13 mars 2015, 13 March 2015.

<sup>94</sup> CoE Committee of Ministers, H/Exec(2015) 6, 8-9 December 2015.

<sup>95</sup> European Commission, *On the state of play of implementation of the priority actions under the European Agenda on Migration*, COM(2016) 85, 10 February 2016, 10.

Europe considers it necessary to continue its supervisory role in the case of *M.S.S. v. Belgium and Greece*.

2. A state of affairs whereby international protection applicants are transferred out of Greece under the emergency relocation scheme (still experiencing very limited implementation), while others are returned to Greece under Dublin, would be highly counter-intuitive to the aim of alleviating pressure on the Greek asylum system;<sup>96</sup> similar flaws in previous relocation schemes such as the intra-EU Relocation from Malta (EUREMA) pilot project testify to this.<sup>97</sup> Quite to the contrary, it could result in placing the Greek authorities under even greater strain in view of the number of asylum seekers who are potentially returnable under the Dublin Regulation, recalling that out of 856,723 persons arriving by sea in the country in 2015,<sup>98</sup> only 13,197 (about 1.5%) applied for international protection.<sup>99</sup> Even if the rate of persons actually transferred to Greece remains low in the short-term, the administrative, financial and human costs incurred in sending Member States, where numerous Dublin procedures will be initiated, should also be taken into consideration.<sup>100</sup>

The Commission's Recommendation of 10 February highlights that the ban on Dublin transfers to Greece acts as a disincentive for asylum seekers to participate in the relocation scheme, as it encourages them to engage in secondary movements to other countries.<sup>101</sup> ECRE has no evidence that the inapplicability of the Dublin Regulation is the reason for the failure to implement the Relocation Decisions. For instance, in the case of Italy, where no blanket ban has been introduced to Dublin transfers, only 303 persons had been relocated as of 24 February.<sup>102</sup> The Commission itself has conceded that "the most important factor remains the political will of Member States to make relocation work", while delays in the implementation of relocation have been attributed to a lack of dedicated contact points and insufficient reception capacity in Member States of relocation.<sup>103</sup> Accordingly, ECRE is not persuaded that the success of the relocation scheme is necessarily dependent on the applicability of the Dublin Regulation to Greece.

3. Bearing in mind the legislative proposal for a substantial revision of the Dublin Regulation to be tabled by the Commission in April 2016, to push for the reinstatement of transfers to Greece would effectively mean to reinforce the operation of a responsibility-allocation mechanism widely recognised as faulty. If the defects of the current Dublin system have been acknowledged by courts, Member States and the Commission itself, ahead of a legislative overhaul, there seems little reason to take drastic measures to enforce them shortly before they disappear.

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<sup>96</sup> On this point, see also Italian Council for Refugees, 'Commento al Rapporto sul Progresso nell'Attuazione dell'Agenda europea Migrazioni', 11 February 2016, available in Italian at: <http://bit.ly/1ofBPxy>.

<sup>97</sup> See EASO, *Fact-finding report on intra-EU relocation activities from Malta*, July 2012, available at: <http://bit.ly/1Xnu88x>.

<sup>98</sup> UNHCR, *Refugees/Migrants Emergency Response – Mediterranean*.

<sup>99</sup> Greek Asylum Service, *Asylum Statistics 2015*, available at: <http://bit.ly/1OukycW>.

<sup>100</sup> This also means that the severely understaffed Greek Asylum Service will have to dedicate human resources to processing incoming Dublin requests, contradicting the Commission's own recommendation to boost the authority's capacity to process new applications.

<sup>101</sup> Recital 22 Commission Recommendation on Dublin transfers to Greece.

<sup>102</sup> European Commission, *Relocation – State of play Table*, 24 February 2016, available at: <http://bit.ly/1WMhASJ>.

<sup>103</sup> European Commission, *On the state of play of implementation of the priority actions under the European Agenda on Migration*, COM(2016) 85, 10 February 2016, 11.

## Main conclusions

- ❖ The persisting challenges to accessing the procedure before the Asylum Service leave asylum seekers at serious risk of detention and deportation, in violation of the principle of *non-refoulement* under Article 3 ECHR.
- ❖ Due to the deficiencies of the Turkish asylum system, the rejection of applications as inadmissible and return of asylum seekers to Turkey based on the “safe third country” concept are not compatible with Article 38 of the recast Asylum Procedures Directive and liable of creating risks of *refoulement* prohibited by Article 3 ECHR.
- ❖ Due to ongoing barriers to the operation of the Appeals Committees examining claims under the “new procedure”, as well as persisting delays in the clearance of the backlog of appeals under the “old procedure”, applicants for international protection do not enjoy effective access to an effective remedy in accordance with Article 46 of recast Asylum Procedures Directive, Article 47 of EU Charter of Fundamental Rights and Article 13 ECHR, taken in conjunction with Article 3 ECHR.
- ❖ Under a correct assessment of reception capacity vis-à-vis persons undergoing an asylum procedure in Greece, the number of available reception places remains far short of meeting the accommodation needs of asylum seekers entering the country. Applicants for international protection not qualifying for relocation are therefore at risk of destitution during the asylum procedure, contrary to Article 17 of the recast Reception Conditions Directive, Articles 1 and 4 of the Charter and Article 3 ECHR.
- ❖ Asylum seekers and migrants face risks of arbitrary deprivation of liberty in Greece given the systematic use of pre-removal detention in respect of specific nationalities.
- ❖ Given that the Reception and Identification Centres will operate under a general regime of detention within the premises, applicable to all entrants indiscriminately, asylum seekers and migrants entering the “hotspots” are liable to be arbitrarily deprived of their liberty under Article 5(1) ECHR.
- ❖ Failure to provide migrants and asylum seekers with the right to challenge their initial three-day detention in the “hotspots” contravenes Article 9 of the recast Reception Conditions Directive, Article 15 of the Return Directive, Article 6 of the Charter and Article 5(4) ECHR.
- ❖ In view of the substandard detention conditions prevailing in pre-removal centres, the use of detention in Greece continues to expose asylum seekers and migrants to risks of ill-treatment contrary to Article 3 ECHR.
- ❖ Despite the improvements of the legal framework, the persisting lack of adequate child protection system raises serious concerns as regards compatibility with the UN Convention on the Rights of the Child, Articles 3 and 5 ECHR and Article 24 of the EU Charter. This is also at variance with the EU asylum *acquis* and in particular Articles 22 of the recast Reception Conditions Directive and Article 25 of the recast Asylum Procedures Directive.