



ecre

European Council
on Refugees and Exiles

THE ROLE OF EASO OPERATIONS IN NATIONAL ASYLUM SYSTEMS

An analysis of the current European Asylum Support Office (EASO) Operations involving deployment of experts in asylum procedures at Member State level

PREPARED BY MINOS MOUZOURAKIS ON BEHALF OF ECRE



This report was supported by the “Hotspot II” (HSP2) research project funded by National Postcode lottery in the Netherlands via the Dutch Council for Refugees and implemented by ECRE from 1 July 2018 to 31 December 2019.



The National Postcode Lottery in the Netherlands raises funds and give structural money for charity organizations that contribute to a better and livable world.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	1
INTRODUCTION	2
CHAPTER I	4
1 GENERAL FEATURES OF THE EASO OPERATIONS	4
Types of deployments	4
Areas of support	5
2 REGISTRATION OF ASYLUM APPLICATIONS	6
Stage of registration	7
Content of registration	9
3 DUBLIN PROCEDURE	9
4 REFUGEE STATUS DETERMINATION AT FIRST INSTANCE	11
Fast-track border procedure & EU-Turkey deal implementation in Greece	12
Regular procedure	13
Quality control	15
5 APPEAL PROCEDURE	17
CHAPTER II	19
1 MEETING OPERATIONAL OBJECTIVES	19
Increasing registration rates	19
Tackling backlog management	20
2 IMPACT OF EASO OPERATIONAL PRESENCE	20
Employment of locally recruited experts	21
Infrastructure challenges	22
Relations between and with national authorities and institutions	22
Quality of asylum decisions	23
Improving asylum systems?	24
CONCLUSIONS & RECOMMENDATIONS	28
ANNEX I	30
ANNEX II	33
Structure of opinions and decisions	33
Use of country of origin information (COI)	34
Legal analysis	38

LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
ASGI	Association for Legal Studies on Immigration (Italy)
COI	Country of origin information
DCLI	Department of Civil Liberties and Immigration (Italy)
DGMM	Directorate-General for Migration Management (Turkey)
DPS	Department of Public Security (Italy)
EASO	European Asylum Support Office
ECRE	European Council on Refugees and Exiles
EU	European Union
HIAS	Hebrew Immigrant Aid Society (Greece)
IPAC	International Protection Administrative Court (Cyprus)
KISA	Action for Equality, Support and Antiracism (Cyprus)
LFIP	Law on Foreigners and International Protection (Turkey)
RefCom	Office of the Refugee Commissioner (Malta)
NGOs	Non-governmental organisations
OHCHR	Office of the High Commissioner for Human Rights
QAT	Quality Assurance Tool
RAO	Regional Asylum Office (Greece)
SOPs	Standard Operating Procedures
TPR	Temporary Protection Regulation (Turkey)
SGDD-ASAM	Association for Solidarity with Asylum Seekers and Migrants (Turkey)
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's and Education Fund
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees in the Near East
USDOS	United States Department of State

INTRODUCTION

The European Asylum Support Office (EASO) offers various forms of support to European Union (EU) Member States in developing and maintaining their asylum systems. Such support involves the Asylum Support Teams and the provision of technical and operational assistance, which are available for deployment upon request by Member States facing particular pressure on the basis of an Operating Plan.¹ It may also consist of targeted measures to assist a country in better implementing the Common European Asylum System (CEAS), regardless of pressure, in the form of a Special Support Plan.²

Since its start of operations in June 2011,³ the Agency has provided operational assistance to seven Member States (Greece, Luxembourg, Sweden, Italy, Bulgaria, Cyprus and Malta) on the basis of different Special Support Plans and/or Operating Plans.⁴ Operations are ongoing in Greece, Italy, Cyprus and Malta at the time of writing and account for about 40% of the Agency's total budget in 2019. The Agency currently has over 900 staff members present in the four countries.⁵

The scope and forms of operational assistance provided to Member States have become increasingly relevant debates at EU level in light of the European Commission proposal to transform EASO into a European Union Agency for Asylum.⁶ The compromise text negotiated between the European Parliament and the Council not only provides a solid legal basis for the proposed powers of the Agency to support national authorities in refugee status determination, reflecting current practice in some EASO Operations, but also provides a legal basis for other activities such as the issuance of Guidance Notes.⁷

Against this backdrop, this report analyses the role of EASO Operations in Greece, Italy, Cyprus and Malta in supporting the national authorities to promote efficiency and quality in their asylum procedures, and presents findings for improved and sustainable operational support to asylum systems under pressure.

For the purposes of this report, ECRE conducted four fact-finding missions to gain a first-hand understanding and to gather views on the role of the Agency's Operations in the different asylum systems. ECRE consulted various stakeholders, ranging from national authorities, EASO and the United Nations High Commissioner for Refugees (UNHCR) to civil society organisations and asylum seekers. ECRE visited Cyprus on 26-30 November 2018, Italy on 20-23 May 2019, Greece on 8-19 July 2019 and Malta on 8-10 October 2019.

1 Article 2(2) and Chapter 3 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office ("EASO Regulation"), OJ 2010 L132/11. See in particular Articles 13 and 18 EASO Regulation.

2 See further EASO Operational support, available at: <https://www.easo.europa.eu/operational-support>

3 Article 54 EASO Regulation.

4 Article 18 EASO Regulation. See also EASO, Archive of operations, available at: <https://bit.ly/2Ni7ZJb> In some cases, Special Support Plans and Operating Plans have been implemented in parallel in countries such as Italy and Greece.

5 EASO, 'Over 900 EASO personnel deployed in operations in four EU Member States', PR 18/2019, 8 October 2019, available at: <https://bit.ly/35gOHdL>.

6 European Commission, Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum, COM(2016) 271, 4 May 2016; Amended proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum, COM(2018) 633, 12 September 2018.

7 For an analysis, see ECRE, Agent of Protection? Shaping the EU Asylum Agency, January 2017, available at: <http://bit.ly/2wxGmBY>.

As part of the missions to Cyprus and Greece, ECRE also analysed a small sample of first instance interviews, opinions and decisions on applications for international protection based on notes taken by the Cyprus Refugee Council and Greek Council for Refugees who had access to files as legal representatives of the applicants. The Cypriot sample contains 10 decisions taken by the Cypriot Asylum Service in the period 2017-2018, of which three were taken following interviews by and opinions from Asylum Service officers, and seven following interviews by and opinions from EASO Caseworkers. The Greek sample consists of 47 first instance interviews, opinions and decisions on applications processed on the islands (Lesvos, Chios, Samos, Leros and Kos) and decided upon in the period 2018-2019. No sample of cases from Malta was analysed for the purposes of this report, given that the Agency only started providing operational assistance to the country in the summer of 2019 and that the Office of the Refugee Commissioner (RefCom) has so far taken decisions on only a small number of opinions forwarded by EASO.⁸

Given the limited scope of the study and small size of the sample of cases examined, the observations made by ECRE in this report should not be read as an exhaustive account of practice in the Agency's Operations in the four countries covered, nor is the report intended to be an evaluation of EASO's operations.

The report is structured into the following sections:

CHAPTER I analyses the different areas of the asylum procedure in which the Agency supports Member State authorities, namely the registration of asylum applications, the implementation of the Dublin Regulation, the examination of asylum applications at first instance, and appeals. Support provided in reception systems falls outside the scope of this report;

CHAPTER II discusses the effectiveness of EASO Operations in meeting their objectives and the impact of the Agency's presence on the efficiency and quality of asylum procedures in the host Member States, particularly as regards the enhancement of staff capacity, the quality of decisions and the contribution to compliance with the EU asylum *acquis*.

8 Information provided by the Maltese RefCom, 8 October 2019.

CHAPTER I

AREAS OF EASO SUPPORT IN THE ASYLUM PROCEDURE

1 GENERAL FEATURES OF THE EASO OPERATIONS

EASO currently has Operations in four EU Member States: Greece, Italy, Cyprus and Malta, the latter launched at the end of June 2019. The activities and types of support provided by EASO to the respective countries are currently laid out in the Operating Plans agreed by the Agency and the governments in question.⁹ In the period 1 January 2018 to 30 June 2019, EASO made available the following numbers of experts and staff to Greece, Italy and Cyprus:

NUMBER OF EASO EXPERTS AND STAFF DEPLOYED IN THE PERIOD 1 JANUARY 2018 TO 30 JUNE 2019						
1 Jan – 31 Dec 2018				1 Jan – 30 Jun 2019		
	GR	IT	CY	GR	IT	CY
Member State Experts	304	139	12	134	36	14
Interim Experts	243	221	37	240	217	33
EASO Staff & Individuals	24	15	0	20	9	0
Total Experts & Staff	569	373	49	394	262	47

Source: EASO Information and Analysis Unit, 13 February 2019 and 31 July 2019. It is possible for individual experts deployed in 2018 to be re-deployed in 2019.

As indicated in the table above, **Greece** remains by far the largest Operation in terms of deployed experts and staff, with 963 deployments of individual experts during the eighteen-month period. A total of 635 deployments of experts have taken place in **Italy** and 96 have taken place in **Cyprus**.

More recent figures published by the Agency refer to a total of 926 experts, interpreters, cultural mediators and security personnel made available in the four countries in which it has operational presence, across 88 different locations. Of those, 510 are deployed in **Greece**, 296 in **Italy**, 71 in **Cyprus** and 49 in **Malta**.¹⁰

TYPES OF DEPLOYMENTS

The majority of deployments in 2018 consisted of locally recruited Interim Experts in **Italy** (59%) and **Cyprus** (75%). This continued in 2019 with 83% of experts in **Italy** and 70% in **Cyprus** being Interim Experts, while

9 EASO, *2019 Operating Plan agreed by EASO and Greece*, December 2018, available at: <https://bit.ly/2W6vJB2>; *Operating Plan agreed by EASO and Italy*, December 2018, available at: <https://bit.ly/2MYTdqx>; *2019 Operational & Technical Assistance Plan agreed by EASO and Cyprus*, December 2018, available at: <https://bit.ly/2CHCOAJ>; *2019 Operational & Technical Assistance Plan agreed by EASO and Malta*, June 2019, available at: <https://bit.ly/2Z4nsP5>.

10 EASO, 'Over 900 EASO personnel deployed in operations in four EU Member States', PR 18/2019, 8 October 2019, available at: <https://bit.ly/35gOHdL>.

the operation in **Greece** also shifted to a majority of Interim Experts (61%) over Member State Experts and other staff. The number of deployments of Member State Experts in Greece has dropped to levels lower than expected in 2019, possibly creating capacity shortages.¹¹ EASO has explained that the reduction in these deployments is overcome with a rise in the number of Interim Experts locally recruited and deployed to the Greek authorities, including for information provision activities.¹² The overall reduction of staff capacity in asylum authorities across the continent could also account for the reduced availability of Member State Experts.¹³ That being said, the target of deployments of Member State Experts requested by **Cyprus** and **Malta** for the year 2019 has already been met.¹⁴

As regards Member State Experts, the main Member States contributing experts to Greece, Italy and Cyprus from 1 January 2018 to 30 June 2019 are as follows:

EASO MEMBER STATE EXPERTS DEPLOYED FROM 1 JANUARY 2018 TO 30 JUNE 2019 BY MAIN SENDERS					
1 Jan – 31 Dec 2018			1 Jan – 30 Jun 2019		
GR	IT	CY	GR	IT	CY
DE	CZ	SK	DE	DE	HU
NL	CH	BE	NL	PL	PL
UK	PL	HR	DK	CZ	SK

Source: EASO Information and Analysis Unit, 13 February 2019 and 31 July 2019.

The total number of Member States contributing experts in 2018 was 20 in **Greece**, 20 in **Italy** and 8 in **Cyprus**. In the first half of 2019, 20 Member States contributed experts to **Greece**, 12 to **Italy** and 10 to **Cyprus**.¹⁵

A significant decrease in contributing Member States has thus been noted in **Italy**, where the number of contributing Member States has dropped from 20 in 2018 to 12 in the first half of 2019. Conversely, the number of contributing Member States has risen from 8 to 10 in **Cyprus**. According to the Agency, Member States were initially reticent to deploy experts to Cyprus but seem to have changed course with the increase in arrivals of asylum seekers and the visibility of the country in the EU agenda.¹⁶ The number of countries offering experts to **Greece** has remained stable in the past eighteen months, despite the aforementioned drop in deployments of Member State Experts. Germany and the Netherlands make up about half of the overall number of Member State Experts.¹⁷

AREAS OF SUPPORT

The national authorities and areas of asylum systems supported by EASO depend on the Operating Plan agreed with the host Member State. The scope of existing Operations therefore differs from one country to another:

11 Information provided by the Greek Asylum Service, 10 July 2019.

12 Information provided by the EASO Operation Greece, 10 and 15 July 2019.

13 *Ibid.*

14 Information provided by the EASO Department of Operations, 9 October 2019.

15 Information provided by the EASO Information and Analysis Unit, 13 February 2019 and 31 July 2019.

16 Information provided by the EASO Operation Cyprus, 26 and 29 November 2018.

17 Information provided by the EASO Operation Greece, 10 July 2019.

AREAS OF EASO SUPPORT TO NATIONAL AUTHORITIES BY OPERATION				
Area of support	GR	IT	CY	MT
Registration	✓	✓	✓	✓
Dublin procedure	✓	✓	✗	✓
Examination of asylum applications at first instance	✓	✓	✓	✓
<i>Conduct of first instance interviews</i>	✓	✗	✓	✓
<i>Drafting of opinions for first instance decisions</i>	✓	✗	✓	✓
Appeal	✓	✗	✗	✗
Reception system	✓	✓	✓	✗

Source: *Operating Plans Greece 2019; Italy 2019; Cyprus 2019; Malta 2019.*

EASO support in the registration of asylum applications is the only activity shared by all four Operations. Support in the Dublin procedure is not provided in **Cyprus** although it is currently being discussed for inclusion in the Operating Plan 2020,¹⁸ while support to the first instance authorities in **Italy** does not involve conduct of interviews and drafting of opinions. Finally, **Greece** is the only Operation which currently involves deployment of EASO personnel to support the appeal body. Discussions on similar forms of support to the appeal procedure are underway in **Italy**.¹⁹

That being said, the primary category of experts deployed by the Agency in the three countries in the first half of 2019 were Caseworkers supporting the first instance authorities, i.e. the Greek Asylum Service, the Italian Territorial Commissions and the Cypriot Asylum Service. Caseworkers accounted for 144 of 394 experts (36%) in **Greece**, 106 of 262 (40%) in **Italy** and 21 of 47 (45%) in **Cyprus**.²⁰ Registration Assistants were the second main category of experts during that period, making up 97 of 394 (25%) in **Greece**, 44 of 262 (17%) in **Italy** and 9 of 47 (19%) in **Cyprus**.²¹

2 REGISTRATION OF ASYLUM APPLICATIONS

EASO deploys Registration Assistants to support authorities in charge of registration in all four countries, i.e. the Greek Asylum Service, the Immigration Units of Italian Police Offices (*Questure*), the Aliens and Immigration Units of the Cypriot Police, and the Maltese Office of the Refugee Commissioner (RefCom). This form of support was not originally foreseen in Operations such as Cyprus²² but emerged in later Operating Plans.

In the first half of 2019, out of a total of 55,159 asylum applications lodged in Greece, Italy and Cyprus, 30,084 were lodged with EASO Registration Assistants:

18 Information provided by the Cypriot Asylum Service, 29 November 2018.

19 Information provided by the EASO Department of Operations, 9 October 2019.

20 Information provided by the EASO Information and Analysis Unit, 31 July 2019.

21 *Ibid.*

22 See e.g. EASO, *Special Support Plan to Cyprus*, June 2014, available at: <https://bit.ly/2N5lI5D>; *Special Support Plan to Cyprus – Amendment No 2*, April 2016, available at: <https://bit.ly/321SWHl>.

ASYLUM APPLICATIONS LODGED: 1 JANUARY – 30 JUNE 2019			
	GR	IT	CY
Applications lodged with EASO support	16,126	9,919	4,039
Total applications lodged	30,443	8,047	6,669
Share of applications lodged with EASO support out of total	53%	55%	61%

Source: EASO Information and Analysis Unit, 31 July 2019; Greek Asylum Service: <https://bit.ly/2DQN0q2>; Italian Ministry of Interior: <https://bit.ly/2pzBgnd>; UNHCR Cyprus: <https://bit.ly/2MohYx1>.

EASO has therefore made a substantial²³ contribution to the host authorities' efforts to register asylum applications by handling more than half of registrations taking place in the three countries. It is worth noting that the Agency plays an important role in registration regardless of increases (Cyprus) or decreases (Italy) in the number of newly arriving asylum seekers.

Registration support is implemented through a similar approach in the four countries, consisting of deployment of Registration Assistants with the competent national authorities in different locations throughout the territory. Registration Assistants are almost exclusively locally recruited interim staff, not least given that, in countries such as Greece, citizenship is required for access to the database managed by the police (*Αλκυόνη*) which is used by the Asylum Service.²⁴

In **Greece**, registration support was provided in areas including Lesvos, Chios, Samos, Leros, Kos, Athens, Piraeus, Thessaloniki, Crete, Alexandroupoli, Fylakio, as well as pre-removal detention centres such as Paranesti.²⁵ In **Italy**, EASO Registration Assistants are present in 40 different Questure across the territory.²⁶ In **Cyprus**, they are present in Nicosia, Limassol, Paphos and Kokkinotrimithia (Pournara).²⁷ In **Malta**, they operate in the Initial Reception Centre of Marsa and the Safi Barracks detention facility,²⁸ both operating as *de facto* detention places for new arrivals.²⁹

STAGE OF REGISTRATION

Greece, Italy, Cyprus and Malta operate a dual registration system whereby the “registration” and “lodging” of an asylum application are distinct procedural stages.³⁰ EASO support is provided during different stages of the process depending on the host country.

Cyprus: The registration procedure evolved from a one-step to a two-step system shortly after the deployment of EASO Registration Assistants in June 2018, although the law already drew a distinction between “registration” and “lodging”. The Assistants support the Aliens and Immigration Units of the Police at the “registration” stage.³¹ They collect the basic personal details of asylum seekers but do not conduct fingerprinting or interrogation, as

23 Information provided by the Regional Asylum Office Thessaloniki, 15 July 2019; UNHCR Greece, 9 July 2019.

24 Information provided by the EASO Operation Greece, 10 July 2019.

25 Information provided by the Greek Asylum Service, 10 July 2019; EASO Operation Greece, 10 July 2019; Greek Council for Refugees, 15 July 2019.

26 Information provided by the EASO Operation Italy, 20 May 2019.

27 Information provided by the EASO Operation Cyprus, 26 November 2018.

28 Information provided by the EASO Department of Operations, 9 October 2019; UNHCR Malta, 9 October 2019.

29 Information provided by aditus foundation, 8 October 2019.

30 For a discussion, see AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, available at: <https://bit.ly/2PySydX>.

31 Information provided by the EASO Operation Cyprus, 26 November 2018.

these tasks remain with the police.³² After that stage is completed, asylum seekers are given an appointment date to reappear before the police in order to lodge their asylum claim.

Upon registration of the application by EASO or the Aliens and Immigration Unit, the applicant receives an A4 paper form entitled “Verification of intention to apply for International Protection”. The form indicates personal details such as name, date of birth and date of request. Only upon lodging of the claim does the person receive an A4 paper form entitled “Confirmation of Submission of an Application for International Protection”, which includes a photograph in addition to personal details.³³

Malta: EASO Registration Assistants are involved both in “registration” of asylum applications, involving collection of personal details and issuance of a unique RefCom number and an Asylum Seeker Document, and “lodging”, upon which the asylum seeker fills in an application form stating the reasons for seeking protection and a Dublin form. The two steps are generally conducted on the same day, according to RefCom. Exceptions to this include cases of unaccompanied children, where an age assessment and appointment of a legal guardian take place prior to lodging, and cases where interpretation is not readily available.³⁴

Italy: In contrast, Registration Assistants seconded to the Questure only provide support during the lodging (*verbalizzazione*) of the application. The core activity of Assistants is the conduct of the lodging interview with the asylum seeker and completion of the application form, known as “C3”, and uploading onto the national database (*Vestanet*).³⁵

They do not cover the earlier stage of registration (*fotosegnalamento*) at the Questura, although in some Questure they may be involved in referrals of vulnerable applicants to ensure their access to the procedure. This means that EASO experts are not involved in the processing of *foglio notizie* which are used at some Questure across the territory such as Milan and Bolzano prior to the filling in of the C3 form,³⁶ although cultural mediators provided by EASO for information provision may assist applicants with filling out the *foglio notizie* form if they are present and available.³⁷

Greece: Here too, Registration Assistants intervene at the stage of lodging (*πλήρης καταγραφή*) of the asylum application on the premises of the Greek Asylum Service. After the applicant has provided the relevant personal details, the Assistants upload the data provided onto the database.³⁸ For this purpose, they use a common template developed by the Asylum Service, which already contained substantial information on the claim.³⁹

EASO does not provide access to the asylum procedure as such, whether through the Skype system on the mainland or other channels of pre-registration (*απλή καταγραφή*).⁴⁰ However, a mobile information team of Member State Experts covers the south and the 15 camps in the north of the country and responds to registered applicants’ queries.⁴¹ The EASO office in Athens also operates a hotline which responded to 28,000 queries last year.⁴²

32 Information provided by the EASO Operation Cyprus, 29 November 2018.

33 AIDA, Country Report Cyprus, 2018 Update, March 2019, available at: <https://bit.ly/2FxnRIA>, 20-21.

34 Information provided by the Maltese RefCom, 8 October 2019.

35 Information provided by the EASO Operation Italy, 20 May 2019.

36 For more details on this barrier to registration, see AIDA, Country Report Italy, 2018 Update, April 2019, available at: <https://bit.ly/2JX2Aat>, 33.

37 Information provided by the EASO Operation Italy, 22 May 2019.

38 Information provided by the Greek Asylum Service, 10 July 2019.

39 Information provided by UNHCR Greece, 9 July 2019.

40 Information provided by the EASO Operation Greece, 15 July 2019.

41 *Ibid.*

42 Information provided by the EASO Operation Greece, 10 July 2019.

CONTENT OF REGISTRATION

The involvement of the Agency in this step of the procedure has had positive effects on the content in the sense of amount of information provided at registration. More specifically, in **Italy**, EASO initiated an “Enhanced Registration Pilot” project in 2018, through which it developed additional annexes to the “C3” form at the Questure where Registration Assistants were seconded. These consisted of:⁴³ (a) a Vulnerability Annex for the identification of special needs; (b) a Subsequent Applications Annex for applicants to provide information on new elements; and (c) a Reasons for Seeking Protection Annex, elaborating on “Point 16” of the form.

The Annexes were developed by EASO in cooperation with the National Asylum Commission and the Department of Public Security and were used in 40 Questure where EASO had presence as of early 2019. The Annexes aim to systematically collect more comprehensive information on the merits of the asylum application and potential special needs at the moment of lodging. In particular, the Annex elaborating on the reasons for applying for protection addresses a logistical problem encountered with the “C3” form whereby “Point 16” did not offer sufficient space for providing more detailed information on the reasons for applying. Under the old “C3” form, which remains in use in the Questure which do not participate in the “Enhanced Registration Pilot”, standard practice entailed filling in the section on the reasons for applying with the mention “Refer to [Territorial] Commission” (*Riferisce in Commissione*). In addition, some Questure instructed applicants to write down the reasons for their claim on separate sheets, but these sheets could not be uploaded on the national database, Vestanet.⁴⁴

Stakeholders explained that the additional information provided through the Annexes to the “C3” developed by the “Enhanced Registration Pilot” should not only enable better preparation of the personal interview at the Territorial Commission but also better consideration of specific vulnerabilities of applicants. On the other hand, legal practitioners have noted that this could increase the risk of applicants being confronted by contradictions between their statements in the “C3” form and in the interview, with potentially adverse effects on their application.⁴⁵

3 DUBLIN PROCEDURE

EASO OPERATIONAL SUPPORT IN THE DUBLIN PROCEDURE BY OPERATION				
Type of support	GR	IT	CY	MT
Outgoing procedure	✓	✓	✗	✓
Incoming procedure	✗	✓	✗	✗

EASO support to the authorities responsible for the implementation of the Dublin III Regulation differs considerably from one Operation to another. In **Cyprus**, the Agency is not involved at all in the Dublin procedure. In **Greece**, it is involved only in the outgoing procedure, due to a decision not to assist in the handling of incoming requests to avoid dealing with cases where requests had to be refused due to limitations in the reception system, or due to policies contrary to the EU asylum *acquis*.⁴⁶ In **Malta**, support to the Dublin procedure is provided

43 Information provided by the EASO Operation Italy, 22 May 2019.

44 Information provided by ASGI, 22 May 2019.

45 *Ibid.*

46 Information provided by the Greek Dublin Unit, 10 July 2019.

as of October 2019 and is limited to the outgoing procedure, *inter alia* due to the relatively small number of incoming requests received by the country.⁴⁷ In **Italy**, EASO has assisted in the Dublin procedure since 2015 and currently supports both the outgoing and the incoming procedure.⁴⁸

The type of experts provided by the Agency in the outgoing procedure differs between Italy, Greece and Malta:

Italy: EASO deploys both Interim Experts and Member State Experts for the purposes of the outgoing procedure.⁴⁹ Staff at the Dublin Unit have been divided into small teams, consisting of one Member State Expert, one Interim Expert and one Ministry of Interior official, each team handling a specific group of countries.⁵⁰

Greece: Member State Experts were previously deployed to the Dublin Unit for the outgoing procedure but cooperation was not deemed efficient. At the moment, the Dublin Unit is solely assisted by Interim Experts, upon request of the Greek Asylum Service.⁵¹

Malta: Two Member State Experts are currently deployed to the Dublin Unit for the outgoing procedure, which mainly involves screening for indications of responsibility of another Member State after an asylum application is lodged. Support could also extend to cases of applicants eligible for *ad hoc* relocation following disembarkation.⁵²

According to the Greek Dublin Unit, EASO support has helped improve the quality of outgoing requests, as staff prepare files and collect all relevant documents before sending a request. However, given the severe restrictions posed by other Member States on family reunification, the Unit consistently prepares for a rejection, and anticipates re-examination requests.⁵³ For its part, the Italian Dublin Unit has noted that the involvement of Member State Experts in the process has contributed to better relations with other countries, particularly Switzerland.⁵⁴

As regards the incoming procedure, the Agency only deploys Interim Experts in **Italy**. As explained by the Dublin Unit, this was done to avoid situations where other countries' officials would be involved in processing incoming requests to Italy, possibly submitted by their own Member State.⁵⁵

47 Information provided by the Maltese RefCom, 8 October 2019.

48 Information provided by the Italian Dublin Unit, 20 May 2019; EASO Operation Italy, 20 May 2019.

49 During the first half of 2019, EASO provided 16 Member State Experts as Dublin Officers and 6 Interim Experts for Dublin: Information provided by the EASO Information and Analysis Unit, 31 July 2019.

50 Information provided by the EASO Operation Italy, 20 May 2019.

51 Information provided by the Greek Dublin Unit, 10 July 2019.

52 Information provided by the Maltese RefCom, 8 October 2019.

53 *Ibid.*

54 Information provided by the Italian Dublin Unit, 20 May 2019.

55 *Ibid.*

4 REFUGEE STATUS DETERMINATION AT FIRST INSTANCE

EASO OPERATIONAL SUPPORT IN THE FIRST-INSTANCE EXAMINATION OF APPLICATIONS BY OPERATION				
Type of support	GR	IT	CY	MT
Case file preparation	✗	✓	✗	✗
Personal interview	✓	✗	✓	✓
Opinion recommending a first instance decision	✓	✗	✓	✓

Support in the processing of asylum applications constitutes the central part of the Agency's Operations, with the majority of Interim Experts and Member State Experts being deployed as Caseworkers to the determining authorities of the host Member States.

The main form of support provided by Caseworkers involves the conduct of interviews with applicants and drafting of opinions to the first-instance authority, which retains responsibility for issuing a decision on the asylum application.⁵⁶ While these tasks are performed by EASO experts in **Greece**, **Cyprus** and **Malta**, they are not carried out in **Italy**.

In addition, the types of procedures in which the Agency provides support differ according to Operation. In all four countries, Caseworkers support the authorities in the regular procedure on the territory, but in **Greece** they also assist in the fast-track border procedure applied on the Eastern Aegean islands for the purpose of implementing the EU-Turkey statement.⁵⁷ In July 2019, there were approximately 60 Caseworkers involved in the fast-track border procedure and 30 in the regular procedure.⁵⁸

From 1 January 2018 to 30 June 2019, EASO conducted interviews and prepared opinions as follows:

EASO INTERVIEWS AND OPINIONS: 1 JANUARY 2018 TO 30 JUNE 2019						
	1 Jan – 31 Dec 2018			1 Jan – 30 Jun 2019		
	GR	IT	CY	GR	IT	CY
Regular procedure						
Interviews	841	-	730	1,685	-	337
Opinions	461	-	724	1,363	-	188
Fast-track border procedure						
Interviews	8,958	-	-	2,955	-	-
Opinions	8,340	-	-	2,124	-	-

Source: EASO Information and Analysis Unit, 13 February 2019 and 31 July 2019.

The above figures indicate a relative reduction in activity in the fast-track border procedure and an important rise in interviews and opinions delivered in the regular procedure in **Greece**. As for **Cyprus**, it appears from the number of opinions issued in the first half of 2019 compared to those issued throughout 2018 that the activity

56 Article 2(6) EASO Regulation expressly states that the Agency “shall have no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications”.

57 AIDA, Country Report Greece, 2018 Update, March 2019, available at: <https://bit.ly/2I3P95L>, 73 et seq.

58 Information provided by the EASO Operation Greece, 10 July 2019 and 15 July 2019.

of EASO Caseworkers has also been reduced.

The following section will describe the activities of EASO experts in the fast-track border procedure (Greece) and the regular procedure (Greece, Cyprus, Malta, Italy) in order.

FAST-TRACK BORDER PROCEDURE & EU-TURKEY DEAL IMPLEMENTATION IN GREECE

Both Member State Experts and Interim Experts are deployed by EASO to support the fast-track border procedure on the Greek islands. The Greek Asylum Service has explained that the involvement of Member State Experts also carries political importance as it highlights that the EU-Turkey deal is implemented not by Greece alone but by the EU as a whole.⁵⁹

The fast-track border procedure is divided into three procedures depending on the country of origin of the applicant:

- a. Syrian nationals undergo an admissibility procedure with an assessment of the safe third country concept;
- b. Non-Syrian nationals from a country with a recognition rate under 25% undergo an eligibility procedure without any assessment of the safe third country concept;
- c. Non-Syrian nationals from a country with a recognition rate over 25% undergo a “merged procedure” where both admissibility and eligibility are assessed.

EASO Caseworkers contribute to the fast-track border procedure by conducting interviews and preparing opinions recommending a decision to the Asylum Service. At the moment, fast-track border procedure interviews on the islands are almost exclusively carried out by EASO Caseworkers, although practice varies from one island to another. On Samos, for instance, the Asylum Service also conducts interviews.⁶⁰

During the first half of 2019, EASO conducted 2,955 interviews in the fast-track border procedure, mainly covering applicants from Afghanistan, Palestine, Iraq, Syria and Cameroon.⁶¹ This means that EASO Caseworkers are involved in all three strands of the fast-track border procedure.

One of several controversies underlying the fast-track border procedure in Greece lies in repeated and at time opaque changes in legislative and administrative practice.⁶² Two recent changes are of note:

- “Merged procedure” cases: As will be discussed in [CHAPTER II](#), as far as non-Syrian applicants undergoing admissibility procedures are concerned, EASO systematically recommends inadmissibility decisions based on the “safe third country” concept, subject to a few exceptions. The Asylum Service overturns these opinions as a matter of policy. Previously, EASO Caseworkers would issue an opinion on the admissibility of the application and would await the decision of the Asylum Service on admissibility. Only after the application was deemed admissible would an opinion on the eligibility of the claim be issued.

The process has been somewhat simplified as of 2019, as the opinion of the EASO Caseworker now covers both admissibility and eligibility. That said, despite divergent policy positions of the Asylum Service and EASO on the admissibility of applications by non-Syrians and requests from the Asylum Service to speed up the procedure by eliminating the – superfluous – admissibility assessment in these cases, EASO continues to produce opinions on admissibility in all “merged procedure” cases.⁶³

59 Information provided by the Greek Asylum Service, 10 July 2019.

60 Information provided by UNHCR Greece, 9 July 2019.

61 Information provided by the EASO Information and Analysis Unit, 31 July 2019.

62 For more details, see AIDA, Country Report Greece, 2018 Update, March 2019, 73 et seq.

63 Information provided by the Greek Asylum Service, 10 July 2019; EASO Operation Greece, 15 July 2019.

- Vulnerability identification: Previously, if vulnerability had not been identified during the reception and identification procedure and was only raised during the interview with EASO, the Caseworker would interrupt the interview and complete a form of Initial Identification of Special Needs (“Annex I”). Subsequently, the Caseworker would refer the applicant to an EASO Vulnerability Expert to conduct a vulnerability assessment, with or without a separate interview. The vulnerability assessment (“Annex II”) would then lead to an EASO opinion recommending or not exemption of the applicant from the fast-track border procedure.

In 2018, the Agency issued 5,826 opinions recommending exemption from the fast-track border procedure for reasons of vulnerability.⁶⁴ In the first half of 2019, it issued 1,212 such opinions.⁶⁵

Since July 2019, the aim is for all applicants to be properly screened during the reception and identification procedure before an interview is scheduled. Where vulnerability is only spotted by the EASO Caseworker during the interview, no interruption is ordered. The Caseworker continues and completes the interview, and then transmits any information on vulnerability together with the rest of the file to the Asylum Service. Accordingly, EASO will no longer conduct vulnerability assessments and issue vulnerability opinions.⁶⁶ It will be up to the Asylum Service to assess whether or not the applicant should be exempted from the fast-track border procedure.

REGULAR PROCEDURE

Contrary to the fast-track border procedure, EASO support in the regular procedure in **Greece** is provided solely through Interim Experts deployed to the Asylum Service. This is due to an express requirement in the law for personnel to be Greek speakers.⁶⁷ Accordingly, both interviews and eligibility opinions are done in Greek, albeit using the same structure as those in the fast-track border procedure.

As of July 2019, interim staff supporting the regular procedure were deployed in two locations: 21 were deployed with the Regional Asylum Office of Lesbos and 9 with that of Thessaloniki.⁶⁸ There was a plan to deploy interim staff in Attica but it did not come to fruition due to a lack of office space. Such a plan does not seem to be expected by the end of 2019.⁶⁹

EASO Caseworkers on Lesbos and in Thessaloniki are predominantly in charge of “island cases”, i.e. applications exempted from the fast-track border procedure for reasons of vulnerability. Caseworkers on Lesbos deal with cases of persons who have remained on the island following an exemption, while those in Thessaloniki cover cases of persons transferred from the islands to camps on the mainland.⁷⁰ An interview is conducted in the regular procedure only if the merits of the claim have not previously been examined in the fast-track border procedure interview.⁷¹

Persons referred to the regular procedure on Lesbos and in Thessaloniki have their interviews with EASO Caseworkers or the Asylum Service scheduled in a parallel queue to the rest of the asylum-seeking population in

64 Information provided by the EASO Information and Analysis Unit, 13 February 2019.

65 Information provided by the EASO Information and Analysis Unit, 31 July 2019.

66 Information provided by the EASO Operation Greece, 10 July 2019.

67 Article 65(16) Greek International Protection Act, Official Gazette 169/A/1.11.2019. Article 36(11) Greek Law 4375/2016, inserted by Article 28(7) Greek Law 4540/2018.

68 Information provided by the EASO Operation Greece, 10 July 2019 and 15 July 2019.

69 *Ibid.*

70 Information provided by the EASO Operation Greece, 10 July 2019; UNHCR Greece, 9 July 2019.

71 Information provided by the Regional Asylum Office Thessaloniki, 15 July 2019.

the regular procedure. This arrangement was made with a view to avoiding long waiting times and rescheduling of appointments, and to avoiding additions to the existing caseload of the Regional Asylum Office. The Asylum Service faces extremely long waiting times for interviews for the time being. In Thessaloniki, newly arriving applicants are given interview appointments for 2023-2024.⁷²

That said, whereas “island cases” make up the vast majority of cases processed by EASO Caseworkers in Thessaloniki, the Agency has also been enlisted for other cases under the responsibility of the Office due to current capacity needs.⁷³ Interview schedules are decided by the Asylum Service according to needs; there are no specific criteria for cases allocated to EASO Caseworkers.⁷⁴ On average, each Caseworker conducts four interviews per week.⁷⁵

The support provided by EASO to the Asylum Service in **Cyprus** follows a similar approach.⁷⁶ Caseworkers based in the Asylum Service office in Nicosia interview asylum seekers and prepare an opinion (“Recommendation Report on application for international protection”) on eligibility based on a template agreed in the Standard Operating Procedures (SOPs) between the Agency and the Cypriot Asylum Service.⁷⁷ One crucial difference with refugee status determination in Greece relates to language. Whereas Greek law requires EASO support in the regular procedure to be delivered through Greek-speaking personnel, no such requirement exists in Cyprus. Therefore, English is used for both interviews and opinions in the Cypriot asylum procedure.

The allocation of cases to Caseworkers of the Agency is decided by the Cypriot Asylum Service. The main nationalities of applicants interviewed by EASO experts in 2018 and the first half of 2019 are Syria, Nepal, Egypt and Iran.⁷⁸

In **Malta**, EASO provides similar forms of support through the conduct of interviews and preparation of opinions for RefCom. The Agency follows the same approach as RefCom as regards the scope of examination of asylum applications, meaning that it processes claims on both admissibility and merits. That said, EASO opinions so far have not recommended dismissal of applications as inadmissible, to the knowledge of stakeholders.⁷⁹ Interviews and opinions, as well as decisions taken by RefCom, are written in English.⁸⁰

Here too, the allocation of cases to Caseworkers of the Agency is determined by the national asylum authority and follows a needs basis. So far, RefCom has referred cases of applicants originating from Bangladesh, West African countries, as well as Sudan to EASO Caseworkers for processing.⁸¹

The situation in **Italy** is different. The support provided by EASO Caseworkers to the Territorial Commissions mainly concerns case file preparation, logistical support with the organisation of personal interviews. Tasks carried out by the Interim Experts are in principle limited to ensuring that the panel of the Territorial Commission has access to all elements that are necessary to take a decision on the individual asylum application. Interim Experts do not take part in personal interviews of applicants or in the deliberation phase or decision of the Territorial Commission on individual applications, but rather provide resources for the actual assessment by the

72 *Ibid.*

73 *Ibid.*

74 Information provided by the EASO Operation Greece, 15 July 2019.

75 Information provided by the EASO Operation Greece, 15 July 2019; Regional Asylum Office Thessaloniki, 15 July 2019.

76 Information provided by the EASO Operation Cyprus, 26 November 2018.

77 Standard Operating Procedures for the implementation of the backlog management measure of the SSP for Cyprus.

78 Information provided by the EASO Information and Analysis Unit, 13 February 2019 and 31 July 2019.

79 Information provided by the Maltese RefCom, 8 October 2019; UNHCR Malta, 9 October 2019.

80 Information provided by the Maltese RefCom, 8 October 2019.

81 *Ibid.*

Territorial Commission, mainly through conducting country of origin information (COI) research and assisting with the planning and possible prioritisation of personal interviews, without being present themselves there. That said, involvement of Interim Experts in COI research is at the discretion of the President of each Territorial Commission.⁸²

The case file preparation appears to be more substantial with regard to the examination of subsequent applications in particular. According to practice in Milan and Rome, Interim Experts examine the case file as uploaded on Vestanet for potential new elements substantiating a subsequent application compared to the previous application. Here too, their role is in theory one of preparation as they submit their findings on the existence of new elements to the President of the Territorial Commission who reviews the file and subsequently discusses the case with the panel before a collegiate decision is taken on the admissibility of the subsequent application.⁸³ Nevertheless, the input of the Interim Experts in the decision-making process seems to be substantial, since their assessment of whether or not a new element as defined in law has been identified may steer the discussion within the panel of the Territorial Commission in a certain direction.

In light of this, lawyers and NGOs have argued that the exact role of EASO Caseworkers at the Territorial Commissions vis-à-vis subsequent applications should be further clarified.⁸⁴ It should be noted that EASO is not involved in the assessment of subsequent applications made during the execution of a removal procedure,⁸⁵ which have been set out as a separate category of automatically inadmissible subsequent claims following a 2018 reform.⁸⁶ According to the authorities, these applications fall under the responsibility of the Questure and not the Territorial Commissions,⁸⁷ although the courts have contested this approach so far.⁸⁸

Moreover, after a decision has been taken by the Territorial Commission panel, Interim Experts may also be used to provide administrative support to the drafting of decisions under the supervision of the Territorial Commission, and their uploading onto the Vestanet database. Although Interim Experts do not engage with the individual applicant in the procedure before the Territorial Commission, they may be consulted by the Ministry of Interior staff of the Territorial Commission prior to the personal interview e.g. for missing or needed documentation, as they often have a good understanding of the case file.⁸⁹

QUALITY CONTROL

The arrangements in place to evaluate the quality of work delivered by the Agency in asylum procedures vary from one Operation to another. In Greece, Cyprus and Italy, quality control mechanisms established by EASO interact to some extent with quality assurance initiatives led by the national authorities in collaboration with UNHCR:

Greece: Quality control mechanisms set up by the Asylum Service involve a review of decisions, which include the corresponding EASO opinions as part of each reviewed case file. Any concerns or observations relating to quality are communicated to EASO.⁹⁰ The Quality Assurance Units of the Asylum Service and EASO have organised joint briefings on the islands building on the results of the review of decisions by both units.

82 Information provided by the Italian National Asylum Commission, 21 May 2019.

83 Information provided by the Territorial Commission Milan, 22 May 2019.

84 Information provided by ASGI, 29 May 2019.

85 Information provided by the EASO Operation Italy, 20 May 2019.

86 Article 29-bis Italian Procedure Decree.

87 Information provided by the Italian National Asylum Commission, 21 May 2019.

88 See e.g. Civil Court of Rome, Order No 7747/2019, 12 April 2019.

89 Information provided by the Italian National Asylum Commission, 21 May 2019.

90 Information provided by the Greek Asylum Service, 10 July 2019.

For its part, the EASO Operation in Greece has a multi-layered Quality Assurance system in place which consists of:⁹¹

1. **Team leaders:** Team leaders have a supervisory function and can be consulted on a daily basis and asked to assist the interview. They also review the opinion before it is sent to the Asylum Service;
2. **Helpdesk:** A team of EASO experts based in Athens responds to queries by Caseworkers, in coordination with the Agency's Headquarters in Malta and with the Asylum Service. The replies to queries are shared with all EASO Caseworkers and with the Asylum Service;
3. **Training:** This includes the EASO training modules, as well as coaching on-site with a view to harmonising positions across the pool of Caseworkers;
4. **Sampling:** A sample of 10 anonymised cases from the islands is transmitted to Headquarters in Malta every two or three months for review. Headquarters prepares a Quality Feedback Report sent to the Operation with recommendations. The same approach is followed for the regular procedure, on condition that all interview transcripts and opinions are translated from Greek to English before being sent to Headquarters for review.

According to the Director of the Asylum Service, quality is expected to remain an element of the Agency's support to Greece in the future.⁹² UNHCR is still actively involved in support to the Asylum Service's quality assurance system, as it is explicitly mentioned as a partner on quality in the law. It provides 19 staff members for that purpose to the Central Service of the Asylum Service and in different locations in the country. Although a gradual phasing out of UNHCR's involvement in quality assurance is planned as soon as the Asylum Service's Quality Control Unit is ready to function autonomously, this is currently on hold given the acute need for capacity in processing and registration.⁹³ Since EASO has developed its own quality assurance mechanism, EASO staff members are not subject to quality control conducted by UNHCR.

Cyprus: Interview transcripts and opinions drafted by EASO Caseworkers in Cyprus are also subject to quality control by the Agency's Quality Audit Unit in Malta.⁹⁴ The Agency is not bound by quality control initiatives taken by the Cypriot Asylum Service or UNHCR. Its Caseworkers remain under the sole instructions of the Malta Headquarters and do not receive instructions from or report to the Cypriot authorities.⁹⁵

On the other hand, UNHCR is currently conducting *ad hoc* quality control of Asylum Service decisions after being granted access to case files in 2018.⁹⁶ Such quality control covers decisions based on interviews and opinions prepared both by Asylum Service Caseworkers and by EASO Caseworkers.⁹⁷ This initiative therefore allows for EASO opinions to be scrutinised not only by the Agency's Quality Audit Unit but also by other mechanisms.

91 Information provided by the EASO Operation Greece, 10 and 15 July 2019. See also European Ombudsman, *Reply of the European Asylum Support Office (EASO) to the European Ombudsman's further inquiry letter to EASO following its response to the Ombudsman's inquiry on the alleged misconduct of EASO staff when conducting interviews with asylum seekers in the Greek 'hotspots'*, 24 May 2019, available at: <https://bit.ly/2H9gz9a>.

92 Information provided by the Greek Asylum Service, 10 July 2019.

93 Information provided by UNHCR Greece, 9 July 2019.

94 Information provided by the EASO Operation Cyprus, 29 November 2018.

95 Information provided by the EASO Operation Cyprus, 26 November 2018.

96 Information provided by UNHCR Cyprus, 27 November 2018.

97 Information provided by the Cypriot Asylum Service, 29 November 2018.

Italy: Establishing a quality monitoring system at all stages of the procedure in which EASO intervenes is a key priority of the Operating Plan to Italy 2019. However, this is most visible in the Agency's support to the National Asylum Commission, where EASO will become more involved in quality monitoring. The Commission has worked with UNHCR in this area since 2016. The quality monitoring system, to be conceptualised by the end of 2019 with the support of EASO, should ensure timely identification of process problems and appropriate follow-up.⁹⁸ Improved quality of asylum decisions and standardisation of COI in asylum decisions are the two key objectives under this support measure of the Operating Plan. This is mainly pursued through the strengthening of the COI Unit at the National Asylum Commission through the deployment of a COI expert by the Agency.⁹⁹

In **Malta**, RefCom performs a quality check prior to the issuance of first instance decisions.¹⁰⁰ EASO has not yet established a process of sampling cases handled by its Caseworkers, although it intends to do so in the future.¹⁰¹ It is within the plans for 2020 to further improve the quality control mechanism within RefCom, in cooperation with EASO¹⁰²

5 APPEAL PROCEDURE

EASO OPERATIONAL SUPPORT IN THE APPEAL PROCEDURE BY OPERATION				
Type of support	GR	IT	CY	MT
Preparation of first instance authority submissions	✗	✓	✗	✗
Research and case file preparation for appeal authority	✓	✗	✗	✗

EASO is less active in the second instance procedure compared to its role in registration, Dublin and the first-instance examination of applications. The Agency is not involved at all in appeal procedures in **Cyprus**, although it has expressed its interest to provide support in this area.¹⁰³ However, the complex background and institutional reform of the Cypriot appeal system,¹⁰⁴ leading to the establishment of an International Protection Administrative Court (IPAC) which only started operations in June 2019,¹⁰⁵ is likely to bring about changes in the Agency's engagement with the second instance procedure. Preparations for next year's Operating Plan include a discussion on possible judicial capacity building support and case file preparation support to IPAC.¹⁰⁶ In **Malta**, EASO support to the Refugee Appeals Board is neither provided at the moment nor under discussion.¹⁰⁷

98 EASO, *Operating Plan to Italy 2019*, December 2018, Measure 3.1.

99 Information provided by the Italian National Asylum Commission, 21 May 2019.

100 Information provided by the Maltese RefCom, 8 October 2019. No quality control takes place after the issuance of the decision for the time being.

101 Information provided by the EASO Department of Operations, 9 October 2019.

102 Information provided by the Maltese RefCom, 8 October 2019.

103 Information provided by the EASO Operation Cyprus, 29 November 2018.

104 AIDA, Country Report Cyprus, 2018 Update, March 2019, 28-29.

105 AIDA, 'Cyprus: International Protection Administrative Court starts operations', 18 June 2019, available at: <https://bit.ly/33wGKQF>.

106 Information provided by the EASO Department of Operations, 9 October 2019.

107 *Ibid.*

EASO has widely different roles in the appeal procedure in Greece and Italy:

Greece: National law expressly foresees the possibility for EASO to provide operational support to the Appeals Authority through the secondment of Rapporteurs (*εισηγητές*).¹⁰⁸ Currently, 10 Rapporteurs are seconded with Independent Appeals Committees in the country. Since they are seconded to the individual Committees, these Rapporteurs are not supervised or line-managed by EASO.¹⁰⁹ Their tasks are limited to preparing the case file and to conducting COI research upon request by the Committee members,¹¹⁰ resulting in the production of “essays” for the members.¹¹¹ Accordingly, stakeholders have not identified any conflict of interest issues stemming from the presence of EASO experts in both the first instance and the second instance procedure.

UNHCR, which designates one member per Appeals Committee, has generally received positive feedback on the role of Rapporteurs, but noted that their services could be requested more frequently by Committees. Members are often reluctant to resort to the Rapporteurs due to pressure to deliver decisions quickly.¹¹²

Italy: EASO does not currently provide operational assistance or deployment of experts to the Civil Courts. However, Interim Experts deployed as Caseworkers to the Territorial Commissions can draft the Commission’s submissions in the appeal procedure, although they have no competence to represent the Commission before the Court. Their submissions should focus exclusively on factual issues and evidence assessment and not enter into legal argumentation.¹¹³ That said, the National Asylum Commission has acknowledged the contribution Interim Experts can make given their legal expertise and knowledge of the EU asylum *acquis*.¹¹⁴

With the gradual reduction of the backlog of first instance decisions and increasing backlog of cases at second instance, the National Asylum Commission aims to increasingly channel Caseworkers into this type of support to ensure that the Territorial Commissions actively take part in the appeal procedure.¹¹⁵ Not all Territorial Commissions make use of this option at the moment. The Commission of Milan, for instance, entrusts Ministry of Interior staff with the preparation of submissions for appeals and continues to use EASO Caseworkers to reduce its first instance backlog.¹¹⁶

Against that backdrop, preparations for the 2020 Operating Plan to Italy include discussions on operational support to the appeal procedure in the form of a pilot project on case file preparation assistance to selected Civil Courts.¹¹⁷

Alongside those activities, EASO also provides trainings to the authorities involved in the processing of appeals in Greece, Italy, Cyprus and Malta as per the respective Operating Plans.

108 Article 95(4) Greek International Protection Act, formerly Article 5(6) Greek Law 4375/2016, inserted by Article 101 Greek Law 4461/2017.

109 Information provided by the EASO Operation Greece, 10 July 2019.

110 Information provided by UNHCR Greece, 9 July 2019.

111 Information provided by the EASO Operation Greece, 10 July 2019.

112 Information provided by UNHCR Greece, 9 July 2019.

113 Information provided by the EASO Operation Italy, 20 May 2019.

114 Information provided by the Italian National Asylum Commission, 21 May 2019.

115 *Ibid.*

116 Information provided by the Territorial Commission of Milan, 22 May 2019.

117 Information provided by the EASO Department of Operations, 9 October 2019.

CHAPTER II

EFFECTIVENESS AND IMPACT ON ASYLUM PROCEDURES

This chapter summarises ECRE's main findings following its analysis, fact-finding visits and discussions with stakeholders in Cyprus, Italy, Greece and Malta. Given the limited scope of research conducted for the purposes of this report, these do not claim to offer an exhaustive analysis of current EASO Operations, nor an evaluation of them. They should be read as observations from ECRE on the effectiveness and impact of the Agency's operational support to asylum procedures. The areas of intended and unintended impact that are described were those which appeared most prominent and notable during the research and analysis.

1 MEETING OPERATIONAL OBJECTIVES

EASO and the host Member States set out the aims of the Agency's Operations in the respective Operating Plans. In the plans currently in force, these are referred to as "result outcomes" or "measures". The Agency has clarified that all Operations should be designed and implemented based on a clear needs assessment as set out in the Operating Plans and a project cycle agreed with host Member States. This includes an "exit strategy" allowing EASO to hand over activities to national authorities and gradually phase out its support, while national authorities build up the capacity and expertise needed.¹¹⁸

More specifically, two stated objectives mentioned in different Operating Plans refer to facilitating effective access to procedure, on the one hand, and to managing the backlog of pending cases on the other. Both objectives relate to the broader aim of enhancing the administrative capacity of host countries to deal with asylum claims.

INCREASING REGISTRATION RATES

In the area of registration, the current Operating Plans refer to objectives such as "improved registration and access to procedure" (Cyprus),¹¹⁹ "swift access to the asylum procedure... including the registration and lodging of the application" (Malta),¹²⁰ or more broadly to implementation "of the asylum procedure efficiently and in a timely manner" (Greece).¹²¹ As mentioned in CHAPTER I, during the first half of 2019, more than half of asylum applications in the countries concerned (53% in Greece, 55% in Italy and 61% in Cyprus) were lodged with the support of EASO Registration Assistants. These figures illustrate the scale of registration assistance provided by the Agency to the host Member States in meeting the aim of swift access to the procedure, without which a substantial number of asylum seekers would risk facing long delays in lodging an application. For the Agency, however, this figure raises concerns as to the sustainability of capacity-building at national level, given that it illustrates a continuing substantial reliance on EASO operational support by host countries' authorities.¹²²

118 Information provided by the EASO Department of Operations, 9 October 2019. In this context, see also European Court of Auditors, *Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results*, Special Report 24/2019, November 2019, available at: <https://bit.ly/32NSTPu>, para 89, which stated that "EASO has no such exit strategy in place for Greece."

119 EASO, *2019 Operational and Technical Assistance Plan to Cyprus*, December 2018, Measure CY 1.0.

120 EASO, *2019 Operational and Technical Assistance Plan to Malta*, June 2019, Measure MT 1.0.

121 EASO, *2019 Operating Plan to Greece*, December 2018, Measure EL AS 1.

122 Information provided by the EASO Department of Operations, 9 October 2019.

TACKLING BACKLOG MANAGEMENT

Supporting authorities in “managing”, “absorbing” and “reducing” the backlog of pending cases has been another main objective of EASO’s Operations.¹²³ Some Operating Plans refer specifically to a reduction of the backlog of pending cases, by setting targets including a 25% reduction in **Cyprus** and by 20% in **Malta** for the year 2019. In practice, EASO presence has not always met the stated aims of reduction of the backlog of pending cases. The backlog of pending cases has dropped by more than half in **Italy** over the past year,¹²⁴ but it has doubled in **Cyprus** during the period of EASO’s presence.¹²⁵ This also reflects the fact that backlogs are affected by a range of external factors, and not least increases in arrivals.

To meet the aforementioned stated objectives, the Agency has sought to contribute to filling human resources gaps in the host Member States’ administrations through the deployment of personnel.

The important contribution of EASO Operations to meeting capacity needs was highlighted by stakeholders interviewed by ECRE in the host countries.¹²⁶ The Agency has been able to rapidly mobilise personnel through temping agencies such as Adecco and Randstad whilst overcoming constraints on recruitment faced by ministries. In addition, experts in **Italy** noted that Interim Experts recruited via temping agencies often have a human rights and protection background and prior experience in civil society organisations or UNHCR.¹²⁷ They therefore have solid knowledge of the domestic and EU legal framework,¹²⁸ through which they can contribute to improvements in the daily work of the authorities.

At the same time, the Agency’s stated operational objectives have often exceeded capacity-building and administrative support. In the case of **Greece**, the Operating Plan expressly mentions the implementation of the EU-Turkey statement as an aim of the Operation.¹²⁹ This shows that some aspects of Agency Operations are inherently connected to the delivery of political objectives, as discussed below.

2 IMPACT OF EASO OPERATIONAL PRESENCE

Beyond the fulfilment of the objectives agreed with host countries in the Operating Plans, the operational presence of EASO personnel on the ground has had a number of other effects on national asylum procedures, both planned and unintended. The following section provides a brief overview of ECRE’s observations noting the areas of impact that were most prominent in the research. These were the impact of the Agency’s operational presence on: employment of locally recruited experts; infrastructure support; relations with and between national authorities; quality of asylum decisions; and overall improvement of asylum systems.

123 EASO, *2019 Operational and Technical Assistance Plan to Cyprus*, December 2018, Measure CY 3.0; *2019 Operating Plan to Italy*, December 2018, Measure 2; *2019 Operating Plan to Greece*, December 2018, Measure EL AS 1; *2019 Operational and Technical Assistance Plan to Malta*, June 2019, 11.

124 Information provided by the Italian National Asylum Commission, 21 May 2019.

125 Information provided by UNHCR Cyprus, 27 November 2018.

126 Information provided by UNHCR Greece, 9 July 2019; Italian Dublin Unit, 20 May 2019.

127 Information provided by UNHCR Italy, 21 May 2019.

128 Information provided by the Italian National Asylum Commission, 21 May 2019.

129 EASO, *2019 Operating Plan to Greece*, December 2018, Measure EL-AS 1.1.

EMPLOYMENT OF LOCALLY RECRUITED EXPERTS

One key effect of the Agency's Operations has been the employment significant numbers of locally recruited personnel working on behalf of EASO to support national authorities. This constitutes useful extra capacity in the contexts. There has been a shift away from the use of Member State Experts towards locally recruited personnel.¹³⁰ Although unplanned, ECRE's assessment is that has been a positive development, although there are other views on the change.

The length of deployment of Member State Experts has been flagged as a recurring concern by representatives of national authorities in recent years, and was confirmed in the research interviews. Furthermore, many countries provide junior staff with knowledge of international protection but limited practical experience. These factors were undermining the sustainability of EASO support through Member State Experts.¹³¹

In **Italy**, where there have been cases of deployments lasting just one week, the Dublin Unit requested that EASO provide experts for longer periods and put in place handover procedures for departing experts to overlap with their replacements for a couple of days.¹³² In **Greece**, where the period of deployment was previously approximately six weeks, the Agency is trying to secure twelve-week deployments to ensure that experts have enough time to get accustomed to the domestic legal and institutional context and become productive.¹³³ In **Cyprus**, the deployment period ranges from six to eight weeks.¹³⁴ In **Malta**, deployments usually last for four to six weeks, subject to possibilities of extension, although this has not been described as a challenge by RefCom.¹³⁵

The Agency's shift towards predominantly offering Interim Experts for deployment to the authorities of the host Member States has generally been seen as a positive development by host countries. Stakeholders interviewed by ECRE in the four countries explained that the deployment of locally recruited Interim Experts has resulted in more effective and durable support to national authorities compared to Member State Experts in a number of respects.

First, Interim Experts are usually recruited for one-year periods, as opposed to periods ranging from six to twelve weeks for Member State officials.¹³⁶ Second, Interim Experts can be rapidly recruited through temping agencies so as to quickly fill human resources gaps in the administration.¹³⁷ Third, the recruitment of (often qualified and experienced) local staff eliminates the language barrier and mitigates the need for adjustment to a new legal and institutional framework.¹³⁸ Fourth, it allows for use of existing expertise from the national field in line with the principle of localisation and in turn reinforces the skills and experience of the pool of local experts.¹³⁹ Finally, in the case of **Italy**, Interim Experts are seconded to the national authorities and can thus be smoothly incorporated in the staff of the administration.¹⁴⁰

130 European Court of Auditors, *Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results*, Special Report 24/2019, November 2019, para 92.

131 Information provided by UNHCR Cyprus, 27 November 2018; EASO Operation Greece, 10 July 2019; EASO Department of Operations, 9 October 2019.

132 Information provided by the Italian Dublin Unit, 20 May 2019.

133 Information provided by the EASO Operation Greece, 10 July 2019.

134 Information provided by the EASO Operation Cyprus, 29 November 2018.

135 Information provided by the Maltese RefCom, 8 October 2019.

136 Information provided by the Italian Dublin Unit, 20 May 2019; Greek Asylum Service, 10 July 2019.

137 Information provided by UNHCR Italy, 21 May 2019.

138 Information provided by the Greek Asylum Service, 10 July 2019; Maltese RefCom, 8 October 2019.

139 For an overview, see World Humanitarian Summit, *Chair's Summary: Standing up for humanity: Committing to action*, 24 May 2016, available at: <https://goo.gl/DQoDQy>.

140 Information provided by the Italian National Asylum Commission, 21 May 2019.

Recourse to Interim Experts came about as a response to challenges in EASO Operations, rather than as a change in policy. The Agency maintains the view that its operational support is, and should continue to be, primarily based on deployment of experts from Member States' authorities. The rationale behind this approach is that it is a demonstration of solidarity as a form of ongoing support from other Member States, and it provides mutual benefit to sending and host countries through the exchange of knowledge, capacity and expertise. According to the Agency, Operations have contributed to fostering closer collaboration between asylum authorities by encouraging host countries to become more active in other activities led by EASO, such as training, participation in networks of practice, and development of common tools, guides and country of origin information.¹⁴¹

INFRASTRUCTURE CHALLENGES

Another, likely unintended, effect of EASO Operations has been the increasing involvement of the Agency in infrastructure support to meet capacity needs of national asylum systems. Infrastructure limitations are reported to pose major challenges in **Greece** currently.¹⁴² The severe lack of physical space in the majority of Regional Asylum Offices hinders EASO Caseworkers from working smoothly and without interruption, as they have no available office space. This means that EASO experts work afternoon shifts in the premises of many Offices, after Asylum Service staff have finished their daily activities. These practical challenges have an impact on applicants as regards certain administrative steps such as the issuance of an official copy of the interview transcript, which cannot be done after official office hours.¹⁴³ The approach followed on Lesbos, where EASO has rented a separate office outside the compound of the Reception and Identification Centre of Moria, is seen as a good practice. In addition to allowing EASO Caseworkers to work without interruption, the separate office outside the facility has helped ensure confidentiality of interviews and has restored some degree of normalcy in the procedure by allowing applicants to have their interviews outside the facility.¹⁴⁴

RELATIONS BETWEEN AND WITH NATIONAL AUTHORITIES AND INSTITUTIONS

In **Italy**, the National Asylum Commission has noted a positive impact of EASO Interim Experts on promoting smoother and closer cooperation between different domestic authorities and institutions such as the Department of Public Security and Questure, the Department of Civil Liberties & Immigration (DCLI) and Territorial Commissions, and the judiciary.¹⁴⁵ This has happened through regular exchanges and communication, during which Interim Experts deployed with the various authorities (Questure, Territorial Commissions) have sought to act as a bridge between the national staff and not to handle procedures only *inter se*.¹⁴⁶ Relations between Italian authorities and counterparts in other countries have also improved. EASO has also found that the involvement of Member State Experts in the Dublin Unit has contributed to better relations with other Dublin Units.¹⁴⁷ Cooperation with Switzerland has been flagged as particularly successful by the Dublin Unit, partly due to shared language.¹⁴⁸

141 Information provided by the EASO Department of Operations, 9 October 2019.

142 Information provided by the Greek Asylum Service, 10 July 2019; Regional Asylum Office Thessaloniki, 15 July 2019; EASO Operation Greece, 10 and 15 July 2019. See also European Court of Auditors, *Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results*, Special Report 24/2019, November 2019, para 93.

143 Information provided by Regional Asylum Office Thessaloniki, 15 July 2019.

144 Information provided by the Greek Asylum Service, 10 July 2019.

145 Information provided by the Italian Asylum Commission, 21 May 2019.

146 Information provided by the EASO Operation Italy, 22 May 2019.

147 Information provided by the EASO Operation Italy, 20 May 2019.

148 Information provided by the Italian Dublin Unit, 20 May 2019.

The authorities and EASO are currently implementing a phase-out of Agency support in certain areas of the Italian asylum procedure given the reduction of the backlog of pending cases. According to the National Asylum Commission, the termination of activities of the Interim Experts deployed at the Territorial Commissions is expected by the end of 2019.¹⁴⁹ The Territorial Commission of Milan, however, has expressed concern as, given the volume of pending cases and the heavy reliance of the Territorial Commissions and sub-Commissions of the city on EASO Interim Experts, the termination of their activities by the end of 2019 could create capacity gaps.¹⁵⁰ According to legal practitioners, the phase-out could have equally adverse effects for the Territorial Commissions in Rome.¹⁵¹ Furthermore, a phase-out of operational support to the Questure is expected to take place in the course of 2020.¹⁵²

The Agency's relations with national authorities in **Cyprus** have been more complex. A security incident occurring in the Kofinou reception centre in February 2018 was described by stakeholders as a pivotal moment for EASO and the Cypriot authorities. Amid reports of appalling living conditions in the Kofinou reception centre, a group of Eritrean refugees who had arrived in Cyprus through relocation set fire to the offices of the centre to demonstrate against termination of the social benefits which would have enabled them to secure accommodation out of Kofinou.¹⁵³ The incident led EASO to withdraw its staff from the reception centre and to revisit its role and degree of involvement in Cyprus.¹⁵⁴ Following encouragement to re-engage in Kofinou, the Agency conducted a security assessment of the situation in Kofinou in August 2018, after which it approved the re-deployment of Reception Experts in the facility.¹⁵⁵ As of October 2018, EASO social workers have returned to Kofinou.

In terms of relations with national authorities, EASO's main interlocutor is the Ministry of Interior, as well as the Asylum Service operating under its control and the Cyprus Police overseen by the Ministry of Justice and Public Order. In 2018, the Agency had no contacts or structured dialogue with the Ministry of Labour and Social Security and entities under its command (Welfare Office, Labour Office) which are responsible for the provision of reception conditions to asylum seekers. This has affected its capacity to carry out effective supporting activities relating to reception such as vulnerability assessments and referrals.¹⁵⁶

QUALITY OF ASYLUM DECISIONS

The full extent of the impact of the Agency's presence on the quality of decisions is difficult to ascertain on the basis of ECRE's observations. This is partly because it is impossible to establish whether and to what extent quality would have been different without the presence of EASO experts. Second, it is also important to recall that EASO Operations involve different types of support in the asylum procedures of the host Member States and might therefore have varying impacts on quality.

As discussed in **CHAPTER 1**, the Agency does not conduct interviews and does not issue opinions recommending specific outcomes in **Italy**, but only assists the Territorial Commissions with case file preparation and sometimes with the drafting of the decision, once this has been taken by the panel. Identifying the exact impact of EASO's support to Territorial Commissions on the quality of first instance

149 Information provided by the Italian National Asylum Commission, 21 May 2019.

150 Information provided by the Territorial Commission of Milan, 22 May 2019.

151 Information provided by ASGI, 29 May 2019.

152 Information provided by the EASO Department of Operations, 9 October 2019.

153 AIDA, Country Report Cyprus, 2018 Update, March 2019, 69; Fileleftheros, 'Εξέγερση αιτητών ασύλου στην Κοφίνου', 17 February 2018, available in Greek at: <http://bit.ly/2GMf9yQ>.

154 Information provided by UNHCR Cyprus, 27 November 2018.

155 *Ibid*; Information provided by the EASO Operation Cyprus, 26 November 2018.

156 Information provided by UNHCR Cyprus, 27 November 2018.

decisions is challenging also due to the fact that the types of support provided by the Agency vary from one Commission to another.

While not a sufficient basis for generalisation, within the sample of decisions reviewed for the purposes of this report, ECRE has seen worrying examples of decision-making based on opinions prepared by EASO Caseworkers in Greece and Cyprus, as summarised below (and discussed in [Annex II](#)).

As regards the assessment of admissibility of asylum applications based on the “safe third country” concept in [Greece](#), it appears that EASO opinions often adapt the sources and legal analysis of the concept to the case at hand, contrary to generally standardised decisions of the Greek Asylum Service. That said, several EASO opinions seen by ECRE cite confidential sources such as interviews with civil society organisations in Turkey. Opinions often rely on outdated sources such as the 2015 update of the Asylum Information Database (AIDA) Country Report on Turkey, whereas Greek Asylum Service decisions make use of more up-to-date sources, albeit without amending the body of the decisions.

The legal analysis contained in most opinions seen by ECRE raises concerns. Most EASO opinions do not examine the individual safety criteria of Article 38(1) of the recast Asylum Procedures Directive in order, and deem that the safety criteria are met. None of the reviewed opinions makes an assessment of the connection requirement under Article 38(2)(a) of the Directive.

ECRE has also seen concerning examples of EASO opinions on the merits of asylum applications, where Caseworkers have entirely disregarded Article 1D of the Refugee Convention vis-à-vis Palestinians holding UNRWA documentation ([Cyprus](#)), have recommended rejection of an asylum application while failing to consider religion and ethnicity as factors liable to trigger persecution in Afghanistan ([Greece](#)),¹⁵⁷ and have erroneously quoted the 2018 EASO Country Guidance on Afghanistan¹⁵⁸ to suggest that the situation in Kabul does not qualify as an international or internal armed conflict and thereby to recommend rejection ([Greece](#)).

IMPROVING ASYLUM SYSTEMS?

ECRE’s research reaches mixed conclusions in relation to the Agency’s impact on improvement of asylum systems. The deployment of EASO Interim Experts and Member State Experts to national asylum authorities inevitably means that core aspects of the host Member States’ procedures are handled by national staff and Agency experts. Although the two groups may undergo similar training and often originate from similar backgrounds, some differences in policy positions and interpretations of the *acquis* have arisen in the various Operations. Divergence in policy positions can stem from embedded national practice which the national authorities may be hesitant to revisit, at times in dereliction of their obligations under the asylum *acquis*. However, it can also result from the EASO Caseworkers’ own domestic policy background, especially as far as Member State Experts are concerned.¹⁵⁹ At times, it may also point to political positions of the Agency which are at odds with those of the host country authorities.

DIVERGENCES IN POLICY

In [Cyprus](#), EASO opinions are followed by the Asylum Service in all cases, according to the Asylum Service.¹⁶⁰ The latter usually accepts guidance and recommendations from the Agency’s Quality Audit Unit with a view

157 On the relevance of such factors, see European Court of Human Rights, *A.A. v. Switzerland*, Application No 32218/17, Judgment of 5 November 2019.

158 EASO, *Country Guidance: Afghanistan*, June 2018, available at: <https://bit.ly/2p0ZEMz>.

159 Information provided by UNHCR Cyprus, 27 November 2018.

160 Information provided by the Cypriot Asylum Service, 29 November 2018.

to improving its practice.¹⁶¹ However, there are cases on which EASO and the Asylum Service hold diverging positions. One such example concerns the type of status granted to Syrian nationals, where EASO opinions deviate from the Cypriot policy of granting subsidiary protection to Syrians unless personal persecution is established, and often recommend the granting of refugee status. The Asylum Service does not depart from its policy but still allows EASO Caseworkers to look at Syrian claims.¹⁶²

Another example concerns the protection needs of victims of female genital mutilation (FGM). Contrary to UNHCR's position that victims of FGM fall within the scope of refugee status, EASO Caseworkers have recommended either rejection on the controversial ground that FGM victims face no future risk of being subjected to the same treatment or a grant of subsidiary protection.¹⁶³ FGM cases are now processed exclusively by the Asylum Service, although EASO will deploy a Vulnerability Expert before the end of 2019 to assist the processing of vulnerable cases.¹⁶⁴ Nevertheless, FGM cases from Somalia are now rejected by the Asylum Service.¹⁶⁵ It is not clear whether this shift was already planned prior to EASO's involvement in the processing of these applications.

As the current SOPs do not regulate "dispute resolution" – pending clarification in future SOPs – disagreements are dealt with in different ways, depending on their implications for Cyprus' protection policy. EASO does not insist on its opinions being adopted if policy considerations prevent the Cypriot authorities from doing so but nevertheless sticks to its own interpretation of the asylum *acquis*.¹⁶⁶ If cases indicate a pattern related to a sensitive policy issue for the authorities, e.g. FGM, there is an implied understanding that they are not to be assigned to EASO Caseworkers and are handled solely by the Asylum Service.¹⁶⁷

In **Malta**, no difference of positions on individual cases has arisen yet between EASO and RefCom. However, it is possible that the two actors take diverging positions on certain elements of international protection such as the type of protection status granted to nationals of countries such as Syria and Eritrea, given that Malta grants subsidiary protection in the overwhelming majority of cases.¹⁶⁸ In addition, the examination of claims by nationals of Sudan, the top country of origin so far in 2019, could be another area of potential contention between EASO and RefCom.¹⁶⁹ However, in this particular case, RefCom has had discussions with EASO prior to referring Sudan cases to the Agency's Caseworkers, with a view to acquainting them with national policy and to ensure that the Agency aligns its practice accordingly.¹⁷⁰

In **Italy**, where EASO does not conduct interviews or issue opinions, neither the National Asylum Commission nor the Territorial Commission of Milan have identified any areas where EASO and the Territorial Commissions have different interpretations of legal provisions or positions on how to handle specific cases.¹⁷¹ However, according to the National Asylum Commission, Italian law is more protective than EU law in some respects e.g. with regard to membership of a particular social group, resulting in the Territorial Commissions going beyond EASO guidance.¹⁷²

161 *Ibid.*

162 *Ibid.*

163 Information provided by UNHCR Cyprus, 27 November 2018.

164 Information provided by the Cypriot Asylum Service, 26 August 2019; EASO Operation Cyprus, 26 November 2018.

165 Information provided by the Cyprus Refugee Council, 28 November 2018.

166 Information provided by the EASO Operation Cyprus, 26 and 29 November 2018.

167 Information provided by the Cypriot Asylum Service, 29 November 2018; EASO Operation Cyprus, 29 November 2018.

168 Information provided by UNHCR Malta, 9 October 2019.

169 Information provided by aditus foundation, 9 October 2019.

170 Information provided by the Maltese RefCom, 8 October 2019.

171 Information provided by the Italian National Asylum Commission, 21 May 2019; Territorial Commission of Milan, 22 May 2019.

172 Information provided by Italian National Asylum Commission, 21 May 2019.

In **Greece**, on the other hand, the main point of contention between EASO and the Asylum Service remains the applicability of the (optional) safe third country concept to non-Syrian applicants in the “merged procedure” strand of the fast-track border procedure. The overwhelming majority of EASO opinions seen by ECRE recommend inadmissibility for non-Syrians on the basis that Turkey is a safe third country for them, whereas the Asylum Service overturns the opinions and declares the applications admissible without exception. There is mutual acknowledgment that the examination of the safe third country concept is a redundant step in “merged procedure” cases, and the Asylum Service is in favour of forgoing the admissibility assessment for these cases. Nonetheless, EASO does not intend to change its practice or to revisit the instructions given to Caseworkers.¹⁷³ This is seen as a political priority that cannot be revisited at operational level.

The situation in the assessment of applications on the merits is different. Here, the Asylum Service and EASO estimate that about 80% to 85% of EASO opinions are upheld by first instance decisions.¹⁷⁴ Decisions overturning the EASO opinion relate to a wide array of issues, for example the type of protection status granted to Palestinians formerly in UNRWA areas of operation.¹⁷⁵ However, it also occurs that the Asylum Service upholds the EASO opinion, albeit using different legal analysis, such as on Article 15(c) and internal flight alternative cases.

UNHCR has explained that divergences in eligibility assessments occur partly due to the heterogeneity of decision-making by EASO Caseworkers. Practice of Caseworkers varies from one island to another and it is often unclear whether the Agency has an official position on a particular issue.¹⁷⁶ This observation is corroborated by the admissibility opinions and decisions seen by ECRE, which indicate that EASO opinions are often structured differently depending on the Caseworker, whereas the Asylum Service decisions are fully standardised. The Asylum Service has clearer guidelines and takes more consistent positions, on the other hand.¹⁷⁷ Where there are structural differences of opinion between EASO and the respective Asylum Services, they are discussed by the respective quality assurance departments.¹⁷⁸

COMPLIANCE WITH THE *ACQUIS*

The Agency’s position is particularly delicate vis-à-vis potential issues of non-compliance with the *acquis* on the part of the host Member State. Pursuant to its mandate, EASO offers support to Member States but holds no power to monitor their implementation of the *acquis* or to enforce EU law in cases of non-compliance. The Agency has explained that monitoring of compliance with the *acquis* falls outside the scope of its mandate.¹⁷⁹ The approach of its Caseworkers instead seeks, through daily support to and discussions with the national authorities, to help them apply procedures in individual cases in a manner that complies with legal standards.¹⁸⁰ As a result of the constraints of the Agency’s mandate, issues relating to compliance with human rights and the EU asylum *acquis* in current practice are not formally or systematically addressed by the Agency in its dialogue with the authorities. This may give rise to the appearance of tacit approval of practices that are not in line with the *acquis*.

173 Information provided by the Greek Asylum Service, 10 July 2019; EASO Operation Greece, 10 July 2019.

174 *Ibid.*

175 Information provided by the Greek Asylum Service, 10 July 2019.

176 Information provided by UNHCR Greece, 9 July 2019.

177 Information provided by UNHCR Greece, 9 July 2019.

178 Information provided by the EASO Operation Greece, 10 July 2019.

179 Information provided by the EASO Operation Italy, 20 May 2019; EASO Department of Operations, 9 October 2019.

180 *Ibid.*; UNHCR Italy, 21 May 2019.

According to the Dublin Unit in **Italy**, the support of EASO experts is operational in nature and does not challenge the positions taken by the Unit.¹⁸¹ In the context of the Dublin procedure, these include a number of questionable practices such as systematic issuance of outgoing requests to all countries, including Hungary and Bulgaria, despite risks of *refoulement*, and the fast-track Dublin procedure in Friuli-Venezia Giulia following incorrect fingerprinting of asylum seekers as “CAT3” and issuance of requests and transfer decisions before the lodging of the asylum application.

In other areas of support, the issue does not arise as EASO is not involved in the questionable activity. For example, compliance issues arise in Italy in relation to Article 29-bis of the Procedure Decree on subsequent applications made during the execution of removal measures, given that this ground for inadmissibility is applied by Questure as per National Asylum Commission guidance and has led to automatic dismissals of applications as inadmissible so far. The Interim Experts deployed with Questure have not been involved in these procedures thus far.

In **Greece**, the Agency has not revisited its involvement in the fast-track border procedure due to issues of non-compliance with the *acquis*. These range from the automatic application of the safe third country concept, without adequate consideration of all conditions set out by Article 38 of the recast Asylum Procedures Directive, as mentioned above, to the scope of the fast-track border procedure beyond the circumstances permitted by Articles 31(8) and 43(1) of the Directive. The latter point has not been legally challenged to date, although recent legislative reform in Greece has brought domestic law in line with the EU *acquis*.¹⁸²

In **Malta**, EASO is in discussions with RefCom to ensure a common understanding in the implementation of the asylum procedure set out in Maltese law, in line with the EU legal framework.¹⁸³ This includes the admissibility procedure, where domestic law exceeds the boundaries set by Article 33(2) of the recast Asylum Procedures Directive.¹⁸⁴ With regard to registration of applications in *de facto* detention facilities in Marsa and Safi, it has been reported that the Agency has distanced itself from registrations of unaccompanied children where age assessments do not comply with EU law standards.¹⁸⁵ However, EASO maintains presence in the two facilities, despite the fact that Malta’s policy of automatic – and largely *de facto* – detention of newly arrived asylum seekers infringes the recast Reception Conditions Directive and has been declared unlawful by domestic courts.¹⁸⁶

What remains unclear is whether and how the Agency can feed information on implementation from operations to its Headquarters and to the European Commission for them to engage in monitoring and enforcement actions. With regard to the latter, EASO is in regular discussions with the Commission regarding its operations but there is no formal mechanism to refer questions of compliance with the asylum *acquis*.¹⁸⁷ These questions directly relate to the ongoing debate on the transformation of EASO into a European Union Asylum Agency and the content of its mandate.

181 Information provided by the Italian Dublin Unit, 20 May 2019.

182 Article 90(1) Greek International Protection Act.

183 Information provided by the EASO Department of Operations, 9 October 2019.

184 AIDA, Country Report Malta, 2018 Update, March 2019, available at: <https://bit.ly/2HX2Lj4>, 29-30.

185 Information provided by UNHCR Malta, 9 October 2019.

186 Information provided by UNHCR Malta, 9 October 2019; aditus foundation, 9 October 2019.

187 Information provided by the EASO Department of Operations, 9 October 2019.

CONCLUSIONS & RECOMMENDATIONS

This report has provided a non-exhaustive description of EASO Operations' support to the authorities of Greece, Italy, Cyprus and Malta related to improving their asylum procedures in 2018 and 2019. It concluded with observations on effectiveness in meeting operational objectives and on the impact of the Agency's operational presence in these countries.

The most significant contribution made by the deployment of EASO experts lies in strengthening the administrative capacity of host Member State authorities, in line with some of the main objectives set out in Operating Plans. The impact of the Agency has been particularly positive in areas such as registration and the processing of Dublin requests, where urgent human resources needs have been covered by EASO and gaps have been filled through the presence of (mainly) Interim Experts. Quantifiable results are clear for registration, with over half of registrations in the first half of 2019 being carried out with the support of EASO Registration Assistants in Greece, Italy and Cyprus.

The effects of the support provided by EASO Caseworkers in the processing of asylum applications have been more complex and varied, however.

On the one hand, from a capacity perspective, the deployment of Caseworkers has undeniably aided the first instance authorities in managing backlogs of pending cases in all Operations, including through the conducting of interviews and preparation of opinions in some.

On the other hand, the impact of the Agency's presence on the quality of asylum procedures and on improving asylum systems appears to be mixed and to vary depending on different factors. One such factor is the (national) background and expertise of individual Caseworkers, which has helped improve the structure, COI and reasoning of decisions taken by national authorities in some cases but has also contributed to poor quality decisions in others, with examples from admissibility assessments in Greece and eligibility assessments in Cyprus and Greece.

Quality concerns arising from the involvement of EASO Caseworkers should thus be addressed more thoroughly in the quality control initiatives led by the Agency. Tools such as the Quality Assurance Tool (QAT)¹⁸⁸ developed by its Asylum Support Unit provide useful guidance on interviews and decision-making but currently lack critical elements, such as coverage of the admissibility procedure, which forms a large part of Caseworkers' work in some Operations.

A serious issue relating to the impact of the Agency's presence in asylum procedures is the influence of political considerations on the activities carried out by EASO Caseworkers. The fast-track border procedure and implementation of the EU-Turkey Statement as explicit objectives of the Greece Operation is the primary example. Rudimentary use of available sources and poor legal analysis, including EASO Caseworker opinions incorrectly applying the safe third country concept under Article 38 of the recast Asylum Procedures Directive, were a dominant trend in practice.

Relatedly, political priorities have also affected the Agency's ability to align its operational support with the actual needs as expressed by the authorities of the host Member States. An example is the continued preparation of admissibility opinions that recommend the use of the safe third country concept in applications by non-Syrian nationals, despite the existence of discretion as to the use of admissibility under EU law and despite it being clear that the Greek Asylum Service has deemed all such claims admissible. This has inevitably had the perverse effect of creating additional workload, inefficiencies and delays in the procedure.

188 EASO, *EASO Quality Assurance Tool: Examining the application for international protection*, April 2018, available at: <https://bit.ly/2l8vSlp>.

It is hoped that these observations will be taken into consideration and feed into discussions on the evolution of the mandate of the Agency - if and when negotiations on the EU Asylum Agency Regulation resume. At the same time, they should inform reflection on the design and adaptation of existing and prospective Operations carried out by EASO, regardless of mandate change.

Based on the findings presented in this report, ECRE makes the following recommendations to EASO:

- 1. Operations Unit:** Consolidate as the rule the deployment of locally recruited Interim Experts to the authorities of the host Member State for operational expert profiles (e.g. Caseworkers, Registration Assistants). Member State Experts should be enlisted, when needed by the host country, for strategy and guidance profiles to bring in additional expertise. This approach will contribute most to long-term investment in and development of asylum system capacity and makes the best use of available expertise.
- 2. Operations Unit:** Guarantee that support remains operational in nature, responds to the expressed needs of the host Member State, and is detached from political priorities set at national or EU level, especially where these contradict with the needs of the local context. For the fast-track border procedure in Greece, this entails refraining from applying admissibility procedures to asylum applications for which the Greek Asylum Service has a policy against the use of admissibility provisions.
- 3. Asylum Support Unit:** Regularly publish the outcome of quality control exercises led by the Quality Assurance Unit in Greece, Cyprus and Malta, including findings contained in the Quality Feedback Reports shared with national authorities.
- 4. Asylum Support Unit:** Expand the Quality Assurance Tool (QAT) to include admissibility procedures in order to better guide EASO Caseworkers on the implementation of the admissibility concepts and criteria pursuant to the recast Asylum Procedures Directive.

ANNEX I

LIST OF INTERLOCUTORS

NATIONAL AUTHORITIES

CYPRUS

Stavros Christofi, Director, Asylum Service	29 Nov 2018	Nicosia
Natasa Andreou, Administrative Officer, Asylum Service	29 Nov 2018	Nicosia
Andreas Varnava, Kofinou Centre Manager, Ministry of Interior	26 Nov 2018	Kofinou
Savvas Stephanides, Menogia Centre Director, Cyprus Police	28 Nov 2018	Menogia

ITALY

Sandra Sarti, & Francesca Tavassi, National Asylum Commission, DCLI, Ministry of Interior	21 May 2019	Rome
Simona Spinelli, Dublin Unit, DCLI, Ministry of Interior	20 May 2019	Rome
Carmen Cosentino, DCLI, Ministry of Interior	20 May 2019	Rome
Elena Scalfaro, Territorial Commission for International Protection Milan	22 May 2019	Milan
Michelina Pignataro, Questura of Milan, DPS, Ministry of Interior	22 May 2019	Milan

GREECE

Markos Karavias, Director, Asylum Service	10 Jul 2019	Athens
Dionysia Papailiou, Head of the Dublin Unit, Asylum Service	10 Jul 2019	Athens
Maria Mourmouri, Director RAO Thessaloniki, Asylum Service	15 Jul 2019	Thessaloniki

MALTA

Roberta Buhagiar, Refugee Commissioner, RefCom	08 Oct 2019	Valletta
Malcolm Cutajar, Assistant Refugee Commissioner, RefCom	08 Oct 2019	Valletta

EUROPEAN ASYLUM SUPPORT OFFICE (EASO)

HEADQUARTERS (MALTA)

Jamil Addou, Principal Head of Departments a.i.	09 Oct 2019	Valletta
Ward Lutin, Head of Department of Operations	09 Oct 2019	Valletta

CYPRUS

Luc Lietaer, Field Coordinator	26 Nov 2018	Kofinou
Konstantinos Bardis, Assistant Field Coordinator	29 Nov 2018	Nicosia
Paraskevi Nikolaki, Interim Expert Reception & Field Operations	26 Nov 2018	Kofinou

ITALY

Anna Renieri, Head of Italy Sector – Department of Operations, EASO	20 May 2019	Rome
Ilaria Siggia, Senior Operations Officer – Training & Content Unit, EASO	20 May 2019	Rome

GREECE

Dimitrios Pagidas, Head of Greece Sector	10 Jul 2019	Athens
Dimitra Pippidou, Field Officer	15 Jul 2019	Thessaloniki
Dawid Oden, Field Support Officer	15 Jul 2019	Thessaloniki

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)**CYPRUS**

Katja Saha, Representative	27 Nov 2018	Nicosia
Chrystalla Katsapaou, Protection Officer	27 Nov 2018	Nicosia

ITALY

Hélène Behr, Senior Protection Associate	21 May 2019	Rome
Riccardo Clerici, Legal Protection Officer	21 May 2019	Rome
Denise Venturi, RSD Eligibility Expert	21 May 2019	Rome
Andrea Pecoraro, Protection Associate	21 May 2019	Rome

GREECE

Kalliopi Stefanaki, Protection Officer	09 Jul 2019	Athens
Emmanouela Tsapouli, Senior Protection Associate	09 Jul 2019	Athens

MALTA

Kahin Ismail, Representative	09 Oct 2019	Hamrun
Paolo Biondi, Senior Protection Associate	09 Oct 2019	Hamrun
Maarten Loeckx, Protection Associate	09 Oct 2019	Hamrun
Maria Jones, Protection & Registration Associate	09 Oct 2019	Hamrun

CIVIL SOCIETY AND LEGAL PRACTITIONERS

CYPRUS

Corina Drousiotou, Manos Mathioudakis, Demetris Katsarides & Panayiota Shoshilou, Cyprus Refugee Council	26 Nov 2018	Nicosia
Elizabeth Kassinis, Caritas Cyprus	29 Nov 2018	Nicosia
Doros Polykarpou, KISA	29 Nov 2018	Nicosia
Stefanos Spaneas et al., MiHub, University of Nicosia	28 Nov 2018	Nicosia

ITALY

Maria Cristina Romano, ASGI	22 May 2019	Milan
Anna Brambilla, ASGI	08 May 2019	Milan
Ilaria Sommaruga, Diaconia Valdese	08 May 2019	Milan
Loredana Leo, ASGI	29 May 2019	Phone
Luce Bonzano, ASGI	03 Jun 2019	Phone

GREECE

Vasileios Papadopoulos, Alexandros Konstantinou, Sia Georgopoulou, Kleio Nikolopoulou & Eleni Koutsouraki, Greek Council for Refugees	08 Jul 2019	Athens
Dimitris Koros, Agapi Chouzouraki & Domna Plomaritou, Greek Council for Refugees	15 Jul 2019	Thessaloniki
Vassilis Kerasiotis, HIAS	10 Jul 2019	Athens
Erika Kalantzi, Danish Refugee Council	12 Jul 2019	Athens
Kalliope Gkliva, SOS Children's Villages	18 Jul 2019	Athens

MALTA

Neil Falzon, Carla Camilleri & Claire Delom, aditus foundation	08 Oct 2019	Hamrun
--	-------------	--------

ANNEX II

ANALYSIS OF SAMPLE OF EASO OPINIONS ON INDIVIDUAL ASYLUM APPLICATIONS

The following section provides an overview of observations and concerns regarding the quality of EASO opinions and national first instance decisions on admissibility and eligibility of asylum applications, drawing on a small sample of first instance decisions taken by the Asylum Services in **Greece** and **Cyprus**.

In **Greece** and **Cyprus**, the Agency handles interviews and issues opinions to the respective Asylum Services which recommend a decision to be taken by the authorities. From 1 January 2018 to 30 June 2019, EASO Caseworkers have drafted 12,228 opinions in Greece and 912 in Cyprus.¹⁸⁹ Therefore the findings based on the sample of opinions and decisions provided by legal practitioners and analysed by ECRE, 47 cases from Greece and 10 from Cyprus, only provide individual examples of practice and can by no means offer an exhaustive or statistically representative account of the involvement of EASO in decision-making in the two countries.

The analysis below does not delve into questions of quality of interviews, credibility assessments or compliance with procedural guarantees, which have been documented and critiqued elsewhere.¹⁹⁰

STRUCTURE OF OPINIONS AND DECISIONS

Admissibility and “safe third country” concept (Greece)

EASO opinions on admissibility seen by ECRE are divided into the following sections: (I) Identity of the applicant and preliminary considerations, sub-divided into 1. Submissions of the applicant and 2. Preliminary considerations on identity and vulnerability; (II) Admissibility, sub-divided into 1. Submissions of the applicant, 2. Credibility, and 3. Applicability of the safe third country concept. The credibility assessment takes each material fact put forward by the applicant in order.

Generally, Greek Asylum Service decisions on admissibility tend to be standardised and to follow templates: an inadmissibility template for Syrians and an admissibility template for non-Syrian applicants. The respective decisions seen by ECRE were almost identical.

Conversely, EASO opinions do not show an absolute degree of homogeneity, although their Legal analysis very often contains the exact same passages, as discussed below. The templates used are not consistent across all islands where the fast-track border procedure is applied. For Syrians, for instance, certain opinions use the template “Case under merged workflow”,¹⁹¹ others use the one entitled “Case under admissibility

189 Information provided by the EASO Information and Analysis Unit, 13 February 2019 and 31 July 2019.

190 See e.g. AIDA, Country Report Greece, 2018 Update, March 2019, 79-80; Yiota Masouridou & Evi Kyprioti, *The EU-Turkey Statement and the Greek hotspots: A failed European pilot project in refugee policy*, June 2018, available at: <https://bit.ly/2sJM2H4>; European Centre for Constitutional and Human Rights, *Case Report: EASO's involvement in Greek Hotspots exceeds the agency's competence and disregards fundamental rights*, April 2019, available at: <https://bit.ly/308Zbc6>.

191 EASO Opinion issued on Leros in February 2019.

workflow”,¹⁹² and others have no mention of the workflow at all.¹⁹³

From the cases seen by ECRE, it appears that EASO predominantly issues inadmissibility opinions for all applicants whether under the admissibility or under the merged procedure, subject to a few exceptions discussed below. For its part, the Asylum Service has a general policy of issuing inadmissibility decisions for Syrians and admissibility decisions for non-Syrians.

Eligibility for international protection (Cyprus, Greece)

In **Cyprus**, the opinion prepared by EASO follows a standard template entitled “Recommendation Report on application for international protection”. The Recommendation is divided into four sections: (A) Key elements of the applicant’s claim; (B) Analysis/Evaluation of information, sub-divided into I. Evidence assessment and II. Risk assessment; (C) Legal analysis; and (D) Recommendation. EASO opinions are drafted in English, including those prepared by Greek-speaking Interim Experts given that interviews are carried out in English.

The Analysis section of EASO opinions presents a good example of structure in analysing the merits of the application which is also reflected in the structure of first instance decisions taken by the Asylum Service in those cases. Since the involvement of EASO Caseworkers, Asylum Service templates seen by ECRE appear to have followed a similar structure along the four abovementioned components, albeit less consistently. In this regard, the distinction between evidence assessment, on the one hand, and risk assessment on the other, is a crucial characteristic of the EASO opinion. However, such a distinction is usually not to be found in the “Report and Recommendation” (*Έκθεση και εισήγηση*) prepared by Asylum Service Caseworkers as most recommendations of Asylum Service officers are limited to a credibility assessment.¹⁹⁴ EASO has also introduced a more structured and thorough approach to credibility assessment. Its opinions take each material fact put forward by the applicant separately, analyse its internal and external credibility separately, and either accept or reject it. The risk assessment is then based on the material facts which have been accepted.

In **Greece**, EASO opinions on eligibility in the “merged procedure” and “eligibility procedure” are divided into the following sections: (I) Identity of the applicant and preliminary considerations, sub-divided into 1. Submissions of the applicant and 2. Preliminary considerations on identity and vulnerability; (II) Eligibility, sub-divided into 1. Basis of claim, 2. Credibility assessment, 3. Risk assessment and 4. Legal Analysis. Here too, the credibility assessment takes each material fact put forward by the applicant in order.

USE OF COUNTRY OF ORIGIN INFORMATION (COI)

Admissibility and “safe third country” concept (Greece)

The credibility assessment conducted by EASO opinions looks at material facts put forward by applicants in order. The Greek Asylum Service admissibility decisions, however, have a standard paragraph deeming the applicant’s statements credible. This means that the Asylum Service accepts the credibility of statements even if these have been found not to be credible by the EASO opinion.

In “admissibility procedure” cases concerning Syrians, most frequently cited sources include the Turkish Law on Foreigners and International Protection (LFIP), the Turkish Temporary Protection Regulation (TPR), the European Commission 2016 progress report on visa liberalisation in Turkey (“Visa Report”) and the Asylum Information Database (AIDA) Country Report on Turkey. However, citations of country information in EASO opinions can differ from one case to another:

192 EASO Opinion issued on Chios in November 2018.

193 EASO Opinion issued on Leros in February 2018; EASO Opinion issued on Leros in August 2018; EASO Opinion issued on Lesbos in December 2018.

194 Information provided by the Cyprus Refugee Council, 28 November 2018.

SOURCES CITED IN SELECTED EASO ADMISSIBILITY OPINIONS ON SYRIANS: GREECE			
Island	Date	Sources cited in the opinion	Outcome
Leros	Feb 2019	TPR, AIDA, Visa Report	Inadmissible
Kos	Dec 2018	OHCHR, Amnesty International, the Syrian Observatory for Human Rights	Admissible
Kos	Dec 2018	The Guardian	Admissible
Chios	Nov 2018	TPR, AIDA, Visa Report, UK Home Office, ASAM's Child and Family Support Centre, USDOS, European Commission Refugee Facility Factsheet, The Guardian, Refugees International, ASAM interview, Amnesty International, Human Rights Watch	Inadmissible
Leros	Aug 2018	LFIP, TPR, AIDA, Visa Report, ASAM interview, RRT interview, Mülteci-Der interview	Inadmissible
Leros	Aug 2018	Criminal Code, AIDA, Visa Report, European Commission Turkey Report, USDOS, UK Home Office,	Inadmissible
Leros	Aug 2018	LFIP, Human Rights Watch, Council of Europe Special Representative Migration, USDOS	Admissible
Samos	Jul 2018	LFIP, AIDA, Al-Monitor, Turkish Ministry of Interior Reply to Human Rights Watch, European Commission EU-Turkey Statement Report	Inadmissible
Samos	Mar 2018	TPR, AIDA, USDOS, UNHCR Evaluation of Syrian response in Turkey	Inadmissible
Leros	Feb 2018	Human Rights Watch, Amnesty International, USDOS, The Guardian, DGMM Frequently Asked Questions page	Inadmissible

Often, EASO opinions cite confidential sources such as: an interview with SGDD-ASAM on 25 May 2016;¹⁹⁵ interviews with Refugee Rights Turkey and Mülteci-Der;¹⁹⁶ and “ASAM's Child and Family Support Centre” dated 26 May 2016.¹⁹⁷ In the latter case, the Asylum Service also cites the SGDD-ASAM interview. None of the EASO opinions on Syrians seen by ECRE quote the 2016 correspondence between Turkish authorities and EU institutions.¹⁹⁸ This appears to indicate a shift from previous practice followed by the Caseworkers deployed by the Agency, which consisted of citing said letters as guarantees that Turkey complies with the safety criteria of the Directive.¹⁹⁹

The Asylum Service has a standardised set of 15 footnotes which include citations of LFIP, TPR, AIDA, the letters exchanged between the European Commission and Turkish authorities, Amnesty International reports, media articles, the Council Special Representative on Migration and Refugees report on Turkey, the European Commission Turkey Report, and USDOS. In the overwhelming majority of cases seen by ECRE, the sources cited by the Asylum Service decisions on Syrians are identical.

In “merged procedure” cases concerning non-Syrians, EASO opinions also use a variety of sources which vary depending on the case:

¹⁹⁵ EASO Opinion issued on Chios in November 2018; EASO Opinion issued on Leros in February 2018; EASO Opinion issued on Leros in August 2018.

¹⁹⁶ EASO Opinion issued on Leros in August 2018.

¹⁹⁷ EASO Opinion issued on Chios in November 2018.

¹⁹⁸ For a copy of the letters, see Greek Asylum Service, *Official documents pertaining to the EU-Turkey statement*, October 2016, available at: <https://bit.ly/2opwAih>.

¹⁹⁹ Yiota Masouridou & Evi Kyprioti, *The EU-Turkey Statement and the Greek hotspots: A failed European pilot project in refugee policy*, June 2018, 25.

SOURCES CITED IN SELECTED EASO ADMISSIBILITY OPINIONS ON NON-SYRIANS: GREECE			
Island	Date	Sources	Opinion
Chios	Dec 2018	AIDA, Council of Europe Special Representative Migration, USDOS	Inadmissible
Lesvos	Dec 2018	Al Jazeera, LFIP, Turkey Letter to European Commission	Inadmissible
Leros	Sep 2018	LFIP, Turkish Coast Guard, AIDA, Crisis Group, European Commission Turkey Report, Council of Europe Special Representative Migration, Visa Report, European Commission EU-Turkey Statement Report	Inadmissible
Lesvos	Jul 2018	LFIP, EU-Turkey Statement, Turkey Letter to European Commission	Inadmissible
Leros	Aug 2018	LFIP, USDOS, Danish Immigration Service, Australia Refugee Review Tribunal, US Commission on Religious Freedom, AIDA, Crisis Group, USDOS, Freedom House	Inadmissible
Samos	May 2018	USDOS, European Commission EU-Turkey Statement Report, Crisis Group,	Inadmissible
Samos	Apr 2018	UK Home Office, AIDA	Inadmissible
Lesvos	Apr 2018	LFIP, Turkey Letter to European Commission	Inadmissible
Lesvos	Apr 2018	LFIP, Turkey Letter to European Commission, DGMM Applications for residence permits	Inadmissible
Leros	Apr 2018	LFIP, AIDA, Visa Report, European Commission Turkey Report	Inadmissible
Leros	Oct 2017	LFIP, Regulation on Work Permits, UNHCR, Refugees International, European Commission Report on Labour Market Integration, Refugee Rights Turkey Questions & Answers	Inadmissible

The Asylum Service follows its aforementioned standardised set of 15 footnotes in its decisions.

Accordingly, the cases seen by ECRE show that whereas EASO opinions often adapt the sources considered to the case at hand, the Greek Asylum Service systematically uses the same text and references for its decisions on admissibility and inadmissibility. In any event, based on the sample of cases reviewed, it appears that the citation of sources such as AIDA by both EASO and the Asylum Service is selective. The opinions and decisions systematically cite introductory passages of the report referring to Turkey's legal framework, while critical passages documenting gaps in practice and legislation in areas such as access to employment,²⁰⁰ or the derogation from the *non-refoulement* principle introduced since 2016,²⁰¹ are not included in the vast majority of cases.

200 Despite the existence of Regulations on Work Permits for international protection and temporary protection holders, less than 1% of the working population of Syrian temporary protection holders had obtained a work permit at the end of 2018, while access to work permits was even more restricted for other nationalities. Undeclared employment under substandard conditions and low wages remains widespread: AIDA, Country Report Turkey, 2018 Update, March 2019, available at: <https://bit.ly/2WomBrt>, 133-138.

201 An emergency decree introduced exceptions to the principle of *non-refoulement* in the LFIP in cases of (i) leadership, membership or support of a terrorist organisation or a benefit-oriented criminal group; (ii) threat to public order or public health; or (iii) relation to terrorist organisations defined by international institutions and organisations. These provisions are frequently used in practice, including against asylum seekers and temporary protection holders: *Ibid*, 23-27.

Finally, the country information cited in opinions and decisions is often out of date. For example, several opinions of EASO on Syrians cite the December 2015 version of the AIDA Country Report on Turkey,²⁰² and not the more recent updates of the report. This is the case in an opinion issued on Leros in February 2019, whereas two opinions issued on Leros in August and September 2018 respectively cite the 2017 update of the report.²⁰³ The Asylum Service decisions have updated some of the sources cited. In a decision taken on Leros in March 2019, for example, the Asylum Service decision cites the 2017 update of the AIDA report, a July 2018 update of the European Commission Refugee Facility Factsheet, and the latest USDOS report. Yet, the content of the decision remains intact despite the updated footnotes.

Eligibility for international protection (Cyprus, Greece)

In **Greece**, EASO opinions make use of COI to assess the credibility of each material fact put forward by the applicant, while decisions of the Greek Asylum Service usually include extensive references to COI on the applicant's country of origin irrespective of whether or not it relates to the material facts put forward during the interview.

Some of the cases seen by ECRE contain issues of concern as regards the use of COI:

- Security situation in Baghdad, Iraq: In a case decided on Samos, the EASO opinion of May 2018 concluded, solely on the basis of a Musings on Iraq blog entry, that mere presence in Baghdad did not constitute a risk of serious harm in the sense of Article 15(c) of the recast Qualification Directive despite significant levels of violence. The Asylum Service decision, issued in February 2019, provided more detailed and extensive sources of COI, including the UN Secretary General, the UK Home Office, the Swedish Migration Agency, the Iraq Body Count database, UNICEF and the aforementioned blog, and concluded that the security situation in the capital reached the threshold of Article 15(c).
- Security situation in Kirkuk, Iraq: In another case decided on Samos, the EASO opinion, issued in May 2018, used only a 2017 UK Home Office report to conclude that Kirkuk is not among the provinces of Iraq where generalised violence triggers Article 15(c). The Asylum Service decision, taken in February 2019, quoted more recent UN Secretary General and UNICEF reports and concluded that mere presence in Kirkuk would expose the applicant to a risk of serious harm.
- Wrong country assessment: In a case decided on Leros in February 2018 concerning a family from Afghanistan, the EASO opinion stated that “based on the information on the situation of Iraq known to us” (sic), the Article 15(c) threshold was not met. Beyond the error in the country of origin indicated, the opinion made no reference to sources on the security situation in the country concerned. The Asylum Service decision referred to poverty risks in certain parts of the country but concluded that the applicants are not at risk of serious harm, since they owned a business and had left money with a friend in Afghanistan.

By way of comparison, in **Italy**, according to legal practitioners in Milan, it appears that with the involvement of EASO Interim Experts, Territorial Commission decisions have at times become more structured and made more detailed use of COI, compared to decisions issued in past years.²⁰⁴ Template decision forms developed by the National Asylum Commission and UNHCR as part of their quality monitoring project may have had direct impact on the structure of decisions as well.²⁰⁵ In Rome, while the structure of first instance decisions has not changed, lawyers have witnessed improvements in the inclusion of COI and information on the individual situation of the applicant in decisions, though these vary according to the individual caseworker.²⁰⁶

202 AIDA, Country Report Turkey, First Update, December 2015, available at: <https://bit.ly/1SaXC43>.

203 AIDA, Country Report Turkey, 2017 Update, March 2018, available at: <https://bit.ly/211S9fS>.

204 Information provided by ASGI, 22 May 2019.

205 Information provided by UNHCR Italy, 13 June 2019.

206 Information provided by ASGI, 29 May 2019.

LEGAL ANALYSIS

Admissibility and “safe third country” concept (Greece)

In most “admissibility procedure” cases relating to Syrian nationals seen by ECRE, EASO opinions do not examine the individual safety criteria of the safe third country concept under Article 38(1) of the recast Asylum Procedures Directive in order. Through what are usually standardised Legal analysis sections, Caseworkers affirm that the applicant can access and benefit from protection in accordance with the 1951 Refugee Convention and is not at risk of persecution, serious harm or *refoulement* in Turkey. However, some legal analysis sections of EASO opinions have deviated from that approach:

- In one case decided on Kos in March 2019, the EASO opinion found the criterion under Article 38(1)(a) of the Directive not to be fulfilled due to a risk of persecution for reasons of the applicant’s membership of a particular social group, Kurds from the Afrin region. The Greek Asylum Service adopted a different reasoning: it found that all safety criteria were satisfied but that the applicant would face hardship as a young single woman in Turkey and should therefore not be returned. The claim was thus deemed admissible.
- EASO took a similar approach in a case decided on Kos in April 2019, arguing that the asylum seeker would be at risk of persecution as a member of the particular social group of Afrin Kurds. In this case, the Asylum Service again found no risk of persecution. The claim was dismissed as inadmissible.
- In one case decided on Leros in August 2018, the EASO opinion referred to the impossibility of the applicant to apply for temporary protection and to push backs to Syria. The opinion was based on a very rudimentary legal analysis and did not examine the safety criteria of the Directive, but recommended admissibility. The Asylum Service decision found the applicant’s claims not to be credible, overturned the opinion and deemed the claim inadmissible.

As regards “merged procedure” cases of non-Syrian nationals, as a rule, the Legal analysis section of EASO opinions deems that the safety criteria of Article 38(1) of the Directive are met without examining them in order. In one case decided on Leros in September 2018, EASO cites the derogation from the *non-refoulement* principle in Turkish legislation in the credibility assessment but its legal analysis is limited to stating that Article 4 LFIP codifies the prohibition of *refoulement*. In a case decided on Lesbos in October 2018, the Legal analysis of the opinion refers to the absence of an “elevated risk” for the individual applicant, without further explaining why a higher burden of proof is set.

Conversely, EASO has deviated from that approach in one opinion issued on Samos in July 2018, which found that the criterion under Article 38(1)(b) of the Directive was not fulfilled due to a risk of serious harm for a single Yazidi woman in Turkey, citing polygamous marriages and widespread domestic violence.

For its part, the Greek Asylum Service systematically accepts claims by non-Syrians as admissible. Admissibility decisions are based on the non-fulfilment of the criterion under Article 38(1)(e) and refer to: lack of access to the international protection procedure and lack of assurances from the Turkish authorities and of statistics to substantiate such access and granting of protection; absence of right to family reunification for conditional refugees and limited duration of conditional refugee status until resettlement. In all cases seen by ECRE, the Asylum Service decisions are identical.

Finally, in relation to the requirement of a connection between an applicant and the safe third country as per Article 38(2)(a) of the Directive, all EASO opinions seen by ECRE omit the assessment of the connection criterion altogether, whether for Syrian or for non-Syrian applicants. The opinions provide no information on the existence of a connection between the applicant and Turkey, or on the reasonableness of requiring the applicant to apply for international protection in Turkey because of such a connection.

Conversely, Greek Asylum Service admissibility decisions differ in their assessment of the connection requirement depending on the country of origin of the asylum seeker:

- Decisions on Syrians make reference to the existence of a connection between the applicant and Turkey, albeit in standardised references. These allude to the applicant being able to request international protection (sic) and having family, cultural ties etc., even though access to international protection is not available to Syrian nationals.²⁰⁷ Without exception, all Asylum Service inadmissibility decisions seen by ECRE contain these general statements and do not assess the individual situation of the applicant. This includes cases such as a decision issued on Samos in May 2018 vis-à-vis an applicant who stayed in Turkey only for two days, even though domestic case law has ruled that transit through a country must be accompanied by specific circumstances such as length of stay in order to substantiate a connection.²⁰⁸ Second instance decisions of the Independent Appeals Committees seen by ECRE have made more specific references to the connection requirement and examined connection on the basis of the applicant's individual circumstances.
- The standardised Asylum Service admissibility decisions on non-Syrians cite the impossibility to access the international protection procedure and the absence of a former international protection status as indicia of a lack of connection between the applicant and Turkey. In some decisions, the Asylum Service limits its assessment to the lack of access to the international protection procedure. It is noted that the exact opposite conclusion is reached in decisions on Syrian applicants, where the Asylum Service states that access to the international protection procedure is possible and signals a connection between the applicant and Turkey

Eligibility for international protection (Cyprus, Greece)

In **Cyprus**, the Legal analysis section of the opinions seems to follow a standard template in many cases, where only the basic personal details and circumstances of the applicant are amended. The legal analysis often consists of a succinct conclusion on the applicant not qualifying for refugee status or subsidiary protection on the basis that he or she does not face persecution related to the five Convention grounds or serious harm based on the three Qualification Directive grounds.

Although most legal analysis sections seen by ECRE were relatively short, a number of EASO opinions contained errors of law or insufficient legal analysis to motivate the conclusion reached by the Caseworker. Examples include:

- One case decided in April 2018 concerning an applicant whose claim was based *inter alia* on persecution for reasons of imputed political opinion, due to his participation in a protest before the country of origin's embassy in Cyprus. The legal analysis of the opinion referred to an opinion from the Law Office of the Republic of Cyprus, according to which, as regards *sur place* claims of persons engaging in activities solely to create the conditions for benefitting from international protection under Article 4(3) of the recast Qualification Directive, refugee status can be denied but subsidiary protection cannot. The EASO opinion stated: "it has been satisfied that he meets those subjective and objective elements of a well-founded fear of persecution, which are essential in the granting of such status." It nevertheless concluded that refugee status should not be granted, without examining whether the applicant's participation in the protest was engaged in solely to create the conditions for obtaining refugee status.
- A case of May 2018 concerns a stateless Palestinian from Gaza whose United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) documentation had been submitted to the Asylum Service. The EASO Caseworker's legal analysis completely disregarded Article 1D of

207 AIDA, Country Report Turkey, 2018 Update, March 2019, available at: <https://bit.ly/2WomBrt>, 17.

208 Greek Council of State, Decisions 2347/2017 and 2348/2017, 22 September 2017, para 61.

the Refugee Convention and its applicability to Palestinian refugees. The Recommendation found no eligibility for refugee status on the basis that the applicant was not at risk of persecution and found that subsidiary protection could be granted under Article 15(c) of the recast Qualification Directive.

In **Greece**, ECRE has seen examples of EASO opinions and Asylum Service decisions making different interpretations of the qualification criteria for international protection, including in cases where the conclusion reached by the decision-maker is the same as the opinion. Examples include:

- Religious and ethnic minorities in Afghanistan: In a case decided on Lesbos in May 2019 concerning a Shi'a Muslim of Hazara ethnic origin, the EASO opinion did not consider religion and ethnicity as factors liable to trigger persecution. The Asylum Service referred to COI on the targeting of Hazaras by ISIS and the Taliban and identified a well-founded fear of persecution for reasons of race and religion. Yet, it concluded that the applicant ran no risk upon return, without further motivating its decision.
- Imputed political opinion in Iraq: In a case decided on Lesbos in February relating to a person working as a driver for a US company in Baghdad for several years, the EASO opinion found a well-founded fear of persecution but recommended rejection as no nexus to Convention grounds was established, on the ground that the applicant's fear was linked to the internal conflict in Iraq. The Asylum Service found the applicant non-credible and made no further assessment. The applicant's parents and minor sibling's application was examined separately. The applicant's father worked in the same US company as a cook. In this case, which was referred to the regular procedure for reasons of vulnerability, EASO and the Asylum Service found the statements credible and agreed on a grant of refugee status on the basis of imputed political opinion.
- Security situation in Kabul, Afghanistan: In a case decided on Chios in March 2019, the EASO opinion quoted the EASO Country Guidance on Afghanistan²⁰⁹ to state that an armed conflict exists in Kabul. Conversely, in another case decided on Lesbos in May 2019, the opinion quotes the same document to state that the situation in Kabul cannot be characterised as an international or internal armed conflict so as to trigger Article 15(c) of the recast Qualification Directive.

209 EASO, *Country Guidance: Afghanistan*, June 2018, available at: <https://bit.ly/2p0ZEMz>.



European Council on Refugees and Exiles

Rue Royale 146

Brussels 1000

Belgium

T. +32 2 234 38 00

F. +32 2 514 59 22

ecre@ecre.org

www.ecre.org