

European Commission
Directorate-General Migration and Home Affairs
The Deputy Director-General

Chios, 24 January 2017

Dear Deputy Director-General Mr Mordue,

In your response of 22 November 2017 to our Open Letter dated 6 November 2017, you refer to several measures of the European Commission and the Greek Government which you suggest brought about considerable improvements to the procedural and material conditions for asylum seekers on Chios. After considering your response, we found your assessment of the current situation to be at considerable odds with the factual situation we daily witness on the ground, and therefore wish to draw your attention to the following issues:

Living conditions in the EU hotspots remain inhumane and in violation of basic human and fundamental rights

Prior to the entry into force of the EU-Turkey statement in March 2016, the EU hotspots on the Aegean islands were not permanent Reception Centres. Rather, asylum seekers passed the islands on their way to the Greek mainland. Immediately after the entry into force of the EU-Turkey statement, the EU hotspots were converted into closed detention facilities. It is well known that UNHCR publicly opposed the systematic detention policy and reacted by significantly reducing its services in the EU hotspots. We welcome that the systematic detention scheme is no longer applied. However, asylum seekers remain subject to a geographical restriction which limits their freedom of movement to the respective island.¹ In practice, this means that asylum seekers are forced to stay in the chronically overcrowded EU hotspot Vial, i.e. a bit less than 2,400 people are currently staying in Vial, which has a capacity of 894 places according to the EU Fundamental Rights Agency.² Therefore, speaking of a “stabilising effect” of the EU Turkey Statement for the situation on Chios is at the very least bizarre.

Greek law³ provides that vulnerable persons as well as individuals falling under Articles 8 to 11 of the Dublin III Regulation shall be exempted from the *fast-track border procedure* and accordingly be allowed to travel to the mainland. In reality however, these exemptions are not applied in numerous cases. We wish to highlight that highly vulnerable persons are currently subject to inhumane conditions in Vial. The effect of the EU-Turkey statement was thus a severe deterioration of the already substandard living conditions in the overcrowded EU hotspots.

We welcome your recognition that reception capacity remains insufficient and, in your words, “not always adequate”. In this regard, we again highlight the information submitted to you in our Open Letter dated 6 November 2017. The humanitarian situation in the EU hotspot Vial is so severe that a violation of the prohibition of inhumane and degrading treatment, Art 4 EU Charter of Fundamental Rights and Art 3 European Convention on Human Rights, cannot be excluded. This

¹ Art. 44 lit. d (iii) Greek Law 4375/2016.

² Monthly data collection on the migration situation in the EU, Fundamental Rights Agency, December Highlights, p. 6.

³ Art 60 para 3 lit f Greek Law 4375/2016.

concerns in particular vulnerable persons, including children, who are forced to remain in Vial during winter.

The European Commission committed itself in autumn 2016 to improve the humanitarian conditions in the EU hotspots on the Aegean islands. Working on the ground, we do not see any improvement of the living conditions in Vial. Basic human needs such as housing, transportation, emergency medical services are still not sufficiently provided. Hundreds of asylum seekers stay in completely overcrowded containers; others in equally overcrowded tents. Many sleep in makeshift structures with no privacy or protection from the elements. Transportation from Vial's isolated and remote location to the city of Chios is not provided for sufficiently. At the moment, medical appointments cannot or if only in an insufficient number take place due to a problem with the contracts for the translators for the medical staff. Therefore, medical care and in particular psychological and psychiatric medical aid are completely insufficient. The same applies to legal aid services and education and recreational activities.

It is clear that funding made available to Greece has failed to rectify fundamental defects concerning reception conditions on Chios. The effect of such severity of conditions on the islands cannot be negated by the 'stabilising' effect you recall in your letter.

Reception conditions must be in line with European asylum law and Human Rights standards. Since both the EU hotspots and EU-Turkey statement are EU policies the EU clearly is responsible for the conditions. We point in particular to the EU hotspot approach presented by the European Commission in May 2015, according to which EU hotspots have been designed as platforms for operational support by EU agencies. Further, we point to the important role of the EU coordinator for the implementation of the EU Turkey statement in Greece under appointment by the European Commission in March 2016. In particular the Joint Action Plan concluded by the aforementioned coordinator in December 2016 clearly shows the effective influence by the European Commission on the situation in the EU hotspots on the Aegean islands. Despite repeated promises and announcements by the European Commission in its regular reports on the implementation of the EU-Turkey statement, the humanitarian conditions on the island have still not improved substantially and must still be considered as inhumane, as many NGO-reports show.⁴

These conditions combined with the geographical restriction implemented due to EU Turkey Statement lead to an overall inhumane situation, that EU institutions are responsible for!

You mention that one of the reason for "severe overcrowding" on most of the islands, including Chios" are the "limited returns to Turkey". As you must be well aware, returning applicants for international protection from Greece to Turkey is only possible if Turkey can be considered as *safe third country* or *first country of asylum* according to Art. 35, 38 Asylum Procedures Directive. Despite the doubts on the question, whether Turkey can be considered as such,⁵ we would like to

⁴ E.g. "EU/Greece: Asylum Seekers' Silent Mental Health Crisis. Identify Those Most at Risk; Ensure Fair Hearings" (available online: <https://www.hrw.org/news/2017/07/12/eu/greece-asylum-seekers-silent-mental-health-crisis>, last accessed 16/01/18).

⁵ E.g. Orcun Ulusoy and Hemme Battjes: Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement, VU Migration Law Series No 15 (available online: <https://www.hrw.org/news/2017/07/12/eu/greece-asylum-seekers-silent-mental-health-crisis>, last accessed on 16/01/18).

point out that the limited returns to Turkey are due to asylum procedures based on the rule of law. Implementing the EU Turkey Statement, those lawful procedures should be considered for the necessary reception capacity. Blaming the low number of returns to Turkey therefore could be interpreted as disrespectful towards lawful asylum procedures including the right to an effective remedy.

Additionally, the situation in Turkey does not fulfil the criteria of Art. 35 and/or 38 Asylum Procedures Directive. Neither the legal nor the factual situation in Turkey is in compliance with the criteria. You are certainly aware that the Turkish asylum framework differentiates between individuals from Syria on one hand, and individuals from other countries of origin on the other. The status offered to individuals from Syria is a group status which does not guarantee the rights required by Art 35, 38 Asylum Procedures Directive. The factual situation on the ground indicates that even rights provided for in law are not guaranteed. The status offered to individuals from other countries of origin is conditional and not in compliance with the mentioned requirements either.

We further draw your kind attention to the recent Presidential Decree No 676⁶ adopted in October 2017: Art. 36 of this Decree allows Turkey to deport applicants for international protection at any stage of the application as soon as the individual is considered to be a “member of a terrorist group” without any formal procedure or Court decision. Taking into account the current political situation in Turkey, this recent legal reform makes it impossible to consider Turkey as safe third country or first country of asylum.

You are well aware that the European Commission, in its Explanatory Note on the Hotspot Approach, presented the EU Hotspots *inter alia* as tools to implement the Relocation Scheme introduced by Council Decisions (EU) 2015/1523 and 2015/1601. You must also be aware that this was how the European Parliament envisaged the EU Hotspots to operate. The Relocation Program is not applied to applicants for international protection who arrived in Greece after the entry into force of the EU Turkey Statement on 20 March 2016. This administrative practice was in clear violation of Art. 13 para 3 of the Council Decision (EU) 2015/1523 resp 2015/1601, which provides for applicability of the Relocation Program to individuals who arrive to the territory of Italy or Greece until 17th resp 16th September 2017. Quite apart from this, the serious overcrowding of the EU Hotspot facilities on the Greek Aegean islands and in particular of the camp Vial on Chios could have been avoided if the EU Hotspots had been used as tools to relocate applicants for international protection to other EU member states - as foreseen originally. It is contradictory to on one hand lament the serious overcrowding of the EU hotspots, and on the other to pursue the policy to not apply the EU Relocation Program. We in particular point to the role of EASO regarding the implementation and then, as from 20 March 2016, non-application of the Relocation Program in Greece. In light of all this, it is inadequate to present limited returns to Turkey as one of the main reasons for the serious overcrowding of the EU Hotspot facilities which lead to inhumane living conditions as described above.

You rightly mention that in order to reduce the population in Vial, works have been started to provide additional containers. These works however have been stopped by a legal order of a local Court. The works now continue but the process is very slow and it is not clear if and when they

⁶ Available online: <http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>, last accessed 16/01/18.

are finished with installing new containers. We assume that you are aware of this recent development.

The following pictures were taken in December 2017 in VIAL:





Asylum procedures – still in violation of Greek and European Asylum Law

Greek Law provides a right to free legal aid during the asylum procedure.⁷ On Chios, a small number of lawyers sponsored by NGOs such as the Greek Council for Refugees, Metadrasi and RSA⁸ struggle to operate a limited legal aid programme. The number of lawyers cannot take on the task compared to the high number of refugees. Currently over 2000 asylum seekers are subject to asylum procedures on Chios alone. The program of Metadrasi is operating on a three-month basis. This shows clearly that it remains a huge factor of insecurity. In July 2017 the program was stopped for a week and refugees did not receive free legal aid during a critical stage of their procedure. This might happen again. Access to legal advice and representation is a prerequisite to fair asylum procedures and is also the right of asylum applicants.⁹

We draw your attention to systemic failures occurring at the following stages of the asylum procedure:

Registration

During registration, applicants for international protection experience structural discrimination. Many errors occur during registration, including incorrect recording of key information such as the name and nationality of applicants. Such errors result in considerable delays to the asylum procedure, and in some cases means applicants for protection are allocated to the wrong procedure entirely.

First instance Procedure

Your recent letter describes an average processing time of 44 days before the first instance decision. This figure related to a period in which arrival numbers were low, during the summer 2017. At the present time, applicants are frequently waiting more than two months before the first interview. The decision of the Greek Asylum Service is often issued a number of weeks after the interview, and longer in many cases. The average processing time is therefore considerably longer than 44 days. Considerable delays in the asylum procedure are exacerbated by the aforementioned conditions to which applicants remain subject during this period.

The role of EASO

With regard to the Asylum Support Teams deployed on the ground, we would like to draw your attention to the fact that first, EASO is [exceeding its competences while](#) “assisting” the Greek Asylum Service. The current practice of EASO, conducting interviews and submitting a “legal opinion” based on which the Greek Asylum Service issues its decision without ever having heard or seen the asylum seeker, is in clear violation of Art. 2 para 6 Regulation 439/2010 (EASO Regulation). Second, the EASO experts are not well prepared for their secondment. They receive either no training or training that is missing the relevant legal information necessary to conduct

⁷ Article 44 Greek Law 4375/2016.

⁸ As of January 2018: One lawyer from RSA, two lawyers Greek Council for Refugees, four lawyers from Metadrasi and one lawyer from Greek Asylum Service.

⁹ Article 44 Greek Law 4375; Article 19, 23 Asylum Procedures Directive.

interviews under the special legal circumstances. We have witnessed EASO experts conducting first instance interviews *without having received any training or preparation*. This lack of training, considered alongside the short period of secondment and fast rotation of EASO experts, considerably compromises the quality and legality of the asylum interviews and legal opinions provided by EASO.

Recommendations:

- 1) Reception conditions must be brought in line with European asylum law and Human Rights standards.
- 2) Free, quality legal aid must be available for applicants for international protection at all stages of the asylum procedure.
- 3) The EU Commission should urgently review its designation of Turkey as a safe third country and/or safe country of asylum, in light of widely available information on fundamental flaws with the Turkish asylum system and a lack of crucial judicial safeguards.
- 4) A review should be conducted into serious operational concerns regarding the role of EASO in the border procedure, noting in particular the lack of requisite training and expertise held by officers whose decisions immeasurably affect the lives of vulnerable refugees.

Contrary to the views expressed in your letter, the EU hotspots constitute a failure both in terms of their human rights implications as well as in their alleged “stabilising effect”. Consequently, we urge the EU to urgently consider the closure of the hotspots on Chios and other Greek islands. In addition, we urge that the European Commission must immediately provide and implement a plan for ensuring access to the rights – in particular the right to medical care, housing, education and free legal aid - every refugee has when arriving to the European Union.

We look forward to your reply and to see prompt and adequate action taken to relieve the suffering on Chios and the other affected Greek islands.

Yours sincerely,

Action from Switzerland

BAAS - Be Aware And Share

Chios Eastern Shore Response Team

ChooseHumanity

Imagine Center, Humans for Humans

RefuComm

Refugee Law Clinics Abroad e.V. – Legal Info Project Chios

Salvamento Marítimo Humanitario – SMH