

**FRA Opinion – 3/2019**  
**[Hotspots Update]**

Vienna, 4 March 2019

Update of the 2016 Opinion of  
the European Union Agency for Fundamental Rights  
on  
fundamental rights in the ‘hotspots’ set up in  
Greece and Italy

February 2019

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## Acronyms

AEMY	Health Units Societe Anonyme (Ανώνυμη Εταιρεία Μονάδων Υγείας)
AMIF	EU Asylum, Migration and Integration Fund
Charter	Charter of Fundamental Rights of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DYEP	Reception/ Preparatory Classes for the Education of Refugees (Δομές Υποδοχής και Εκπαίδευσης Προσφύγων)
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EKKA	National Centre for Social Solidarity (Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης)
EU	European Union
Eurodac	European Dactyloscopy
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
EURTF	European Union Regional Task Force
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
IOM	International Organization for Migration
KEELPNO	Hellenic Center for Disease Control and Prevention (Κέντρο Ελέγχου και Πρόληψης Νοσημάτων)
NGO	Non-governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
RIS	Reception and Identification Service
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA),

Bearing in mind the Treaty on European Union (TEU), in particular Article 6 thereof,

Recalling the obligations set out in the Charter of Fundamental Rights of the European Union (the Charter),

In accordance with Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (FRA), in particular Article 2 with the objective of FRA *“to provide the relevant institutions, bodies, offices and agencies of the Community and its EU Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights”*,

Having regard to Article 4 (1) (d) of Council Regulation (EC) No. 168/2007, with the task of FRA to *“formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the EU Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission”*,

Considering FRA Opinion 5/2016 on the fundamental rights in the ‘hotspots’ set up in Greece and Italy<sup>1</sup> which outline the fundamental rights challenges linked to the hotspots approach as of November 2016,

Having regard previous opinions of FRA on related issues, in particular to the FRA Opinion concerning an EU common list of safe countries of origin,<sup>2</sup> the FRA Opinion on the revised European Border and Coast Guard Regulation and its fundamental rights implications<sup>3</sup> and the FRA Opinion on the recast Return Directive and its fundamental rights implications,<sup>4</sup>

Noting FRA’s Regular overviews of migration-related fundamental rights concerns,<sup>5</sup>

Having regard to the request of the European Parliament of 22 February 2019 to FRA for an update of FRA’s 2016 Opinion on the fundamental rights situation in the hotspots,

SUBMITS THE FOLLOWING OPINION:

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<sup>1</sup> FRA (2016), [Opinion of the European Union Agency for Fundamental Rights on the fundamental rights in the ‘hotspots’ set up in Greece and Italy](#), FRA Opinion 5/2016 [Hotspots], Vienna, 29 November 2016. All hyperlinks were accessed on 27 February 2019.

<sup>2</sup> FRA (2016), [Opinion of the European Union Agency for Fundamental Rights concerning an EU common list of safe countries of origin](#), FRA Opinion – 1/2016 [SCO], Vienna, 23 March 2016.

<sup>3</sup> FRA (2018), [Opinion of the European Union Agency for Fundamental Rights on the revised European Border and Coast Guard Regulation and its fundamental rights implications](#), FRA Opinion – 5/2018 [EBCG], Vienna, 27 November 2018.

<sup>4</sup> FRA (2019), [Opinion of the European Union Agency for Fundamental Rights on the recast Return Directive and its fundamental rights implications](#), FRA Opinion – 1/2019 [Return], Vienna, 10 January 2019.

<sup>5</sup> FRA, <https://fra.europa.eu/en/theme/asylum-migration-borders/overviews>. The overviews start from September 2015.

## Key points

In November 2016, FRA formulated 21 individual opinions to address the fundamental rights shortcomings identified in the implementation of the hotspot approach in Greece and Italy.<sup>6</sup> Despite genuine efforts to improve the situation since November 2016, many of the suggestions contained in the 21 opinions FRA formulated at the time remain valid. Taking the situation in both EU Member States together, Table 1 shows that only three issues were properly addressed. On eight opinions, there have been developments without resulting in significant improvements on the ground. In 10 out of 21 opinions, there was no significant progress.

More specifically, the main changes and/or persisting challenges in the five areas FRA highlighted in 2016 are:

- **International protection:** Most gaps to access international protection have been addressed. But asylum applicants stay on average over five months on the Greek islands, where conditions are sub-standard, as they await the end of the asylum procedure or the confirmation that they are allowed to move onward to the mainland. Despite genuine efforts to inform asylum applicants better on the asylum procedure, applicants still note that they are not sufficiently aware. At the same time, state-funded legal aid remains inadequate. There were no new reports about excessive use of force when taking fingerprints.
- **Child protection:** In spite of important developments – such as new guardianship laws in Greece and Italy, shorter stay of unaccompanied children in Italian hotspots and the creation of dedicated areas for unaccompanied children in most hotspots in Greece – serious child protection issues still persist. Adequate shelters for unaccompanied children remain insufficient and the conditions in the dedicated areas inside the hotspots are inadequate.
- **Identification of vulnerable people:** The system to identify vulnerable people in Greece and Italy improved. In Greece, shortages of doctors, psychologists, social workers and interpreters create constant delays leading to prolonged stay of vulnerable people in inadequate conditions in the hotspots. In addition, the sub-standard reception conditions make people prone to become vulnerable. In Italy, there is no structured approach for adequate onward referral to facilities, which can address the specific needs of vulnerable persons.
- **Security:** Violent incidents continue to happen in the hotspots in Greece and Italy. Overcrowding in some Greek hotspots increased the risk of sexual and gender based violence significantly as in most hotspots single women are often not accommodated separately. Most police officers patrolling the hotspots are men, although efforts resulted in the presence of more female officers. Community engagement remains limited and information gaps persist in the hotspots of both countries.
- **Return and readmissions:** Frontex escorts in return and readmission operations are better trained and national human rights monitoring bodies regularly visit the hotspots, adjacent pre-removal facilities and monitor return and readmission operations. At the same time, deprivation of liberty without assessing necessity

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<sup>6</sup> FRA (2016), [Opinion of the European Union Agency for Fundamental Rights on the fundamental rights in the 'hotspots' set up in Greece and Italy](#), FRA Opinion 5/2016 [Hotspots], Vienna, 29 November 2016.

and proportionality in the individual case continues. In Greece, this practice also concerns some of the asylum applicants.

Fewer arrivals in Italy since July 2017 resulted in improvements in the hotspots. As an illustration, on 25 February 2019, two of the three hotspots used for new arrivals (Lampedusa and Pozzallo) were empty and the third one in Messina hosted 23 people. As the hotspots are underused, it is difficult to assess whether the system is equipped to handle future fundamental rights emergencies adequately, should arrivals increase again. In Italy, fundamental rights challenges have shifted to the cooperation with Libya, refusals to let rescue ships dock, as well as the penalisation of civil society organisations deploying rescue vessels in the central Mediterranean.

Serious fundamental rights gaps persist in the Greek hotspots, where reception conditions remain sub-standard. Part I of this FRA Opinion focuses on Greece, acknowledging the particular challenges faced by Greece, which after Spain remains the EU Member State receiving most of the new arrivals by sea. It describes three underlying reasons why a fundamental rights crisis persists in the hotspots on the Greek islands.

### **1. Keeping asylum applicants in remote locations to process their asylum claims**

The processing of asylum claims in facilities at borders, particularly when these facilities are in relatively remote locations, although *per se* not unlawful, brings along built-in deficiencies. As almost three years of experience in Greece shows, this approach creates fundamental rights challenges that appear almost unsurmountable. Examining asylum applications fairly and carefully takes time. On average, asylum applicants stay on the Greek islands over five months. During that time, they need not only housing, but also social workers, lawyers, doctors and other professionals so that they can enjoy the minimum standards set out in the Reception Conditions Directive (2013/33/EU). Asylum and other authorities need office space, caseworkers and interpreters. It has been difficult to deploy the needed experts to such locations, sometimes also because such professionals are not even available for the resident population, as for example in Kos, where there is no paediatrician in the public health system on the whole island.

### **2. Systemic delays in procurement and contracting**

The use of prolonged and complex procurement and contracting procedures limits significantly the potential impact of national and European funds allocated to improving reception conditions in Greece. It goes beyond the scope of this FRA Opinion to analyse the reasons for the prolonged duration of procurement procedures. As FRA noted in past reports, it is mainly caused by a combination of insufficient planning, limited administrative capacity, coordination difficulties and procurement weaknesses. These problems are neither new nor unique to the asylum and migration area and are structural in nature. However, they result in delays, which significantly affect the daily life of asylum applicants accommodated in the hotspots causing fundamental rights violations on a daily basis; children, for example, might be left without shoes, clothes, or blankets.

### **3. Inadequate consultation and engagement with the resident population on the islands**

There has been little effort to find a win-win solution. Local residents perceive the camps as a burden imposed on them by “Athens and the EU”. According to them, the presence of asylum applicants on the islands creates problems for the tourism industry, which is an important source of income for many residents. Moreover, the prolonged stay of a significant number of people with particular needs puts a substantial strain on

the local infrastructure and public services. Residents are less willing to contribute in finding solutions to address gaps, as the example of local residents blocking the road to prevent carrying new containers to the camps illustrates. This situation fuels animosity and tensions and constitutes an important obstacle for the effective implementation of the hotspots approach. The dynamics between the local communities and asylum applicants can only change by involving the affected resident populations more proactively. If there is no overcrowding and conditions are decent, the hotspots can bring direct and indirect economic benefits for the residents, but they need to be proactively engaged to ensure their support.

In conclusion, given that new arrivals on the Greek islands will continue, the past three years have shown that the manner in which the hotspots approach is applied in Greece is not sustainable from a fundamental rights point of view. FRA continues to see the added value of having facilities at the border, where newly arrived persons are informed, screened, registered, provided with immediate assistance and referred to the relevant procedures, but considers that the number of people must remain at all times within the capacity of existing first reception facilities. To achieve this, Greece needs the support of the European Union and other Member States not only on the ground, but also through other solidarity measures. In this context, one important measure is to enhance legal entry channels for persons in need of international protection to reach Europe.






The European Ombudsman on her inquiry on the human rights impact assessment of the EU-Turkey Statement of 18 March 2016 indicated that the European Commission should carry out regular fundamental rights assessments of its implementation. The implementation of the EU-Turkey Statement is linked to the hotspots approach. It has brought about serious fundamental rights challenges, which remain unresolved. The hotspots approach warrants, therefore, regular assessments, to which this FRA Opinion intends to contribute.










## Table 1: Assessing progress against individual opinions issued in FRA Opinion 05/2016





FRA Opinion 05/2016 included 21 individual opinions. For each of them, this table describes the relevant legal standards, the situation in November 2016 and in February 2019. Using a ‘traffic light’ approach, the last column shows in green ● significant improvements; in orange ● developments that have not yet resulted in significant improvements on the ground; and in red ● no significant improvements.



Legal standards	Situation in November 2016	Situation in February 2019	Trend
Access to international protection			
1. <i>The Asylum Procedures Directive (2013/32/EU) requires Member States to ensure that an <b>asylum application can be lodged as soon as possible</b> after an intention to apply for asylum is expressed. Likewise, asylum procedures must <b>be concluded as soon as possible</b>, without prejudice to an adequate and complete examination.</i>	Systemic delays in registering asylum applications of certain nationalities in the Greek hotspots.	Registration of the asylum claims is faster on the Greek islands, but delays in conducting first interviews are still significant.	●
2. <i>To give primary consideration to the best interests of the child as required by Article 24 of the Charter (the rights of the child), the examination of <b>applications for international protection of unaccompanied children</b> must be ensured as early as possible.</i>	Delays in registering asylum applications of unaccompanied children.	There were significant improvements in speeding up the registration of the asylum claim of unaccompanied children in Greece and Italy, but the asylum procedure itself remains protracted.	●
3. <i><b>Adequate information on the right to apply</b> for international protection and <b>the procedure to follow</b> is a prerequisite for accessing the right to asylum, as stipulated in the 1951 Geneva Convention relating to the Status of Refugees, Article 18 of the Charter (right to asylum), and the Asylum Procedures Directive.</i>	The capacity to provide adequate information was still not sufficient to cover all new arrivals.	The Greek and Italian authorities are making genuine efforts to enhance the provision of information through various initiatives, although migrants remain partly uninformed.	●

4.	<b>Excessive use of force to take fingerprints</b> for Eurodac may amount to violations of the following Charter rights: the right to dignity (Article 1) and integrity of a person (Article 3), prohibition of torture and inhuman or degrading treatment or punishment (Article 4) and the right to liberty and security (Article 6).	Excessive use of force to take fingerprints for Eurodac documented in particular in Italy.	FRA did not hear of any new cases of excessive use of force when taking fingerprints in neither Italian nor Greek hotspots.	
5.	Availability of <b>legal support</b> is a prerequisite for full access to the right to asylum. As required by Article 20 of the Asylum Procedures Directive and stemming from Article 47 of the Charter (the right to an effective remedy and to fair trial), free legal assistance and representation must be available for appeal proceedings.	FRA documented a gap in legal support for asylum applicants in the Greek hotspots.	The state is responsible for ensuring that free legal aid is available to appeal a negative asylum decision. Legal support capacity on the Greek islands has not improved significantly. In 2016, NGOs provided legal support, now there are state lawyers, but only one in Lesbos and one in Chios. UNHCR and civil society fill the gap. In Italy, asylum procedures are not carried out at hotspots.	
<b>Rights of the child</b>				
6.	An effective <b>guardianship system for unaccompanied children</b> is a pre-condition to ensure the child's best interests and general well-being, as required by the UN Convention on the Rights of the Child and Article 24 of the Charter (rights of the child) and the Reception Conditions Directive (2013/33/EU).	Local authorities without child protection expertise exercised temporary guardianship for unaccompanied children.	Greece and Italy adopted new guardianship laws. In Greece, the European Commission is funding a transitional programme bringing together UNHCR, the Greek Ministry of Labour and the Greek NGO Metadrasi to fill the gap until the new law is fully implemented on the ground.	
7.	<b>Separated children</b> – meaning children who are not travelling together with their parents or legal guardians but are accompanied by other adults – may be exposed to heightened risk of abuse or neglect. They must be identified and registered to ensure that they are provided the protection and care necessary for a child's well-being, as required by the UN Convention on the Rights of the Child and Article 24 of the Charter (rights of the child).	There were no adequate procedures to assess if a separated child (meaning a child accompanied by an adult other than the parents) was at risk of abuse or neglect.	A first assessment usually takes place upon arrival in Greece and Italy, but effective monitoring of the child's situation after the first assessment is limited.	
8.	Under Article 6 (right to liberty and security) and Article 24 (rights of the child) of the Charter, <b>detention of children, including unaccompanied children, is rarely justified. In its case law, the European Court of Human Rights (ECtHR) also made it clear that the detention of</b>	Most unaccompanied children in hotspots were deprived of liberty.	In Italy, unaccompanied children are not anymore staying in the hotspots for weeks and typically move on as soon as registration is completed, although in some cases they may stay longer. In Greece, areas for unaccompanied children are guarded	

	<p>children is not allowed in facilities that are inappropriate – as is the case for the hotspots.</p> <p>Article 24 (2) of the Reception Conditions Directive requires that unaccompanied children who have made an application for international protection must be placed either with adult relatives, a foster family, in accommodation centres with special provisions or other <b>suitable accommodation</b>.</p>		<p>but children are not detained there. Exceptionally, children are briefly detained on public order grounds and could be detained pending age assessment procedures.</p> <p>In Greece, in spite of genuine efforts, the number of dedicated places for unaccompanied children in shelters managed by the National Centre for Social Solidarity are still far below the needs. Dedicated areas in the hotspots remain inadequate.</p>	
9.	<p>Under Article 24 of the Charter, children are entitled to protection and care as is necessary for their well-being. Article 23 of the Reception Conditions Directive requires that <b>children are ensured a standard of living adequate</b> for their physical, mental, spiritual, moral and social development, as well as access to leisure activities, including age-appropriate play and recreational activities and to open-air activities. Articles 14 and 19 of the directive also guarantee the right to education and healthcare.</p>	<p>FRA documented serious gaps in the provision of adequate housing, education, and healthcare in the hotspots. Child-specific activities were often unavailable in practice.</p>	<p>Greece appointed child protection focal points in each hotspot who in practice are mainly exercising administrative tasks. In spite of genuine efforts material reception conditions worsened in the overcrowded Greek hotspots.</p> <p>In Italy, the requirements for the new call for tender for services in the hotspots may result in lowering the level of services, affecting also children.</p>	
10.	<p>Article 10 and Recital (40) of the Directive on combating the sexual abuse and sexual exploitation of children (2011/92/EU) provide for the <b>disqualification of persons who are convicted for certain offences</b> against children to exercise temporarily or permanently professional activities involving direct and regular contacts with children.</p>	<p>There were no systematic vetting procedures to ensure that individuals with a child abuse past do not engage with children in the hotspots.</p>	<p>Civil servants are checked against criminal record registries upon recruitment. The Standard Operating Procedures for the Greek hotspots (but not for Italy) contain some screening duties and the Hellenic Ministry of Migration Policy has a registry of NGOs but does not include vetting requirements.</p>	
<b>Identification of vulnerabilities</b>				
11.	<p>The Charter guarantees the rights of the child (Article 24), the elderly (Article 25) and of persons with disabilities (Article 26). Under Article 22 (1) of the Reception Conditions Directive, Member States have an obligation to assess whether an applicant for international protection has <b>special protection needs</b>.</p>	<p>Weak procedures to identify vulnerable persons swiftly.</p>	<p>Greece adopted a standardised vulnerability template and operational manual, but serious shortages of medical staff and interpreters delayed identification and lead to prolonged stay of vulnerable people in inadequate conditions in the hotspots. In Italy, the identification improved but there is no structured approach for adequate onward referral to facilities, which can address their specific needs.</p>	

12.	<i>Recital (25) and Article 11 of the EU Anti-Trafficking Directive (2011/36/EU) emphasise Member States' responsibility for ensuring assistance and support to <b>victims of trafficking in human beings</b>, and providing training for staff likely to encounter victims.</i>	Limited awareness and availability of specialised expertise on trafficking in human beings, particularly in Greece.	In spite of a number of measures, such as awareness-raising sessions for deployed officers, the appointment of focal points within the Hellenic Police and the Greek National Referral Mechanism becoming operational, the number of victims identified in the Greek hotspots remains extremely limited.  In Italy, particular attention continues to be given to trafficking in human beings.	
13.	<i>Sufficient presence of female police staff and interpreters contributes to safeguarding the dignity of women and girls in the hotspots, in line with Article 1 of the Charter (right to human dignity), and helps ensure respect for their right to private life enshrined in Article 7 of the Charter. It also plays an important role in facilitating the reporting of <b>sexual and gender-based violence</b>.</i>	Female staff are uncommon among police officers deployed to the hotspots.	Despite genuine efforts to increase the proportion of female police officers, the overwhelming majority of police officer are male. The proportion of women among interpreters and staff of other authorities involved in identification procedures is more balanced.	
<b>Safety of all persons in the hotspots</b>				
14.	<i>The right to good administration, which is a general principle of EU law also mirrored in Article 41 of the Charter, requires that persons <b>be informed</b> of procedures applicable to them. Article 5 of the Reception Conditions Directive and Article 12 of the Asylum Procedures Directive contain a duty to inform applicants for international protection.</i>	The inconsistent provision of information on procedures and rights contributed to tensions among migrants and asylum seekers in the hotspots.	In spite of genuine efforts, the lack of information emerged as one of the main concerns from UNHCR's inter-agency participatory assessment in Greece.  Information gaps exist also in Italian hotspots.	
15.	<i>The way a camp is designed and managed impacts significantly on the safety of people staying there, contributing also to preventing sexual and gender-based violence, as required by Article 18 (4) of the Reception Conditions Directive.</i>	Women and girls face specific risks in the hotspots, which are not always sufficiently taken into account in camp design and management.	Overcrowding in some Greek hotspots increased the risk of sexual and gender-based violence significantly. In practice, in most hotspots, single women are not accommodated in separate areas. Lack of gender-segregated sanitary facilities in Chios and Samos heighten the risk of gender-based violence.  In Italy, awareness about sexual and gender-based violence increased.	

16.	<i>Under Article 19 of the UN Convention on the Rights of the Child, states have the responsibility to ensure the <b>children's safety</b> from violence, sexual exploitation and abuse, as well as trafficking in human beings.</i>	In the hotspots, children face aggravated risk of abuse and violence.	In Italy, shorter stay in the hotspots has reduced the risk of experiencing violence, but in Greece, in spite of the establishment of dedicated areas for unaccompanied children and other measures, children continue to be exposed to abuse and violence, as victims as well as witnesses.	
17.	<i>Under Article 18 (8) of the Reception Conditions Directive, Member States may involve applicants in <b>managing the material resources and non-material aspects of life</b> in the reception facilities.</i>	Community engagement and outreach through regular meetings with asylum seekers and migrants hosted in the hotspots is limited.	The situation has not significantly changed. In some Greek hotspots, during the inter-agency participatory assessments, asylum applicants complained about limited community engagement.	
<b>Readmissions and returns</b>				
18.	<i>According to Guideline 18 (2) of the Council of Europe Twenty Guidelines on Forced Return and the Annex to Decision 2004/573/EC, <b>escorts</b> should be carefully selected and receive adequate training, including in the proper use of restraint techniques.</i>	Escorts deployed through Frontex for readmissions did not have sufficient experience.	Since mid-2017, the European Border and Coast Guard Agency undertakes monthly training for escorts; a guide on readmissions is under preparation.	
19.	<i><b>Effective monitoring of forced returns</b> by independent entities is an important safeguard against potential ill-treatment. It is also acknowledged by the Return Directive, which, in Article 8 (6), specifically requires Member States to establish effective forced return monitoring systems. Independent forced return monitoring safeguards the right to human dignity, the prohibition of inhuman or degrading treatment or punishment and the right to an effective remedy, all enshrined in the Charter.</i>	Insufficient independent monitoring of return and readmission operations.	The Office of the Greek Ombudsman and the Italian National Guarantor for the rights of persons detained and deprived of their liberty regularly visit the hotspots and monitor readmission and removal operations.	

20.	<b>Pre-removal detention</b> represents a limited exception to the right of liberty (Article 6 of the Charter) and as such needs to comply with the principles of necessity and proportionality (Article 52 (1) of the Charter). Article 15 of the Return Directive likewise states that detention should only be used where there are no other sufficient but less coercive measures available.	Placement in pre-removal detention without assessing necessity and proportionality (e.g. to prevent absconding) in the individual case.	Deprivation of liberty without assessing necessity and proportionality in the individual case continues. In Greece, this practice also concerns those asylum applicants who are placed in pre-removal facilities on the islands. In the Lampedusa hotspot in Italy, people are detained without a detention order.	
21.	Under Article 16 (5) of the Return Directive, which applies also when a Member State opted not to apply the directive in situations falling under its Article 2 (2) (a), returnees must be regularly <b>informed on their rights while in detention</b> .	There were gaps in the provision of information and limitations concerning the availability of interpreters.	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment documented major gaps during its visit to Greece in April 2018. Meanwhile, the Greek authorities contracted AEMY (Ανώνυμη Εταιρεία Μονάδων Υγείας, Health Units Societe Anonyme) to provide interpreters, medical and psycho-social staff to work in Kos and Moria pre-removal centres. FRA did not assess the effectiveness of this measure.	

## Introduction

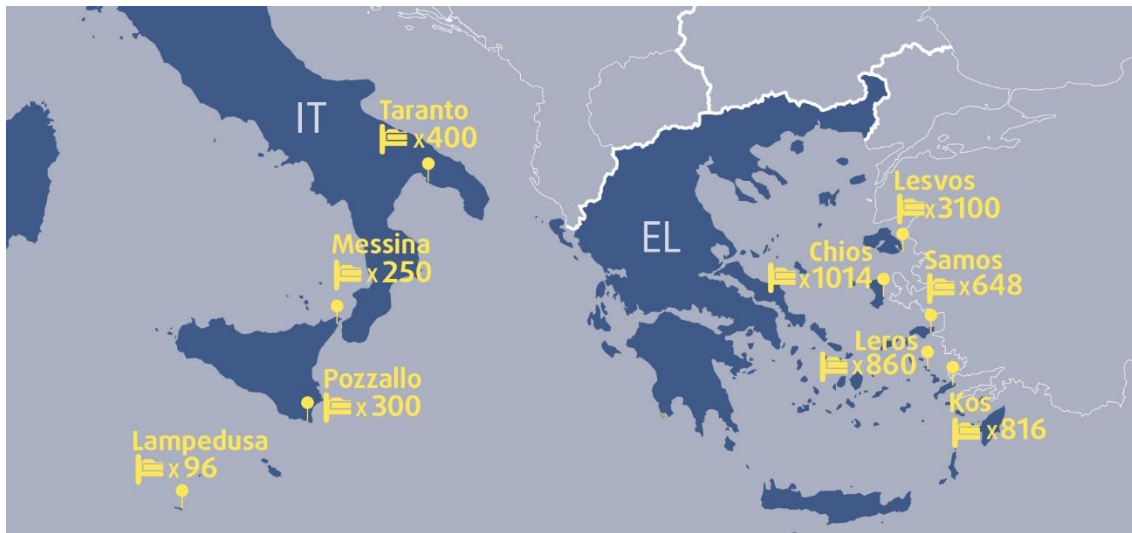
### Managing arrivals at borders: the 'hotspot' approach

The European Union's (EU) 'hotspot' approach is a building block of the EU response to significant numbers of refugees and migrants arriving at external borders, often traumatised or in distress.

Under this approach, conceived as a temporary measure, the EU assists frontline Member States that are confronted with disproportionate numbers of arrivals in registering those who come, addressing initial reception needs, identifying vulnerabilities and undertaking security checks. Asylum and return procedures may also take place in the hotspots. Conceptualised in the European Agenda on Migration in April 2015,<sup>7</sup> the hotspot approach has since then been implemented in Greece and Italy. It applies to all disembarkations of migrants rescued at sea, as well as to unauthorised landings in the Eastern Aegean islands and in the most affected areas of Southern Italy.

Five reception facilities in Greece and four in Italy implement the hotspot approach. Figure 1 shows the location of these nine facilities. A tenth hotspot in Trapani converted into a pre-removal detention centre (a "Permanent Centre for Returns" under Italian law) in late 2018.<sup>8</sup> The hotspot in Taranto does not process new arrivals anymore, as it hosts asylum applicants and migrants apprehended in the North of Italy trying to move to another EU Member State. At the same time, relevant actors also apply the hotspot approach to arrivals in other ports of Southern Italy, through arrangements also referred to as "mobile hotspots".

**Figure 1: Hotspots in Greece and Italy and their reception capacity (No. of persons)**



Note: In 2019, the hotspot in Taranto did not host new arrivals.

Source: FRA, 2019

<sup>7</sup> European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration](#), COM(2015) 240 final, Brussels, 13 May 2015.

<sup>8</sup> See the [notice for the call for tender](#) by the Italian Prefecture of Trapani, *Avviso pubblico esplorativo per la manifestazione di interesse a partecipare a procedura negoziata per l'affidamento del servizio di gestione del Centro per il Rimpatrio di Milo*, Trapani, 30 November 2018.

The primary responsibilities for a fundamental rights-compliant management of the hotspots remain with the Member States operating these. When implementing the hotspot approach, Member States act within the scope of EU law and, therefore, have to comply with the rights and principles set forth in the Charter of Fundamental Rights of the EU (Charter), which is legally binding also for EU institutions and agencies on the ground.<sup>9</sup>

National legislation, in particular on border management, asylum, return and child protection, regulates the activities carried out there. Whereas such legislation needs to comply with the Schengen *acquis* and the EU *acquis* on asylum and returns, Member States have discretion as to how to organise the different activities implemented in the hotspots.<sup>10</sup> Standard Operating Procedures adopted in Greece and Italy set out the tasks and responsibilities of the different actors involved, which may also include international organisations, such as the United Nations High Commissioner for Refugees (UNHCR) or the International Organization for Migration (IOM) and non-governmental organisations (NGOs).

Keeping new arrivals in facilities at the border implies interferences with a number of fundamental rights, as listed at the end of this introduction. The explanatory note of the European Commission on the hotspot approach mentions that EU agencies can use FRA for assistance on how to address fundamental rights challenges in the hotspot approach.<sup>11</sup> Since April 2016, FRA has regularly visited the hotspots to provide fundamental rights advice. As an illustration of its activities, FRA prepared short videos on fundamental rights for EASO and Frontex deployed experts in the hotspots. FRA's temporary field presence focused, in particular, on issues related to child protection, the situation of other vulnerable groups and procedural safeguards both in the asylum and return procedures.

The legal settings in which the hotspots operate in Greece and Italy differ significantly. In Greece, after the EU – Turkey statement of 18 March 2016,<sup>12</sup> the examination of the asylum claim often takes place while people stay in the hotspots. This means that asylum applicants stay in the hotspots on average over five months. In Italy, where the hotspots serve only registration, security screening and immediate assistance purposes, people usually stay in the hotspots for up to a few days, although longer stays lasting weeks occurred in 2018.<sup>13</sup> The longer people stay in the hotspots, the bigger the challenge is to comply with fundamental rights, experience shows.

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<sup>9</sup> See also European Commission, Commission Staff Working Document, [Best practices on the implementation of the hotspot approach](#), Accompanying the document Report from the Commission to the European Parliament, the European Council and the Council, Progress report on the European Agenda on Migration, SWD(2017) 372 final, Brussels, 15 November 2017, which underlines the need to comply with fundamental rights when operating and performing tasks in the hotspots.

<sup>10</sup> Italy, Ministry of the Interior, [Standard Operating Procedures \(SOPs\) applicable to Italian Hotspots](#) and Greece, Reception and Identification Service, General Secretariat for Reception, Ministry of Migration Policy, Manual of Standard Operating Procedures applicable to the Reception and Identification Centres (R.I.Cs), 1 December 2017.

<sup>11</sup> Statewatch made the explanatory note public at: <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>.

<sup>12</sup> [EU-Turkey Statement](#), Council of the EU, Press Release No. 144/16, 18 March 2016.

<sup>13</sup> Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Report to the Italian Government on the visit to Italy](#) carried out by the CPT from 7 to 13 June 2017, Strasbourg, 10 April 2018, paras. 23-24.



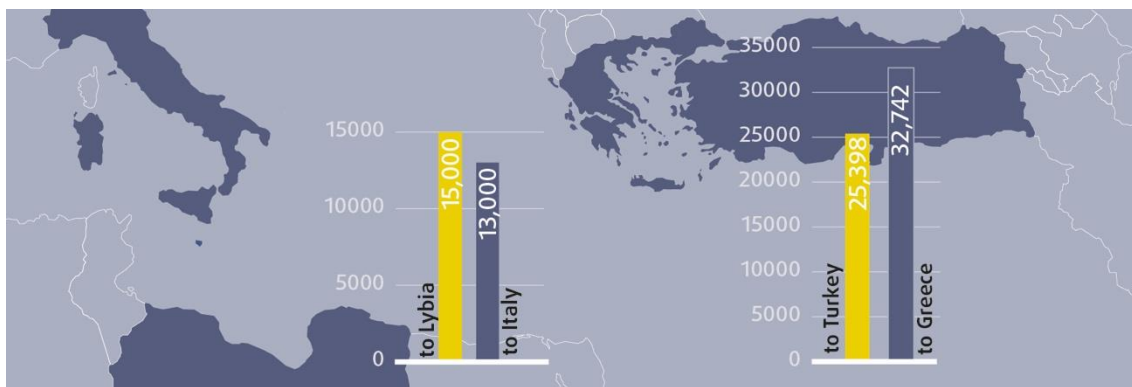
## EU and Member States policies affecting the implementation of the hotspot approach

The hotspots approach is one among several measures the EU and its Member States took following the unprecedented arrival of over a million people seeking refuge in EU Member States in 2015.<sup>14</sup> Some of the other measures taken affect the fundamental rights situation in the hotspots and deserve, therefore, mentioning.

### *Cooperation with third countries impacts on rescue at sea*

Libya and Turkey rescue many migrants and refugees and bring them back to their own ports. As illustrated in Figure 2, in 2018, the Libyan Coast Guard rescued or intercepted almost 15,000 refugees and migrants at sea,<sup>15</sup> which is more than the approximately 13,000 persons who left Libya and reached Italy.<sup>16</sup> The cooperation with Libya resulted in a significant decrease in persons reaching Italy after mid-2017,<sup>17</sup> with less people in the hotspots: Only some 227 people arrived in Italy between 1 January 2019 and 17 February 2019, compared to 9,448 people in the same period in 2017.<sup>18</sup> In 2018, Turkey intercepted or rescued 25,398 persons in the Aegean Sea, compared to 32,742 who reached the Eastern Aegean islands.<sup>19</sup> In December 2016, FRA provided guidance on the fundamental rights challenges resulting from the increased cooperation with third countries on migration management.<sup>20</sup>

**Figure 2: Disembarkation of persons rescued at sea: EU and third countries, 2018**



Source: FRA, 2019; based on data by UNHCR (Libya and arrivals in Greece), the Italian Ministry of Interior (Italy) and IOM (Turkey)

### *Relocation as an important safety valve ends*

As first countries of entry into the EU, Greece and Italy remain responsible to examine the asylum applications of the majority of persons who arrive.<sup>21</sup> Therefore, they are also

<sup>14</sup> Eurostat reports a total of some 1,322,000 first time applications in 2015. See Eurostat migration statistics ([migr\\_asyappctza](#)), data extracted on 28 February 2019.

<sup>15</sup> UNHCR, [Overview 2018, Libya](#), p. 1.

<sup>16</sup> The number of arrivals in Italy has been provided by Ministry of the Interior, personal communication, 21 January 2019.

<sup>17</sup> FRA (2018), [Fundamental Rights Report 2018](#), Luxembourg, Publications Office, sub-section 6.1.

<sup>18</sup> Italy, Ministry of the Interior, [Crusotto Statistico](#).

<sup>19</sup> For data on Turkey see International Organization for Migration, [Migrant Presence Monitoring Turkey](#), Overview of the Situation with Migrants, Annual Report 2018, p. 5; for Greece see [UNHCR Greece, Sea arrivals dashboard, December 2018](#).

<sup>20</sup> FRA (2016), [Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries](#), Luxembourg, Publications Office, December 2016.

<sup>21</sup> See [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining

responsible to host and protect them. To better share responsibility, on 20 July 2015, the EU agreed on the temporary emergency relocation of certain categories of asylum applicants from Greece and Italy to other parts of the EU<sup>22</sup> – a programme that meanwhile ended. At the same time, new arrivals in Greece increased: In 2018, over 32,000 persons arrived in Greece by sea, which is approximately 10 % more than in 2017 when some 29,000 arrived.<sup>23</sup> In 2018, the total number of arrivals to Greece by land and sea corresponds to some 35 % (50,215 arrivals) of total arrivals in Europe (144,166 arrivals).<sup>24</sup> In Italy, as of June 2018, the government disallowed several NGO rescue vessels to dock in Italian ports until other EU Member States agreed to accept the migrants rescued at sea.<sup>25</sup> This policy aimed at obtaining pledges by other EU Member States, but it further exacerbated the hardship of those rescued as they remained at sea for days and sometimes weeks until EU Member States negotiated an *ad hoc* solution.

### *Asylum processing at borders increases*

FRA observes an emerging trend towards processing applications for international protection while applicants remain confined at the external land or sea border.<sup>26</sup>

According to the European Commission the hotspot approach in Greece has shown “the added value of initiating the asylum and return procedures and, when appropriate, finalising them, in the hotspots.”<sup>27</sup> Other Member States adopted similar practises. Already in September 2015, Hungary introduced a border procedure to process applications for international protection in transit zones along its southern land border, confining applicants there;<sup>28</sup> an approach that Hungary extended to all applications in March 2017.<sup>29</sup> The Court of Justice of the EU will review this situation.<sup>30</sup> In June 2018, the European Council suggested the creation of “controlled centres” for persons

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an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, pp. 31-59.

<sup>22</sup> See [Justice and Home Affairs Council Conclusions](#), 20 July 2015 and [Council Decision \(EU\) 2015/1601](#) of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24 September 2015; subsequently amended by [Council Decision \(EU\) 2016/1754](#) of 29 September 2016 amending Decision 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 268, 1 October 2016. For the places pledged, see European Commission, [Relocation – Sharing responsibility within the EU](#), EU solidarity between Member States, November 2017.

<sup>23</sup> UNHCR Greece, Sea arrivals dashboard, December 2018.

<sup>24</sup> International Organization for Migration, (IOM), [Flow Monitoring Europe](#).

<sup>25</sup> For an overview of vessels, which were disallowed disembarkation, see FRA (2019), *Fundamental Rights Report 2019*, Luxembourg, Publications Office, sub-section 6.1 [forthcoming].

<sup>26</sup> See also Hungarian Helsinki Committee (2019), [Crossing a Red Line: How EU Countries Undermine the Right to Liberty by Expanding the Use of Detention of Asylum Seekers upon Entry: Case Studies on Bulgaria, Greece, Hungary, and Italy](#), Budapest, February 2019.

<sup>27</sup> European Commission, Commission Staff Working Document, [Best practices on the implementation of the hotspot approach](#), Accompanying the document Report from the Commission to the European Parliament, the European Council and the Council, Progress report on the European Agenda on Migration, SWD(2017) 372 final, Brussels, 15 November 2017.

<sup>28</sup> Hungary, [2007. évi LXXX. törvény a menedékjogról](#) (Act No. 80 of 2007 on asylum), Article 71/A. The legal basis for establishing the transit zones is set forth in Act No. 89 of 2007 on State borders ([2007. évi LXXXIX. törvény az államhatárról](#)), Article 15/A.

<sup>29</sup> Hungary, [2017. évi XX. törvény a határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes törvények módosításáról](#) (Act No. 20 of 2017 on amending laws on further tightening the rules of the asylum procedures conducted at the border).

<sup>30</sup> CJEU, C-808/18, *Commission v. Hungary*, case [referred to the Court](#) on 21 December 2018. See also European Commission, [Press release – Migration and Asylum: Commission takes further steps in infringement procedures against Hungary](#), Brussels, 19 July 2018.

intercepted or rescued at sea and disembarked in the EU.<sup>31</sup> The centres should enable identification and security checks of new arrivals, as well as rapid procedures for asylum and return; the centres would benefit from full EU support.<sup>32</sup> The term suggests some forms of deprivation or restriction of liberty that remain undefined.<sup>33</sup> As this FRA Opinion describes later, the processing of asylum claims in facilities at the land or sea borders, although not *per se* unlawful, raises many fundamental rights challenges, which in practice appear difficult to resolve.

### **EU action in the hotspots and related fundamental rights challenges**

The European Commission, the European Border and Coast Guard Agency (Frontex), the European Asylum Support Office (EASO, which has large operations only in the Greek hotspots), and Europol have a regular presence in most of the hotspots. FRA has been regularly visiting the hotspots since April 2016. Eurojust assists the host Member States with investigations to dismantle smuggling and trafficking networks.<sup>34</sup>

In Greece and Italy, the EU agencies concerned continue to deploy hundreds of staff.<sup>35</sup> EU agencies are significantly involved in the day-to-day operation of the hotspots, particularly in Greece. An EU Regional Task Force (EURTF) ensures the operational coordination and exchange of information between the national authorities and EU agencies. The Court of Auditors of the EU recommended that the Commission, together with the EU agencies and the national authorities, set out more clearly the role, structure and responsibilities of the EU Regional Task Forces.<sup>36</sup> Relevant actors agreed on the terms of cooperation<sup>37</sup> as well as on the rules of procedure for the EU Regional Task Force meetings in Greece and Italy.<sup>38</sup> EURTF meetings in Greece to which FRA also participates regularly discuss some targeted fundamental rights issues. The European Commission has deployed an expert to Athens focusing on vulnerable people who also prepares updates on child protection for the EURTF meetings.

EU law frames EU agencies deployment to support front-line Member States within “migration management support teams”.<sup>39</sup> According to the proposal on the revised

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<sup>31</sup> European Council, [European Council conclusions](#), 28 June 2018.

<sup>32</sup> European Commission, [Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard](#), COM(2018) 631 final, Brussels, 12 September 2018, Recitals (44), (46) and (48).

<sup>33</sup> European Commission, [Non-paper on “controlled centres” in the EU – interim framework](#), Brussels, 24 July 2018, which does not cover the regime of such centres.

<sup>34</sup> Eurojust Annual Report 2017, 9 April 2018, p. 37.

<sup>35</sup> See, for Greece, European Commission, [Operational implementation of the EU-Turkey Statement](#), Brussels, 5 December 2018; European Asylum Support Office, [EASO’s Operating Plan for Greece for 2019](#).

<sup>36</sup> European Court of Auditors, [EU response to the refugee crisis: the ‘hotspot’ approach](#), Special Report No. 6, 2017, Recommendation 4.

<sup>37</sup> Terms of cooperation for European Union Regional Task Forces (EURTF), Ref. Ares(2018)1622597 – 23/03/2018.

<sup>38</sup> See, for example, Rules of procedure of the European Union Regional Task Force for migration management support to Greece (EURTF-GR) as endorsed on 4 October 2018.

<sup>39</sup> [Regulation \(EU\) 2016/1624](#) of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC, Article 2 (10); [Regulation \(EU\) 2016/794](#) of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA ([2018] OJ L 135/53), Article 4; [Amended proposal](#) for a Regulation of the European Parliament and of the Council on the European Union Agency for

European Border and Coast Guard Regulation,<sup>40</sup> “migration management support teams” will be composed of staff deployed by Frontex, EASO, Europol and other relevant EU agencies as well as by Member States (Article 41 of the proposal). Recital (47) of the proposal reminds that relevant EU actors should ensure that activities in hotspots comply with applicable EU law. This can only be operationalised by deploying staff with the necessary fundamental rights knowledge. This could be achieved, for instance, by involving FRA.<sup>41</sup>

In the hotspots, EU agencies operate in an environment, which is delicate from a fundamental rights point of view. They are in daily contact with migrants and refugees supporting national authorities in taking decisions that significantly affect their lives and may interfere with their fundamental rights. In doing this, they also encounter fundamental rights challenges that relate to the national situation in the given Member State. For example, a screening process which ends in deprivation of liberty by the national authorities without fully respecting the safeguards of the Charter (as described in Part II, Section 5) indirectly affects the operational support by the European Border and Coast Guard Agency to screening. Furthermore, when people are not safe at night or basic human needs such as clothing, shoes remain unmet, asylum applicants may have difficulties focusing during the interview EASO carries out in support of the Greek Asylum Service. If not adequately addressed, such gaps affect the work of all actors in the hotspots, including EU institutions and agencies, with negative implications for the legitimacy and credibility of the EU operational support as a whole.

### Scope of this update

In November 2016, FRA analysed the fundamental rights challenges connected to the implementation of the ‘hotspot’ approach in Greece and Italy. At that time, FRA flagged a number of serious fundamental rights gaps, affecting the work of all actors in the hotspots, including the EU. FRA underlined also the need for a more systematic and regular collection of data and evidence on the fundamental rights situation in Greek and Italian hotspots. Meanwhile, FRA has been reporting on developments in Greece and Italy in the context of its regular overviews of migration-related fundamental rights concerns.<sup>42</sup>

In her inquiry on the human rights impact assessment of the EU-Turkey Statement, the European Ombudsman invited the Commission to include the impact of the implementation of the EU-Turkey Statement on fundamental rights in its regular updates.<sup>43</sup> By measuring progress against the fundamental rights gaps identified in 2016, this FRA Opinion contributes to assess the impact of the hotspots approach and the EU-Turkey Statement more specifically on the rights of migrants and refugees.

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Asylum and repealing Regulation (EU) No 439/2010, COM(2018) 633 final, 2016/0131(COD), Brussels, 12 September 2018; Article 16 (2) (o)-(q) and Article 21.

<sup>40</sup> European Commission (2018), [Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation \(EU\) No. 1052/2013 of the European Parliament and of the Council and Regulation \(EU\) n° 2016/1624 of the European Parliament and of the Council](#), 2018/0330(COD); COM(2018)631 final, Brussels, 12 September 2018.

<sup>41</sup> See also European Commission, Fact Sheet, [State of the Union 2018: A reinforced European Union Agency for Asylum – Questions and Answers](#), Strasbourg, 12 September 2018.

<sup>42</sup> Such overviews are available on FRA’s webpage at <https://fra.europa.eu/en/theme/asylum-migration-borders/overviews>.

<sup>43</sup> European Ombudsman, [Decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Agreement](#), 18 January 2017.

The 2019 FRA Opinion has two parts. The first part focuses on the reception conditions in Greece. Given persistent challenges to address serious gaps, it tries to explain some of the underlying reasons why existing fundamental rights gaps, in particular those related to sub-standard reception conditions on the Eastern Aegean islands, are difficult to address in spite of all genuine efforts by national, European and international actors. The second part follows the same five thematic headings of the 2016 FRA Opinion, adjusting some section and opinion headings to facilitate reading. For each of the five thematic sections, FRA compares the situation in November 2016 with that in February 2019, looking at each of the 21 individual FRA opinions. This part covers Greece and Italy. Illustrative boxes in light red provide examples of fundamental rights gaps and boxes in green promising practices.

The 2019 FRA Opinion is based on observations and discussions in Greece and Italy complemented by desk research. It touches upon the following Charter rights without comprehensively looking at all fundamental rights risks arising from the operation of the hotspots:

- the right to human dignity (Article 1);
- the prohibition of torture and inhuman or degrading treatment or punishment (Article 4);
- the prohibition of trafficking in human beings (Article 5 (3));
- the right to liberty and security (Article 6);
- the right to respect for private and family life (Article 7);
- the right to asylum and the protection in the event of removal, expulsion and extradition (Articles 18 and 19);
- equality before the law and non-discrimination (Articles 20 and 21);
- the rights of the child (Article 24);
- the rights of the elderly and persons with disabilities (Articles 25 and 26);
- the right to good administration (Article 41);
- the right to an effective remedy and to a fair trial (Article 47).

FRA would like to thank all those who at short notice contributed to the collection and verification of data and information for this update.

## Part I: Reception conditions in Greece: a persistent challenge

Reports about refugees trapped in undignified conditions on the Greek islands regularly hit the press.<sup>44</sup> They pictured the ever-growing tent camps under the olive grove or in the forest around the hotspots in Moria (Lesvos), Vial (Chios) and Vathy (Samos) showing children walking in the mud and angry residents complaining about the unbearable situation in the camps.



Picture 1: Extended area of Vial hotspot (Chios), November 2017, FRA

The first part of this FRA Opinion covers Greece. It is there where most fundamental rights challenges in the hotspots persist. This part of the opinion tries to illustrate some of the underlying reasons why fundamental rights gaps, in particular those relating to reception conditions, remain unaddressed in spite of the genuine efforts by many national, European and international actors. In doing this, FRA focuses on three factors, although these are not exhaustive.

### 1. Asylum processing resulting in longer stay

Greece and Italy apply the hotspots approach differently. This influences the fundamental rights challenges that arise. It also determines the nature of EU's involvement, in particular EASO's role, which is prominent in the Greek hotspots, as there EASO provides support for processing applications for international protection.

In Greece and Italy, registration and identification procedures record whether a newly arrived person intends to request international protection. In Italy, those who express the intention to apply for international protection are transferred soon to other facilities (a practice, which allows for better living conditions in the hotspots). This is not the case in Greece after the EU-Turkey Statement of 18 March 2016.

The Greek Asylum Service formally registers all applications for international protection while people stay in the hotspots. All applicants, except for vulnerable persons and family reunification cases under the Dublin Regulation (EU) No. 604/2013, are obliged to stay in the hotspot until the end of the asylum procedure, including during the review by the appeal committee. Their freedom of movement is limited to the island where they are staying. For vulnerable cases, the practice has not always been the same. Since late 2018, the Greek Asylum Service has been lifting such geographical restriction when asylum applicants are found to be vulnerable. Prior to that, however, many vulnerable

<sup>44</sup> See, for example, The Telegraph, 9 January 2019, [Migrant women with newborn babies sent back to live in tents in notorious Greek refugee camp](#); The New York Times, 2 October 2018, ['Better to Drown': A Greek Refugee Camp's Epidemic of Misery](#); Independent, January 2017, [Refugees in Greece 'could freeze to death' in snow due to inadequate winter preparations, warn aid groups](#); Ekathimerini, 12 October 2018, [Migrant camp squalor not limited to Moria](#).

applicants had to stay in the hotspots not just until they were found vulnerable but until their first asylum interview. On two islands, Lesbos and Kos, there are closed pre-removal facilities nearby or at the hotspots where migrants and asylum applicants can be detained. Figure 3 visualises in a simplified manner the different ways in which the hotspots approach is applied in Greece and Italy.

**Figure 3: Simplified overview of procedures in the hotspots in Greece and Italy**



*Note: In Greece, pre-removal facilities exist only on two islands, Lesbos and Kos; practices regarding who is placed there change regularly.*

*Source: FRA, 2019*

In Italy, there are indications of moves towards the Greek model. Legislative reforms adopted in 2018 will make it also possible to confine migrants for 30 days in special facilities (*appositi locali*) within the hotspots as the authorities carry out accelerated asylum procedures.<sup>45</sup> By February 2019, no such facilities existed in any of the three operational hotspots. If not adequately governed and organised, the implementation of this new provision could create important new fundamental rights challenges in Italy.

The first main consequence of this difference in approach is the time people spend in the hotspots. Usually, people stay in the Italian hotspots for one-two days before their transfer – although longer stays of weeks occur in some instances – whereas they spend on average over five months on the Eastern Aegean islands (see Table 2). According to estimates based on UNHCR records, over 200 persons have been on the islands since 2016, although this may also include persons who stay there due to lack of alternative options in the mainland. The infrastructure and the services offered in the hotspots are not designed for long-term stay. If people remain in the hotspots for months, it results in interference in a wide array of individuals’ rights including right to human dignity, rights of the child and others, as shown in the second part of this FRA Opinion.

<sup>45</sup> Italy, Law Decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018 [*decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1° dicembre 2018, No. 132*], Official Gazette [Gazzetta Ufficiale] No. 281, 3 December 2018, Article 3 (1) (a) on the 30 days deadline and Article 9 (1-ter) and (1-quarter) on border procedure as well as on the five territorial commissions.

**Table 2: Number of persons staying on the five Greek islands by year of arrival and total average length of stay, 25 February 2019**

Year of arrival	2016	2017	2018	2019	Total	Average stay on the islands		
						Syrians	Nationalities with recognition rate above 25%	Nationalities with recognition rate below 25%
Number of persons staying on the five islands	224	628	11460	1306	13618	6,7 months	5,46 months	4,43 months

Note: The five islands are Lesbos, Chios, Samos, Leros and Kos. The analysis is an estimation based on available UNHCR records of all asylum applicants and refugees living on the five islands. The 25 % recognition rate is calculated according to Eurostat, Table 7: [First instance decisions by outcome and recognition rates, 30 main citizenships of asylum applicants granted decisions in the EU-28, 2nd quarter 2018](#) (accessed on 18 February 2019). Syrian nationals are not included to the 'above 25% category'.

Source: UNHCR, February 2019

The second related consequence is the risk of overcrowding. As procedures take time to complete and people continue to arrive, keeping applicants for international protection in the hotspots until the interview or the whole procedure is over, means that accommodation capacity is quickly overstretched. Table 3 shows the number of people staying in each of the Greek hotspots on five different dates, namely 27 February 2019, 4 February 2019, 18 September 2018, 18 April 2018 and 16 November 2017 compared to their official capacity. It shows that the hotspots in Greece were most of the time overcrowded, even if the total reception capacity of the hotspots has increased since 2017 and despite the fact that there are also other facilities for vulnerable people on the islands, such as apartments. In February 2018, the Greek Council of State issued an interim order according to which the occupancy of the hotspot in Chios should not exceed 100 prefabricated houses and 1,274 residents.<sup>46</sup>

**Table3: Greek hotspots: Occupancy compared to capacity, selected dates**

Date	Lesvos		Chios		Samos		Leros		Kos	
	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.
27.02.2019	5125	3100	1422	1014	3969	648	950	860	719	816
04.02.2019	4930	3100	1369	1014	3669	648	1017	860	767	816
18.09.2018	8804	3100	2274	1014	4017	648	659	860	1318	816
18.04.2018	6539	3000	1432	1014	2879	648	646	860	880	816
16.11.2017	6489	2330	2274	894	2162	700	837	880	792	772

Notes: Occ. = number of people staying in the hotspot at a given date; Cap. = reception capacity of the hotspot at that time. Numbers in red show overcrowding and in green occupancy within capacity. The numbers refer only to the hotspots and not to other accommodation facilities on the islands.

Source: Hellenic Republic, Ministry of Citizen Protection, National Coordination Centre for Border Control, Immigration and Asylum, National situation regarding the islands at Eastern Aegean Sea on [27.02.2019](#), [04.02.2019](#), [18.09.2018](#), [18.04.2018](#) and [16.11.2017](#).

<sup>46</sup> See, Council of State Interim Order, 28.02.2018, at: [http://www.era-aegean.gr/wp-content/uploads/2018/03/STE\\_proswrini\\_entoli\\_VIAL\\_chios\\_18Feb18.jpg](http://www.era-aegean.gr/wp-content/uploads/2018/03/STE_proswrini_entoli_VIAL_chios_18Feb18.jpg).





Picture 2: Samos, tents outside Vathy hotspot, December 2018, FRA

In 2018 and early 2019, the level of overcrowding has been particularly high on the islands of Samos and Lesbos. When FRA visited Samos in December 2018, the hotspot hosted over 4,000 people, which is more than six times its intended capacity. Thousands of asylum applicants including families with small children and other vulnerable people had to live in sub-standard

conditions in extended areas of the hotspot. The Greek government implemented since September 2018 a decongestion strategy aimed at transferring those whose geographical restriction was lifted: for example, in December 2018, it accelerated the transfers to the mainland, particularly from Samos and Lesbos.<sup>47</sup> Despite all the transfers to decongest the islands, overcrowding remains critical.

Many of the asylum applicants in the Greek hotspots are obliged to stay there. Their freedom of movement is limited to the island where they are living. Such restriction of liberty serves to allow a possible future readmission to Turkey under the EU-Turkey Statement of 18 March 2016.<sup>48</sup> As Turkey does not readmit migrants who moved from the islands to the Greek mainland,<sup>49</sup> those who could potentially be sent back to Turkey are forced to stay on the island by means of a geographical restriction of liberty, the Greek Asylum Service issues. The geographical restriction lasts until the applicant receives international protection or until it is established that he or she is exempted from the border procedure as found vulnerable or for family reunification reasons.<sup>50</sup> Such vulnerability assessment, however, can take weeks or sometimes months (see Part II, Section 4). At the same time, in practice, vulnerable applicants might stay in the hotspots even after their geographical restriction is lifted due to lack of sufficient facilities in the mainland. For example, when FRA visited Samos in July 2018, there were some 1,000 persons staying there with lifted geographical restriction.

For non-vulnerable persons, the length of stay on the islands depends on the length of the asylum procedure. The length of the asylum procedure depends not only on the number of arrivals and the circumstances of each case but also on the capacity of the caseworkers and interpreters, as well as on the availability of space to conduct

<sup>47</sup> UNHCR, [Thousands of asylum-seekers moved off Greek islands](#), 27 December 2018.

<sup>48</sup> European Council, EU-Turkey Statement, 18 March 2016. See also European Commission, [Next operational steps in EU-Turkey cooperation in the field of migration](#), COM(2016) 166 final, Brussels, 16 March 2016.

<sup>49</sup> See European Commission, [Turkey 2018 Report, 2018 Communication on EU Enlargement Policy](#), SWD(2018) 153 final, Strasbourg, 17 April 2018: "Turkey is not yet implementing the provisions relating to third-country nationals in the EU-Turkey readmission agreement, despite these entering into force on 1 October 2017."

<sup>50</sup> Following a Council of State ruling annulling a 2016 decision of the Director of the Greek Asylum Service imposing a restriction of movement on asylum seekers arriving on the islands, the Greek Asylum Service issued a new decision justifying the geographical restrictions to facilitate the implementation of the EU Turkey statement and the processing of asylum requests. See Decision of the Greek Asylum Service Director No. 8269, Gov. Gazette B' 1366/20.04.2018. In October 2018, the Director of Greek Asylum Service issued a new decision confirming the geographical restriction but expressly exempting vulnerable applicants and family reunification cases under the Dublin Regulation (EU) No. 604/2013. See Decision of the Greek Asylum Service Director No. 18984, Gov. Gazette B' 4427/05.10.2018.

interviews on each island. The availability of medical staff is another critical element as interviews are postponed if a vulnerability assessment has not been carried out. In Kos, which is one of the hotspots less affected in terms of overcrowding, in 2018, the average time from the lodging of the application until the first interview with EASO was 41 days while from the date of the interview until the issuance of the recommendation by EASO was 45 days.

Greece has become one of the top 10 EU Member States processing the largest numbers of asylum claims with a total of 46,254 decisions in 2018.<sup>51</sup> Comparing this with other EU Member States, as shown in Table 4, in the first nine months of 2018, all over Greece, the Greek Asylum Service examined asylum applications of 23,520 people, which is more than the United Kingdom and twice as many as the total decisions the Greek Asylum Service took in 2016 (11,455 decisions).<sup>52</sup> This represents a major increase.

**Table 4: First instance decisions on asylum applications, January-September 2018, 10 EU Member States with the largest number of decisions**

EU Member State	No. of decisions
1. Germany	136,810
2. France	85,470
3. Italy	72,015
4. Austria	28,445
5. Sweden	23,640
<b>6. Greece</b>	<b>23,520</b>
7. United Kingdom	22,290
8. Belgium	15,025
9. Spain	9,045
10. Netherlands	7,535
<b>TOTAL NO. OF DECISION IN THE 28 EU MEMBER STATES</b>	<b>441,665</b>

Source: Eurostat, [migr\\_asydcfstq](#) (data extracted on 18 February 2019)

Even with the important assistance the European Asylum Support Office provides, it is difficult to imagine how the processing time of implementing the temporary border procedure under Article 60 (4) of Law 4375/2016 or the regular asylum procedure on the islands can be further accelerated without undermining the quality of decisions. Putting further pressure on the Greek Asylum Service may undermine the quality of first instance asylum decisions, which in turn would prolong the overall length of procedure, as more work would be shifted to the appeals stage.

It is foreseeable that asylum applicants will continue to stay on the islands for a significant amount of time. This means that reception arrangements on the islands must cater not only for the immediate needs of people upon arrival, as is the case in Italy, but provide safe and dignified reception conditions over time. This is a much more challenging task.

<sup>51</sup> [Statistical Data of the Greek Asylum Service \(from 7.6.2013 to 31.01.2019\)](#).

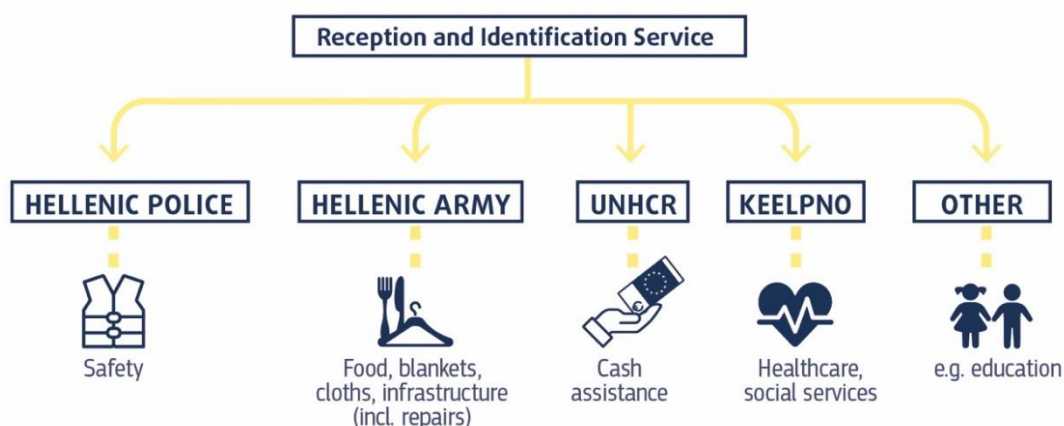
<sup>52</sup> Eurostat, [migr\\_asydcfstq](#), data extracted on 18 February 2019.

## 2. Procurement, staffing and coordination challenges delay actions to enhance reception conditions

The Reception and Identification Service (RIS) is the Greek authority responsible for the management of the hotspots.<sup>53</sup> RIS appointed a permanent coordinator in each hotspot who bears overall responsibility for the running of the centres. Administrative and technical staff, employed under different contractual arrangements, support the coordinator. Only few RIS staff have permanent contracts. In Leros, none of them has. The majority are either contract agents co-financed through the EU Asylum, Migration and Integration Fund (AMIF) with renewable fix-term contracts or staff provided through a scheme for unemployed people who rotate regularly. In February 2019, the staff provided through the scheme for unemployed people constituted approximately 62% of RIS staff in the hotspots.<sup>54</sup> Contract agent staff faced regular delays in the payment of their salaries. In 2018-2019, this happened three times. Contract staff funded by AMIF and working for the Greek Asylum Service went on strike several times in 2017 and 2018, as they had not been paid for some months.<sup>55</sup>

Whereas RIS bears overall responsibility for the hotspots and for ensuring due respect of the right to human dignity there, it does not provide directly most of the services for people hosted there. As illustrated in Figure 4, the Hellenic Army is responsible for maintaining the hotspot infrastructure, for food distribution and for the purchase of non-food items (e.g. tents or clothing). Social, psychosocial and medical services are provided by the Hellenic Centre for Disease Control and Prevention (KEELPNO). UNHCR provides cash assistance. Security is the responsibility of the Hellenic Police. The permanent coordinator must thus rely on the effectiveness and good cooperation of several actors on the ground. This requires significant coordination skills and efforts.

**Figure 4: Responsibilities for material reception conditions and services in the Greek hotspots**



Source: FRA, 2019

<sup>53</sup> Greece, Law 4375/2016, Article 8 (2), Government Gazette 51/A/03.04.2016. The facilities on the islands are referred to as Reception and Identification Centres.

<sup>54</sup> Information provided by the Reception and Identification Service, February 2019.

<sup>55</sup> See, iefimerida, 8 March 2018, [Σε επίσημη εργασία οι συμβασιούχοι της υπηρεσίας Ασύλου -Οι υποσχέσεις Μπαλάφα](#); Greek Asylum Service, 4 April 2017, [Announcement concerning the Asylum Service staff strike on April 5th and 6th](#) and CNN Greece, 6 September 2017. [Σε 48ωρη απεργία προχωρούν οι συμβασιούχοι των δομών της Υπηρεσίας Ασύλου.](#)

Coordination is particularly challenging with regard to procurement. Eight years ago, FRA published a report on the situation in the Evros region.<sup>56</sup> The report found the lengthy bureaucratic procedures to be one of the factors contributing to the fundamental rights crisis at the Greek-Turkish border in 2011. Some of the underlying factors resulting in procurement delays remain also today. The approach to procurement has been reactive with limited advance planning. New calls for tender are issued whenever needs arise without making full use of mechanisms, which could simplify procurement, such as framework contracts. Moreover, the risk of being held accountable for not having taken all the precautionary measures to ensure correct use of funds takes precedence over the urgency to ensure, for example, that children in the hotspots do not walk around without shoes. As the following examples illustrate, it takes excessive time to get budget approval for small-scale purchases, repairing a broken window or contract a service.

- **RIS interpreters under AMIF**

For some years, the NGO Metadrası provided interpreters to RIS under AMIF. The contract with Metadrası ended in December 2017. Following several unsuccessful procurement procedures, eventually RIS signed a contract with a private company in December 2018 and started to deploy interpreters to the hotspots. The gap lasted almost a year. During this time, EASO and other actors supported RIS sharing their own interpreters who, however, could not cover all the needs.

- **Tents in Samos**

The hotspot in Samos has been regularly overcrowded.<sup>57</sup> In each of the hotspots, RIS should have a sufficient number of tents as a contingency in case of large number of arrivals. When FRA visited the Samos hotspot in July 2018, newly arriving migrants and asylum seekers had to buy their tents from the local shops for approximately € 10. FRA was informed that RIS in Samos ran out of tents already in May 2018. RIS requested the Ministry of Defence, who is responsible to procure the tents who reacted to it by issuing a call for tender. Tents were delivered in December 2018 but were of wrong type. Ten months later, RIS Samos still does not have the proper type of tents and most of the newly arrived migrants and asylum seekers continue to buy them for € 10 from the local shops.

- **Beds for unaccompanied children in Kos**



*Picture 3: Kos, container for unaccompanied children, December 2017, FRA*

In December 2017, FRA visited the Kos hotspot. FRA noted that in the area for unaccompanied children, some of the children had no beds. Children slept on mattresses put on the floor. RIS informed FRA that it had requested the Ministry of Defence to procure new beds. In February 2019, when FRA visited the hotspot, the situation had not changed.

<sup>56</sup> FRA (2011), [Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner](#), Luxembourg, Publications Office, 8 March 2011.

<sup>57</sup> See Table 3. For example, according to the data provided by the Hellenic Republic, Ministry of Citizen Protection, National Coordination Centre for Border Control, Immigration and Asylum, National situation regarding the islands at Eastern Aegean Sea, on 4 February 2019 Samos hotspot hosted 3.669 people and its capacity is 648.

- **RIS petty cash**

In 2018, using a national budget line, RIS allocated the amount of € 1,000 to each hotspot for small repair works and small non-food items. However, in the absence of clear guidelines on how to disburse this money and for what type of expenditure, only the permanent coordinator in Lesvos could partly use it. The money had to be disbursed through the Bank of Greece, which has no office on Leros. In Samos, there was no civil servant entitled to use the funds.

When visiting the islands, FRA generally noted a commitment by all actors involved to resolve the issue. When asked why there are delays in procurement, FRA was typically asked to inquire with the various authorities in Athens. It goes beyond the scope of this publication to analyse the reasons for long procurement procedures caused by insufficient planning, coordination difficulties and procurement weaknesses in some national institutions. However, time delays significantly affect the daily life of asylum applicants accommodated in the hotspots leading to fundamental rights violations on a daily basis.

### 3. Specific challenges relating to the islands

The five Greek hotspots are all located on an island. As a starting point, it is important to realise that the share of asylum applicants and refugees among the islands' populations is significant. As shown in Table 5, this is more than 15 % of the resident population in Leros (almost 13 % counting only those in the hotspots) and almost 12 % in Samos (11 % calculated with those in the hotspots). Except for Lesvos, the presence of a large number of asylum seekers is a new phenomenon for residents.

**Table 5: Asylum applicants and resident population, five Greek islands, February 2019**

Island	People in hotspots	Asylum applicants* on the island (total)	Resident population	Ratio in %	
				Hotspots/residents	All asylum applicants/residents
Lesvos	4930	6917	86,436	5.7	8
Chios	1369	1633	52,674	2.6	3.1
Samos	3669	3927	32,977	11.1	11.9
Leros	1017	1239	7,917	12.8	15.6
Kos	767	990	34,396	2.2	2.9

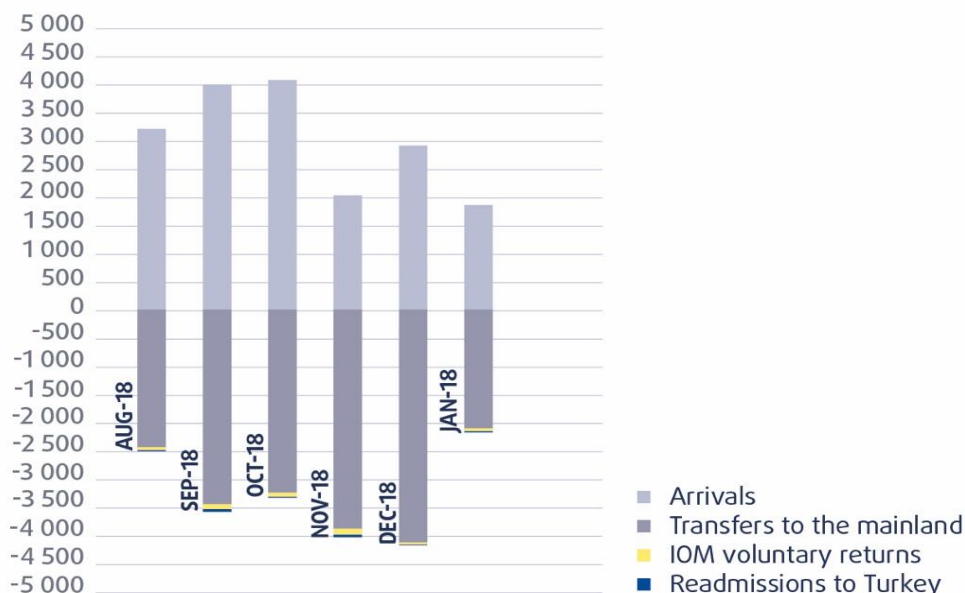
Note: \* = includes also persons granted international protection and rejected asylum applicants staying on the island, including in pre-removal detention.

Source: FRA, 2019; based on data on asylum applicants in hotspots and on the islands from the Hellenic Police: [04.02.2019](#); data on resident population from the Hellenic Statistical Authority: [Demographic characteristics \(2011 census\)](#)

The Greek authorities regularly transfer asylum applicants to the mainland. Most people transferred are vulnerable people, although there are also some recognised refugees and family reunification cases. In 2018, the Greek authorities transferred 29.000 vulnerable people to the mainland, the majority of whom were women and children. One of the reasons that contributes to the increasing vulnerabilities are the sub-standard reception conditions in the overcrowded facilities that make people prone to become vulnerable, as defined by Article 14 (8) of Law 4375/2016. However, as new people continue to arrive, these transfers do not bring down the overall number of asylum seekers in the hotspots. As shown in Figure 5, roughly the same number of

people come and leave the hotspots each months. People come, have to endure the conditions of the hotspots for some months, and, if vulnerable, the authorities transfer them.

**Figure 5: Arrivals to Eastern Aegean islands and movements from the islands**



Source: Hellenic Police, February 2019

Some public services for the resident population on the islands are traditionally limited. The arrival of migrants and refugees further affected them. The following case study on paediatricians and gynaecologists illustrates that regardless of the genuine efforts taken to improve relevant medical capacity on the five islands, the situation is deemed to remain difficult.

**Case study: Paediatricians and gynaecologists working in public healthcare facilities on the five islands**

Some 30 % of the asylum seekers and refugee population living in the five islands are children and some 20 % women. To cater for their medical needs, there must be sufficient paediatricians and gynaecologists. Most asylum applicants lack financial resources, which means that such medical services need to be provided by public healthcare providers. As Tables 6 and 7 show, there are only 10 paediatricians and some 15 gynaecologists working in the public healthcare institutions on all five islands taken together. In Samos, there is only one paediatrician and in Kos none.<sup>58</sup> Next to healthcare services, the expertise of paediatricians is also needed for the age assessment procedure. In June 2018, the Commissioner for Human Rights of the Council of Europe also noted the serious lack of medical staff working in the hotspots.<sup>59</sup>

Having acknowledged this gap, the Greek authorities attempted to address it by deploying more medical staff to the islands. Through the AMIF-funded project Philos, the Hellenic Centre for Disease Control and Prevention (KEELPNO) tried to recruit doctors, nurses, psychologists and other professionals to support public healthcare

<sup>58</sup> FRA, personal communication with healthcare providers on the islands, February 2019.

<sup>59</sup> Council of Europe, [Report of the Commissioner for Human Rights of the Council of Europe](#), Dunja Mijatovic following her visit to Greece from 25-29 June 2018, Strasbourg, 6 November 2018, p.8.

institutions on the islands. This, in addition to medical staff, social workers and other experts recruited to work within the hotspots.<sup>60</sup>

However, the results of such calls are disappointing. In February 2019, KEELPNO published the results of a call for tender for medical staff to work in the hotspots: the call included 17 positions for general practitioners and only three successful applicants figure in the provisional results.<sup>61</sup> Furthermore, for the seven paediatricians required for the local public hospitals, there are only two successful applicants in Lesvos. Similarly, the call included four gynaecologists and there were only two successful applications.<sup>62</sup>

**Table 6: Availability of paediatricians on the Greek islands**

Island	No. of asylum seeking children on the island	Number of local children	Paediatricians			
			In public institutions	Private	KEELPNO	
					Call	Successful applications
Lesvos	2244	16,969	4	12	2	2
Chios	357	10,053	3	11	1	0
Samos	1000	6,070	1	5	2	0
Leros	231	1,697	2	0	1	0
Kos	246	7,668	0	8	1	0

Notes: Asylum seeking children includes also refugee children and children of rejected asylum applicants still staying on the islands. Local children mean persons aged 0-19 years. The table does not include the six paediatricians KEELPNO recruited to work inside the hotspots (distribution per hotspot not yet available). Results of the KEELPNO call are not final. Doctors who work in public institutions and have also their private office are listed in the column "in public institutions" only.

Source: FRA, 2019; calculation based on UNHCR data for asylum-seeking children (week 4-10 February 2019); [2011 census](#) for data on resident children; healthcare providers on the islands; and KEELPNO Philos II call for number of paediatricians

**Table 7: Availability of gynaecologists on the Greek islands**

Island	No. of female asylum seekers on the island aged >18	Female local residents >19 years	Gynaecologists			
			In public institutions	Private	KEELPNO	
					Call	Successful applications
Lesvos	1518	35,543	5	5	1	1
Chios	374	21,444	3	8	1	1
Samos	880	13,171	3	5	-	-
Leros	131	3,865	1	0	-	-
Kos	164	12,825	3	3	2	0

Notes: The term asylum seeker includes also refugees and rejected asylum applicants still staying on the islands; For Leros, female local residents >19 includes all female resident

<sup>60</sup> See Philos I call at [https://philosgreece.eu/images/MyMedia/call-for-tenders/PROKIRIXI\\_PHILOS\\_NISIA\\_10-7-2017.pdf](https://philosgreece.eu/images/MyMedia/call-for-tenders/PROKIRIXI_PHILOS_NISIA_10-7-2017.pdf) and Philos II call at <https://keelpno.gr/wp-content/uploads/2019/01/%CE%A9%CE%9B%CE%A4%CE%9E469%CE%97%CE%9C%CE%9B-70%CE%91.pdf>.

<sup>61</sup> See, KEELPNO, 11 February 2019, results of the Philos II call for the hotspots at <https://keelpno.gr/anartisi-prosorinon-apotelesmaton-philos/>.

<sup>62</sup> See, KEELPNO, 11 February 2019, results of the Philos II call for public healthcare institutions on the islands at <https://keelpno.gr/anartisi-prosorinon-apotelesmaton-philos-ypoerqo-4/>.

population as of 0 years of age. In Leros, there is one gynaecologist travelling from Kalymnos once or twice per week. - = not included in call; results of the KEELPNO call are not final.

Source: FRA (2019) calculation based on UNHCR data for women > 18 years (week 4-10 February 2019); [2011 census](#) for local residents; healthcare providers on the islands; and KEELPNO Philos II call for number of gynaecologists

According to estimates based on available UNHCR records, asylum seeking women and girls aged 15-49 years stay on the islands on average over six months in Kos, over five months in Lesvos, over four months in Chios, almost four months in Samos and almost three in Leros. This case study illustrates that it is difficult for the Greek authorities to recruit specialists to work on the Eastern Aegean islands. The fact that the KEELPNO Philos II call offered increased compensation and lowered the necessary requirements candidates needed to fulfil,<sup>63</sup> did not significantly change the outcome. The situation is similar to the call the Greek Asylum Service issued for lawyers (see Part II of this FRA Opinion).

On the islands, tourism is an important source of income for many residents. As Table 5 and 8 indicates, in Kos there are more hotel beds than residents, and in Samos, there is one hotel bed for every three inhabitants. This, without counting private accommodation for tourists. The infrastructure and services on the islands, such as healthcare, also need to cater for them.

**Table 8: Number of hotel beds five Greek islands, 2018**

Island	Beds in hotels	Ratio in %
Lesvos	6,896	8
Chios	2,882	5,4
Samos	9,835	30
Leros	1,228	15,5
Kos	52,490	152

Source: [Hellenic Chamber of Hotels](#) (private accommodation for tourists not included)

Infrastructure, economic situation and population vary between the five islands. The significant number of asylum applicants on the island puts a strain on the local infrastructure and services. Resident populations on all islands struggle to cope with the impact of the hotspots.

Local communities organised several rallies with the support from municipal authorities, the most recent ones in early February 2019 in Samos and Lesvos. The local communities have been protesting against the containment policy and desolate reception conditions. They were demanding faster decongestion of the overcrowded hotspots. Residents also express concerns about safety, hygiene and provision of health care services and on the impact on tourism, which is a major industry on some islands. The long stay of asylum seekers on the islands in undignified conditions has also contributed to the rise of xenophobic rhetoric and hate crime incidents, even on Lesvos whose residents have been traditionally providing support to refugees. On 22 April 2018, in Mytiline, a group of approximately 200 far-right activists violently attacked asylum seekers who were camping on the main square protesting against the living

<sup>63</sup> See Ministry of Health, 26 September 2018, [Press release on further incentives for doctors and dentists working in facilities for refugees](#).



conditions in the Moria hotspot.<sup>64</sup> The incident in Lesvos is not unique. In 2017, the Greek Racist Violence Recording Network documented 13 instances of assaults against asylum seekers and people supporting them on the islands.<sup>65</sup>

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<sup>64</sup> See, ERT International, 23 April 2018, [Violent incidents in Mytilene – Far-right members attacked refugees](#).

<sup>65</sup> Greek Racist Violence Recording Network, [Annual Report 2017](#). See also, Refugee Support Aegean, 31 October 2018, ["Rise of xenophobic and racist incidents in the past 6 months": A timeline - R.S.A.](#)

## Part II: Assessing progress on the 2016 FRA Opinion on the hotspots

The second part of this FRA Opinion describes progress against the 21 individual opinions formulated in November 2016. Several of these opinions coincided with the findings of Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, who visited Italy on 16-21 October 2016 and Greece in March 2016.<sup>66</sup> This part provides a brief overview of the gaps identified at the time and of the situation in February 2019, assessing whether, in broad terms, the situation improved considerably, did not improve considerably, or developments have not yet resulted in significant changes for people on the ground. This second part follows the same five headings used in 2016.

### 1. Addressing fundamental rights issues resulting from international protection procedures carried out at hotspots

Identifying whether newly arrived people wish to apply for international protection and directing them to the asylum procedure is a core function of the hotspot approach. It serves to uphold the right to asylum protected in Article 18 of the Charter. It also forms the basis for the protection from *refoulement* and collective expulsion, reflected in Article 19 of the Charter as well as Article 78 of the Treaty on the Functioning of the European Union and Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR).

The first chapter of the 2016 FRA Opinion covered access to international protection. Whereas, as illustrated in Part I of this FRA Opinion, new fundamental rights challenges emerged because more people are kept in the Greek hotspots during the asylum procedures, in general terms, most gaps to access international protection have meanwhile been addressed.

In its 2016 Opinion, FRA listed five issues for improvement. By February 2019, significant improvements occurred in relation to the excessive use of force while taking fingerprints (Opinion 4). On the other issues, either no significant changes occurred, or (as is the case for Opinion 3 on information) the developments did not significantly affect the life of those staying in the hotspots.

The main changes compared to the situation in 2016 on these five issues are as follows:

#### ***FRA Opinion 1: Addressing delays in processing applications for international protection***

According to Article 6 (1) of the Asylum Procedures Directive (2013/32/EU),<sup>67</sup> applications for international protection must be registered within three working days, or 10 working days in case of large numbers of simultaneous applications (Article 6 (5)). Member States also have the obligation under Article 6 (2) of the directive to ensure that individuals who have expressed their wish to apply for asylum ('made' an

<sup>66</sup> For Italy, see Council of Europe, [Report of the fact-finding mission to Italy](#) by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 16-21 October 2016, SG/Inf (2017)8, 2 March 2017 and for Greece, see [Report of the fact-finding mission](#) by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Greece and "the former Yugoslav Republic of Macedonia", 7-11 March 2016, SG/Inf(2016)18, 26 April 2016.

<sup>67</sup> [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, pp. 60-95.

application for international protection) have an effective opportunity to lodge their application as soon as possible.

The 2016 FRA Opinion noted several months delay in the registration of asylum applications of certain nationalities on the Greek islands. In February 2019, registration of asylum claims in the Greek hotspots is faster, but delays in scheduling interviews remain significant also in case of vulnerable applicants. This is partially due to the lack of sufficient working space on the islands that would ensure that interviews are carried out in confidential setting. As shown in Part I, asylum applicants stay on average over five months on the Eastern Aegean islands.

In Italy, the swift implementation of return procedures may *de facto* deprive some new arrivals of a reasonable possibility to access international protection, in particular those coming from countries that have readmission agreements with Italy. NGOs underlined that migrants of Tunisian origin could not always express their intention to apply for asylum at the hotspot.<sup>68</sup> Furthermore, new arrivals do not receive any document, which certifies that they have expressed the intention to apply for asylum during their registration in an Italian hotspot, contrary to what the Italian Standard Operating Procedures for hotspots envisage.<sup>69</sup> This exposes them to a possible risk of *refoulement* if they are arrested before they can officially lodge their asylum application after their transfer to other reception facilities.

### ***FRA Opinion 2: Ensuring access to asylum for unaccompanied children***

Delays in registering and processing asylum applications have particularly serious effects on unaccompanied children. In 2016, Greek and Italian authorities registered asylum applications of unaccompanied children after they were transferred from the hotspots. The absence of appropriate accommodation, however, delayed their transfer considerably.

Asylum applications of unaccompanied children are registered in the Greek hotspots; they are immediately referred to the National Centre for Social Solidarity (EKKA), with the request to find appropriate accommodation. In Italy, Law 47/2017 on unaccompanied children allows an unaccompanied child to lodge an asylum request in presence of a temporary guardian.<sup>70</sup> This has reduced the time until the registration of the asylum application of unaccompanied children, but has not yet significantly reduced the length of their asylum procedures as a whole, which remain long in both Member States.

### ***FRA Opinion 3: Enhancing the provision of information on asylum***

Adequate information on the right to apply for international protection and the procedure to follow is a prerequisite for accessing the right to asylum, as stipulated in Article 18 of the Charter. The Asylum Procedures Directive stipulates in Article 8 (1) the obligation of Member States to provide information on the possibility to apply for international protection at the border, and to provide the necessary interpretation arrangements, if needed. In 2016, FRA concluded that in spite of significant efforts to

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<sup>68</sup> See also ActionAid, ASGI, Cild, IndieWatch, In Limine, [Scenari di frontiera: il caso Lampedusa. L'approccio hotspot e le sue possibili evoluzioni alla luce del Decreto legge n. 113/2018](#), October 2018, pp. 14 and 16. The UN Special Rapporteur on the Human Rights of Migrants already highlighted this issues in 2014, see: [Report on the Follow-up mission to Italy](#) (2-6 December 2014), A/HRC/29/36/Add.2, 1 May 201.

<sup>69</sup> Italy, [Standard Operating Procedures applicable to the Italian hotspots](#), at B.3.

<sup>70</sup> Italy, [Law No. 47 of April 7, 2017](#), Provisions on Protective Measures for Unaccompanied Foreign Minors, Official Gazzette, 21 April 2017, No. 93, Article 18.

inform new arrivals, the capacity to provide adequate information was still not sufficient, particularly in light of people's language diversity.

In Greece as well as Italy, different actors through a collaborative approach provide information on asylum in the hotspots – with important roles played by the managing authority, RIS, UNHCR, IOM, EASO, the asylum and police authorities, legal practitioners as well as NGOs contracted or invited to carry out specific activities in the hotspots. Since 2016, the channels used to provide information have improved.

The Greek Asylum Service developed an app in different languages,<sup>71</sup> a brochure targeting children<sup>72</sup> and updated the information about the asylum procedure on its website in 18 languages.<sup>73</sup> The UNHCR HELP website<sup>74</sup> provides answers to asylum seekers' questions regarding the application process, their rights and obligations, and on how to access services when living in Greece. Nevertheless, the Inter-Agency Participatory Assessments carried out annually by UNHCR on all the Eastern Aegean islands show that asylum applicants still have only limited understanding of the asylum procedure and lack information on their individual asylum cases. FRA observed that communities in the hotspots were uninformed, in particular, about the scope and rationale of transfers to the mainland.

In Italy, in spite of genuine efforts by the specialised organisations providing information, such as UNHCR and IOM as well as the national authorities, not everyone seemed to understand the implications of requesting or not requesting asylum, as FRA witnessed when visiting Lampedusa in January 2019. The physical and psychological state of the people rescued at sea, the timing of delivering information, the complexity of the procedures and the fact that not all relevant languages are covered, continue to be important obstacles to effective information provision.<sup>75</sup> In November 2018, the Italian Ministry of the Interior announced new standard terms of references (*capitolato*) for the provision of services at first reception centres, including the hotspots, which continue to provide 12 hours for the provision of information.<sup>76</sup>

#### **FRA Opinion 4: Complying with the Charter when taking fingerprints**

Excessive use of force when taking fingerprints for the Eurodac database<sup>77</sup> may amount to violations of the rights to dignity (Article 1 of the Charter) and integrity of a person

<sup>71</sup> Greek Asylum Service Application, at:

<https://play.google.com/store/apps/details?id=com.ionicframework.asylumapp646672&hl=el>.

<sup>72</sup> See, Greek Asylum Service, [I am under 18 and I seek asylum in Greece](#).

<sup>73</sup> Greek Asylum Service, *Information in 18 languages*, available at: [http://asylo.gov.gr/en/?page\\_id=99](http://asylo.gov.gr/en/?page_id=99).

<sup>74</sup> UNHCR HELP available at: <https://help.unhcr.org/greece/>.

<sup>75</sup> See also CPT, [Report to the Italian Government on the visit to Italy](#) carried out from 7 to 13 June 2017, CPT/Inf (2018) 13, paras. 33-34.

<sup>76</sup> Italy (2018), Ministry of the Interior, [Circolare sul nuovo schema di capitolato di appalto per i centri di prima accoglienza](#), 21 November 2018, Article 15 (5) and Annex A, p. 3 (table applicable to hotspots). To compare with the previous applicable framework, see, for example, Italy (2019), Ministry of the Interior, Prefecture Ragusa, [Gara per la gestione dell'Hotspot di Pozzallo, Dotazione minima del personale](#), 29 October 2018.

<sup>77</sup> [Regulation \(EU\) No 603/2013](#) of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, pp. 1-30.

(Article 3 of the Charter), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter) and the right to liberty and security (Article 6 of the Charter). Instances of alleged excessive use of force when taking fingerprints for Eurodac were brought to FRA's attention from Italy in the course of 2015.

FRA suggests refraining to use physical or psychological force to obtain fingerprints for Eurodac, because it entails a high risk of violating fundamental rights. As FRA pointed out in its 2015 focus paper,<sup>78</sup> compliance with this obligation should primarily be secured through effective information and counselling. This can either be provided individually and/or through outreach actions targeting migrant communities, such as focus group discussions, information sessions and similar initiatives. The Standard Operating Procedures for Italy also envisage counselling, in case of refusal of fingerprinting.<sup>79</sup>

Since 2018, FRA did not hear of any new cases of excessive use of force when taking fingerprints for Eurodac, neither in Greece nor in Italy.

### ***FRA Opinion 5: Increasing availability of legal support and legal aid***

Given the complexity of the asylum procedures as well as language barriers, availability of legal support is a prerequisite for full access to the right to asylum. As required by Article 20 of the Asylum Procedures Directive and stemming from Article 47 of the Charter (the right to an effective remedy and to fair trial), free legal assistance and representation must be available for appeal proceedings. In cases involving international protection, availability of legal support becomes a key safeguard against *refoulement*, as highlighted by the European Court of Human Rights (ECtHR).<sup>80</sup>

In 2016, in Greece, legal support occurred through a temporary EU funded project, which UNHCR and its local partners implemented.<sup>81</sup> In Italy, asylum procedures do not take place in the hotspots, where the authorities only register the person's intention to apply for asylum. If this approach is changed, arrangements for legal aid to appeal asylum decisions will become relevant also there.<sup>82</sup>

Legal support capacity on the Greek islands has not improved significantly since then in spite of genuine efforts. In September 2017, the Greek Asylum Service created its own registry of lawyers for the provision of legal assistance in appeal procedures. The initial call provided for six lawyers on Lesbos, five on Chios, four on Samos, one on Leros and four on Kos.<sup>83</sup> By the end of 2017, only three lawyers were contracted in Lesbos, Chios and Kos, respectively.<sup>84</sup> After a second call in February 2018,<sup>85</sup> at the end of 2018 the situation remained similar: there was one state-funded lawyer on Chios and one who was seconded from Athens to Lesbos.<sup>86</sup> As past calls for tender were unsuccessful in filling the needs, an Inter-Ministerial Decision signed in February 2019 reduced the

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<sup>78</sup> FRA (2015), [Fundamental rights implications of the obligation to provide fingerprints for Eurodac](#), Luxembourg, Publications Office, October 2015.

<sup>79</sup> Italy, [Standard Operating Procedures applicable to the Italian hotspots](#), at B.7.2.c.

<sup>80</sup> ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, 23 February 2012, paras. 185-186.

<sup>81</sup> UNHCR, *Refugees/Migrants Emergency Response – Mediterranean*, Greece Web Data Portal, [Europe's Refugee Emergency Response Update #29](#), 19 July–8 August, p. 1.

<sup>82</sup> See Italy, Law Decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018, Article 3.

<sup>83</sup> Greek Asylum Service, [Document No. 5713/29.03.2017](#).

<sup>84</sup> See Greek Asylum Service [Legal aid from 21.09.2017 until 31.12.2017](#).

<sup>85</sup> Greek Asylum Service, [Document No. 3217/02.02.2018](#).

<sup>86</sup> See Greek Council for Refugees, Press Release, [Refugees on the islands without second instance legal assistance](#), 28 November 2018.

requirements for lawyers to apply and raised lawyers' compensation.<sup>87</sup> The next call will show if lawyers find it more attractive. Meanwhile, UNHCR funds lawyers on the five islands and NGOs continue to provide legal aid (see Table 9).

**Table 9: State-funded legal aid, number of lawyers on the Greek hotspot islands**

Island	November 2017			February 2019			UNHCR funded lawyers*
	Call for tender 2017	No. of lawyers	Camp population	Call for tender 2018	No. of lawyers	Camp population	
Lesvos	6	1	6489	4	1	4975	5
Chios	5	1	2274	1	1	1370	3
Samos	4	0	2162	2	0	3715	3
Leros	1	0	837	1	0	1011	1
Kos	4	1	792	1	0	751	1

Notes: \* = data for December 2018. In addition, non-governmental organisations deploy lawyers to support in particular unaccompanied children, victims of sexual and gender based violence and other vulnerable persons.

Source: FRA, 2019; based on: Greek Asylum Service calls for tender; Hellenic Republic, Ministry of Citizen Protection, National Coordination Centre for Border Control, Immigration and Asylum (for camp population); UNHCR for number of UNHCR lawyers.

<sup>87</sup> Greece, Ministerial decision signed in February 2019. Not yet published.

## 2. Protecting children must remain a high priority

Children represent the largest vulnerable group on the Greek islands. In February 2019, 31% of the asylum seekers population on the islands were children. A significant proportion of them, approximately 18% are unaccompanied.<sup>88</sup> In Italy, 3,536 unaccompanied and separated children arrived by sea, representing 15 % of all sea arrivals in 2018.<sup>89</sup> Some 38 % of the 10,787 unaccompanied children present in Italy at the end of 2018 were in Sicily, where most of Italian hotspots are located.<sup>90</sup>

The ECtHR repeatedly stated that the special protection granted to asylum seekers is particularly important in case of children, in view of their specific needs and their extreme vulnerability, whether unaccompanied or accompanied by parents.<sup>91</sup> Article 24 of the Charter emphasises the best interests of the child as a key principle of all actions taken in relation to children by public authorities and private actors. In this regard, Member States must provide to the child such protection and care as is necessary for his or her well-being and development. According to Article 3 of the United Nations (UN) Convention on the Rights of the Child, States should also ensure that institutions, services and facilities responsible for the care or protection of children promote and safeguard the child's best interests and wellbeing and are subject to effective supervision and monitoring. The principle of the best interests as a primary consideration is reiterated in EU secondary law (in particular Articles 7 and 25 of the Asylum Procedures Directive, Articles 23 and 24 of the Reception Conditions Directive (2013/33/EU)<sup>92</sup> and Articles 10 and 17 of the Return Directive (2008/115)<sup>93</sup>) which provides specific safeguards for children in asylum and return procedures.

FRA's 2016 Opinion put significant emphasis on child protection, formulating several suggestions for improvement. Greece and Italy consider that the hotspots are not appropriate facilities to keep unaccompanied children but in practice children do spend some time there. Due to overcrowding, lack of specialised staff, but also due to severe shortage of non-food items as well as meaningful activities, including enrolment in public schools, conditions in the Greek hotspots remain far below the minimum standards set out in the Reception Conditions Directive. Changes occurred in relation to three of the five opinions formulated in 2016: Opinions 6, 7 and 8 but developments did not yet result in significant improvements on the ground.

The main changes compared to the situation in 2016 on these five issues are the following:

### ***FRA Opinion 6: Ensuring a functioning system of guardianship for unaccompanied children***

An effective guardianship system for unaccompanied children is a pre-condition to ensure the child's best interests and general well-being, as required by the UN

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<sup>88</sup> UNHCR, Aegean Islands [Weekly Snapshot, 4-10 February 2019](#).

<sup>89</sup> UNHCR, [Italy Unaccompanied and Separated Children Dashboard - December 2018](#), 11 January 2019.

<sup>90</sup> Italy, Ministry of Employment and Social Policies (*Ministero del Lavoro e delle Politiche Sociali*) (2018), [Report Mensile Minori Stranieri Non Accompagnati \(Msna\) In Italia](#), 31 December 2018.

<sup>91</sup> See ECtHR, *Tarakhel v. Switzerland [GC]*, No. 29217/12, 4 November 2014, para. 99; ECtHR, *Popov v. France*, Nos. 39472/07 and 39474/07, 19 January 2012, para. 91; ECtHR, *Rahimi v. Greece*, No. 8687/08, 5 July 2011, para. 87.

<sup>92</sup> [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

<sup>93</sup> [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Convention on the Rights of the Child and Article 24 of the Charter (rights of the child). In the absence of their parents, unaccompanied children need a guardian who supports them during their stay, safeguarding the child's best interests and his/her general well-being and to this effect complementing the limited legal capacity of the child.<sup>94</sup> Without a guardian, an unaccompanied child will remain excluded from a number of rights. The manager of the hotspot in Italy (or the mayor) and the local public prosecutor of the Court of First Instance in Greece exercise temporary guardianship functions for unaccompanied children staying in the hotspots.<sup>95</sup> Typically, they lack specific child protection expertise.

Some improvements occurred. Italy adopted a law for the protection of unaccompanied children in 2017,<sup>96</sup> and Greece adopted a new law on guardianship<sup>97</sup> with implementing Ministerial Decisions expected soon. Meanwhile, the European Commission is funding a transitional programme bringing together UNHCR, the Greek Ministry of Labour and the Greek NGO Metadrasi to ensure the continuous deployment of staff to all hotspot islands to whom the responsible public prosecutor assigns part of the guardianship tasks. In Italy, unaccompanied children do not stay anymore for weeks in the hotspots. Although the temporary guardianship role of the manager of the facility is very limited in time, such tasks require adequate child protection expertise. Insufficient knowledge and skills may lead to unintentional mistakes, with serious consequences for the child's well-being.

Issues still remain with age assessment in Greece. Limited resources, for example, the absence of a paediatrician in Kos, may lead to protracted age assessment procedures. In addition, difficulties emerge when the age of a child needs to be rectified in a database. As these procedures might also determine the outcome of an asylum claim or a family reunification procedure, assistance by guardians or persons assigned with guardianship tasks should be provided to children upon arrival.

**Promising practice: Presence of Metadrasi during identification and registration procedures in some of the Greek hotspots**

As a temporary measure and following the authorisation of the responsible Public Prosecutor, on some islands, members of the Metadrasi guardianship network are allowed to be present during the initial screening and registration carried out by the Hellenic Police. This results in more accurate recording of the age of unaccompanied children, thus reducing the need for rectification at a later stage.

Source: FRA, 2019

**FRA Opinion 7: Standardising procedures for separated children**

Separated children – meaning children who are not travelling together with their parents or legal guardians but are accompanied by other adults<sup>98</sup> – may be exposed to heightened risk of abuse or neglect. They must be identified and staff with child

<sup>94</sup> FRA (2015), [Guardianship systems for children deprived of parental care in the European Union – With a particular focus on their role in responding to child trafficking](#), Luxembourg, Publications Office, October 2015, p. 14.

<sup>95</sup> *Ibid.*, at sub-section 4.3.

<sup>96</sup> Italy, [Law No. 47 of April 7, 2017](#), Provisions on Protective Measures for Unaccompanied Foreign Minors, *Gazzetta Ufficiale* 21 April 2017.

<sup>97</sup> Greece, Law No. 4554 of 18 July 2018, published in State Gazette No. 130 on the regulatory framework for the guardianship of unaccompanied minors.

<sup>98</sup> UN Committee on the Rights of the Child, [General Comment No. 6](#) (2005), para. 8.



protection expertise must assess whether there is a risk of abuse or neglect by the accompanying person. They must advise if the child should stay with the accompanying adult or not and what steps are required to monitor the child's well-being. In its November 2016 Opinion, FRA highlighted the absence of a standardised child protection approach. In 2016, in Greece, there was no systematic assessment to see whether the child was at risk of abuse or neglect by the accompanying adult.

Meanwhile, as FRA observed in Greek hotspots, psychologists and/or social workers carry out a risk assessment based on which the public prosecutor issues decisions on the assignment of care of the separated child. Sometimes the absence of psychologists or interpreters prevents this to occur or delays the process. However, the capacity to monitor the situation of the child after the initial assessment is limited thus preventing adequate follow up in case of changes affecting the child.

In Italy, during its visit to Lampedusa in January 2019, FRA noted that international organisations had spoken to a separated child to gather information on possible protection risks in view of emergency measures to be taken by the competent authorities in favour of the child. FRA could not observe how follow-up measures, including a risk assessment carried out by specialised staff, are coordinated with the reception facility to which the child is moved.

### ***FRA Opinion 8: Ensuring protection of unaccompanied children without resorting to detention***

Under Article 6 (right to liberty and security) and Article 24 (right of the child) of the Charter, detention of children is rarely justified. In its case law, the ECtHR made it clear that the detention of children is unlawful in facilities that are inappropriate.<sup>99</sup> Article 24 (2) of the Reception Conditions Directive requires that unaccompanied children who have made an application for international protection must be placed either with adult relatives, a foster family, in accommodation centres with special provisions or other suitable accommodation.

In Greece as well as in Italy, new arrivals, including children, stay in the hotspots until a place for them in another reception facility becomes available. In Greece, the Reception and Identification Service has the authority to deprive a person of liberty for a three-day period, extendable up to 25 days, a practice which FRA has recently not observed.<sup>100</sup> Unaccompanied children involved in disturbances sometimes end up for a few days in police detention facilities for public order reasons. Italian law does not allow the detention of unaccompanied children.<sup>101</sup>

In its 2016 FRA Opinion, the Agency described the deprivation of liberty in the hotspots, including the placement of unaccompanied children in closed dedicated sections in some hotspots. In at least one hotspot in Italy, unaccompanied children were not allowed to leave the hotspot premises.

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<sup>99</sup> ECtHR, *Popov v. France*, Nos. 39472/07 and No. 39474/07, 19 January 2012, para. 119; ECtHR, *S.F. and Others v. Bulgaria*, No. 8138/16, 7 December 2017, paras. 87-89, 90 and 92.

<sup>100</sup> Greece, Law No. 4375 of 2016 on the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, Article 14 (2) and Article 46 (10) (b). Exceptionally, the deprivation of liberty may be extended further 20 days in case to ensure safe referral of unaccompanied children to appropriate accommodation.

<sup>101</sup> Italy, [Law No. 47 of April 7, 2017](#), Provisions on Protective Measures for Unaccompanied Foreign Minors, Official Gazzette, 21 April 2017, Article 4.



Picture 4: Dedicated area for unaccompanied children, Vial (Chios) April 2017, FRA

The legislative framework regulating detention of unaccompanied children in Greece and Italy remains essentially unchanged. In practice, deprivation of liberty in hotspot areas is less common. In Greece, dedicated areas for unaccompanied children, which were closed in 2016 are now guarded but not closed anymore. However, the excessive use of barbed wire and the lack of structured activities in most of the dedicated areas is not conducive to a dignified stay and a child-friendly environment. Cases of unaccompanied children held for a few days for public order reasons in police custody continue.

### **Adequate housing for unaccompanied children in Greece remains insufficient**

The overall number of unaccompanied children in Greece has increased sharply since 2017. Whereas in January 2017, there were 2,200 unaccompanied children in Greece, on 15 February 2019, the National Centre for Social Solidarity (EKKA) reported an estimate of 3,708 unaccompanied children. Despite this fact, the number of places available in the long-term accommodation has decreased from 1,282 in January 2017 to 1,045 in February 2019. Children waiting for placement increased from 1,350 in 2017 to 1,980 in 2019. In order to cover the gap in accommodation for unaccompanied children, safe zones were established in the camps on the mainland and an emergency hotel scheme was introduced. These arrangements do not offer, however, the quality standards necessary for the long-term reception of unaccompanied children. Besides, based on EKKA data, on 15 February 2019, 607 unaccompanied children were homeless in Greece, a situation resulting in the violation of many of their fundamental rights.<sup>102</sup> This shows that in spite of the efforts made, a gap in adequate shelter remains in Greece.

Source: FRA, 2019; based on data by the National Centre for Social Solidarity (EKKA), *Situation Updates: Unaccompanied Children in Greece*

In Italy, where most newly arrived children are unaccompanied, their swift onward movement to open facilities and child protection measures by the agency managing the hotspots significantly reduced the number of those deprived of liberty in the hotspots. Nevertheless, FRA observed that in the hotspot of Lampedusa, a closed facility, unaccompanied children risk to remain deprived of their liberty for prolonged time until an appropriate place where to accommodate them is found or due to the adverse weather conditions on the sea, which delay the ferry crossing. In January 2019, FRA met one separated Tunisian child. He stayed in the hotspot for a total of 11 days.

### **FRA Opinion 9: Providing adequate conditions and access to services for children**

Under Article 24 of the Charter, children are entitled to protection and care as is necessary for their well-being. Article 23 of the Reception Conditions Directive requires that children are ensured a standard of living adequate for their physical, mental, spiritual, moral and social development, as well as access to leisure activities, including age-appropriate play and recreational activities and to open-air activities.

<sup>102</sup> Greece, EKKA, Situation Update, [Unaccompanied children in Greece, 15 February 2019](#).

Articles 14 and 19 of the directive also guarantee the right to education and healthcare.

Adequate response to the needs of children in the hotspots requires not only adequate infrastructure, but also the presence of qualified staff, both women and men, with child protection and social work expertise.

In Greece, material reception conditions as well as services in the hotspots dropped because of overcrowding in most hotspots, affecting also children's well-being.

### **Unaccompanied children continue to live in inappropriate and unsafe conditions**

Samos: In December 2018, FRA visited Vathy hotspot, which was hosting approximately 267 unaccompanied children. Only 120 of them lived in the dedicated area, which has an official capacity to host 56 children. The other children lived either elsewhere in the hotspot or in the area surrounding the camp. The containers in the dedicated area had broken doors following an incident that took place in September 2017, water leaking inside and no proper beds or mattresses. Makeshift tents were placed inside the dedicated area. FRA observed 16 unaccompanied girls hosted in one container inside the police registration area of the hotspot where they had very little space. FRA understood that they had to take shifts in sleeping, as they did not fit inside.

Source: FRA, 2019

According to the Greek law, children have access to education regardless of their migration or residence status.<sup>103</sup> Even if they lack sufficient documentation, they can be enrolled in public schools as long as they are vaccinated. According to estimation based on available UNHCR records, compulsory school age children stay on the islands on average over six months in Kos, over five months in Lesbos, some three months and a half in Chios and Samos and some two months and a half in Leros. To facilitate access of asylum seeking children who live in camps and hotspots to formal education, the Greek Ministry of Education established in 2016, "Reception/ Preparatory Classes for the Education of Refugees" (Δομές Υποδοχής και Εκπαίδευσης Προσφύγων, DYEP) in certain public schools.<sup>104</sup> This programme serves to prepare the children up to the age of 15 to attend regular school classes. However, its implementation on the Eastern Aegean islands has been slow. On most islands, the operation of DYEP in neighbouring schools has started in 2018 (e.g. October 2018 on Chios<sup>105</sup>) or in the beginning of 2019 (e.g. in Samos and Kos).<sup>106</sup> For pre-school education, DYEP kindergartens have started operating inside hotspots, however as FRA observed during its visit to Samos in December 2018, only 10 children were enrolled. With the exemption of some cases in the hotspot of Leros, children above the age of compulsory schooling (16-17) face serious difficulties in accessing public schools. The Commissioner for Human Rights of the Council of Europe during her visit to Greece in June 2018 also expressed concern regarding access to education.<sup>107</sup> To fill these gaps, non-governmental organisations

<sup>103</sup> Greece, Presidential Decree No. 220/2007, Article 9 (1).

<sup>104</sup> Greece, Ministerial Decision No 152360/ΓΔ4/2016, Gov. Gazette 3049/B/23.09.2016 (replaced by Ministerial Decision No 180647ΓΔ4, Gov. Gazette 3502/B/31.10.2016).

<sup>105</sup> UNHCR Greece, National Education Sector Working Group, "[Meeting Minutes](#)," 29 October 2018.

<sup>106</sup> Greece, Ministry of Education, Research and Religious Affairs, "[Refugee children from the RICs of Samos and Kos go to school](#)," 7 February 2019.

<sup>107</sup> Council of Europe, "[Report of the Commissioner for Human Rights of the Council of Europe](#)," Dunja Mijatovic following her visit to Greece from 25-29 June 2018, Strasbourg, 6 November 2018, p.13.

continue to provide informal schooling and some recreational activities on all the hotspot islands.

The capacity of doctors and psychologists remain stretched and the lack of paediatricians persists (see Part I of this Opinion). In Lesbos, Chios and Samos, the NGO Praksis mitigates these gaps through its child protection work offering legal and psychosocial support as well as recreational activities, as FRA observed. The Reception and Identification Service appointed child protection officers on each of the islands who according to the hotspot Standard Operating Procedures in Greece should also be a “visible and available contact” for the children, to whom these can voice any concerns.<sup>108</sup> Although trained on child protection with FRA’s and EASO’s support, their tasks remain primarily administrative. More generally, only few Reception and Identification Service staff on the island have a social worker profile.



Picture 5: Hotspot in Lampedusa, January 2019, FRA

In Italy, 45 unaccompanied children arrived between 1 January and 12 February 2019, but only some of them passed through the hotspots.<sup>109</sup> It is, therefore, difficult to assess whether the services the hotspots offer would be adequate if more unaccompanied children were to arrive. Medical services in Lampedusa were well managed under the leadership of the primary health care centre on the island (Polyclinic). However, as of 1 February 2019, the Regional Health

Authority of Palermo suspended the emergency healthcare services for migrants rescued at sea (*servizio emergenza sbarchi*). Health authorities had scaled up capacity to cover the emergency healthcare needs on Lampedusa. It remains to be seen if the Polyclinic in Lampedusa will continue to be able to provide proper and timely healthcare services to new arrivals. Moreover, the new terms of reference (*capitolato*) for first reception facilities envisage that, in hotspots, services should be reduced at a minimum in case of low number of arrivals. The manager of the hotspot is obliged to reinstate the services at the latest within eight hours from the moment information on new arrivals is received. It remains to be seen how this will work in practice and whether this arrangement may negatively affect the services for children in the hotspots.<sup>110</sup>

#### **FRA Opinion 10: Vetting of staff who have direct and regular contacts with children**

All children and in particular those who are unaccompanied or separated are highly vulnerable to abuse and exploitation. The Reception Conditions Directive requires in Article 23 (d) and Article 18 that Member States must take measures to promote and ensure safety and security of persons residing in all premises and accommodation centres and put in place child protection safeguards to prevent violence, abuse and exploitation of children. Article 10 and Recital (40) of the Directive on combating the

<sup>108</sup> Hellenic Republic, Reception and Identification Service, Manual of Standard Operating Procedures applicable to the Reception and Identification Centres (R.I.Cs), Section A.2.3. Duties of the Unaccompanied Minor Protection Officers, p. 15, 1 December 2017.

<sup>109</sup> The number of unaccompanied children are regularly updated on the Ministry of the Interior’s webpage, *Crusotto Statistico*, <http://www.interno.gov.it/it/sala-stampa/dati-e-statistiche/sbarchi-e-accoglienza-dei-migranti-tutti-i-dati>.

<sup>110</sup> Italy, Ministry of the Interior, [Schema di capitolato di gara di appalto per la fornitura di beni e servizi relativo alla gestione e al funzionamento dei centri di prima accoglienza](#), 18 December 2018.

sexual abuse and sexual exploitation of children (2011/92/EU)<sup>111</sup> specifically provide for the disqualification of persons who are convicted for certain offences against children to exercise temporarily or permanently professional activities involving direct and regular contacts with children. The directive calls on Member States to take the necessary measures to ensure that employers (including voluntary organisations) conduct proper screening of all staff and volunteers when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children.

Staff and volunteers of different organisations provide services in the hotspots in Greece and Italy. Many of them do come into direct contact with children. In both Greece and Italy, convicted persons are disqualified from becoming civil servants and checks take place upon recruitment or formal appointment. However, this may not be the case for all entities present in the hotspots.

According to the information available to FRA, since November 2016, the main development in strengthening vetting and screening obligations is the adoption of the Standard Operating Procedures for the Greek hotspots. According to it, those actors who operate in the hotspots must submit to the permanent coordinator a solemn declaration in writing stating that their staff has not been convicted for crimes and major offences during the exercise of their duties under Article 67 (1) of the Penal Code, as supplemented by Article 4 of Law 4267/14. The Ministry of Migration Policy holds a registry of NGOs, but there are no vetting requirements listed in the relevant decision.<sup>112</sup> FRA could not find all organisations providing services in the hotspots in the registry.<sup>113</sup> FRA could not verify if and how vetting occurs in practice for non-civil servants, nor did any development in Italy come to the Agency's attention.

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<sup>111</sup> [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, pp. 1-14.

<sup>112</sup> Greece, Decision of the Minister of Migration Policy No. 7586/18 – Gov. Gazette 4794/B/26-10-2018 on the Operation of a National Registry of Greek and Foreign Non-Governmental Organizations (NGOs) active in the field of international protection, migration and social integration issues.

<sup>113</sup> Greece, Ministry of Migration Policy, [National Register](#) of Greek and Foreign Non-Governmental Organizations (NGOs) dealing with international protection, migration and social integration issues.

### 3. Ensuring adequate expertise to identify vulnerabilities

Migrants and refugees reach Greece or Italy in distress. Some endured persecution, abuse or exploitation before coming to the EU. Others survived shipwrecks or lost family members who cared for them.

The Charter guarantees the rights of the child (Article 24), the elderly (Article 25) and of persons with disabilities (Article 26). In addition, Article 1 of the Charter stipulates the inviolability of human dignity of any person. Any measures taken by the EU or by its Member States when implementing EU law must take into account the special situation of vulnerable persons. Authorities must identify whether asylum applicants have special protection needs and take steps to address them. Article 21 of the Reception Conditions Directive contains a non-exhaustive list of vulnerable categories, and so do national laws in Greece and Italy.<sup>114</sup>

In Greece, vulnerable persons are not subject to the fast-track asylum procedure established on the Greek islands.<sup>115</sup> Therefore, the decision on whether a person falls under one or more of the categories of vulnerable persons listed in Article 14 (8) of Law 4375/2016, essentially also entails a decision on whether to lift the geographical restriction or not.

In its 2016 Opinion, FRA formulated three suggestions. By February 2019, developments occurred in all three, but these have not yet resulted in significant improvements for people on the ground.

The main changes compared to the situation in 2016 on these three issues are as follows:

#### ***FRA Opinion 11: Ensuring identification of vulnerable people upon arrival and later***

Under Article 22 (1) of the Reception Conditions Directive, Member States have an obligation to assess whether an applicant for international protection has special reception needs. When not identified early, such special reception needs will then not be taken into account in designing a protection-sensitive response (e.g. when allocating a place to sleep or referring the person to special support services). Identification and referral of vulnerable people is a shared responsibility of all actors operating in the hotspots. The first opportunity to identify vulnerable people is the screening procedure carried out by the national police with the support of Frontex. However, the new screening forms used in Greece in 2019 and the “*foglio notizie*” (information sheet)<sup>116</sup> in Italy only collect identity data and do not have a tick box or a question allowing the flagging of vulnerabilities. Other actors focus on identification of vulnerable people.

At the same time, significant improvements occurred since November 2016 in identifying vulnerable people. Greece adopted Standard Operating Procedures for the

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<sup>114</sup> For the definition of vulnerable groups under Greek law, see Greece, Law No. 4375 of 2016 on the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, Article 14 (8). For the definition under Italian law, see Italy, Legislative Decree No. 140/2005, Article 17.

<sup>115</sup> Greece, Law 4375/2016, Article 60 (4) (στ), Gov. Gazette 51/A/03.04.2016.

<sup>116</sup> The information sheet includes a section where each person arriving at the hotspot has to tick a box indicating the reasons for leaving his/her country. Among the possible options, there are: work, family reasons, fleeing poverty, asylum and others.

hotspots,<sup>117</sup> which define the role and responsibilities of each actor. Relevant actors working in the Greek hotspots agreed on a vulnerability template, which, together with an accompanying operational manual, help ensuring a coordinated response to the protection needs of people identified as vulnerable.<sup>118</sup> The time it takes to assess if a person is or is not vulnerable under Greek law varies considerably depending on the number of new arrivals, but also on the availability of professionals and interpreters. Insufficient number of doctors, psychologists (but also lack of space for them to have confidential interviews and examinations) as well as significant delays in recruiting interpreters (see Part I of this FRA Opinion) limit the impact of these measures, leading to months of delays in some hotspots.

In Italy, in response to the decreased number of arrivals, the authorities suspended the “Support Action for Vulnerability Emergence (SAVE)” project that would have scaled up the capacity for early identification of vulnerabilities at the hotspots. At the same time, coordination among different actors tasked with responding to the needs of vulnerable people improved, after a dedicated workshop in Taranto FRA organised together with the European Commission and the Italian authorities in partnership with IOM and UNHCR.<sup>119</sup> However, there is not yet a system for proper mapping of vulnerabilities aiming at ensuring that vulnerable persons or persons at risk are transferred to appropriate reception facilities that can offer the follow-up services needed. In some Italian hotspots, informal arrangements continue whereby the migrant takes along his/her medical file when transferred to other facilities by bus or s/he is given an information paper with the contact number of relevant psychological or medical services at the place of destination. UNHCR has been supporting the relevant authorities in mapping existing referral mechanisms and best practices at regional level. Amendments to the hotspots Standard Operating Procedures could improve identification and referral of vulnerable persons but these remain pending.

### ***FRA Opinion 12: Providing an adequate response to trafficking in human beings***

Trafficking in human beings is a persistent issue that often accompanies large-scale migration flows.<sup>120</sup> Recital (25) and Article 11 of the EU Anti-Trafficking Directive (2011/36/EU)<sup>121</sup> emphasises the Member States’ responsibility for ensuring assistance and support to victims, and providing training for staff likely to encounter victims. Victims of trafficking in human beings represent one of the groups at risk who are particularly difficult to identify. In November 2016, FRA reported little awareness and limited specialised expertise on trafficking in human beings, although also noting a promising practice in Italy, where the authorities had contracted the IOM to provide

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<sup>117</sup> Greece, Reception and Identification Service, Secretary General for Reception, Ministry of Migration Policy, Manual of SoPs applicable to the Reception and Identification Centres (R.I.Cs), 1 December 2017.

<sup>118</sup> Minimum standards for a harmonized operationalization of the vulnerability template in the RICs, Athens 30 July 2018.

<sup>119</sup> A workshop in Taranto discussed ways to streamline the implementation of the hotspot SOPs, see the FRA news item, [Fundamental rights support to Italian authorities in migration hotspots](#), 18 May 2017.

<sup>120</sup> International Organization for Migration (IOM), [Abuse, Exploitation and Trafficking: IOM reveals data on the scale of the danger and risks that migrants face on the Mediterranean routes to Europe](#), 18 October 2016; FRA (2013), [Fundamental rights at Europe’s southern sea borders](#), Luxembourg, Publications Office, March 2013, p. 24.

<sup>121</sup> [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, pp. 1-11.

information upon disembarkation and to support actors in identifying presumed victims of trafficking.<sup>122</sup>

Over the last two years, there were numerous efforts to address gaps, as the following examples illustrate. The European Commission organised workshops in the framework of the EU Regional Task Force in Greece and Italy<sup>123</sup> and discussed with the main national partners and EU agencies how to strengthen identification of victims of trafficking in the hotspots. Since early 2018, EASO’s induction training for deployed experts in Greece has a dedicated session on trafficking in human beings. Frontex provided regular awareness sessions for officers deployed to the hotspots (see Table 10).

**Table 10: Awareness raising sessions for Frontex deployed officers in Greece and Italy**

Location	Dates of sessions	Location	Dates of sessions
Lesvos	22 May 2017 28 August 2017 16 November 2017	Rome	6 September 2017 4 October 2017 6 February 2018 6 March 2018 4 April 2018 4-5 September 2018 2 October 2018 6 November 2018 5 December 2018 4 January 2019
Chios	23 May 2017 23 August 2017 17 November 2017		
Samos	25 May 2017 24 August 2017 20 November 2017		
Leros	29 May 2017 25 August 2017 21 November 2017		
Kos	27 May 2017 27 August 2017 23 November 2017		

Source: European Border and Coast Guards Agency, 2019

In Greece, the NGO A21 carried out awareness raising sessions on the islands and provided support in individual cases. A number of asylum caseworkers received training on detecting, in the course of the asylum interview, indications that the applicant is a possible victim of trafficking in human beings. On 1 January 2019, the national referral mechanism for victims of trafficking started to become operational. Greece adopted Standard Operating Procedures on trafficking in human beings for hotspots, whereas the Hellenic Police appointed focal points for trafficking in human beings on each island. However, in spite of these efforts, the number of victims, including presumed victims identified in Greece remains extremely low. Separation of presumed victims from perpetrators and the provision of safe accommodation on the islands until the transfer to safe houses in the mainland remains challenging.

At the Italian hotspots, through the Aditus project, IOM has deployed mobile teams to facilitate the early identification and referral of victims of trafficking among new arrivals.<sup>124</sup> IOM provides leaflets with contact number to new arrivals and offers counselling sessions on trafficking following disembarkation. Although due to the short duration of the stay the identification of victims at hotspots is difficult, these measures help victims to understand their situation and their rights so that they can contact protection services after their transfer, if they wish so. Nevertheless, information on

<sup>122</sup> Italy, Ministry of the Interior, [Procedure Operative Standard \(SOP\) – Hotspot](#).

<sup>123</sup> The workshop in Greece took place on 7 May 2018 in Piraeus and the workshop in Italy on 13 December 2018 in Catania.

<sup>124</sup> A description of the project is available on the webpage of the International Organization for Migration at <https://italy.iom.int/en/activities/assistance-vulnerable-groups-and-minors-/ADITUS>.



trafficking often emerges only during the asylum interview, which still points to early identification failures. GRETA, the Council of Europe monitoring body on trafficking in human beings, noted the lack of dedicated procedures to identify and protect victims of trafficking in human beings upon arrival.<sup>125</sup> Moreover, if identified, the referral of victims to appropriate services, in particular safe housing remains also challenging.<sup>126</sup>

### ***FRA Opinion 13: Deploying sufficient female police staff***

Sufficient presence of female police staff and interpreters contributes to safeguarding the dignity of women during entry checks including body search, first registration and other procedures in the hotspots and helps to ensure respect for their right to private life enshrined in Article 7 of the Charter. It also plays an important role in facilitating the reporting of sexual and gender-based violence.

Female staff were uncommon among national police authorities carrying out first identification interviews in November 2016. This has not changed significantly, neither in Italy nor in Greece, although FRA noted that more female police officers guard the hotspots. As an illustration, during the visit to Leros and Kos on 13-14 February 2019, in every shift there was at least one female officer among the Hellenic Police staff in charge of security at the hotspot. At the same time, during the Participatory Assessment UNHCR carried out in Greece in 2018, asylum seekers and refugees reported that there is lack of female staff to whom potential sexual and gender based violence incidents can be reported. Furthermore, asylum seekers reported that police officers are hesitant to intervene in the hotspots, which leads to a perceived culture of impunity and contributes to foster a feeling of insecurity.<sup>127</sup> This is not conducive to victims of sexual and gender based violence coming forward.

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<sup>125</sup> See GRETA (2019), [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy](#), GRETA (2018) 28, published on 25 January 2019, para. 148.

<sup>126</sup> *Ibid.*, para. 173.

<sup>127</sup> UNHCR Greece, Inter-Agency participatory assessments, Country Report Greece 2018.

#### 4. Ensuring safety for all persons in the hotspots

Safety remains an issue of concern for staff working on the ground as well as for the persons accommodated in the hotspots. According to Article 18 (4) of the Reception Conditions Directive, Member States must take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment. In the Greek and Italian hotspots, serious incidents occurred, including rape and other violent crimes, as well as suicide attempts and riots.

##### **Violence, deaths and self-harm incidents in the hotspots: selected incidents**

- November 2016: A woman and her 6-year-old grandchild were killed when a gas canister used for cooking exploded inside a tent in Moria.
- January 2017: Two men who shared the same tent died in the hotspot of Moria. Media reports suggest they inhaled toxic fumes from heaters. Few days later, another young man is found dead in his tent in Moria.
- March 2017: A young man died after self-immolation in the hotspot of Chios. A police officer was injured while trying to prevent the incident.
- September 2017: An alleged rape attempt provoked clashes in the hotspot of Samos. Five people were stabbed.
- December 2017: Fire spreads in the Moria hotspot, reportedly started by persons accommodated in the camp. Fifteen people had to be hospitalised.
- January 2018: a young person living in the hotspot of Lampedusa for approximately two months committed suicide.
- January 2018, residents in Lampedusa protested against the reception conditions by sewing their mouths shut, demanding their transfer to the mainland.
- February 2018, some 60 persons tried to escape from the Trapani hotspot and set fire to the facility.
- March 2018: A group of residents set fire to one of the dormitories in the hotspot in Lampedusa. They protested against prolonged stays and dire living conditions in the centre.
- March 2018: A young man set himself on fire outside the asylum office in the Moria camp.
- May 2018: Approximately 900 asylum seekers refuse to return to the Moria camp following clashes.
- July 2018: A local farmer shot a 16-year old boy in a land plot north of the Moria camp.

*Source: See list of references at the end of this FRA Opinion*

Most of the hotspots are not designed in a protection-sensitive manner. Despite the fact that the Greek hotspots are, in practice, open facilities, the use of barbed wire is prevalent even in areas hosting children. At the same time, the entry-exit controls that could reduce security concerns are not systematically carried out in all hotspots.

Security gaps in the hotspots affect children disproportionately. Women are at heightened risk of gender-based violence. According to UNHCR, some 14,700 refugees and migrants reside on the Eastern Aegean islands. Women account for 20 % and children for 31 % of whom more than 60 % are younger than 12 years old. Approximately 18% of the children are unaccompanied.<sup>128</sup> This section, therefore, also looks specifically at the risks these women and children face and at possible measures to reduce these.

<sup>128</sup> UNHCR, Aegean Islands Weekly Snapshot, [4-10 February 2019](#).

In its 2016 Opinion, FRA formulated four suggestions to address identified gaps. By February 2019, there was no significant improvement. Due to the overcrowding in some Greek hotspots, the situation relating to Opinion 15 (sexual and gender-based violence) deteriorated further.

The main changes compared to the situation in 2016 are the following:

***FRA Opinion 14: Providing information to mitigate tensions***

The right to good administration, which is a general principle of EU law also mirrored in Article 41 of the Charter, requires that persons in the hotspots be informed of procedures applicable to them. Article 5 of the Reception Conditions Directive contains a duty to inform applicants. No or inaccurate information can lead to anxiety and frustration and be a contributing factor to eruptions of violence. Provision of information to new arrivals is challenging, as FRA has already documented in its 2013 report on the situation at Europe's southern sea borders.<sup>129</sup> In 2016, FRA concluded that in spite of significant efforts to inform new arrivals, the capacity to provide adequate information was still not sufficient, particularly in light of people's language diversity.

Since then, in Greece, the NGO Praksis has provided child-specific information in Chios, Lesbos and Samos. Information points exist on all islands, although they function differently.

**Promising practice: Info points in Leros and Kos**

In the Leros and Kos hotspots, the Reception and Identification Service (RIS) manages info points, which are open during the day from Monday to Friday. RIS staff and interpreters receive people and speak to them in a dignified setting. When necessary, they refer them to other actors in the camp, accompanying them. The info points are easily accessible. Asylum applicants make regular use of them.

Source: FRA, 2019

In spite of these efforts, during the Inter-Agency Participatory Assessment carried out by UNHCR in Greece in 2018, asylum applicants continued to have unclear understanding of the asylum procedures and were not sufficiently kept informed.<sup>130</sup> One issue on which there are regular information gaps concerns transfers. The emergency mode for managing onward movements to the mainland to decongest the islands results in people not understanding why certain groups are transferred and others not. Some nationalities feel discriminated against.

***FRA Opinion 15: Adapting the infrastructure and operation of the hotspots to reflect gender diversity and to prevent sexual and gender-based violence***

The way a camp is designed and managed impacts significantly on the safety of people staying there, contributing also to prevention of sexual and gender-based violence, as required by Article 18 (4) of the Reception Conditions Directive. In its 2016 Opinion, FRA reported limited action to prevent sexual and gender-based violence and, more generally, limited awareness.

More than two years later, there is more awareness about the issue. For example, Standard Operating Procedures for Sexual and Gender-Based Violence were adopted

<sup>129</sup> FRA (2013), [Fundamental rights at Europe's southern sea borders](#), Luxembourg, Publications Office, March 2013, pp. 95-96.

<sup>130</sup> UNHCR, [Inter-Agency Participatory Assessment Report – Greece 2018](#), October 2018.

for all reception facilities in Greece.<sup>131</sup> Also, each hotspot has a referral pathway for cases of sexual and gender-based violence. The Reception and Identification Service has developed tools to monitor the situation in the hotspots and appointed focal points on sexual and gender-based violence in each of the islands.

However, in spite of genuine efforts, the impact remains limited. For example, when FRA visited Pili hotspot in Kos in October 2018, the Agency noted that approximately 100 people, including families with small children, were sleeping rough inside the hotspot. Some of the people to whom FRA spoke mentioned that they had been staying in the open area for over two months.

Most Greek hotspots are constantly overcrowded and, as observed by FRA, in some cases this resulted in placement of unrelated men and women in the same containers. In such a setting, preventing sexual and gender-based violence is challenging. Access to sanitary facilities for women and girls at night remains dangerous for those who do not stay in containers that have toilets and showers, as highlighted in Inter-Agency Participatory Assessments for Chios and Samos. Victims were hesitant to report violence due to lack of female reporting officers.<sup>132</sup> FRA noted during its visits that single women or single mothers were often not placed in separated areas in Greek hotspots. Thus, overall, for women and girls in the Greek hotspots the situation is even more dangerous than two years ago. During the Inter-Agency Participatory Assessment in 2018, asylum seekers in the Eastern Aegean islands noted the limited police presence and patrolling at night as well as absence of meaningful community-based protection mechanisms.

#### **UNHCR expresses concerns on sexual and gender-based violence**

In 2017, UNHCR received reports from 622 survivors of sexual and gender-based violence (SGBV) on the Eastern Aegean islands, out of which at least 28 % experienced such forms of violence after arriving in Greece. Women reported inappropriate behaviour, sexual harassment and attempted sexual attacks as the most common forms of sexual and gender-based violence.

*Source: UNHCR, [Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands](#), 9 February 2018*

Shelters for victims of gender-based violence are either non-existent or very limited. When FRA visited Lesbos in early 2018, there was one counselling centre of the General Secretariat for Gender Equality, which can accommodate adult women survivors or women at risk of violence under specific conditions as victims need to fulfil a number of requirements (for example, present medical examinations) to be accepted.

In Italy, during a mission to Pozzallo and Messina in June 2018, FRA observed increased awareness about sexual and gender-based violence and adequate separation by sex of sanitary facilities. However, FRA also noted that the multi-agency approach adopted to identify and refer victims of trafficking in human beings could be extended to all other victims of sexual and gender-based violence. FRA also noted the need for a safer transfer of the relevant information on the victim to the follow-up structure to be

<sup>131</sup> Greece, Ministry of the Interior, General Secretariat For Gender Equality, Ministry of Migration Policy, Reception and Identification Service in collaboration with civil society and international organisations, Standard Operating Procedures for Prevention and Response to Sexual and Gender Based Violence, Greece, 2017.

<sup>132</sup> UNHCR, [Inter-Agency Participatory Assessment Report – Greece 2018](#), October 2018.

carried out in full respect of the victim's privacy, suggesting modifications to the Standard Operating Procedures.

**Promising practice: Adequate facilities for confidential counselling in Italy**

Dedicated space for psychosocial counselling were set up in the hotspots in Pozzallo and Messina to improve the effectiveness of the intervention by psychologists and social workers. Thanks to the confidential setting, more women opened up and reported instances of sexual and gender-based violence, including domestic violence.

Source: FRA, 2019

**FRA Opinion 16: Mitigating the risk of violence, abuse and exploitation of children**

Under the UN Convention on the Rights of the Child, States have the responsibility to ensure the children's safety from violence, sexual exploitation and abuse, as well as trafficking in human beings. Children are more vulnerable to some types of violence (such as sexual abuse) and the effect of violence on children, is potentially very damaging, both when they are direct victims and in cases where they witness it. In November 2016, FRA reported several child protection issues – such as a lack of child protection experts in the hotspots and unaccompanied children in some hotspots accommodated together with adults, as summarised in Section 2 above.

The measures taken since then by the Greek authorities, though significant, have not resulted in improving the situation for children staying in the Greek hotspots. In Greece, RIS child protection officers were appointed and trained, but only few had a social work background or specific experience of working with children. At night, protection staff remain absent, except for the safe area IOM runs in Lesbos. Children informed FRA of instances, where adults were sleeping in areas dedicated to unaccompanied children.

The limited number of children present in the Italian hotspots make it difficult to assess the risks in case of larger arrivals.



Picture 6: hotspot in Pozzallo, June 2018, FRA

**FRA Opinion 17: Enhancing outreach to the communities in the hotspots**

Under Article 18 (8) of the Reception Conditions Directive Member States may involve applicants in managing the material resources and non-material aspects of life in the centre.

In 2016, FRA had mentioned that reaching out in an appropriate manner to the communities accommodated in the hotspots might help the authorities in preventing tensions and addressing already existing issues. This was deemed particularly important in those hotspots where persons stay longer. Such outreach could include regular meetings between the camp management and the communities, participatory assessments or community policing.

More than two years later, community outreach activities remain weak and non-systematic, although authorities organise meetings with community representatives. UNHCR undertakes yearly participatory assessments<sup>133</sup> on each of the Greek islands and

<sup>133</sup> UNHCR, [Inter-Agency Participatory Assessment Report – Greece 2018](#), October 2018.

organises meetings with women's groups. During the participatory assessment exercise, participants of different age, gender and nationality requested to be consulted, called for strengthening community representation structures, suggested more community meetings as well as feedback on their requests and a complaint mechanism. Asylum applicants also reported that complaint mechanisms are not enforced or their use is not encouraged.

## 5. Implementing safeguards to readmissions and returns

The last chapter of the 2016 FRA Opinion dealt with readmission to Turkey and returns to the country of origin.

In Greece, after the EU-Turkey Statement in March 2016, rejected asylum applicants and those who withdraw their asylum application may be removed to Turkey with the support of the European Border and Coast Guard Agency. Syrian nationals are brought to Adana (Turkey) by air, whereas other nationalities are removed from Mytilene in Lesbos to Dikili (Turkey) by ferryboat. Until 1 February 2019, a total of 1,825 migrants were returned to Turkey under the EU-Turkey Statement, including 341 Syrians and 1,484 non-Syrians (mainly Pakistani nationals). In addition, with IOM, 3,175 third-country nationals (mostly Iraqis, Algerians and Pakistanis) returned voluntarily from the hotspots to their home country.<sup>134</sup> These numbers are small, compared to the overall number of arrivals.

**Figure 6: Readmissions to Turkey from the Greek islands**



Source: FRA, 2019

In Italy, there are normally no removals from the hotspots directly. The authorities complete the return procedure in other locations. However, in some instances, Tunisian nationals subject to a deferred refusal of entry decision, who usually depart from Palermo to Tunisia, were directly removed by air from Lampedusa. Returns to Lampedusa are facilitated by bilateral arrangements between Italy and Tunisia allowing for swift identification and removal.<sup>135</sup>

Readmission agreements and other arrangements concluded by Member States or the EU with third countries facilitate the implementation of returns of third-country nationals.<sup>136</sup> As far as EU law is concerned, however, removal operations in the

<sup>134</sup> Data provided by the Hellenic Police, February 2019.

<sup>135</sup> For an analysis of accelerated returns under readmission agreements, see FRA (2013), *Fundamental rights at Europe's southern sea borders*, Luxembourg, Publications Office, March 2013, sub-section 8.2 and table 13. For the bilateral readmission arrangements between Italy and Tunisia, see the [Inventory of the bilateral agreements linked to readmission](#), created and managed by Jean-Pierre Cassarino.

<sup>136</sup> For a comprehensive analysis of these instruments, see Coleman, N. (2009), *European Readmission Policy. Third Party Interests and Refugee Rights*, Leiden/Boston, Martinus Nijhoff Publishers, 2009; and more recently Panizzon, M. (2012), 'Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?', *Refugee Survey Quarterly* 31 (2012), pp. 101-133; Cassarino, J.-P. (2014), 'A Reappraisal of the EU's Expanding Readmission System', *The International Spectator* 49

framework of readmission fall under the EU return and border management *acquis* and need to comply with the safeguards stipulated particularly in the Return Directive and the Schengen Borders Code (Regulation (EU) No. 2016/399).<sup>137</sup>

Both Greece and Italy make use of the option under Article 2 (2) (a) not to apply the Return Directive to persons who have been refused entry at the border or have been apprehended or intercepted in connection with irregular entry, and have not subsequently obtained the authorisation to stay. Fast-tracked returns of Tunisian from Italy are carried out using the refusal of entry provisions of the Schengen Borders Code and not the Return Directive. However, even where Member States make use of the option under Article 2 (2) (a) of the Return Directive, basic principles and safeguards set out in Article 4 (4) of the directive still apply.

In its 2016 Opinion, FRA listed four issues for improvement. By February 2019, significant improvements occurred in two of them (Opinions 18 and 19). Gaps on the issuance of detention orders remain unaddressed (Opinion 22) and genuine efforts to enhance communication have not yet led to significant changes for detainees (Opinion 21).

The main changes compared to the situation in 2016 on these five issues are as follows:

#### ***FRA Opinion 18: Enhancing training and skills of return escorts***

According to Guideline 18 (2) of the Council of Europe Twenty Guidelines on Forced Return, escorts “should be carefully selected and receive adequate training, including in the proper use of restraint techniques.”<sup>138</sup> Similar requirements are laid down in the Common Guidelines on security provisions annexed to Decision 2004/573/EC,<sup>139</sup> which are applicable to all removals by air. To ensure a smooth completion of the removal procedure and safeguard the rights and human dignity of the returnees, escort staff must be adequately trained and possess the necessary skills in handling potentially difficult situations.

In November 2016, FRA noted that not all staff deployed by Frontex had prior escort experience or had undertaken return escort leader training or other similar courses. Meanwhile, Frontex carries out monthly training of escort staff deployed to support readmission operation from Greece. The European Border and Coast Guard Agency is also currently working on a guide for readmissions, which should be swiftly finalised, as it will be an important tool to further a fundamental rights compatible implementation of readmission operations. In Italy, police officers are chosen to work as return escorts

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(2014), pp. 130-145; Cassarino, J.-P. (2018), ‘Informalizing EU readmission policy’ in Ripoll Servent, A. and Trauner, F. (eds.), *The Routledge Handbook of Justice and Home Affairs Research*, Abingdon, Routledge, 2018, pp. 83-98.

<sup>137</sup> [Regulation \(EU\) 2016/399](#) of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, pp. 1-52.

<sup>138</sup> [Council of Europe, Twenty Guidelines on Forced Return](#), Guideline 18 (2).

<sup>139</sup> [Council Decision 2004/573/EC](#) of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders, OJ L 261, 6.8.2004, pp. 28-35.



only after a strict selection. They receive detailed training, including on the proper use of restraint techniques.

### **FRA Opinion 19: Ensuring systematic monitoring of forced returns**

Effective monitoring of forced returns by independent entities is an important safeguard against potential ill-treatment. It is also acknowledged by the Return Directive, which, in Article 8 (6), specifically requires Member States to establish forced return monitoring systems. Such provision in the Return Directive does not directly apply to the hotspots, as Greece and Italy make use of the optional clause in Article 2 (2) (a) of the directive. Nevertheless, independent return monitoring safeguards the right to human dignity, the prohibition of inhuman or degrading treatment or punishment and the right to an effective remedy. These rights apply regardless of the type of operation. National bodies designated for forced return monitoring under the Return Directive in Greece and Italy hold the comprehensive mandate of National Preventive Mechanisms under the 2011 Optional Protocol to the UN Convention Against Torture.<sup>140</sup> Both institutions regularly visited the hotspots and monitored several return or readmission operations (for example, six visits to Italian hotspots and 60 readmission monitoring visits in Greece between 2016-2018).<sup>141</sup>

**Table 11: Recurrent findings of forced return monitoring bodies in Greece and Italy**

Issue	Greece – readmissions	Italy – forced returns to Tunisia
<b>Notification of departure day</b>	Late provision of information that third-country nationals are listed for readmission to Turkey.	The decision obliging persons to leave Italy (differed refusal of entry decision) is notified only shortly before departure. In practice, this limits access to an effective remedy and does not allow the returnee to prepare for his or her return.
<b>Coercive measures</b>	No individualised risk assessment before using velcro handcuffs.	Systematic use velcro handcuffs during pre-return phase based on objective criteria (e.g. setup of the pre-departure facility at the airport) and not on an individualised risk assessment.
<b>Medical issues</b>	No fit to travel certification provided before readmissions.	Medical examination before return not systematic but only when authorities deem it necessary.
<b>Communication</b>	—	Lack of interpreters or cultural mediators during return operations do not allow for smooth communication.
<b>Incomplete files</b>	The migrant’s file is sometimes incomplete resulting in risk of removal of persons who still have pending procedures.	—

*Note: The table is not comprehensive, as it does not include all findings.*

*Source: FRA, 2019 based on reports by national return monitoring bodies*

<sup>140</sup> OHCHR publishes an updated list of National Preventive Mechanisms at <https://www.ohchr.org/en/hrBodies/opcat/pages/nationalpreventivemechanisms.aspx>.

<sup>141</sup> See for an overview of their activities, Greek Ombudsman, [Special report on return of third country nationals](#), Athens, September 2018; and Garante Nazionale dei diritti delle persone detenute o private della libertà personale, *Due anni di monitoraggio dei rimpatri forzati*, 12 November 2018.

The main findings of such monitoring activities are similar in Greece and in Italy. As shown in Table 11, people are notified late of the day when they will be removed, coercive measures do not follow an individual risk assessment and some medical issues remain unresolved. In addition, in Italy, insufficient language skills make communication during the return operation difficult and in Greece, the file of persons to be readmitted is not always complete, entailing the risk of including in the readmission operations persons with pending asylum applications.

***FRA Opinion 20: Conducting an individual assessment before depriving persons subject to readmission of their liberty***

Deprivation of the right to liberty stipulated by Article 6 of the Charter and Article 5 of the ECHR is permissible, including as a measure to prevent unauthorised entry or prepare removal. However, pre-removal detention represents a limited exception to the right of liberty and as such needs to comply with the principles of necessity and proportionality expressed in Article 52 (1) of the Charter. Article 15 of the Return Directive likewise states that detention should only be used where there are no other sufficient but less coercive measures available.

In its 2016 Opinion, FRA noted, that upon arrival all migrants on the Greek islands received a return decision accompanied by a detention order. Such detention orders (whose implementation was suspended during the asylum procedure) did not assess if the deprivation of liberty was necessary and proportionate in the individual case.

Over two years later, detention decisions issued upon arrival to the Greek islands still do not contain an individual necessity and proportionality assessment. In addition, since 2017, in Lesbos and Kos, the Greek authorities started to place in pre-removal detention facilities also asylum applicants from countries of origin with a low recognition rate.<sup>142</sup> Practices keep changing. At some point in time, in Moria (Lesvos) non-vulnerable single men from 28 countries were placed in the pre-removal centre. FRA was not able to find evidence of any individual assessment – as required under Article 52 (1) of the Charter for any limitation to rights enshrined in the Charter – to determine if deprivation of liberty is necessary and proportionate, for example to prevent absconding.

**Carceral design of pre-removal facilities on the Greek islands**

As noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its recent report covering Greece, the design of the pre-removal centres on the Aegean islands is carceral. At the Moria pre-removal centre in Lesbos, as well as in Pili in Kos, razor blade wire is pervasive along with high wire-mesh fences. The CPT recommended the Greek authorities to take steps to review the prison-like design of the facility and the cells.

*Source: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Greek government on the visit to Greece carried out from 10 to 19 April 2018, p. 35.*

A persistent issue is the deprivation of liberty in the hotspots of all those persons who withdraw their asylum applications as they wish to return home voluntarily with the support of IOM. They remain in detention, typically for one or two weeks until they are moved to Athens for the pre-departure formalities (during which they are further

<sup>142</sup> See also Council of Europe, [Report to the Greek Government on the visit to Greece](#) carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, published on 19 February 2019, at p. 35.

detained).<sup>143</sup> No open temporary accommodation facility for persons subject to return procedures as provided by the Article 10 (5) of Law 4375/2016 has been established yet. In its recent report, the CPT also reiterated to the Greek authorities the need to consider alternatives to detention for those who declare their intention to return voluntarily.<sup>144</sup>

In Italy, only the hotspot in Lampedusa is a closed facility, although the authorities tolerate when migrants leave the facility through a hole in the fence. In spite of the ECtHR judgement in *Khlaifia* that found the detention in the hotspot in Lampedusa to be arbitrary, migrants staying there for more 48 hours still do not receive a detention order.<sup>145</sup>

### **FRA Opinion 21: Communicating effectively and providing information during the readmission procedure**

Provision of sufficient information and communication with persons in a return or readmission procedure allows safeguarding the rights of the returnee and facilitates the conduct of the operation. Under Article 16 (5) of the Return Directive, which applies also when Member State opted not to apply the directive in situations falling under Article 2 (2) (a), migrants must be regularly informed on their rights while in detention.

In November 2016, FRA noted serious gaps in the provision of information to people waiting to be readmitted from the Greek hotspots.

The information gap was particularly serious in the first part of 2018 in the pre-removal facilities as noted also by the Committee for Prevention of Torture (CPT).<sup>146</sup> Meanwhile, there are interpreters, social workers, and psychologists in the pre-removal facilities in Moria and in Kos.<sup>147</sup>

#### **Information gap in pre-removal facilities**

In April 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the pre-removal centre in Moria (Lesvos). People held there were not informed in a timely and sufficient manner in a language they understand, of their rights and the procedure applicable to them. Several foreign nationals in pre-removal centres complained that the information concerning their legal situation and length of detention was insufficient.

The CPT “calls upon the Greek authorities to ensure that detained foreign nationals are systematically and fully informed of their rights, their legal situation (including the grounds for their detention) and the procedure applicable to them as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police), if necessary, with the assistance of a qualified interpreter.

<sup>143</sup> See also *Ibid.* at p. 37.

<sup>144</sup> *Ibid.*, at p. 37.

<sup>145</sup> ECtHR, *Khlaifia and Others v. Italy* [GC], No.16483/12, 15 December 2016, paras. 72, 106 and 107.

<sup>146</sup> Council of Europe, [Report to the Greek Government on the visit to Greece](#) carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, published on 19 February 2019, p. 35.

<sup>147</sup> See Greece, AEMY, Ανάπτυξη των παρεχόμενων υπηρεσιών στα Προ-Αναχωρησιακά Κέντρα Κράτησης Αλλοδαπών – (Ιατροφαρμακευτική Περίθαλψη, Ψυχολογική Υποστήριξη, Κοινωνική Υποστήριξη και Υπηρεσίες Διερμηνείας) με κωδικό ΟΠΣ (MIS) 5010510” του Ταμείου Ασύλου Μετανάστευσης και Ένταξης 2014-2020 at: <http://www.aemy.gr/el/prokeka/>.

Further, all detained persons should be systematically provided with a copy of the leaflet setting out this information in a language they can understand.”

*Source: Council of Europe, Report to the Greek government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018*

## List of references for the incidents listed in Part II, Section 4

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