



## **Entscheidung im Fall 735/2017/MDC über die Beteiligung des Europäischen Unterstützungsbüros für Asylfragen (EASO) an der Entscheidungsfindung im Zusammenhang mit der Zulässigkeit von Anträgen auf internationalen Schutz, die in den griechischen Hotspots eingereicht wurden; insbesondere Mängel bei den Anhörungen**

Entscheidung

**Fall 735/2017/MDC - Geöffnet am 13/07/2017 - Entscheidung vom 05/07/2018 -**

**Betroffene Institution** Europäisches Unterstützungsbüro für Asylfragen ( Keine weiteren Untersuchungen gerechtfertigt ) |

Die Beschwerde wurde in diesem Fall von einer deutschen NRO, dem European Center for Constitutional and Human Rights, eingereicht. Es macht geltend, dass (i) das Europäische Unterstützungsbüro für Asylfragen (EASO) außerhalb seines unionsrechtlich erteilten Mandats handele, indem es im Rahmen der in den „Hotspots“ [1] auf den griechischen Inseln durchgeführten Anhörungen tatsächlich über die Zulässigkeit von Anträgen von Migranten auf internationalen Schutz entscheide, und dass (ii) das EASO bei der Durchführung der Anhörungen die in Artikel 41 der Charta der Grundrechte festgelegten Bestimmungen über „das Recht, gehört zu werden“ sowie seine eigenen Richtlinien nicht einhalte.

Diese Vorwürfe wurden von der Europäischen Bürgerbeauftragten untersucht. Die Bürgerbeauftragte erkennt an, dass diese Beschwerde ernsthafte Bedenken hinsichtlich des Ausmaßes der Beteiligung des EASO-Personals an der Bewertung von Asylanträgen in den griechischen Hotspots sowie der Qualität und Verfahrensgerechtigkeit in Bezug auf die Durchführung von Anhörungen von Anträgen aufwirft. Allerdings entschied die Bürgerbeauftragte aus den in der Entscheidung dargelegten Gründen, dass weitere Untersuchungen der in der Beschwerde aufgeworfenen Fragen nicht gerechtfertigt sind und stellte die Untersuchung daher ein. Hauptgrund für die Entscheidung der Bürgerbeauftragten ist, dass die Zuständigkeit für Entscheidungen über einzelne Asylanträge bei den griechischen Behörden liegt.

[1] In der Europäischen Migrationsagenda gibt die Europäische Kommission keine Definition für „Hotspot“ vor, sondern beschreibt, wie das „Hotspot-Konzept“ anzuwenden ist. Ein



„Hotspot“ zeichnet sich durch einen besonderen und unverhältnismäßigen Migrationsdruck aus, der aus gemischten Migrationsströmen besteht, die weitgehend mit der Schleusung von Migranten zusammenhängen, und bei dem der betreffende Mitgliedstaat um Hilfe und Unterstützung bei der besseren Bewältigung des Migrationsdrucks ersuchen könnte. Das Hotspot-Konzept beruht sowohl auf der Bewertung durch den betreffenden Mitgliedstaat als auch auf der von den zuständigen EU-Agenturen, insbesondere Frontex und EASO, bereitgestellten Risikoanalyse.

#### Background to the complaint

**1.** In March 2017, the European Center for Constitutional and Human Rights (ECCHR, hereinafter, 'the complainant'), a German NGO, contacted the European Asylum Support Office (EASO), voicing concerns about EASO's involvement in the admissibility interviews of applicants for international protection in the 'hotspots' in Greece, since the entry into force of (what is known as) the EU-Turkey Statement [2] .

**2.** All migrants arriving in the Greek islands via Turkey may apply for asylum. The Greek Asylum Service ('GAS') is in charge of assessing the admissibility of their claims. GAS is assisted by EASO. The EASO Hotspot operating plan to Greece, signed between EASO and the Greek authorities (Amendment 2) on 1 April 2016, provides that EASO should conduct admissibility interviews, recommend decisions and notify applicants.

**3.** In accordance with Article 2(6) of Regulation (EU) 439/2010 establishing EASO [3] (hereinafter, 'EASO's founding Regulation'), "[EASO] shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection " [4] . Moreover, Article 10 of EASO's founding Regulation provides as follows:

*" At the request of the Member States concerned, the Support Office shall coordinate actions to support Member States subject to particular pressure on their asylum and reception systems, including coordinating:*

*(a) action to help Member States subject to particular pressure to facilitate an initial analysis of asylum applications under examination by the competent national authorities; ... "* [5] .

**4.** In its letter to EASO, the complainant sought EASO's opinion on two issues in particular. First, the complainant contended that EASO's involvement in the decision-making process on asylum claims exceeds its legal powers under EU law. Second, the complainant considered that, when conducting interviews in the hotspots on the Greek islands, with a view to determining the admissibility of applications for international protection, EASO fails to provide a fair and proper individual hearing on the admissibility of asylum claims.

**5.** In April 2017, EASO replied to the complainant. It denied its involvement in the decision-making process on asylum claims. EASO stated that it conducts interviews and 'prepares opinions' [6] , as it is legally authorised to do, on the basis of *i)* the Special Operating Plan signed, at the request of Greece, between Greece and EASO, *ii)* the Standard Operating Procedures developed jointly by GAS and EASO, and *iii)* Greek law.



**6.** Furthermore, EASO argued that it had taken the following measures to “ *support the quality* ” of the interviews: *i)* competent experts are selected; *ii)* they are provided with coaching and training by EASO; *iii)* they are supervised by team leaders “ *with more experience* ”; and *iv)* in August 2016, EASO began to implement a quality review process encompassing a sample of interviews, and opinions and lessons learnt are reflected in the Guidance Note. Finally, EASO stated that it deploys vulnerability experts to the hotspots. The interviewing experts have to refer the case to a vulnerability expert if any vulnerability is detected during an interview.

**7.** Since the complainant was not satisfied with EASO’s reply, it lodged a complaint with the Ombudsman.

The inquiry

**8.** The Ombudsman opened an inquiry into the following aspects of the complaint:

1) EASO is acting outside of its mandate under EU law by effectively deciding on the admissibility of applications for international protection in the context of the ‘admissibility interviews’ it carries out;

2) When conducting interviews in the hotspots on the Greek islands, EASO fails to comply with the provisions on ‘the right to be heard’ in the Charter of Fundamental Rights (Article 41), as well as EASO’s own guidelines (EASO Guidelines) [7] .

The Ombudsman asked EASO to send her a copy of the *Concluding Remarks* from all of the 19 interviews on which the complaint was based, and transcripts of all admissibility interviews carried out in May 2017 and their *Concluding Remarks* [8] .

**9.** In the course of the inquiry, the Ombudsman received the reply of EASO on the complaint and, subsequently, the comments of the complainant in response to EASO’s reply.

EASO’s involvement in the admissibility interviews of applicants for international protection

## **Arguments presented to the Ombudsman**

**10.** The complainant argued that, under the applicable EU law [9] , it is EU Member States, and not EASO, which have the power to decide on the admissibility of applications for international protection. However, the complainant alleged that, in practice, EASO decides on the admissibility of the applications in the context of ‘admissibility interviews’ it carries out in Greece. According to the complainant, EASO’s *Concluding Remarks* , drafted after admissibility interviews, look like decisions, rather than recommendations to the authority responsible. Moreover, since there is no representative of the relevant Greek asylum authority present during interviews, and the transcripts of interviews exist in English only, the *Concluding Remarks* appear to have greater importance than what was envisaged in the applicable provisions (such as the ‘EASO Hotspot Operating Plan to Greece’, Amendment 2).

**11.** The complainant claimed that EASO should suspend its involvement, as described above, in admissibility interviews.



**12.** In its reply, EASO outlined the applicable legal framework [10] . It then responded to the points raised in the complaint. EASO stated that the support which its personnel provides to GAS does not include the carrying out of tasks that are connected to exercising public authority. Therefore, its personnel have no authority to decide on the admissibility of individual applications [11] . The decision-making is done exclusively by GAS.

**13.** EASO specified that it had developed, jointly with GAS, the Standard Operating Procedures ('SOPs' [12] ) and templates for the interview transcript and for the opinion of the EASO expert. According to EASO, these documents determine the parameters of the support provided by EASO experts, including in the assessment of the admissibility of applications for international protection. EASO justified the absence of GAS representatives during interviews by referring to "time and effort efficiencies". It added that GAS has never stated that the fact that the interview transcript and the opinion prepared by EASO experts are drafted in English constitutes an obstacle to the taking of decisions on admissibility.

**14.** According to EASO, the (non-binding) reasoned opinion of the EASO expert outlines the relevant factors to support the GAS decision-maker. It includes sections that are similar to those expected from a written decision in order to ensure that *i)* sufficient information has been collected to assist GAS in taking a justified decision, and *ii)* the opinion of the EASO expert is sufficiently reasoned . EASO added that, since the complainant carried out its analysis, the opinion and interview templates have been improved continuously.

**15.** With regard to the vulnerability assessment, EASO stated that experts are provided with guidance on what issues they need to explore in the interview in relation to a potential vulnerability (vulnerability considerations may be prompted by specific questions to the applicant, claims by the applicant or observations by the expert). It also referred to the '*Vulnerability Guidance note for EASO experts*' and to the support provided by EASO vulnerability experts deployed in the field. EASO added that, in accordance with the revised opinion template, the EASO expert would be expected to provide relevant details in all cases where vulnerability was explored, including where the case was not referred to a vulnerability expert.

**16.** EASO said that, in accordance with Section 5.3.1 of the SOPs, a vulnerability expert is consulted "*as soon as a vulnerability indicator or claim comes up*".

**17.** EASO also stated that, in accordance with Section 6 of the SOPs, "*the [Asylum Service] liaison with EASO, taking into account the interview transcript, the opinion of the EASO Interviewer/interim caseworker, any submitted documents and the available information, issues the decision.*" Moreover, EASO argued that the SOPs contain clear rules on the process which applies in any case in which the GAS decision-maker disagrees with the opinion of the EASO expert. This includes the possibility of conducting additional interviews or of issuing a decision which differs from the opinion of EASO's experts.

**18.** EASO insisted that, by assisting GAS in examining the admissibility of an application or the assessment of protection needs of an applicant, EASO experts provide technical and



operational support to GAS. That support is limited to providing an opinion which could facilitate the analysis of the asylum application under examination, as envisaged in Article 10 of EASO's founding Regulation, but which is not binding on GAS, since the decision to grant or refuse international protection falls within the sole authority of the Member State.

**19.** In reply to the Ombudsman's questions, EASO stated that, during the period 1 January 2017 to 4 August 2017, it deployed 31 vulnerability experts in the hotspots in Greece (and a total of 300 experts to perform asylum interviews). It added that vulnerability experts are nominated by Member States. Candidates' professional *curriculum* and, in particular, relevant professional training and previous work experience related to the identification, detection and referral of persons belonging to vulnerable groups, are carefully screened. The deployed vulnerability experts are immigration or asylum caseworkers who have performed similar tasks in their national administration [13] .

**20.** As regards the 'quality review process', EASO stated that there are no specific criteria for the selection of cases but that it selected cases raising different issues and coming from, at least, 2 or 3 hotspots. EASO stated that some of the gaps identified related to the application of different standards by national experts and that these were addressed through training, quality review and guidance.

**21.** Finally, with regard to the training that experts receive before they start conducting interviews, EASO stressed that deployed experts receive operational training on a regular basis and that each training session lasts two and a half days [14] .

**22.** In its observations on EASO's reply [15] , the complainant stated that, for those applicants subjected to the admissibility procedure, that procedure is the precondition for accessing the Greek asylum procedure (that is, for their applications to be assessed on their merits) [16] . An inadmissibility decision will provide the grounds for an applicant's return to Turkey. In brief, the complainant argued that EASO " *appears to misunderstand both its limited mandate under EU law and the scope of [the] complaint* ".

**23.** The complainant contended that the deployment and actions of EASO in the Greek Hotspots, as well as its involvement in the carrying out of admissibility interviews, are not within the scope and framework of EASO's founding Regulation [17] for the following reasons.

**24.** The complainant argued that the limited scope of EASO's mandate under EU law expressly precludes its involvement in the joint processing of asylum claims in the Greek hotspots. Through the conduct of admissibility interviews, EASO exercises, at the very least, significant influence and indirect power on a decision that should be taken by the Greek authorities. This expressly violates Article 2(6) of EASO's founding Regulation [18] . Moreover, the complainant contended that the legal framework does not provide for any kind of direct involvement of EASO as the sole authority responsible for a crucial stage of an asylum application: the interview [19] . In the complainant's view, EASO is exceeding the legal limits expressly defined in its founding Regulation [20] .



**25.** According to the complainant, the processes described in the SOPs (on how EASO should conduct the interview, complete the interview transcript, examine the reasons for possible exemptions from the border procedures and draft an opinion on the admissibility of the application) make clear the extent to which EASO interviewers, through their conduct of admissibility interviews, influence the decisions made. The complainant observed, from an analysis of the Interview Transcript Template, that many of the potential follow-up questions are “if-” clauses, meaning that they will be asked only if the EASO interviewer decides so, based on an assessment of the previous reply to the previous question. In the template, it is also mentioned that the EASO interviewer has to adjust the questions according to the applicant’s answers. The EASO interviewer records the applicant’s answers in the transcript, which tends to be the only record of the interview to be provided to the GAS.

**26.** The complainant stated that, through the opinion drafted by the EASO expert, the main elements of which are outlined in the Template for Concluding Remarks, the EASO interviewer provides a reasoned recommendation as to the applicability of the “safe third country” or “first country of asylum” concept [21]. According to the complainant, EASO admitted its influence on GAS decisions when it stated, in its reply to the Ombudsman, that *“the opinion template continues to include the relevant elements of a decision”*.

**27.** The complainant lay emphasis on EASO’s (at least indirect) decision-making power during vulnerability assessments [22]. It stated that, despite the importance of such assessments (since the recognition of vulnerability leads to an exemption from the border procedure), the exploration of vulnerability is not a mandatory part of the admissibility procedure but depends on the evaluation made by the EASO interviewer. The SOPs simply provide that if, during the interview, the interviewer finds that it is “reasonably possible” [23] that the applicant is a vulnerable person, s/he should ask questions related to vulnerability, stop the interview and fill in the relative Report.

**28.** According to the complainant, the optional nature of vulnerability assessments is confirmed by the interview transcripts. Initially, the templates did not include any instructions on vulnerability. Later templates indicate that questions on vulnerability are to be asked only “if relevant”. The templates also instruct EASO interviewers to apply the “reasonably possible” test on vulnerability in order to decide whether to make a referral to an EASO vulnerability expert. According to the complainant, the interviewer’s decision not to proceed with a referral amounts to decision-making, in that it entails an implicit negative decision on vulnerability.

**29.** The complainant stated that in cases of potential vulnerability, the standard procedure is that an internal consultation takes place between the EASO interviewer and the EASO vulnerability expert. However, early versions of the SOPs (including those from July 2016) did not contain any precise indication on how the internal consultation was to take place. Recent SOPs contain more precise guidelines which describe the scenario where a referral is made. However, according to the complainant, *“it seems that no referral will be made if the EASO Interviewer does not confirm that there is enough information on vulnerability. This amounts to the exercise of discretionary power to rule out vulnerability at this stage.”*



**30.** Crucially, according to the complainant, the EASO vulnerability expert (who, the complainant states, does not, in most cases, conduct a personal interview but draws a conclusion on the basis of the applicant's file) decides whether to make a positive or negative finding on vulnerability as a result of the vulnerability assessment. The SOPs state that "[w] *here the applicant is not found vulnerable, the case is returned*" to the EASO expert and the interview proceeds accordingly. The complainant argued that the SOPs do not require, in the case of a negative finding, that Annex II (the report on the vulnerability assessment), which contains the reasons for this conclusion, be included in the applicant's file (in contrast to the instructions in the case of a positive finding). If it is not included, GAS would lack this information on potential vulnerability and would not be able to assess it at all. This can lead to situations where GAS does not make practical use of the theoretical possibility to conduct a further interview or to take a decision contrary to EASO's recommendation.

**31.** Finally, the complainant argued that EASO's involvement in the admissibility process is not grounded on operating plans which followed a request made by Greece [24], but rather on operating plans which were drafted in order to implement decisions of the European Council. The complainant argued that the deployment of EASO on the basis of a European Council decision is not provided for in the EASO Regulation. It added that EASO's Hotspot Operating Plan of September 2015 was based on a decision of the European Council taken under Article 78(3) TFEU, rather than on a request by Greece. EASO's role was further expanded to the carrying out of admissibility interviews through an amendment which referred exclusively to the 'EU-Turkey Joint Action Plan'. In EASO's Special Operating Plan to Greece of December 2016, there is simply a reference to the EU-Turkey Statement in relation to the carrying out of admissibility interviews by EASO. According to the complainant, it is clear from the wording of Article 13(2) of EASO's founding Regulation that each operating plan must ensue from a specific request from the Member State.

## The Ombudsman's assessment

**32.** This inquiry has helped draw attention to very serious concerns, that have been voiced in particular by civil society, about the extent of the involvement of EASO personnel in assessing asylum applications in the Greek hotspots. While those concerns are certainly genuine, it cannot be denied that ultimate responsibility for decisions on asylum applications rests with the Greek authorities.

**33.** The Ombudsman recognises that EASO is in a particularly difficult position in light of the Statement of the European Council of 23 April 2015 [25] (Point P), in which the European Council commits to "*deploy EASO teams in frontline Member States for joint processing of asylum applications, including registration and finger-printing*". EASO is being encouraged politically to act in a way which is, arguably, not in line with its existing statutory role. Article 2(6) of EASO's founding Regulation (which should be read in the light of Recital 14 thereof, which speaks of "*direct or indirect powers*") reads: "*The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection*".



**34.** The Ombudsman notes that it is likely that EASO's founding Regulation will be amended in the near future to provide explicitly for the type of activity in which EASO is currently engaged, thus resolving the issue of EASO possibly operating outside of its statutory brief.

**35.** The Ombudsman therefore considers that further inquiries into this aspect of the complaint would serve no useful purpose and are therefore not justified.

EASO's alleged failure to comply with the right to be heard (Article 41 of the Charter of fundamental rights) and its own guidelines during the interviews

## Arguments presented to the Ombudsman

**36.** The complainant argued that the way in which interviews are conducted does not allow for a fair assessment of individual cases (the asylum claims are not examined on an individual basis) and prevents a thorough investigation of 'vulnerability' [26] .

**37.** The complainant contended that the interviews do not comply with the principle of fairness, as set out in EASO Guidelines, which provide that the applicant has access to the same information that the decision-maker has. According to the complainant, EASO interviewers do not inform the applicant about the aim, framework and structure of the interview, and do not provide an opportunity to clarify any inconsistency. Moreover, they do not establish and maintain "an atmosphere of trust" during interviews. Finally, according to the complainant, EASO interviewers do not follow EASO guidelines on the use of specific interview techniques in order to be able to identify special procedural needs.

**38.** EASO informed the Ombudsman that, since all files processed by EASO experts during the admissibility interviews are returned to GAS, which is the sole decision-maker on the admissibility of the applications, it was not in possession of the Concluding Remarks and transcripts requested by the Ombudsman and could not send them to her. Nor could it address the Ombudsman's question on whether vulnerability experts had been involved in the cases on which the complaint was based (though it added that "*in the few enclosed opinions however, it does not appear to be the case*" that a vulnerability expert had been involved).

**39.** EASO argued that the interview template aims to ensure that individual elements are explored sufficiently. It also referred to its 'Practical Guide: Personal interview', which highlights the importance of providing information to the applicant.

**40.** EASO contended that applications are examined on an individual case-by-case basis [27] . Moreover, in the training which EASO experts receive as well as in the *EASO Practical Guide: Personal Interview* , the experts are instructed that they need to explain to applicants what the aim of the interview is, the general context of the procedure in which the interview takes place, the structure of the interview, and the possibility to ask for breaks etc. The experts are also instructed, through the training received and other guidance material [28] , to always address potential credibility issues and provide the applicant with an opportunity to clarify any inconsistencies. Moreover, experts are instructed that establishing an atmosphere of trust is of key importance in the interview process [29] .





**41.** The complainant contended that EASO's response implicitly acknowledges past misconduct by referring to "improved" procedures and templates without providing an explanation for the improvements made [30] . According to the complainant, such an approach fails to address the implications of past failures on the asylum claims of individual applicants " *who have been subjected to inadequate admissibility interviews and vulnerability assessments* ". Moreover, the complainant argued that the fact that EASO could neither provide the Ombudsman with the documents she requested, nor determine whether vulnerability experts were involved in the cases analysed in the complaint, pointed to a highly concerning lack of accountability regarding EASO's past misconduct and raised serious concerns with regard to future operations [31] . The complainant stated that, in order to counteract this lack of accountability, it was presenting further evidence [32] " *confirming EASO's failure to respect core standards of fairness in the admissibility interviews in violation of the Agency's own guidelines delineated in its Practical Guide on Personal Interviews* ."

**42.** The complainant argued that the lack of instructions on vulnerability in the earlier SOPs and templates give rise to serious concerns as to the ability of EASO officers to identify and raise vulnerability issues in the early months of EASO's operations. The amended SOPs and templates now include specific questions and sections on vulnerability. However, the complainant stated that the expert opinion submitted by HIAS in support of its complaint, as well as other reports published on the subject, raise considerable doubt as to whether these written changes translate into the actual identification of vulnerability in practice [33] .

**43.** The complainant insisted that the conduct of interviews by EASO lacks transparency due to unclear procedures and insufficient access to information for applicants. First, applicants lack information about the purpose and procedures of the admissibility interview with regard to vulnerability assessment. They consequently lack crucial information about the requirement to provide detailed information and evidence in order to have their vulnerability assessed and recognised. Second, procedural and practical concerns remain regarding the opportunity for applicants to clarify inconsistencies. The instructions which have now been included in the templates regarding the need to address lack of credibility due to inconsistencies during the interview, in order to give the applicant an opportunity to clarify those inconsistencies, were not included in previous templates. In any event, the complainant stated that, once again, there are serious concerns about the divergence between the theory and practice on the possibility for applicants to clarify inconsistencies and on credibility assessments.

**44.** In conclusion, the complainant requested (i) an acknowledgment by EASO of its past maladministration during admissibility interviews in the Greek hotspots and the formulation of a plan on how to address the consequences of that maladministration in general and in individual cases; and (ii) the suspension of EASO's involvement in admissibility interviews in the Greek hotspots and the limitation of its activities to conduct which would not be in breach of EU law, in particular Article 2(6) of EASO's founding Regulation and the right to a fair hearing under Article 41(2)(a) of the Charter.



## The Ombudsman's assessment

**45.** The Ombudsman takes the view that EASO has made considerable efforts to improve its practices in those areas highlighted by the complainant. The amendments to the SOPs and to the various templates used by the experts it deploys are steps in the right direction. There appears to be a willingness on the part of EASO to continuously improve these instruments and the Ombudsman encourages it to do so. She also urges EASO, in order to sensitise them to the issues raised in this complaint, to ensure that the attention of all of its experts, both current and future, is drawn to this decision.

**46.** The Ombudsman accepts that there are genuine concerns about the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted. Nevertheless, ultimate legal responsibility for decisions on individual asylum applications rests with the Greek authorities. The Greek authorities may, once they have seen the interview transcript, determine whether there were shortcomings in the interview which require that it be repeated; or it is open to them to disagree with the EASO expert's opinion and consider the application admissible. Moreover, under Greek law, if a claim is considered inadmissible, the applicant can appeal GAS's decision to the relevant Appeals Committees. The Ombudsman considers that any shortcomings in the interview process (and in GAS's decisions) are best addressed in the course of individual appeals [34], rather than in the context of an Ombudsman inquiry. She therefore considers that no further inquiries into this aspect of the complaint are warranted.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**Further inquiries into the complaint are not justified.**

The complainant and EASO will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 05/07/2018

[1] In the European Agenda on Migration, the European Commission does not provide a definition of a 'hotspot' but rather describes how the 'Hotspot' approach is to be applied. A 'Hotspot' is characterised by specific and disproportionate migratory pressure, consisting of mixed migratory flows, which are largely linked to the smuggling of migrants, and where the Member State concerned might request support and assistance to better cope with the



migratory pressure. The triggering of the 'Hotspot' approach is based on both the assessment of the Member State concerned and the risk analysis provided by the relevant EU Agencies, in particular Frontex and EASO.

[2] In accordance with the 'EU-Turkey Statement' of 18 March 2016, all irregular migrants arriving on the Greek islands after 20 March 2016 are to be returned to Turkey, as a safe third country, if they do not apply for international protection or if their application for international protection is declared inadmissible.

[3] Regulation (EU) 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ 2010, L 132, p. 11).

[4] Recital 14 of EASO's founding Regulation stipulates that: "[EASO] *should have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.*"

[5] Article 14 of EASO's founding Regulation lays down that "[t]he asylum support teams shall provide expertise as agreed upon in the operating plan referred to in Article 18, in particular in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases within the framework of the actions to support Member States referred to in Article 10."

[6] EASO stated that it deploys national experts to Greek hotspots to conduct personal interviews with applicants for international protection and to prepare opinions. During the interviews, EASO experts explore whether the concept of safe third country or first country of asylum may be applicable in the individual case and whether the person is eligible for international protection. Based on the interview and other evidence, EASO experts prepare an opinion. This opinion is however "*in no way*" binding on the GAS "*who has full and exclusive decision-making authority.*" GAS can issue a decision differing "*from the conclusion in the opinion of the expert*", it can collect additional information and conduct additional interviews. EASO took the view that "*if in practice decisions tend to be in line with the opinion of MSs experts deployed by EASO, this should only confirm that the process as such is working well.*"

[7] EASO Practical Guide: Personal interview

<https://www.easo.europa.eu/sites/default/files/public/EASOPractical-Guide-Personal-Interview-EN.pdf>

[8] The Ombudsman also asked EASO to reply to the following questions:

(1) Were vulnerability experts involved in the cases on which this complaint is based? How many vulnerability experts work in the hotspots in Greece? How does this compare with the overall number of other EASO experts? At which stage is a vulnerability expert consulted (during or after the interview)? What qualifications are necessary to become a vulnerability expert?

(2) In relation to the 'quality review process', mentioned by EASO in its reply to the complainant (12 April 2017), how are the samples of opinions and interviews selected? What



gaps have been identified so far, and what measures have been taken to address these gaps? Could EASO share with the European Ombudsman its Guidance Note (latest version)?

(3) How many days/hours of training on average does EASO provide to Member States asylum experts before they start interviewing applicants?

(4) How many Member State asylum experts are supervised by one team leader? On average, how much experience of interviewing (in terms of time) do team leaders have?

[9] Articles 78(1) and (2) TFEU and EASO's founding Regulation.

[10] EASO referred to Articles 8, 10, 13 and 18 of its founding Regulation, to the Greek Law No 4375/2016 and to Articles 4 and 34(2) of the Asylum Procedures Directive (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 2013, L 180, p. 60).

[11] According to Article 10(a) of EASO's founding Regulation, the support provided by EASO consists in facilitating an initial analysis of asylum applications under examination by the competent national authorities. This possibility of receiving support from EASO is also envisaged by Greek national law.

[12] Standard Operating Procedures for the Implementation of the Border asylum procedures in the context of the EU Turkey Statement 18/03/2016. Unless otherwise indicated, the version of the Standard Operating Procedures referred to in this decision is that of 30 June 2017.

[13] EASO added that thorough theoretical and practical knowledge of working methodologies with vulnerable categories, acquired through *ad hoc* training, delivered by EASO or the experts' national administration " *is an added value. Relevant reference point for this is the attendance of EASO specific training modules, such as "Interviewing Children", "Interviewing Vulnerable Persons", "Trafficking in human beings"* .

[14] EASO stated that, since April 2017, one Team Leader supervises five case workers. Generally, Team Leaders are caseworkers, employed in their national administration for a period of three to five years, who have already performed a similar function in the Member State of reference, either as Coaches or as Reviewers. In some cases, experts who have participated in EASO operations have been working within their service for more than ten years. It often occurs, according to EASO, that experts appointed as Team Leaders are certified trainers, in core and/or EASO specific training modules. Moreover, some of the current Team Leaders have been deployed with EASO in the course of the hotspots operations for more than one year, in addition to the professional experience within their national service.

[15] Together with its reply, the complainant sent the Ombudsman additional documents in



support of its complaint. These include an Expert Opinion drafted by the NGO HIAS, which provides a legal assessment of EASO's role in the processing of applications, based on the first-hand experiences of HIAS lawyers representing asylum-seekers on Lesbos in the Hotspot of Moria, as well as 28 EASO interview transcripts and opinions provided as anonymised Annexes. The complainant also submitted copies of several versions of EASO's Standard Operating Procedures for the implementation of the border asylum procedures in the context of the EU-Turkey Statement, Templates for Interview Transcripts and Concluding Opinions, the Annexes used for vulnerability referrals and vulnerability assessments, as well as documents providing further guidance and training to EASO Interviewers and Vulnerability Experts.

[16] The complainant stated that the purpose of the admissibility interviews is to assess whether the "safe third country" or "first country of asylum concept" can be applied. The complainant noted that the admissibility procedure applies to applicants from countries with very high recognition rates. For applicants who are prima facie likely to have a valid asylum claim, the admissibility interview will focus on whether there are any reasons why Turkey should not be considered a safe third country to which they could be returned.

[17] The complainant contended that, in the light of the principles of primacy of EU law and of direct effect of EU Regulations, the fact that EASO's involvement is stipulated in national Greek law bears no significance, as national Greek law should comply with EU law. Additionally, the complainant noted that the argument of EASO, that the Asylum Procedures Directive provides for the possibility that the determining authority be assisted by the personnel of other authorities to conduct interviews on admissibility, is based on a misunderstanding of both the wording and the purpose of the Directive. In brief, regarding the wording of the Directive, the complainant argued that it is apparent from the provisions of the latter that it provides for the possibility for Member States to allocate the responsibility of carrying out admissibility interviews to a different public body or administration than the one actually responsible for deciding on the asylum application (referred to as the "determining authority"). As to the purpose of the Directive, the complainant argued that the limits to EASO's powers, explicitly provided for by its founding regulation, cannot be implicitly lifted by the wording of a directive whose aim is to regulate the actions of Member States.

[18] The complainant referred to Article 2(6) read in the light of recital 14 of the Preamble to EASO's founding Regulation: "[EASO] *should have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection ."*

..

[19] The complainant referred to Article 2 of EASO's founding Regulation.

[20] Furthermore, according to the complainant, although the Greek Law 4375/2016 (as amended) provides a legal basis for the conduct of interviews by EASO officers, it does not give them competence for writing concluding opinions and recommendations.



[21] The complainant stated that the Template for Concluding remarks contains a summary of the applicant's statements, a summary of the key material facts, as well as an assessment of the vulnerability, credibility, and risk of persecution or serious harm formulated by the EASO interviewer.

[22] According to the complainant, the Greek Law 4375/2016 and its amendments do not provide a legal basis for EASO officers to conduct vulnerability assessments.

[23] EASO, Standard operating procedures for the implementation of Border asylum procedures in the context of the EU-Turkey statement, 29 July 2016, pp 7-8.

[24] The complainant referred to the provisions of EASO's founding Regulation which allow for the deployment of EASO's Asylum Support Teams at the request of Member States that are "*subject to particular pressure on their asylum and reception systems*" (recital 15, and Articles 10, 13, 16, 17 and 18).

[25] Special meeting of the European Council, 23 April 2015 - statement

[26] The EASO Guidelines (*EASO Practical Guide; Personal interview*), developed on the basis of Article 2 (d) of Directive 2013/32/EU, define a 'vulnerable applicant' as an applicant "whose ability to understand and effectively present his/her case or fully participate in the process is limited due to his/her individual circumstances".

Article 2 (d) of Directive 2013/32/EU provides that an "applicant in need of special procedural guarantees"

means an applicant whose ability to benefit from the rights and comply with the obligations provided for in

this Directive is limited due to individual circumstances.

Vulnerable persons are exempted from the admissibility accelerated procedure (in application of the safe third country concept) and readmission to Turkey under the EU/Turkey Statement.

[27] EASO drew attention to the instructions contained in the interview template, which state as follows: "... *questions suggested [in the template] are of a general nature. In every case, the set of questions should be flexible and adjusted according to the applicant's answers, especially for crucial statements related to the applicant's fear of return to Turkey.*"

[28] EASO referred to guidance contained in EASO's *Practical Guide: Evidence assessment*, as well as in the *Quality Feedback: Guidance* note developed on the basis of the quality review process.

[29] EASO stated that the complainant mentioned only one example in this regard:



informing the applicant that information concerning his/her personal data may be communicated to the Turkish authorities. EASO contended that the possibility to share this (and only this) information with the Turkish authorities exists and applicants have the right to be informed accordingly, in line with the principles of fairness and transparency. Furthermore, the revised template now includes instructions to experts which state that the expert should further explain that "*only information concerning his/her personal data (name, surname, date, and place of birth, nationality) may be communicated to the Turkish authorities; no other information provided by the applicant will be shared with the Turkish authorities.*"

[30] The complainant contended that, by describing adjustments whilst refusing to disclose the grounds on which those adjustments were deemed necessary, EASO not only attempts to escape accountability through opacity, but also declines to take any responsibility by withholding its express acknowledgement of previous shortcomings.

[31] The complainant argued, with regard to EASO's lack of internal accountability, that this means that it is unable to review its work and reflect upon it in a meaningful way. With regard to EASO's lack of external accountability, the complainant stated that it is "striking" that there exists no mechanism through which the actions and modus operandi of EASO would be reviewed and audited by an external independent actor on a regular basis and in a systematic way, without the need for the filing of a complaint on specific issues.

[32] The complainant's analysis was based on EASO's SOPs and Interview Templates, the expert opinion submitted by HIAS, in support of the complaint and additional reports in support of the complainant's "*analysis of EASO's maladministration during admissibility interviews conducted by its officials in the Hotspots on the Greek Islands.*"

[33] The complainant contended, first, that the questions asked to investigate vulnerability are misunderstood by applicants as questions related to their capability to be interviewed. Furthermore, the questions fail to explicitly include vulnerabilities not considered a health issue such as trafficking, torture, rape, serious physical violence or disabilities, which are all listed as relevant vulnerabilities both under Greek law and in EASO's guidance. Second, the complainant stated that HIAS submitted evidence of several cases demonstrating EASO's failure to identify indicators of vulnerability, refer cases to the vulnerability experts, adequately explore vulnerability in their opinions or properly interpret the vulnerability categories. The complainant added that EASO experts prevented applicants from explaining what happened in their country of origin, based on the reasoning that the admissibility interview focuses on events in Turkey, thereby not taking into consideration accounts of torture or severe physical violence that occurred before entering Turkey.

[34] The Ombudsman has no information as to whether GAS's decisions on the applications of the applicants concerned by the 19 interviews on which the complaint was based (and the 28 interviews annexed to the complainant's comments on EASO's reply) were appealed.