

## **Report on (i) the inspection of the European Commission's documents and (ii) the meeting of the European Ombudsman inquiry team with representatives of the European Commission**

Correspondence - 09/03/2023

**Case** OI/3/2022/MHZ - **Opened on** 11/07/2022 - **Decision on** 07/06/2023 - **Institution concerned** European Commission ( No further inquiries justified ) |

### **I. Inspection of documents (remote arrangements)**

#### **Documents inspected**

Prior to the meeting the Ombudsman inquiry team obtained a set of documents in response to questions posed to the European Commission in the [Ombudsman's letter of 11 July 2022 \[Link\]](#).

The Commission informed the Ombudsman inquiry team that most of the documents are confidential. In accordance with Article 4.8 of the Implementing Provisions of the European Ombudsman, the Ombudsman's inspection will not result in any other person obtaining these documents.

### **II. Meeting**

Date: Wednesday, 26 October 2022

#### **Present**

*Representatives of the European Commission:*

Senior Expert - Coordinator for inter-institutional Relations - relations with the European Ombudsman

Representatives of the Directorate-General for Migration and Home Affairs from the Migration



Management Coordination Unit, the Financial Management Support Greece Sector, the Asylum Unit, and the Enforcement, Transparency and Rule of Law Monitoring Unit.

*Representatives of the European Ombudsman:*

**Marta Hirsch-Ziemińska** - Principal Adviser on Charter compliance **Louisa Jakobsson** - Inquiries trainee

## Purpose of the meeting

The purpose of the meeting was for the Ombudsman inquiry team to obtain replies to questions on how the Commission monitors and ensures respect for fundamental rights in the Multi-Purpose Registration and Identification Centres (MRPICs) in the Greek islands (as set out in the Ombudsman's letter to the Commission dated 11 July 2022).

## Introduction and procedural information

The Ombudsman inquiry team introduced themselves, thanked the European Commission representatives for meeting with them and set out the purpose of the meeting. They outlined the legal framework that applies to meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified by the European Commission as confidential, to any person outside the Ombudsman's Office, without the Commission's prior consent. [1]

The inquiry team explained that they would draw up a draft report on the meeting. The report will be published on the European Ombudsman's website.

## Information exchanged

In reply to the questions put by the Ombudsman in the letter opening the inquiry, the Commission representatives clarified the following:

### **On the Task Force for Migration Management in Greece**

*What are the exact duties of the staff of the Task Force Migration Management in Greece in relation to the MPRICs?*

1. The Commission explained that, in order to understand the role of the Task Force, it is important to understand the context within which cooperation and collaboration between the Commission and the Greek authorities has developed. The Commission adopted the [EU](#)



agenda on migration [Link] in 2015, which introduced the 'hotspot' approach. The approach envisaged that the Commission [2] , the European Union Agency for Asylum (EUAA) [3] , the European Border and Coast Guard Agency (Frontex) and European Union Agency for Law Enforcement Cooperation (Europol) would work closely with the Greek authorities at national, regional and local level. Five hotspots were established in Greece in Lesbos, Chios, Samos, Leros and Kos. This cooperation was further strengthened following the [EU-Turkey statement \[Link\]](#) of 2016.

2. Throughout this cooperation, it was clear that there were significant gaps in how the Common European Asylum System (CEAS) was implemented in Greece. This was especially clear in the refugee camps on the Greek islands of Samos (the Vathy hotspot) and Lesbos (the Moria hotspot) where the humanitarian situation was well below EU standards.

3. In the beginning of 2020, significant challenges on the islands, due to severe political tension and an escalation of violence, led the Greek authorities to start discussions with the Commission on how to improve reception conditions through the funding of the establishment of so-called Multi-Purpose Reception and Identification Centres (MPRICs). The MPRICs would include identification, first reception and pre-removal detention facilities.

4. The devastating fire in Moria camp in September 2020 significantly increased the need to implement this plan, as hundreds of people were living on the streets as a result of the complete destruction of the camp. It was important to ensure quick progress while also ensuring respect for the principle of sound financial management. In order to achieve quick progress, a Task Force on migration management was set up by the Commission to facilitate the coordination with the Greek authorities, as well as among different units in the Commission on issues relating to migration management in Greece. The Task Force is headed by a Deputy Director-General from the Commission's Directorate-General for Migration and Home Affairs (HOME). The Task Force is not a separate team dedicated to specific tasks. Rather it is a collaboration framework between many different people in different units that, through the Task Force, come together to further certain objectives.

5. A [Memorandum of Understanding \[Link\]](#) (MoU) was established between the Greek authorities and the European Commission, the EUAA (then EASO), Frontex and the Fundamental Rights Agency of the EU (FRA) to improve reception conditions in Lesbos.

6. The Task Force is supported by 10-12 staff members based in Greece; some in Athens and some on the islands, of which about half are seconded national experts. The work performed by the Task Force in Greece is possible thanks to the close cooperation of the Greek authorities. The Task Force seeks to facilitate cooperation with the different Greek authorities involved. It also aims to ensure the camps on the islands Lesbos, Chios, Samos, Leros and Kos comply with EU standards.

7. In Greece, the Task Force (which is also part of DG HOME) has held several meetings with Greek government officials and other stakeholders. These meetings include, for example, steering committee meetings in accordance with the MoU, as well as ad hoc meetings wherever



needs arise. The Task Force ensures that the work of the different stakeholders on the ground - including the Greek authorities, EU agencies and international organisations - does not overlap, and that cooperation is effective and swift, including when it comes to financing of projects.

**8** .The Task Force currently also monitors operations in other countries such as Spain, Malta, Italy, Cyprus, Poland, Czech Republic, Slovak Republic, Hungary and Romania. [4] As it is not a specific Commission unit or a separate team, the Task Force format allows for a more structured way of working when implementing EU standards on migration management.

**9** . In cases of complaints relating to Greek migration management, the Task Force can provide valuable input and information on policy shifts and trends to the sections of the Commission that deal with these complaints. The Task Force picks up on all elements in contacts with Greek authorities.

*According to the Commission's website 3 , the duties of the Task Force include overseeing a number of 'actions'. Could the Commission explain how, in practice, the Task Force implements its tasks related to (a) improving the link between key processes including asylum and return or integration supported by the EU Asylum Agency and the European Border and Coast Guard Agency (Frontex) , and (b) increasing the amount of voluntary returns ?*

**10** . EU agencies such as Frontex or the EUAA work independently in relation to their engagement in Greece. The EUAA, for example, has its own [operating plan \[Link\]](#) with Greece. Frontex engages within the context of [Joint Operation Poseidon \[Link\]](#). Collaboration between these agencies and the Commission in Greece takes place, amongst other ways, through the steering committee that meets bimonthly. These meetings also include Greek authorities as well as Europol and the FRA. The purpose of the meetings is to exchange information, ensure that overlaps are avoided, that objectives are met, and that the principle of sound financial management is respected.

**11** . An alternative to the return procedure is the [assisted voluntary return and reintegration scheme \[Link\]](#) run by the International Organization for Migration (IOM) and supported by the Commission. The Task Force has been initiating a 'return working group' between a variety of Greek stakeholders to enhance cooperation.

*The Memorandum of understanding states that the steering committee "assesses the need for corrective actions, on the basis of a commonly agreed set of indicators aimed at ensuring, among others, that the site capacity is not exceeded, reception conditions remain fully satisfactory for the various categories of persons and procedures are correctly and effectively carried out". Could the Commission share with the Ombudsman the results of these assessments and the indicators used for the assessment? Could the Commission share with the Ombudsman the minutes of the meetings of the steering committee that have taken place so far?*



**12.** Commission staff deployed to the islands are responsible for providing a picture of what is happening on 'the ground' so that the steering committee can take informed decisions. They monitor by staying in close contact with civil society organisations, international organisations and resident communities in the centres. Reporting ensures proper monitoring of the implementation of the grant agreement and of EU standards on migration management. This monitoring feeds into any assessments made. The results of these assessments are presented in the Steering Committee operational conclusions/minutes of meetings that were disclosed to the European Ombudsman and made available under requests for public access to documents.

### **On the implementation of surveillance technologies in the MPRICs**

*Could the Commission state which EU funding programmes were used to finance surveillance systems in the MPRICs? Is the Commission aware of the investigation by the Hellenic Data Protection Authority concerning the use of the surveillance systems at the camps ?*

**13.** Surveillance technologies that are implemented in Greece are funded under different financial structures. For example, the interception and identification system (called HYPERION) was co-funded under the Internal Security Fund (ISF) under the previous multiannual financial framework. Other systems are also funded under the Recovery and Resilience Facility (RRF). The Commission acknowledges the ongoing investigation by the Hellenic Data Protection Authority.

### **On whether the Commission carried out fundamental rights impact assessments in the context of the MPRICs in Greece**

*Did the Commission carry out a fundamental rights impact assessment, or review the fundamental rights impact assessment made by the Greek authorities, before the call for tenders for constructing the MPRICs was launched? Has there been a fundamental rights impact assessment since the MPRICs were created? If so, could the Commission share these documents with the Ombudsman?*

**14.** The Commission applies all the checks and controls required by the relevant financial instruments used for the surveillance technologies that are funded by the EU and implemented in migration management in Greece. The Greek authorities completed a data protection impact assessment and fundamental rights impact assessment before the full deployment of the surveillance systems.

**15.** The MPRICs are funded under emergency assistance awarded to the Greek government through the Asylum, Migration and Integration Fund (AMIF). The use of emergency assistance funds is regulated by the relevant financial framework and the Commission has adhered to all applicable rules. Although the financial rules do not refer to the need for fundamental rights impact assessments, the grant agreement gives the Commission the right to recover or stop payments if the requirements of the grant agreement are not respected.



## **On the concerns raised by the Fundamental Rights Agency (FRA) about the potential for fundamental rights violations in the MPRICs**

*Has the Commission replied to the concerns raised by the FRA about the potential for fundamental rights violations in the MPRICs? If so, could the Commission share with the Ombudsman the related documents, including internal exchanges among parties to the Memorandum of understanding? Did the Commission consider measures for improving the material conditions of migrants, while ensuring the protection of their fundamental rights?*

**16.** As a co-signer of the MoU, the FRA has had an enhanced role in planning and monitoring the MPRICs. The Commission has joint missions with the FRA in order to ensure implementation and promotion of EU policy. The MoU has created a positive environment for the FRA to raise any concerns it might have. With regard to the [12 points for guidance \[Link\]](#) that the FRA published in 2021, the Commission raised the following examples of how concerns had been addressed:

(a) Regarding reception standards in national legislation, the Commission follows up on transposition of EU law in all Member States. In the context of the MPRICs the Commission has ensured the adoption of a ministerial decision regulating standard operating procedures for the MPRICs, to clarify the legislation. Its publication in the Greek official journal was introduced as a prerequisite of the grant agreement. The Commission requested written assurances at the highest level concerning the openness of accommodation areas of the MPRICs before approving their funding with EU money.

(b) Regarding protection risks, the choice of the location by the Greek authorities for the MPRICs has been a very complicated process due to local geographical, judicial and political considerations. The Commission put an emphasis on ensuring the availability of public transport to the town for persons residing in the newly built centre on Samos. For example, the bus route was adapted so that the centre is served with several daily connections. The Commission expects that similar arrangements will be introduced for the Lesvos centre once it is operational.

(c) Regarding the facilities in the camps, the Commission stated that it is important to keep in mind that the type of materials used to build the reception centres across the EU, are not prescribed in EU law and ultimately are the choice of the national authorities. The Commission has, however, worked intensively on ensuring certain distances between the fences and the living areas, for example, as well as made proposals on how to improve reception and include the potential of residents creating a sense of ownership and belonging, which the Commission believes is conducive to a tension-free environment. National authorities maintain that certain internal fencing is required in order to minimise protection risks for vulnerable migrants such as minors or those under risk due to their sexual orientation and/or gender identity.

(d) Regarding the facilitation of the right to asylum, the MPRIC approach is conducive for people



to be able to apply for asylum. All persons arriving in the MPRIC have access to the asylum procedure and access to legal aid in second instance procedures as provided by EU law.

(e) Regarding child protection issues, the Task Force worked hard with the Ministry of Migration to ensure that protective custody of minors was abolished in national legislation. In August 2022, a guardianship law was adopted in national legislation, a concern which has been under discussion between the Commission and the Greek authorities since 2009. Another example is the Emergency Referral Mechanism that was developed by the Greek special secretary for the protection of unaccompanied minors in order to track and trace unaccompanied minors that are unaccounted for, as well as the overall increase of dedicated, EU-funded shelters for unaccompanied minors.

### **Regarding transparency**

*Why does the Commission website indicate that all MPRICs are open, whereas reports by independent organisations and the relevant Greek law indicate that they are not [5] ?*

**17.** On the Commission's website, it is indicated that all MPRICs are open structures as each centre contains identification (open), first reception (open) and pre-removal detention facilities (closed). Entry/exit systems have been put in place, which is a need identified also in the FRA's guidance.

*On its website, the Commission has published the Memorandum of understanding concerning the MPRIC in Lesbos, but it has published no documents concerning its involvement in or the funding for the remaining four MPRICs. Could the Commission share with the Ombudsman the agreements on which the EU's involvement with the other MPRICs is based?*

**18.** The Commission fully takes note of the need to update the website and ensure that more information is available for the public. This is a work in progress and under discussion.

*Given the prospect of the establishment of MPRICs in other Member States, has the*

*Commission considered more dignified alternatives to camp-like structures for the registration and reception of refugees?*

**19.** The MoU for reception conditions in Lesbos was created in a specific context and does not constitute a prerequisite for the Commission to support reception facilities in different member states. The MPRICs are country-specific to Greece and a result of the hotspot approach and the EU-Turkey Statement. The Commission engages with migration management in many different Member States but this does not mean that the MPRICs will be recreated at other border entry points. The Commission noted the current challenge overall in the EU as regards reception, referring to the situations in Belgium, the Netherlands and Ireland, and is supporting Member States in maintaining adequate reception conditions and capacities.



## Conclusion of the meeting

The inquiry team thanked the Commission's representatives for their time and for the explanations provided. The Commission agreed to respond to any further questions in writing. The meeting ended.

Brussels/Strasbourg, 15/12/2022

Marta Hirsch-Ziembinska

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[1] Article 4.8 of the European Ombudsman's Implementing Provisions.

[2] DG ECHO, DG HOME, Structural Reform Support Service (now DG REFORM)

[3] The predecessor of the EUAA at the time was the European Asylum Support Office (EASO).

[4] DG HOME has been providing operational support through deployments to Italy since 2016, Spain and Cyprus since 2017 and to Poland, Czech Republic, Slovakia, Hungary and Romania since the beginning of the Russian aggression in Ukraine.

[5] The Greek law describes the facilities as "Closed Controlled Centres" ( *Κλειστές Ελεγχόμενες Δομές* ). See Article 8(4) of Greek Law 4375/2016, as last amended by Law 4825/2021.