



# **The role of the European Commission in the implementation of the EU asylum *acquis* on the Greek islands**

RSA & HIAS Submission to the European Ombudsman  
Strategic Inquiry OI/3/2022 MHZ

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## 1. Engagement with the Task Force Migration Management of the European Commission Directorate-General for Migration & Home Affairs (DG HOME)

1. The information in the present submission from the perspective of civil society organisations<sup>1</sup> providing free legal assistance to asylum seekers and refugees in Greece mainly draws on our casework and research, direct experience and engagement with the Task Force Migration Management, and documents obtained from the Commission under access to documents requests.<sup>2</sup> It does not purport in any way to present an official or exhaustive account of the institutional structure and workings of the Task Force.

### 1.1. Structure, accessibility and transparency

#### Organisational structure

2. The European Ombudsman's Report on Inspection and Meeting (hereafter "Inspection Report") reflects the position of the Commission as follows: *"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."*<sup>3</sup> It adds that *"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."*<sup>4</sup>
3. However, available Commission information seems to point to a different institutional status of the Task Force. In addition to highlighting several DG HOME units as related to the Task Force Migration Management, the December 2022 organisational chart of DG HOME includes a dedicated unit, titled "HOME.01 Migration Management Coordination", which reports directly to the Head of the Task Force.<sup>5</sup> The existence of such a unit appears to be confirmed by email correspondence of the Commission with the Greek authorities on issues relating to the Greek asylum procedure, signed by staff of the "HOME.01 Migration Management Coordination" Unit.<sup>6</sup> Our organisations have understood from informal contacts with the Commission that monitoring of migration management in Greece comes under the remit of that unit rather than of "HOME.C4 Migration Management Response", for instance.
4. The DG HOME organisational chart indicates specific units – highlighted in green – as associated with the Task Force. These are: "HOME.01 Migration Management Coordination"; "HOME.C4 Migration Management Response"; "HOME.C5 Migration Management Preparedness"; and HOME.E2 and HOME.E3 on home affairs funding.

<sup>1</sup> The contributing organisations would like to thank the Greek Council for Refugees (GCR) and Equal Rights Beyond Borders for input to the information provided herein.

<sup>2</sup> Namely, GESTDEM 2022/2217; 2022/4473; 2022/4474; 2022/4475; 2022/4476; 2022/4484; 2022/4485; 2022/4486; 2022/4487; 2022/4488; 2022/4489; 2022/4490; 2022/4491; 2022/4492; 2022/4493; 2022/5051; 2022/6877.

<sup>3</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 4.

<sup>4</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 7.

<sup>5</sup> European Commission, *Directorate-General for Migration & Home Affairs*, 16 December 2022, available at: <https://bit.ly/3V1EkDj>.

<sup>6</sup> European Commission, Ares(2022)7285918, 8 July 2022.

Therefore, according to the organisational chart, neither "HOME.C3 Asylum" nor "HOME.C1 Irregular migration & returns" come under the Task Force. However, our understanding from informal contacts with "HOME.C3 Asylum" unit officials responsible for Greece is that they too form in fact part of the Task Force.

#### Task Force documentation on monitoring of the *acquis*

5. On 15 April 2022, RSA requested the Commission to grant access to *"All documents, including but not limited to reports, emails, meeting reports, operational conclusions, relating to the assessment of transposition and implementation of the Asylum Procedures Directive 2013/32/EU, the Reception Conditions Directive 2013/33/EU, the Qualification Directive 2011/95/EU and the Return Directive 2008/115/EC in Greece, exchanged by the Commission's Task Force for Migration Management."*<sup>7</sup>
6. In its 22 June 2022 reply to the above request, the Commission noted that *"The Task Force Migration Management exchanges information with the Greek authorities on issues of transposition and implementation of the aforementioned Directives either via written exchanges in the form of letters and e-mails, or in person or via videoconference, in the context of meetings and missions undertaken under the framework of the Memorandum of Understanding"*. It thereby identified the following categories of documents as falling within the scope of documents *"exchanged"* in relation to the assessment of transposition and implementation of the *acquis*: (i) Steering Committee Migration Management Minutes; (ii) Task Force Migration Management Mission Reports; and (iii) emails.<sup>8</sup>
7. A fresh request for access to the above-described categories of documents was filed by RSA on 28 November 2022. Upon expiry of the deadline for reply on 19 December 2022, the Commission extended the reply deadline by an additional 15 working days and indicated 17 January 2023 as a new deadline for reply.<sup>9</sup> Despite the lapse of the extended deadline, no reply has been given on the request to date. Following a reminder by RSA on 23 January 2023, the Commission stated on 24 January 2023 that it has *"some delay on the expected deadline due to the efforts to include December documents as part of the request."*
8. It is worth noting that, in response to a more specific request from an independent researcher for *"All documents (even emails) relating to the assessment of transposition and implementation of art. 38.4 of the Asylum procedures Directive 2013/32/EU in Greece, exchanged by the Commission's Task Force for Migration and Management and Greece's authorities"*, the Commission disclosed emails and letters but did not disclose any Steering Committee Migration Management Minutes or Task Force Migration Management Mission Reports.<sup>10</sup>
9. The Commission has explained to the European Ombudsman that Task Force meetings with the Greek authorities *"include, for example, steering committee*

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<sup>7</sup> European Commission, Reply to application GESTDEM 2022/2217, Ares(2022)4581235, 22 June 2022.

<sup>8</sup> *Ibid.* A total of 22 documents were partially disclosed, of which 9 Steering Committee operational conclusions, 11 mission reports and 2 emails.

<sup>9</sup> European Commission, Letter on application GESTDEM 2022/6877, Ares(2022)884055, 19 December 2022.

<sup>10</sup> European Commission, Reply to application GESTDEM 2022/5051, Ares(2022)8259762, 29 November 2022.

meetings in accordance with the MoU, as well as ad hoc meetings wherever needs arise.”<sup>11</sup> We would note, on the one hand, that according to the Commission “no meetings of the Steering Committee on Migration Management for the implementation of the Joint Pilot for Lesvos have taken place as of April 2022, due inter alia to overriding constraints and developments after the Russian invasion in Ukraine.”<sup>12</sup> On the other hand, it is not clear whether or not the “ad hoc meetings” cited in the Inspection Report correspond to missions and are reported on in the form of “missions” as mentioned earlier. Further clarification thereon would be helpful in ensuring a better understanding of the functioning of the Task Force.

### Contact with practitioners & civil society

10. As regards engagement of the Task Force with legal practitioners and civil society on the ground, the Commission notes that staff deployed on the islands “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”.<sup>13</sup> To our knowledge, however, the Task Force has not organised structured discussions with civil society organisations in Athens or on the islands to date. Task Force officials’ attendance of civil society fora is not ensured on all islands. For instance, Task Force focal points have not participated in meetings with civil society organisations providing legal support on Kos and Chios, though meetings with the Legal Aid Working Group on Lesvos have occasionally been held.
11. Our organisations have attended seven informal meetings with Task Force officials upon our request in Brussels, Athens and Lesvos. Commission officials at technical level who have met with our organisations have shown positive engagement and openness to discussing the transposition and implementation of the *acquis* in those meetings. To our knowledge, however, the Task Force does not keep minutes of meetings held with our organisations, given that no minutes of those meetings were identified or made available in the June 2022 response of the Commission to the aforementioned RSA access to documents request.<sup>14</sup> In light of this, the process of reporting input from practitioners and civil society organisations on the ground to the competent DG HOME units and/or political hierarchy with a view to ensuring “proper monitoring of the implementation of the grant agreement and of EU standards on migration management” remains unclear to our organisations.

### 1.2. Responsibilities and activities of the Task Force

12. Publicly available information points to the Task Force Migration Management as a mechanism of coordination of EU institutions and agencies, Greek authorities and other stakeholders in the area of migration management:

12.1. According to its webpage, “The Task Force acts as a ‘resource instigator’. It works in close collaboration with the Greek authorities to coordinate the

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<sup>11</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 7.

<sup>12</sup> European Commission, Reply to application GESTDEM 2022/4473, Ares(2022)7122515, 14 October 2022.

<sup>13</sup> *Ibid*, para 12.

<sup>14</sup> European Commission, Reply to application GESTDEM 2022/2217, Ares(2022)4581235, 22 June 2022.

efforts and support for migration management at a key part of the EU's external border. It actively engages with the EU Agencies joined in the pilot project and with relevant stakeholders, local authorities, international organisations, non-governmental organisations, and with EU Member States and Schengen countries to find the right support for each migration management challenge in Greece."<sup>15</sup>

- 12.2. The Inspection Report reflects the Commission's view as stating that the Task Force "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".<sup>16</sup>
  - 12.3. The Inspection Report further states that "The Task Force seeks to facilitate cooperation with the different Greek authorities involved. It also aims to ensure the camps on the islands of Lesbos, Chios, Samos, Leros and Kos comply with EU standards."<sup>17</sup>
  - 12.4. The Inspection Report further states that "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."<sup>18</sup>
13. However, there appear to be additional, albeit broadly framed, responsibilities entrusted to the Task Force which exceed coordination of different actors in the Greek context:
- 13.1. Upon launch of the Task Force in September 2020, the President of the European Commission stated that "this entity would make operational the joint management" by EU actors of the prospective Multi-Purpose Reception and Identification Centre (MPRIC) on Lesbos, and that "by setting up this task force, the Union would now have a hand in the management".<sup>19</sup>
  - 13.2. The Inspection Report notes that "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."<sup>20</sup>

These are discussed in further detail below.

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<sup>15</sup> European Commission, *About Task Force Migration Management*, available at: <https://bit.ly/3WpQtmn>.

<sup>16</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 4.

<sup>17</sup> *Ibid*, para 6.

<sup>18</sup> *Ibid*, para 7.

<sup>19</sup> European Commission, Minutes of the 2350<sup>th</sup> meeting held on 23 September 2020, PV(2020) 2350, 14 October 2020.

<sup>20</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 9.

14. Since the summer of 2021, various complaints on infringement of EU law have been lodged with the European Commission by asylum seekers in Greece. In addition to complaints from persons legally represented by our organisations on the islands,<sup>21</sup> our organisations are aware of complaints lodged by persons represented by the Greek Council for Refugees (GCR). The complaints have alleged different breaches of the EU Charter and asylum *acquis* stemming from deficient transposition and implementation of the Asylum Procedures Directive (APD), the Reception Conditions Directive (RCD), the Qualification Directive (QD) and the Return Directive (RD). The provisions cited in each complaint known to our organisations are provided below:

Complaint	Deficient transposition	Deficient implementation
<b>CHAP(2021)02261</b> 7 June 2021 [closed]	<b>APD:</b> 10(3)(b); 12(1)(d); 38(2)(a); 38(2)(b); 46(7) <b>RCD:</b> 7; 8(2); 8(3); 25(1); 26(1)	<b>APD:</b> 10(3)(b); 12(1)(d); 24(3); 38(2)(a); 38(2)(b); 46(7) <b>RCD:</b> 7; 8(2); 8(3); 25(1); 26(1) <b>Charter:</b> 1; 4; 6; 19(2)
<b>CHAP(2021)02265</b> 7 June 2021 [closed]	<b>APD:</b> 31(6)(a); 46(7) <b>RCD:</b> 7; 8(2); 8(3); 25(1)	<b>APD:</b> 24(3); 31(6)(a); 46(7) <b>RCD:</b> 7; 8(2); 8(3); 25(1) <b>Charter:</b> 1; 4; 6; 19(2)
<b>CHAP(2021)02274</b> 8 June 2021 [closed]	<b>APD:</b> 10(3)(b); 12(1)(d); 38(2)(a); 38(2)(b); 46(7)	<b>APD:</b> 10(3)(b); 12(1)(d); 24(3); 38(2)(a); 38(2)(b); 46(7) <b>RCD:</b> 9(1); 11(1) <b>Charter:</b> 4; 6; 19(2)
<b>CHAP(2021)02994</b> 31 July 2021 [closed]	<b>APD:</b> 10(3)(b); 12(1)(d); 15(3)(a); 28; 32(2); 38(2)(a); 38(2)(b); 38(2)(c); 46(7); 46(11) <b>RCD:</b> 7; 8(2); 8(3); 9(3); 22; 25(1); 26(1)	<b>APD:</b> 6(1); 10(3)(b); 12(1)(d); 28(1); 32(2); 38(2)(b); 38(4); 46(7) <b>RCD:</b> 7; 8; 22; 25(1); 26(1) <b>Charter:</b> 1; 4; 6; 7; 18; 19; 21; 24; 35
<b>CHAP(2022)00677</b> 28 February 2022 [pending]	-	<b>APD:</b> 6(1); 24(3); 38(4); 46(3) <b>QD:</b> 4(3) <b>RD:</b> 14 <b>Charter:</b> 1; 18
<b>CHAP(2022)02264</b> 12 August 2022 [pending]	-	<b>APD:</b> 6(1); 6(2) <b>Charter:</b> 1; 18
<b>CHAP(2022)02981</b> 26 October 2022 [pending]		<b>APD:</b> 38(4), 40-42 <b>RCD:</b> 8, <b>RD:</b> 15(4) <b>Charter:</b> 6, 18

15. As shown in the table above, the complaints cover different areas of the *acquis*. For instance, only CHAP(2021)02265 refers to the scope of in-merit processing of asylum claims in the border procedures, only CHAP(2021)02274 and CHAP(2022)02981 deal with formal detention of asylum seekers, and only CHAP(2021)02994 relates to implicit withdrawal of asylum applications. Other aspects such as the provision of adequate support to applicants in need of special procedural guarantees or methodology rules required for the use of the safe third country concept may be found in multiple

<sup>21</sup> See e.g. RSA, 'Asylum seekers in Greece lodge complaint on infringement of Asylum Directives', 16 June 2021, available at: <https://bit.ly/3FEFP4E>.



complaints. Supplementary evidence to complaints CHAP(2021)02261, CHAP(2021)02265 and CHAP(2021)02274 was submitted at the beginning of 2022.<sup>22</sup>

16. In early 2022, the European Commission ("HOME.C3 – Asylum") indicated its intention to dismiss all four complaints lodged in summer 2021, i.e. CHAP(2021)02261, CHAP(2021)02265, CHAP(2021)02274 and CHAP(2021)02994, through four identical pre-closure letters containing the following wording:

*... the European Commission is already looking into the matters raised in your complaint in the context of a horizontal exercise of assessing conformity in the transposition of these Directives in the Member States, including Greece. Therefore, we do not intend to investigate individual complaints about the transposition of the Directives that raise the kind of issues that will be addressed in the context of the horizontal exercise. In the light of the above, I therefore wish to inform you that we do not intend to pursue this complaint.*<sup>23</sup>

17. The complainants responded to the pre-closure letters within the deadline set by the Commission,<sup>24</sup> highlighting that all four complaints related also to implementation of the *acquis* on the one hand, and requesting further information on the assessment of transposition of the APD and RCD on the other.

18. The closure letters subsequently issued by the Commission in all four cases were also identical and provided the following reasoning:

*Moreover, the European Commission does not intend to pursue the conformity issues individually as it is already looking into the matters in the context of a horizontal exercise of assessing conformity in the transposition of the Asylum Procedures Directive 2013/32/EU and the Reception Conditions Directive 2013/33/EU in all the Member States, including Greece. Finally, the issues relating to bad implementation of the Asylum Procedures Directive are being addressed in the ongoing dialogue between the Commission's Task Force for Migration Management and the Greek authorities. The European Commission is e.g. fully aware of the issue of inadmissible applicants, and has indicated its position *inter alia* in the answers to questions from Members of the European Parliament.*<sup>25</sup>

19. We note that the same reference to "the issue of inadmissible applicants" was also given in the closure letter for CHAP(2021)02265, a complaint in no way related to the safe third country concept or to other grounds for inadmissibility of asylum applications.

20. We would also interpret the Commission's response as referring to "addressing" issues not only related to the APD but of other relevant instruments as well, namely the

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<sup>22</sup> RSA, β/36/4.1.2022, 4 January 2022.

<sup>23</sup> European Commission, Ares(2022)797703, 3 February 2022; Ares(2022)798354, 3 February 2022; Ares(2022)798618, 3 February 2022; Ares(2022)48564, 4 January 2022.

<sup>24</sup> RSA, β/42/7.2.2022, 7 February 2022; HIAS, Email correspondence, 1 February 2022.

<sup>25</sup> European Commission, Ares(2022)1621126, 4 March 2022; Ares(2022)1620916, 4 March 2022; Ares(2022)1619212, 4 March 2022; Ares(2022)1417670, 24 February 2022.



Charter, the RCD, the QD and the RD, in line with the stated responsibilities of the Task Force.

21. More importantly, however, we believe that the Commission, as expressed in the closure letters for the four aforementioned complaints, puts “addressing” of issues relating to “*bad implementation*” of the EU *acquis* within the remit of powers and responsibilities of the Task Force Migration Management. This competence would undoubtedly go beyond the stated coordination objectives of the Task Force e.g. “*to facilitate cooperation with the different Greek authorities involved*”.<sup>26</sup> It would also seem to create a degree of confusion as to which DG HOME units are in charge of assessing compliance by Greece with the EU *acquis* when relevant complaints are lodged with the Commission.
22. In any event, available information would provide grounds for questioning the view that the full set of alleged infringements of the EU *acquis* raised in complaints to the Commission have in fact been or “*are being addressed*” by the Task Force “*in its ongoing dialogue with the Greek authorities*”.
23. First, such a position does not seem to be supported by Commission documentation made available to our organisations. We recall that in June 2022 the Commission granted access to 22 documents “*exchanged by the Commission’s Task Force*” and relating to the APD, RCD, QD and RD, further to an access request.<sup>27</sup> We were not able to locate any reference to aspects related *inter alia* to Art 28(1) APD, Art 31(6) APD, Art 32(2) APD, Art 38(2)(a), (b) and (c) APD, Art 46(7) APD or to Art 7, 25(1) or 26(1) RCD in any of the above documents. On the other hand, issues such as the alleged breach of Art 24(3) APD are only visible in a single reference to the effect that “*Many Syrians are transferred to the regular procedure on the grounds that they need special procedural guarantees*” in an October 2021 mission report, without further analysis.<sup>28</sup> This would mean that complaints CHAP(2021)02261, CHAP(2021)02265, CHAP(2021)02274 and CHAP(2021)02994 were likely dismissed by the Commission in March 2022 without an individualised assessment of each alleged infringement,<sup>29</sup> since several of the alleged breaches of the Directives were not previously covered in Task Force meetings or correspondence with the Greek authorities.
24. Second, as regards transposition, the Commission’s closure letters refer to a “*horizontal exercise*” vis-à-vis all Member States without referring to the fact that the Commission has in fact initiated “EU Pilot” procedures regarding Greece’s transposition of both the APD and the RCD.<sup>30</sup> Several of the transposition issues identified in the complaints e.g. Art 46(7) APD and Art 25(1) RCD, are not included in the “EU Pilot” letters sent to the

<sup>26</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 6.

<sup>27</sup> European Commission, Reply to application GESTDEM 2022/2217, Ares(2022)4581235, 22 June 2022.

<sup>28</sup> European Commission, Mission Report: Mission to Athens 25-27 October 2021, Ares(2021)6697895, 29 October 2021, 1.

<sup>29</sup> European Ombudsman, Decision OI/5/2016/AB, 14 September 2017, para 30.

<sup>30</sup> RSA et al., *Comments on the Deportations and Returns Bill*, June 2021, 2, available at: <https://bit.ly/3PyBRz2>.

Greek authorities in March 2021. In late January 2023, the Commission sent letters of formal notice to Greece relating to the RCD and QD, but not of the APD.<sup>31</sup>

25. Third, it is not clear whether and to what extent the contents of complaints lodged with the Commission are transmitted to Task Force officials in the first place. Information obtained by our organisations in meetings with Task Force officials does not confirm that such complaints have been transmitted to all “10-12 staff members based in Greece” to ensure appropriate evidence collection and follow up.<sup>32</sup> For instance, in the context of pending complaint CHAP(2022)00677, lodged on 28 February 2022 on behalf of an asylum seeker whose claim was processed in the border procedure on the Greek islands, the complainant has written to the Commission to express his interest in following the details of its investigations<sup>33</sup> and to request the following information:

1. *Whether the present complaint has been submitted to the Task Force;*
2. *Whether the provisions cited in the present complaint, namely Articles 6, 24, 38, 46 of the Asylum Procedures Directive, have been specifically addressed by the Task Force in its dialogue with the Greek authorities;*
3. *If so, what is the content and state of play of discussions on the implementation of those provisions, including the response provided by the Greek authorities on compliance therewith;*
4. *Whether the ongoing dialogue between the Task Force and the Greek authorities covers the implementation of the Qualification Directive 2011/95/EU and the Return Directive 2008/115/EC and whether the provisions cited in the complaint, namely Article 4 of the Qualification Directive and Article 14 of the Return Directive, have been specifically addressed by the Task Force vis-à-vis the Greek authorities;*
5. *If so, what is the content and state of play of discussions on the implementation of those provisions, including the response provided by the Greek authorities on compliance therewith...*
6. *Whether the Commission has opened an “EU Pilot” procedure against Greece concerning the transposition of the Asylum Procedures Directive and of the Reception Conditions Directive;*
7. *If yes, the state of play of that procedure and the responses provided by the Greek authorities;*
8. *Whether relevant legislative measures adopted by Greece in the last year, including L 4825/2021, JMD 42799/2021, JMD 458568/2021 and L 472687/2021, have been included in the Commission’s assessment of conformity of the transposition of said Directives.*<sup>34</sup>

The complainant's letter was sent to the Commission on 7 April 2022. No response has been given thereon by the time of writing.

<sup>31</sup> INF(2022)256 and INFR(2022)2044 respectively: European Commission, ‘January Infringements package: key decisions’, 26 January 2023, available at: <https://bit.ly/3j7qF0t>.

<sup>32</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 6.

<sup>33</sup> European Ombudsman, *Decision OI/5/2016/AB*, 14 September 2017, para 27.

<sup>34</sup> RSA, β/55/7.4.2022, 7 April 2022.

26. Based on the above observations in relation to the handling of recent complaints by the Commission, we do not believe that practice thus far supports the Commission's view that *"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."*

#### Monitoring implementation of the MoU on the MPRIC of Lesbos

27. The December 2020 Memorandum of Understanding on a Joint Pilot for the establishment of a MPRIC in Lesbos (hereafter "MoU")<sup>35</sup> forms the bedrock for the work of the Task Force Migration Management in Greece. As noted in the Inspection Report, the Task Force engages with the Greek authorities primarily through *"steering committee meetings in accordance with the MoU"*.<sup>36</sup> The MoU indeed foresees weekly Steering Committee core meetings and monthly extended meetings in Athens, in which minutes shall be kept.<sup>37</sup> The Commission has confirmed, however, that *"no meetings of the Steering Committee on Migration Management for the implementation of the Joint Pilot for Lesbos have taken place as of April 2022, due inter alia to overriding constraints and developments after the Russian invasion in Ukraine. It should be also noted that the Steering Committee has been meeting under a single configuration, so there have not been separate core and extended meetings."*<sup>38</sup>
28. The MoU foresees additional configurations for Task Force meetings, including the "Lesbos Coordination Group" set to meet every week on the island and to produce operational conclusions.<sup>39</sup> However, the Commission has explained in response to a request for access to documents that no minutes of those meetings exist: *"The Coordination Group has been holding regular meetings physically on Lesbos, as part of the everyday, practical follow-up of works and activities, and in varying compositions. The Lesbos Coordination Group did not maintain or document any operational conclusions."*<sup>40</sup> It remains unclear to us whether "regular meetings" take place on a weekly basis in line with the MoU, on the one hand, and how appropriate follow up thereto is ensured in the absence of minutes or operational conclusions, on the other.
29. In addition to meetings, the MoU sets out a series of targets for regular reporting and documentation on the implementation of the joint pilot project. Yet, a substantial number of the deliverables agreed in the MoU had still not been developed by the Greek authorities or communicated to the Commission by October 2022, nearly two years after the launch of the MoU. This includes at least: *"weekly targets on asylum and return procedures set as part of the proactive planning to address cases of bottlenecks";*<sup>41</sup> *"monitoring mechanism that ensures applicants' smooth access to the*

<sup>35</sup> C(2020) 8657, 2 December 2020.

<sup>36</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 7.

<sup>37</sup> MoU, 9.

<sup>38</sup> European Commission, Reply to application GESTDEM 2022/4473, Ares(2022)7122515, 14 October 2022.

<sup>39</sup> MoU, 9.

<sup>40</sup> European Commission, Reply to application GESTDEM 2022/4474, Ares(2022)7122515, 14 October 2022.

<sup>41</sup> MoU, 15. See European Commission, Reply to application GESTDEM 2022/4475, Ares(2022)7122515, 14 October 2022.

appeal procedure, as well as their right to an effective remedy";<sup>42</sup> "monthly progress reports the implementation of readmission agreements and arrangements";<sup>43</sup> "monthly progress reports regarding the coordination of support measures by other Member States for the return of illegally staying third-country nationals";<sup>44</sup> "monthly monitoring reports regarding the assessment and care of vulnerabilities in relation to accommodation, safe areas for vulnerable groups and for single women";<sup>45</sup> and "monthly progress reports regarding contacts with third countries and countries of origin on return operations".<sup>46</sup> The Commission has also confirmed that the MoU deliverable of a "complete overview table with task allocation and set of indicators, kept updated and used to monitor the progress of the pilot project" has also not been developed but that "work progress is measured through regular meetings".<sup>47</sup>

30. In response to the above requests for access to documents, the Commission has consistently stated that *"the Task Force Migration Management is usually informed on the progress of the aforementioned procedures through information provided by the relevant authorities in the context of the Steering Committee meetings on Migration Management."*<sup>48</sup> It has not, however, clarified how monitoring of the implementation of the MoU is ensured given that Steering Committee meetings have not taken place since April 2022.

## 2. Fundamental rights impact of migrants' stay in MPRIC

31. At the time of writing, Greece has operational Multi-Purpose Reception and Identification Centres (MPRIC), officially titled "Closed Controlled Access Centres" (Κλειστές Ελεγχόμενες Δομές), on five islands: Lesbos, Chios, Samos, Leros and Kos.<sup>49</sup> The information provided in the section draws on our organisations' direct experience in provision of free legal assistance to persons staying in the MPRIC of Lesbos and Chios, as well as on available information relating to the remaining islands.

### 2.1. Right to asylum and non-refoulement: Articles 4, 18 and 19(2) Charter

32. The Commission confirms, per the Inspection Report, that the MPPRIC are *"a result of the hotspot approach and the EU-Turkey Statement."*<sup>50</sup> The MoU contains several references to and deliverables on asylum and return procedures, as mentioned above.

<sup>42</sup> MoU, 16. European Commission, Reply to application GESTDEM 2022/4489, Ares(2022)7122515, 14 October 2022.

<sup>43</sup> MoU, 18. See European Commission, Reply to application GESTDEM 2022/4484, Ares(2022)7122515, 14 October 2022.

<sup>44</sup> MoU, 18. See European Commission, Reply to application GESTDEM 2022/4485, Ares(2022)7122515, 14 October 2022.

<sup>45</sup> MoU, 19. See European Commission, Reply to application GESTDEM 2022/4486, Ares(2022)7122515, 14 October 2022.

<sup>46</sup> MoU, 18. See European Commission, Reply to application GESTDEM 2022/4493, Ares(2022)7122515, 14 October 2022.

<sup>47</sup> MoU, 10. See European Commission, Reply to application GESTDEM 2022/4491, Ares(2022)7122515, 14 October 2022.

<sup>48</sup> European Commission, Reply to application GESTDEM 2022/4475, Ares(2022)7122515, 14 October 2022. See also replies to applications GESTDEM 2022/4476, 2022/4484, 2022/4489, as well as 2022/4491 referring to "regular meetings".

<sup>49</sup> Article 34 PD 106/2020, as amended by Article 12 PD 77/2022, Gov. Gazette A' 212/17.11.2022.

<sup>50</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 19.

The fundamental rights impact of MPRIC should therefore be understood as extending to the procedures conducted therein, insofar as the facilities serve for the conduct of different stages of the Greek reception and identification, asylum and return proceedings.

33. Since the establishment of the Task Force Migration Management in late 2020, Greece has taken several legislative and policy measures limiting access to refugee status determination and exacerbating breaches of the right to seek asylum and of the prohibition on *refoulement*. These are analysed in order below.

#### Arbitrary application of the safe third country concept

34. In June 2021, the Greek government enacted a national list of safe third countries, designating Türkiye as a safe third country for asylum seekers originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh.<sup>51</sup> As a result, the safe third country concept is now applied to nationals of the above countries throughout the entire national territory, leading to the dismissal of over 7,000 asylum applications inadmissible since its entry into force.<sup>52</sup> The list is currently pending judicial review before the Council of State.<sup>53</sup>
35. The policy breaches Article 38(1) APD, to the extent that Greek asylum authorities have provided no reasoning behind the designation and disregard credible evidence of non-compliance with the *non-refoulement* principle, lack of access to international and temporary protection procedures, and general rule of law backsliding in Türkiye from authoritative sources such as the European Commission.<sup>54</sup> In January 2023, the Ministry of Migration and Asylum maintained the view that Türkiye remains a safe third country based on “*all available information and relevant reports of international organisations, including UNHCR*”, without any reference to Commission reports.<sup>55</sup>
36. The application of the safe third country concept is also contrary to Article 38(4) APD, given that both Greek authorities and EU institutions acknowledge the clear lack of prospect of readmission to Türkiye either from the Greek islands or from the mainland.<sup>56</sup> Specifically, Türkiye has unilaterally suspended the Greece-Türkiye Bilateral Readmission Agreement since 2018 and has stopped accepting returns under the EU-Turkey Statement since 2020. Nevertheless, Greek asylum authorities routinely disregard submissions regarding the applicability of Article 38(4) APD even when accompanied by documentary evidence from the Hellenic Police in individual cases.<sup>57</sup> Per internal

<sup>51</sup> JMD 42799/2021, Gov. Gazette B' 2425/07.06.2021.

<sup>52</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 19, available at: <https://bit.ly/3PC2Nhb>.

<sup>53</sup> RSA & GCR, 'Decision declaring Turkey a "safe third country" brought before Greek Council of State', 8 October 2021, available at: <https://bit.ly/3oOIWA0>.

<sup>54</sup> RSA et al., 'European Commission dispels Greece's designation of Türkiye as a "safe third country" for refugees – Repeal the national list of safe third countries', 1 November 2022, available at: <https://bit.ly/3PEQxwt>.

<sup>55</sup> Ministry of Migration and Asylum, Reply to parliamentary question, 21779/2023, 12 January 2023, available at: <https://bit.ly/407qCIO>.

<sup>56</sup> European Commission, Reply to written question E-1347/2022, 22 June 2022; Reply to written question E-5103/2021, 25 January 2022; Reply to written question E-4131/2021, 21 December 2022; Reply to priority question P-604/2021, 1 June 2021.

<sup>57</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 21; RSA, *Greece arbitrarily deems Turkey a "safe third country" in flagrant violation of rights*, February 2022, available at: <https://bit.ly/3jbUZGU>. Exceptions include 3<sup>rd</sup> Appeals



guidance of the Asylum Service, the lapse of a one-year period since an asylum seeker's transit through a third country is deemed as a factor countering the existence of a connection therewith.<sup>58</sup> However, the guidance is neither binding<sup>59</sup> nor consistently applied in practice. In a November 2022 letter to the European Commissioner for Home Affairs, HIAS points out that, despite their affirmations to the Commission, the Greek authorities have not implemented said guidance and have applied the safe third country concept to persons present in Greece for over a year.<sup>60</sup>

37. Asylum seekers rejected on safe third country grounds are either summarily detained for readmission purposes or ordered "voluntary departure" within a deadline of up to 30 days. However, rejected asylum seekers often cannot voluntarily depart in order to return to their country of origin due to ongoing armed conflicts and individual persecution, while lacking legal documents to enter and stay in another country. Therefore, the decision to leave voluntarily is contrary to Articles 4 and 19(2) of the Charter, to the extent that their fear of return to their country of origin has never been assessed by the Greek authorities.<sup>61</sup>
38. Despite several interventions from the European Commission in meetings and correspondence with the Greek authorities,<sup>62</sup> Greece has not remedied the above violations. On the contrary, the government continues to apply the concept and has upheld the designation of Türkiye as a safe third country through subsequent secondary legislation adopted in December 2021 and December 2022.<sup>63</sup> We are not aware of "EU Pilot" procedures or infringement proceedings initiated by the Commission in this regard. The breach of Article 38(4) APD has been brought before the Commission in complaints CHAP(2021)02994, CHAP(2022)00677 and CHAP(2022)02981. The latter two are pending at the time of writing.

#### Special rules for preliminary assessment of subsequent applications lodged after a safe third country decision on the islands

39. In July 2021, the Ministry of Migration and Asylum issued Circular 112808/2021 specifically in relation to the treatment of subsequent applications lodged following the dismissal of the initial claim on safe third country grounds on the islands. The Circular provides that *"Specifically, for applicants arriving from Turkey, new substantial elements shall exclusively bear on the assessment of the initial application based on the law and the EU-Turkey Statement relating to whether or not Turkey – as a transit country for the individual applicant – constitutes a safe third country according to national and European legislation. Where no new substantial elements arise as above, the subsequent application shall be dismissed by the competent authorities as*

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Committee, 345521/2022, 16 June 2022; 19<sup>th</sup> Appeals Committee, 761318/2022, 19 December 2022; 441361/2021, 8 December 2021; 21<sup>st</sup> Appeals Committee, 115795/2022, 28 February 2022; 364000/2021, 4 November 2021.

<sup>58</sup> *Inter alia*, European Commission, Ares(2022)1709388, 12 April 2022; Ares(2022)1942801, 16 March 2022.

<sup>59</sup> On second-instance authorities, see e.g. 18<sup>th</sup> Appeals Committee, 672919/2022, 11 November 2022; 3<sup>rd</sup> Appeals Committee, 8620/2022, 7 January 2022.

<sup>60</sup> HIAS, 'Implementation of the safe third country concept in Greece', Letter to the European Commissioner for Home Affairs, 28 November 2022.

<sup>61</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 21-22.

<sup>62</sup> *Inter alia*, European Commission, Ares(2022)2235456, 27 March 2022; Ares(2022)6658201, 29 November 2022.

<sup>63</sup> JMD 548568/2021, Gov. Gazette B' 5949/16.12.2021; JMD 734214/2022, Gov. Gazette B' 6250/12.12.2022.

*inadmissible...*" This guidance breaches Article 40(2) APD, since the preliminary admissibility assessment of those subsequent applications does not bear on elements related to qualification for refugee status or subsidiary protection. Here too, submissions and documents pointing to the lack of prospect of readmission to Türkiye are either disregarded or dismissed as falling short of "new and substantial elements".<sup>64</sup>

40. The Asylum Service dismissed 2,796 subsequent applications as inadmissible in 2021, of which nearly half concern countries for which Türkiye is designated as a safe third country: 374 concern Afghanistan, 95 Syria, 37 Somalia, 657 Pakistan and 204 Bangladesh. In the first ten months of 2022, the Asylum Service dismissed 2,579 subsequent applications as inadmissible, of which 55 relating to Afghanistan, 14 Syria, 87 Somalia, 872 Pakistan and 350 Bangladesh.<sup>65</sup> At second instance, the Appeals Committees have dismissed 1,733 subsequent applications as inadmissible during the first ten months of 2022.<sup>66</sup>

#### Blanket fee for second and onward subsequent applications

41. In September 2021, Greece enacted rules under which the "making" of second or further subsequent applications is only permitted upon payment of a 100 € fee per person.<sup>67</sup> The fee has been applied without exception since the entry into force of the rules in 2022. This includes cases of persons whose initial claims have arbitrarily been dismissed based on the safe third country concept.<sup>68</sup> The European Commission has clarified that "the unconditional application of a EUR 100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure".<sup>69</sup> It has also "signalled that the fee introduced for second subsequent applications was not supported"<sup>70</sup> and has since "reiterated its concerns on the introduction of the fee at political level".<sup>71</sup> Related breaches of EU law on account of the policy have been raised in complaints CHAP(2022)00677 and CHAP(2022)02981, pending before the European Commission. JMD 472687/2021 regulating specific issues regarding the subsequent applications' fee has been challenged before the Greek Council of State by a number of civil society organisations. The case, initially set for hearing in June 2022, is due to be heard at the end of March 2023.
42. In the first ten months of 2022, the Asylum Service has lodged 1,004 asylum applications subject to the 100 € fee rule. Over two thirds of those concern countries for which

<sup>64</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 22-23; RSA, *Greece arbitrarily deems Turkey a "safe third country" in flagrant violation of rights*, February 2022, 7-8.

<sup>65</sup> Ministry of Migration and Asylum, Statistics provided to the Greek Council for Refugees, 717513/2022, 28 November 2022.

<sup>66</sup> Ministry of Migration and Asylum, *Monthly statistical report*, October 2022, available at: <https://bit.ly/3YBfgFU>.

<sup>67</sup> Article 23 L 4825/2021, Gov. Gazette A' 157/04.09.2021; JMD 472687/2021, Gov. Gazette B' 6246/27.12.2021.

<sup>68</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 25-26; RSA, *Greece arbitrarily deems Turkey a "safe third country" in flagrant violation of rights*, February 2022, 8-9.

<sup>69</sup> European Commission, Reply to written question E-5103/2021, 25 January 2022.

<sup>70</sup> European Commission, *Task Force Migration Management Mission Report – Mission to Athens 25-27 October 2021*, Ares(2021)6697895, 29 October 2021, 1.

<sup>71</sup> European Commission, *Task Force Migration Management Mission Report – Greece – Jan/Feb 2022*, Ares(2022)1024324, 11 February 2022, 3.



Türkiye is designated as a safe third country: 200 concern Afghanistan, 193 Syria, 21 Somalia, 168 Pakistan and 54 Bangladesh.<sup>72</sup>

## 2.2. Right to dignity, health care and liberty: Articles 1, 6 and 35 Charter<sup>73</sup>

### Extreme material deprivation as a result of legal limbo

43. As a consequence of the arbitrary application of the safe third country concept, as detailed above, thousands of asylum seekers have their asylum claims dismissed as inadmissible and are ordered to return to Türkiye without return being possible. These people are excluded from reception conditions in Greece, since their status of “applicant for international protection” ceases upon the delivery of a second-instance inadmissibility decision. Accordingly, through no fault of their own, these persons remain in MPRIC or other reception facilities throughout the territory without access to reception conditions. Even “basic needs” in the meaning of Article 14 and Recital 12 RD are not covered, insofar as persons have no access to health care and a dignified standard of living, including food, clothing and personal hygiene. This breaches Greece’s obligation under Article 1 of the Charter to ensure a dignified standard of living continuously and without interruption.<sup>74</sup> Relatedly, the European Commission “has repeatedly called upon the Greek authorities to ensure all persons, particularly the vulnerable receive basic means of subsistence, notably, food and hygiene products”.<sup>75</sup> This issue has been brought before the European Commission in complaints CHAP(2021)02994 and CHAP(2022)00677. The latter is pending at the time of writing.

### Obstacles to access to health care

44. The MPRIC of Kos has no permanent doctor at the time of writing. A doctor occasionally visits the facility with a view to carrying out vulnerability assessments. This has resulted in significant delays in the conduct of reception and identification procedures, as described below.
45. A doctor is on site in the MPRIC of Chios. On Lesbos, it is worth noting that the MPRIC has stopped receiving requests for psychological assistance as of 11 January 2023 due to a shortage in interpreters.

### Pre-removal detention despite a clear lack of prospect of readmission

46. At the time of writing, Kos is the only island with an operational pre-removal detention centre. The Hellenic Police has previously systematically detained rejected asylum seekers on Kos – as on the mainland – for the purpose of readmission to Türkiye, despite a clear lack of prospects of readmission thereto. Such deprivation of liberty is arbitrary and contravenes Article 6 of the Charter and Article 30(4) RD. Despite constant case

<sup>72</sup> Ministry of Migration and Asylum, Statistics provided to the Greek Council for Refugees, 717513/2022, 28 November 2022.

<sup>73</sup> The contributing organisations would like to thank Equal Rights Beyond Borders for input to the information provided herein.

<sup>74</sup> CJEU, Case C-233/18 *Haqbin*, 12 November 2019, para 50.

<sup>75</sup> European Commission, Ares(2021)7554555, 7 December 2021.

law from the administrative courts,<sup>76</sup> practice has not been brought in line with EU standards. Similar concerns apply to pre-removal detention on the mainland. This issue has been raised in complaint CHAP(2022)02981, pending before the European Commission.

#### Prohibition on exit from MPRIC during reception and identification procedures: *de facto* detention

47. Contrary to the European Commission's website and positions in replies to parliamentary questions,<sup>77</sup> we would stress that the "identification" component of the MPRIC is *not* an "open" regime. Article 40(a) of the Asylum Code foresees a "restriction on freedom" consisting of a prohibition on leaving the MPRIC and a duty to remain on the premises for the purposes of completing reception and identification procedures. Given the severity of interference with the right to liberty, this measure qualifies as deprivation of liberty,<sup>78</sup> thereby the guarantees set out in Article 8(2)-(3) RCD should apply. The National Transparency Authority (Εθνική Αρχή Διαφάνειας) has equally conceded that the measure amounts to detention.<sup>79</sup> However, Article 40(a) of the Asylum Code does not comply with the requirement of an individualised assessment of necessity, proportionality and of the applicability of less coercive alternatives under Article 8(2) RCD, or the permissible grounds for detention of applicants for international protection under Article 8(3) RCD. It is not clear to us whether the 26 January 2023 letter of formal notice sent to Greece on incorrect transposition of the RCD covers this particular infringement.
48. The duration of confinement within the premises of the MPRIC under Article 40(a) of the Asylum Code varies, given that the speed of reception and identification procedures depends on the number of arrivals and registration capacity. Moreover, reception and identification procedures on Kos currently take several days to weeks *inter alia* due to the absence of a permanent doctor on the MPRIC. As a result, new arrivals are deprived of their liberty in the "registration area" of the MPRIC under inappropriate conditions.

<sup>76</sup> Administrative Court of Rhodes, AP127/2022, 1 December 2022; AP116/2022, 7 October 2022; AP114/2022, 7 October 2022; AP111/2022, 20 September 2022; AP99/2022, 11 August 2022; AP96/2022, 11 August 2022; AP79/2022, 21 June 2022; AP78/2022, 21 June 2022; AP72/2022, 25 May 2022; AP46/2022, 24 March 2022. See also Administrative Court of Corinth, Π4473/2022, 6 December 2022; Π4248/2022, 15 November 2022; Π4194/2022, 9 November 2022; Π4123/2022, 31 October 2022; Π4118/2022, 27 October 2022; Π3633/2022, 17 October 2022; Π3179/2022, 21 September 2022; Π3166/2022, 19 September 2022; Π2814/2022, 20 July 2022; Π2424/2022, 24 June 2022; Administrative Court of Kavala, AP835/2022, 2 August 2022; AP779/2022, 14 July 2022; Administrative Court of Athens, AP831/2022, 26 May 2022.

<sup>77</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 17; European Commission, Reply to written question E-2308/2022, 8 September 2022.

<sup>78</sup> CJEU, Joined Cases C-924/19 and C-925/19 *FMS*, 14 May 2020, paras 216-231.

<sup>79</sup> National Transparency Authority, *Investigation Report OM3/4: Management of immigration flows – Allegations of pushbacks in Greece*, March 2022, 29, available at: <https://bit.ly/38CREfj>.

49. Importantly, the enforcement of the same regime in the mainland RIC of Evros, as well as the newly established facilities in Malakasa and Diavata, results in *de facto* deprivation of liberty for up to or even over 25 days.<sup>80</sup>

#### Prohibition on exit from MPRIC without a valid asylum seeker's card: *de facto* detention

50. Practice in the MPRIC of Samos demonstrates that rejected asylum seekers and other persons without a valid asylum seeker's card are subject to a prohibition on exit from the facility. According to the Administrative Court of Syros, such a prohibition amounts to arbitrary deprivation of liberty.<sup>81</sup> Yet, although the Court has deemed this practice unlawful, people who lack a valid asylum seeker's card remain *de facto* confined within the MPRIC without any possibility to exit the facility.<sup>82</sup> The Ministry of Migration and Asylum nevertheless states expressly that rejected asylum seekers who have not been issued a detention order are allowed to enter and exit the MPRIC in line with its house rules "*without any general prohibition on exit*".<sup>83</sup>

#### Automatic COVID-19 quarantine: *de facto* detention & discrimination

51. In 2022, Greece continued to impose automatic quarantine on new arrivals on the islands regardless of vaccination or COVID-19 infection status, even though COVID-19 quarantine requirements had been lifted for the remainder of the population. On Kos, containers within the pre-removal detention centre were used to quarantine asylum seekers, while a dedicated facility in Lefkonía district was used on Chios and one in Megala Therma on Lesbos, in addition to the Mavrovouni camp. No asylum seeker placed in quarantine was issued an administrative order indicating the duration and place of the health restriction, or the factual and legal basis for the implementation of the quarantine, so as to be able to challenge it.<sup>84</sup>

### 2.3. Right to privacy and data protection: Articles 7-8 Charter<sup>85</sup>

52. The Greek government has rolled out two surveillance systems relevant to the MPRIC. "Hyperion" is an asylum seeker management system for all needs of the Reception and Identification Service (RIS) of the Ministry of Migration and Asylum.<sup>86</sup> It includes a detailed record of asylum seekers' data and will interoperate with the "Alkyoni II" database with regard to the state of play of asylum claims. In addition, the system is responsible for control of access to MPRIC and other reception facilities, i.e. entry and exit through security turnstiles, upon presentation of a valid resident, worker or NGO member card, as well as simultaneous taking of fingerprints. The "Hyperion" project includes the creation of a mobile application that will provide personalised information

<sup>80</sup> Regarding the RIC of Malakasa, Greek Ombudsman, 327045/328337/67645, 12 December 2022.

<sup>81</sup> Administrative Court of Syros, AP36/2021, 17 December 2021.

<sup>82</sup> GCR et al., 'Κλειστή Δομή Σάμου: ο εγκλωβισμός συνεχίζεται', 10 February 2022, available at: <https://bit.ly/3JEV8dD>.

<sup>83</sup> Ministry of Migration and Asylum, Reply to parliamentary question, 203240, 9 April 2022, available at: <https://bit.ly/3OeqTNT>.

<sup>84</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 27.

<sup>85</sup> The contributing organisations would like to thank Homo Digitalis for input to the information provided herein.

<sup>86</sup> Greek Government, *Digital Transformation Bible 2020-2025: Hyperion System*, available at: <https://bit.ly/3kAFSaC>.

to users and serve as an electronic mailbox for the asylum procedure and for personalised information from the RIS.

53. "Centaur"<sup>87</sup> concerns the implementation of an integrated digital system for the management of electronic and physical security around and within reception facilities, using cameras and motion analysis algorithms (Artificial Intelligence Behavioural Analytics). In addition to centralised management in the Ministry of Migration and Asylum headquarters, the system includes signalling of fire alarms, algorithm-based alarms for illicit behaviour of individuals or groups inside camps, algorithm-based perimeter alarms, automatic or optional transmission of audio messages at the perimeter and central points of the installation, fever alarm for new entrants in the facilities, and use of unmanned aircraft systems to assess incidents within facilities. "Centaur" was launched in September 2021.
54. Given the sensitive nature data subjects and of data processing involved in both projects, the Ministry of Migration and Asylum is required to provide a data protection impact assessment (DPIA) "prior to the processing" in order to apply privacy by design.<sup>88</sup> However, at the time of planning of the two projects, the Ministry did not have a Data Protection Officer (DPO) and only subsequently appointed one with the aim to conduct an express DPIA within a month.<sup>89</sup>
55. In March 2022, following an information request from the European Parliament and a request from civil society organisations Homo Digitalis, the Hellenic League for Human Rights, HIAS and Dr Niovi Vavoula, Lecturer at Queen Mary University of London, for an investigation and an opinion on the supply and installation of the "Hyperion" and "Centaur" systems, the Hellenic Data Protection Authority (Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα, DPA) launched an investigation into the deployment of the two aforementioned systems.<sup>90</sup> The DPA has requested the Ministry of Migration and Asylum to provide information *inter alia* on: (i) the specific legal basis of the intended processing; (ii) further elements of processing such as data retention period, information to data subjects etc.; (iii) whether an impact assessment of the processing on the protection of personal data has been carried out, taking into account that DPIA on the operation of surveillance and monitoring systems should be carried out not only before operation but also before procurement in order to comply with the principles of data protection by design and by default. At the time of writing, the DPA has not provided additional information on whether the Ministry has provided the necessary information on whether data processing has been found to comply with data protection standards.
56. The above observations would confirm that the systems went 'live' without a prior DPIA, thereby contradicting the European Commission's view that *"The Greek authorities completed a data protection impact assessment and fundamental rights impact*

<sup>87</sup> Greek Government, *Digital Transformation Bible 2020-2025: Centaur System*, available at: <https://bit.ly/3JcPgM1>.

<sup>88</sup> Article 35(1) GDPR.

<sup>89</sup> Solomon, 'Asylum Surveillance Systems Launched in Greece without Data Safeguards', 31 August 2022, available at: <https://bit.ly/3XGQ5Bd>.

<sup>90</sup> Homo Digitalis, 'A major success for civil society in Greece: The Hellenic DPA launches an investigation into the Ministry of Immigration and Asylum re the YPERION and KENTAYROS IT systems', 9 March 2022, available at: <https://bit.ly/3YhfOjF>.

assessment before the full deployment of the surveillance systems.”<sup>91</sup> We recall that, in a December 2022 response to a parliamentary question relating to the absence of a DPIA prior to deployment of the systems, the Commission stated that it “is aware of the report mentioned by the Honourable Members of the European Parliament and monitors closely the implementation of these projects.”<sup>92</sup>

57. Finally, in December 2022, the UN Working Group on the use of mercenaries and private military and security companies expressed concern at the use of high-tech security systems in MPRIC and other reception facilities, noting: “These disproportionate security and surveillance measures developed by private technology companies infringe on the fundamental rights of those held in these centres, including their rights to freedom of movement and privacy”.<sup>93</sup>

### 3. Access to legal assistance for migrants staying in MPRIC

#### 3.1. Prior authorisation for entry of lawyers in MPRIC

58. Article 34 of the Lawyers Code<sup>94</sup> guarantees lawyers’ access to public facilities upon presentation of their professional identity card, subject to no other restriction. In addition, authorisations to lawyers under Article 36 of the Lawyers Code may validly be given in writing or orally.<sup>95</sup> The Lawyers Code provisions are *lex specialis* over any other provision.<sup>96</sup>
59. However, lawyers’ access to the MPRIC is subject to prior authorisation by the camp manager. Requirements are set out in the Ministry of Migration and Asylum Handbook on entry in and exit from MPRIC and are strictly enforced in practice. Our organisations have recently been informed by the MPRIC of Lesvos that lawyers wishing to enter the facility must submit an “entry request form” for each client they wish to visit at least one day prior to the date of arrival, with a view to obtaining the “necessary approval” from the facility.<sup>97</sup> The MPRIC also requires a certified signed authorisation from the clients concerned before approving lawyers’ entry – even for the initial contact with clients.<sup>98</sup> Similar obstacles are reported in the MPRIC of Samos.<sup>99</sup>
60. The policy contravenes the domestic legal framework governing the legal profession and poses impermissible restrictions on the exercise of the right to legal assistance and representation under Article 47 of the Charter. The Ministry of Justice has recalled the

<sup>91</sup> European Ombudsman, *Report on Inspection and Meeting*, OI/3/2022, 15 December 2022, para 14.

<sup>92</sup> European Commission, Reply to written question E-3094/2022, 22 December 2022.

<sup>93</sup> UN Working Group on the use of mercenaries and private military and security companies, ‘UN human rights experts call on Greece to strengthen oversight of private security industry’, 16 December 2022, available at: <https://bit.ly/3HuxXol>.

<sup>94</sup> L 4914/2013, Gov. Gazette A’ 208/27.09.2013.

<sup>95</sup> Ministry of Administrative Reform Circular ΔΙΔΔΑ/ΤΔΙ/Φ.15/ 29103,29097 “Representation of citizens before Administrative Authorities by lawyers”, 14 September 2018, <https://bit.ly/3i0IEoh>.

<sup>96</sup> Article 166(1) Lawyers Code.

<sup>97</sup> MPRIC Lesvos, Email correspondence to RSA, 21 November 2022.

<sup>98</sup> MPRIC Lesvos, Email correspondence to RSA, 5 December 2022.

<sup>99</sup> The Press Project, ‘Άγρια κακοποίηση προσφύγων στο ΚΕΔ Σάμου από αστυνομικούς – «Ξεκινάμε άμεσα ΕΔΕ», η απάντηση της ΕΛ.ΑΣ στο TPP’, 4 January 2023, available at: <https://bit.ly/3GHb2pG>.

safeguards attached to the legal profession in response to a recent parliamentary question.<sup>100</sup> The Ministry of Migration and Asylum, however, has confirmed in response to the same question that authorities require lawyers to produce certified signed authorisations of their clients to be allowed entry into reception facilities for refugees and migrants.<sup>101</sup> A December 2022 opinion of the Bar Association of Athens clarifies that lawyers enjoy free access to all facilities accommodating refugees and migrants without prior notification of camp management.<sup>102</sup> The MPRIC have not adapted their practice in accordance with this opinion to date.

### 3.2. Restrictions on communication of MPRIC residents<sup>103</sup>

61. Our organisations understand that persons are asked by the authorities to destroy their phone cameras upon arrival in the MPRIC of Kos in order to prevent filming inside the pre-removal detention centre.
62. Furthermore, planned restrictions in internet access in the MPRIC are liable to pose undue barriers to people's communication with the outside world, including access to legal assistance and representation. From January 2023 onwards, the MPRIC of Samos will limit the availability of Wi-Fi access in the camp only to persons with valid asylum seekers' cards (Δελτίο Αιτούντος Διεθνή Προστασία). This means that internet access will not be provided by the MPRIC to various categories of persons, including those undergoing reception and identification procedures, claimants awaiting the preliminary assessment of a subsequent application, rejected asylum seekers and so forth.<sup>104</sup> We recall that exit from the facility is also conditioned upon possession of a valid asylum seeker's card.
63. Persons on Kos and Chios did not have access to their phones throughout their placement in COVID-19 quarantine.

### 3.3. Impact of truncated border procedures in the MPRIC

64. The implementation of border procedures to persons applying for asylum in the MPRIC on all five islands contravenes Article 43(1) APD and corollary domestic legislation,<sup>105</sup> insofar as the facilities do not constitute "borders" or "transit zones".
65. Due to the arbitrary use of border procedures in the MPRIC, the Asylum Service delivers summons to an interview (κλήση σε συνέντευξη) to asylum seekers on the day of lodging of their application, almost as a rule. The scheduling of interviews on Lesbos

<sup>100</sup> Ministry of Justice, Reply to parliamentary question, 200/2022, 25 October 2022, <https://bit.ly/3i72HSe>.

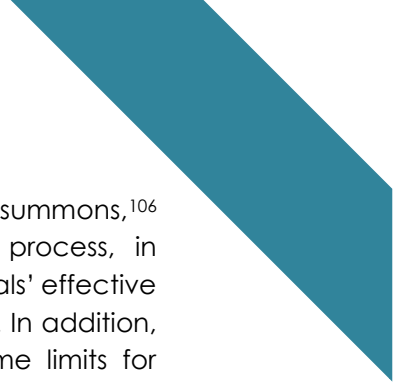
<sup>101</sup> Ministry of Migration and Asylum, Reply to parliamentary question, 625975/2022, 20 October 2022, <https://bit.ly/3U2AkC3>.

<sup>102</sup> Bar Association of Athens, Opinion No 185, 1 December 2022, 2.

<sup>103</sup> The contributing organisations would like to thank Equal Rights Beyond Borders for input to the information provided herein.

<sup>104</sup> I Have Rights et al., 'Planned Wi-Fi restrictions CCAC Samos', 19 December 2022, available at: <https://bit.ly/3HUFNrZ>.

<sup>105</sup> Article 95(1) Asylum Code. Only Article 95(3) Asylum Code permits the use of border procedures to persons applying for asylum in MPRIC under conditions of "mass arrivals". The use of this derogation has been discontinued after the end of 2021: RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 13-15.



and Chios varies from 5-10 days from notification to one to two days from summons,<sup>106</sup> depending on arrivals and available capacity. The speed of the process, in conjunction with the barriers mentioned above, severely hampers individuals' effective access to legal assistance and representation during the asylum process. In addition, as a result of the border procedure, lawyers face extremely short time limits for submissions following the interview (υπόμνημα).

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<sup>106</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 12.