

Comments of the Commission on the suggestion for improvement of the European Ombudsman on the strategic inquiry on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece

- Strategic inquiry ref.: OI/3/2022

The Commission takes note of the decision of the European Ombudsman of 7 June 2023 in the strategic inquiry OI/3/2022/MHZ, which assessed how the Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece.

In particular, the Commission welcomes the assessment of the Ombudsman that the Commission, namely its Task Force Migration Management has:

- engaged with the Greek authorities very regularly and in detail on the design and implementation of the Multi-Purpose Reception and Identification Centres (MPRICs);
- provided detailed reports to the Ombudsman that document the problems identified;
- promoted important changes in the Greek migration management legislation, including the adoption of a law setting out standard operating procedures at the MPRICs;
- resulted in Greece giving regular accounts of actions on migration management in the context of the Steering Committee meetings;
- insisted that standards related to the reception of asylum applicants are respected;
- makes use of all the tools at its disposal to prevent and address any shortcomings in the MPRICs.

The Commission takes note of the European Ombudsman's assessment that there is still room for improvement on how the Commission ensures that already-operational MPRICs comply with the relevant standards and takes note of the recommendations for improvement. It welcomes the European Ombudsman's assessment of the particular circumstances faced by the Commission in 2020-2021, when it sought to act as quickly as possible to create bearable living conditions for the large numbers of third country nationals arriving in Greece.

Through the Task Force Migration Management, the Commission took decisive action to support Member States, including Greece as a matter of priority, in developing a comprehensive and effective national migration management system. The close cooperation of the Task Force with all relevant stakeholders in migration management proved to be an efficient and beneficial tool to achieve significant improvements on the ground, through better coordination, cooperation and communication. The Commission's Task Force will continue working with Greece and the EU Agencies to consolidate the existing framework of cooperation, and to further improve the migration management system and the reception conditions of asylum applicants in Greece. Finally, the Commission will continue to support Greece in shaping an effective framework to address fundamental rights concerns and ensure compliance with the EU Charter of Fundamental Rights and the EU law.

In this respect, the Commission acknowledges the good cooperation with the Ombudsman inquiry team and takes into account the suggestions for improvement.

Specific replies to the suggestions for improvement can be found below:

Suggestion 1. *The Task Force should increase the overall transparency of its actions by: interacting in a more regular and structured format with civil society organisations present in the field, and publishing minutes of such meetings; requiring that the steering committee between the Task Force and the Greek authorities has regular meetings and publishes detailed minutes of such meetings. The Commission should publish documents relating to the activities of the Task Force on its dedicated webpage, including all grant agreements signed with Greece about MPRICs or summaries of them.*

The Commission has always emphasized the important role of civil society. International Organisations and Non-Governmental Organisations (NGOs) offered, and continue to offer, significant support and a range of services to applicants for and beneficiaries of international protection in Greece. This includes medical care, educational activities, childcare, legal assistance, protection services, as well as social integration activities, either through their own means or via the significant EU funding provided.

Since 2016, when the Commission first deployed staff in Greece, interaction between the Commission services and civil society organisations in Greece is continuous, valuable and dynamic. This cooperation continued and was enhanced after September 2020, when the Task Force was established¹, and includes regular contacts with a wide number of organisations, either bilaterally or in wider fora (see below). Indicatively, since 2020, **Task Force representatives have met with more than 60 different NGOs** in Brussels, in Athens, and on the Aegean islands.

Commission services also requested to participate in meetings of civil society working groups (such as Protection Working Groups and Legal Working Groups) that take place in Athens and on the Aegean islands. On Lesbos, for example, the Task Force participates in all stakeholder working groups, including in the monthly Interagency Coordination meeting, where all stakeholders active on Lesbos are participating. In summary, contacts with civil society organisations are frequent and intensive and already occur on a regular basis.

In addition, in recent months, the Commission services specifically held meetings with the organisations² that were consulted and that provided contributions to the Ombudsman inquiry, to further clarify the structure and modus operandi of the Task Force and discuss issues regarding the operation of the MPRICs.

Following the Ombudsman suggestion, the Commission will work towards establishing a more structured way of cooperating with civil society organisations active in the field of migration in Greece including making information publicly available.

With regards to the **Steering Committee meetings**, since September 2020 the Steering Committee has met 12 times, and brought together relevant stakeholders, including International Organisations. In this respect, the Commission would like to highlight the

¹ A European taskforce to resolve emergency situation on Lesbos (europa.eu): https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1728.

² OXFAM, GCR, HIAS, RSA, IRC, MSF.

significance of the bilateral dialogue between its services and Member States' authorities to address any issues, gaps and challenges, where safeguarding mutual trust and cooperation between authorities involved in areas of shared competence, such as migration and home affairs, is an essential prerequisite to ensure progress. As per the agreed MoU³ between the Commission, the Greek authorities and the EU Agencies, the Steering Committee meetings are co-chaired by DG HOME and the Greek authorities (Ministry for Migration & Asylum). Thus, the Commission will work towards a mutually agreed solution with the Greek authorities to increase the transparency of such meetings.

On the **request to publish documents** related to the Task Force activities on its dedicated webpage, the Commission has recently updated dedicated webpage on migration management⁴, as well as the Task Force webpage⁵, to include additional information and reply to questions with regards to its mandate and work. On the specific request to publish grant agreements⁶ signed with Greece about MPRICs (or summaries of them), the Commission would like to bring to the attention of the Ombudsman that the establishment of all (existing and future) MPRICs on the islands⁷ is covered under a single grant agreement. Press releases were published in January 2022 with details on the financing provided for the establishment of the first MPRICs on Kos and Leros⁸, and in September 2021 concerning Samos⁹. These press releases contain summaries of the main information outlined in the Grant Agreements with regards to the functioning and technical specifications of the MPRICs. The Greek authorities have also published detailed information on each reception facility, including the islands MPRICs, in the dedicated webpage by the Ministry for Migration¹⁰. In this respect, the Commission services consider that this suggestion has been fulfilled.

***Suggestion 2.** The Commission should conduct a fundamental rights impact assessment of the existing MPRICs, including setting out mitigating measures where it identifies problems. It should publish this assessment on its website. The fundamental rights impact should be assessed periodically throughout the course of the MPRICs' operation.*

Under EU law, Member State authorities are responsible for ensuring that EU law and fundamental rights are upheld in reception facilities across the EU. As noted in the MoU, the support provided by the Commission is without prejudice to the competences of the Greek authorities e.g., for site planning, design, construction and management of the new facility, and decisions in the areas of asylum or return, or any other decisions in relation to reception, public order, public health or national security. In the context of the Greek MPRICs, as per

³ https://home-affairs.ec.europa.eu/system/files/2020-12/03122020_memorandum_of_understanding_en.pdf

⁴ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management_en

⁵ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/task-force-migration-management_en

⁶ Any publication of the grant agreement in reference should be in respect to the provisions and the applicable exceptions of the Article 4 of the Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

⁷ MPRICs have already been established on Samos, Kos and Leros and are expected to be established on Lesbos and Chios

⁸ https://home-affairs.ec.europa.eu/news/opening-new-reception-centres-greek-islands-leros-and-kos-2022-01-25_en

⁹ https://home-affairs.ec.europa.eu/news/opening-first-new-reception-centre-samos-zervou-2021-09-28_en

¹⁰ <https://migration.gov.gr/en/ris/perifereiakes-monades/kyt-domes/>

national legislation¹¹ the responsibility for the MPRICs operation lies with the Reception and Identification Service of the Ministry for Migration & Asylum.

The Commission has been supporting for many years, through the Home Affairs Funds, the establishment of reception facilities across the EU. The drawing up of Fundamental Rights Impact Assessments with regards to reception and identification facilities is not a requirement in EU law and has never been done in any Member State benefitting from EU funding.

The Commission notes that, while the **establishment** of the MPRICs was supported under the 2014-2020 Asylum, Migration and Integration Fund (AMIF) Emergency Assistance Instrument¹², the **operation** of these facilities is supported under the 2021-2027 Home Affairs Funds programmes of Greece. In the applicable Common Provisions Regulation (CPR)¹³, a Horizontal Enabling Condition provides that the Member States must ensure the effective implementation of the EU Charter of Fundamental Rights provisions throughout the programming period. In particular, based on the Charter Horizontal Enabling Condition, Member States are obliged to put in place effective mechanisms to ensure Charter compliance in the implementation of the programmes. The Regulation foresees mitigation measures in case of non-compliance. At the same time, also in line with the CPR, the Commission shall ensure respect for fundamental rights in the implementation of the Funds. More generally, in the exercise of its competences, the Commission oversees the application of Union law, including the Charter of Fundamental Rights, as per the Treaties.

Taking into consideration the aforementioned points, the Commission notes the assessment of the Ombudsman that there is still room for improvement in how the Commission ensures that the already-operational MPRICs (on Samos, Kos and Leros) comply with the relevant standards. The Commission will thus work together with EU Agencies and the Greek authorities responsible for the MPRICs' operation on drawing up a Fundamental Rights Impact Assessment of the existing MPRICs, which should be made publicly available and reassessed periodically.

Suggestion 3. *The Commission should urge the Greek authorities to publish their fundamental rights impact assessment and personal data impact assessment of the surveillance system in the MPRICs. The Commission should include a link to that publication on its own website.*

As requested by the Commission, the Greek authorities have drawn up Data Protection and Fundamental Rights Impact Assessments with regards to the EU-funded surveillance tools that are operating on the islands' facilities before the full deployment of these tools.

¹¹ Law 4939/2022 & Ministerial Decision 77 of 17 November 2022 - https://www.kodiko.gr/nomologia/download_fek?f=fek/2022/a/fek_a_212_2022.pdf&t=bb78217e013bb681f19022ff62efe756

¹² https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/migration-management-greece/construction-new-reception-centres_en

¹³ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy

The Commission will suggest to the Greek authorities to publish the aforementioned assessments and include a link to the publication on its website following their publication.

For the Commission
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