The implementation of the hotspots in Italy and Greece

A study
The implementation of the hotspots in Italy and Greece

A study
ACKNOWLEDGEMENTS

This study was written by Aspasia Papadopoulou at the European Council for Refugees and Exiles (ECRE) with substantial contributions from Elisa Maimone (CIR), Vicky Tsipoura (GCR) and Katerina Drakopoulou (GCR). Special thanks to Kris Polet and Minos Mouzourakis (ECRE), Daniela di Rado and Maria de Donato (CIR), Sandy Protogerou and Alexandros Konstantinou (GCR), Berend Jonker, Lenny Reesink and Nelleke Koffeman (Dutch Council for Refugees) and Karl Kopp (ProAsyl) for reviewing different versions of the draft, and to Allan Leas for the final review.

We would like to thank all the persons we interviewed for their time and information provided, namely in Italy: the directors of the managing body of the centres in Trapani, Villa Sikania, Castelnuovo di Porto, and Ponte Galeria, medical and legal staff in Castelnuovo di Porto, the Prefecture of Trapani, the Ministry of Interior, Department for Civil Liberties and Immigration, EASO, Frontex, UNHCR, Medecins sans Frontieres, IDM, Mediterranean Hope, and Save the Children.

In Greece, the Greek Asylum Service, Reception and Identification Service, the Ministry of Interior, the Police, the Hellenic Coast Guard, the Hellenic Army, the municipalities of Lesvos and Chios, the Public Prosecutor of Chios, EASO, Frontex, Europol, UNHCR, MetaAction, Praksis, Save the Children, Medecins sans Frontieres, Medecins du Monde, the Hellenic Red Cross, the Greek Council for Refugees and ProAsyl lawyers and volunteers.

The study is part of a project led by the Dutch Council for Refugees, in partnership with ECRE, the Italian Council for Refugees (CIR), the Greek Council for Refugees (GCR) and ProAsyl that aims to support monitoring of hotspots in Greece and Italy and the strengthening of legal assistance provision by local NGOs.

ABBREVIATIONS

AS  Asylum Service in Greece | Υπηρεσία Ασύλου
CARA  Centre for the Reception of Asylum Seekers | Centro di accoglienza per richiedenti asilo
CAS  Emergency Accommodation Centre | Centro di accoglienza straordinaria
CIE  Identification and Expulsion Centre | Centro di identificazione e espulsione
CPSA  First Aid and Reception Centre | Centro di primo soccorso e accoglienza
CPA  First Reception Centre | Centro di prima accoglienza
CTRiP (or Territorial Commission)  Territorial Commission for the Recognition of International Protection |
Commissione territoriale per il riconoscimento della protezione internazionale
EASO  European Asylum Support Office
EBCG  European Border and Coast Guard
EJAA  European Union Asylum Agency
EURTF  EU Regional Task Force
FRA  Fundamental Rights Agency
FRA/FRS  First Reception Service / Reception and Identification Service |
Πρώτης Υποδοχής / Υπηρεσία Υποδοχής και Ταυτοποίησης
MDI  Ministry of Interior in Italy
Questura  Immigration Office of the Police
RAO  Regional Asylum Office in Greece | Περιφερειακό Γραφείο Ασύλου
SDP  Standard Operating Procedures
SPRiAR  System of Protection for Asylum Seekers and Refugees | Sistema di protezione per richiedenti asilo e rifugiati
STC  Safe third country
UAM  Unaccompanied minors
The "hotspot approach" has been envisaged as a model of operational support by the EU agencies to Member States faced with disproportionate migratory pressure, with the aim to help them swiftly identify, register and fingerprint migrants, support the implementation of relocation and returns.

One year since the first hotspots were set up, and half a year since the entry into force of the EU-Turkey Statement of March 2016, this study analyses the legal framework and practices developed in Italy and Greece, the role of the different actors involved and the challenges that have emerged. The key question throughout the study is whether and how implementation is in line with EU asylum law and legal standards and whether it ensures that the fundamental rights of the migrants and refugees are respected.

The hotspots, as implemented today, are a pilot model of a more permanent registration and identification mechanism at the points of arrival that selects between those seeking asylum and those to be returned. Yet, the hotspots currently apply certain practices and standards that are either inadequate or contrary to the EU asylum and immigration acquis. As this is a hybrid EU-Member States tool, responsibility for human rights protection and safeguards relates to both levels.

In terms of accessing the asylum procedure, the research shows that, while for some individuals this may have been the case, for many others it was not; many newly arrived migrants have been trapped in prolonged detention without access to asylum, have not received the right information in order to do so, or have been swiftly returned as a result of the hotspots approach.

The hotspots have certainly not helped in relieving the pressure from Italy and Greece as was their stated objective: instead, they have led to an increase in the number of asylum applicants waiting in Italy and Greece, consolidating the challenges and shortcomings already inherent in the Dublin system. The hotspots approach has also led to more repressive measures, often disregarding fundamental rights, which are applied by national authorities as a result of EU pressure to control the arrivals; yet despite EU pressure, it is the Member States that are held ultimately responsible for this implementation. The implementation of the EU-Turkey deal is a prime example of this EU pressure shifting responsibilities to the national level.

The implementation of the hotspots approach should be understood in relation to the broader reform of the CEAS, and an overarching strategy to end irregular migration flows into the EU. The aim of the study is to contribute to current debates, by highlighting the challenges that emerge through the function of the hotspots at national level, the role of EU agencies and the level of EU responsibility in the absence of an EU mechanism for responsibility sharing. Ultimately, if the hotspots are to be consolidated as a permanent referral mechanism and the points of entry, a number of elements need to be in place to ensure that this is compatible with the EU acquis and legal standards.
1. Introduction

Almost one year has passed since the first hotspots were established in Greece and Italy. Much has happened in this one year in response to the unprecedented migratory flows that Europe was witnessing, all of which has been cumulatively strengthening migration controls: starting with the October Leaders’ Meeting on the Western Balkans Route, Member States have gradually closed internal borders and eventually blocked the Balkan route, leading to a humanitarian disaster of 60,000 stranded refugees in Greece; the EU-Turkey Statement has set the frame to decrease irregular migrant arrivals, increase returns, and in exchange offer resettlement out of Turkey; new proposals have been put forward to revive the Common European Asylum System, which to a large extent consolidated the externalisation of control and asylum responsibility and lowered the quality of rights granted to refugees in the Union; and the hotspots approach in Greece and Italy has been implemented as a first level of filtering to allow returns and limit the number of persons entering the asylum procedure.

The study takes stock of the implementation of the hotspots in Italy and Greece during this last year, and particularly since the entry into force of the EU-Turkey Statement in March 2016. It analyses the legal framework and practices developed in each country, the role of the different actors involved, and the challenges that have emerged. The key question throughout the study is whether and how implementation is in line with EU objectives and supported by EU agencies, the hotspots in Italy and Greece remain primarily national systems of registration and identification, embedded in the national context of the two countries with challenges and recommendations on the functioning of the hotspots. As publicly available information on the functioning of the hotspots reveals a number of challenges relating to the respect for human rights standards and the need for rigorous monitoring. In addition, the interplay between EU agencies and national authorities also raises questions about the accountability and liability under EU and human rights law of all actors involved, including for decisions resulting from “joint processing” of applications for international protection in admissibility procedures, as is the case in Greece.

At the same time, the functioning of the hotspots in each country needs to be understood against the background of their specific national context which involves different migratory flows, reception systems and political imperatives. Even if clearly driven by EU objectives and supported by EU agencies, the hotspots in Greece and Italy remain primarily national systems of registration and identification, embedded in the national context of the particular Member State, rather than a full-fledged “EU” instrument applied in Member States of first entry. Chapters 3 and 4 of the report present the functioning of the hotspots in each country in detail, from the moment that refugees are disembarked up to relocation and return, outlining practices and challenges in each context. As publicly available information on the functioning of hotspots beyond statistical data remains limited, this report also aims to fill this gap by providing a detailed account of the various procedures conducted within the hotspots, while giving an NGO-perspective on the role and protection challenges inherent in the hotspot approach.
2. The hotspots: key findings from Greece and Italy

The European Agenda on Migration introduced the “hotspot approach” as the model of operational support to Member States faced with disproportionate migratory pressure. In particular, according to the Agenda, the European Asylum Support Office, Frontex and Europol will support frontline Member States to swiftly identify, register and fingerprint incoming migrants. The work of the agencies should be complementary to one another and supportive towards the Member States. Those claiming asylum will be channelled into the asylum procedure where EASO support teams will help process asylum cases. For those who are not in need of international protection, Frontex will help Member States by coordinating the returns. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks.1

The approach was endorsed by the European Council of 25–26 June 2015. The details of the hotspots’ functioning modalities were presented through an unofficial “Explanatory Note” sent by Commissioner Avramopoulos to Justice and Home Affairs Ministers on 15 July 2015, whose main elements were restated in an Annex to the Commission Communication on managing the refugee crisis of 29 September 2015.2 According to the Explanatory Note and the Annex, the hotspot approach should be the provision of operational support to Member States for the registration, identification and fingerprinting at points of arrival, in order to avoid irregular secondary movements; it would also aim to support the implementation of the relocation scheme under article 78(3), enhance law enforcement analysis on the ground and more effective implementation of returns policy.3

The Regulation establishing the European Border and Coast Guard (EBCG) of 13 September 2016 adds the definition of hotspot as “an area in which the host Member State, the Commission, relevant union agencies and participating Member State cooperate with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external border”.4

According to these documents, operational support is coordinated by the EU Regional Task Force (EURTF), a coordination group consisting of relevant EU agencies and Member States’ authorities. While there is no hierarchy between the EU Agencies involved in the hotspot approach, each Agency has a specific role in its implementation. Frontex provides assistance with registration, nationality screening, fingerprinting and Eurodac registration. Frontex also conducts debriefing interviews to gather intelligence on smuggling routes and supports the organisation of returns. Eurodac runs second-line checks to identify possible smugglers and report them to the national authorities. EASO provides support in identifying persons wishing to apply for asylum in relation to relocation and Dublin, in order to channel them either to the regular asylum procedure, or to relocation; it also provides information on the relocation procedure and operational support to the Dublin limit. Since the EU-Turkey Statement, EASO staff and deployed experts are also involved in the fast track inadmissibility procedure. Europol and Eurojust, in contrast, continue to operate in Greece, and most recently also in the registration and examination of asylum claims in merit. The involvement of EASO and Frontex is regulated by the two agencies’ respective Regulations. In addition, the tasks of EASO are defined and agreed in the Operating plans for Georgia and Italy.5

A series of Communications and Reports have been providing updated information on the implementation of the hotspots in the two countries throughout this period.6

They provide updates on progress made with reception capacity, the resources available by Frontex and EASO, the development of national capacities, reception conditions and relocation data. In particular, with regards to Greece, the reports have focused on the construction of foreseen hotspot facilities and reception capacities in the islands and mainland, the staffing of national authorities, the availability of equipment to conduct registration and fingerprinting, the need to enhance the implementation of returns and relocation. In Italy, the reports have focused on the need to enhance and reach 100% fingerprinting, improve reception capacities, set up mobile hotspots to register those disembarked in non-hotspot areas, and address technical and coordination problems hindering relocation. The number of Member States experts deployed by EASO and Frontex is constantly reported as insufficient in both countries throughout this implementation period.7

Assessed against the hotspots’ stated objectives the following observations are made on the basis of findings from the field visits:

> Hotspots are designed with the aim to swiftly identify, register and process migrants. Speed is not achieved at the same level in the two countries; also speed might not necessarily guarantee that procedural safeguards are in place to ensure that fundamental rights are sufficiently protected. In Italy, on average, migrants spend a few days in the hotspots before being transferred to reception or detention centres, whereas in Greece the hotspots also serve as receipt/detention centres where people stay for prolonged periods of time. In Greece, at the time of the field visits, the actual registration and identification phase and the inadmissibility procedures were not lengthy. Delays occurred primarily between registration/identification and the start of the asylum/admissibility procedure; for some nationalities in particular the delays have been significant, as they were not prioritised. While, in Italy, there were only nationalities fingerprinted, this gradually changed over the next months with other nationalities being processed as well, but the delays still remain. Delays have also been observed in the processing times of the appeals.

At the same time, striving for “swift procedures” should not undermine respect for essential guarantees to ensure full respect of applicants’ fundamental rights and the non-refoulement principle. One key aspect is reasonable time limits to ensure that refugees receive the necessary information during all stages of the process, have access to a lawyer and legal assistance and can prepare for the appeal as needed.8

Sufficient time and the right tools are also needed in order to identify vulnerabilities and special needs, including the non-visible and non-declared ones. Currently such vulnerabilities are not sufficiently identified either because time does not allow, or the appropriate tools are either not in place or not used. Identification of vulnerability and special needs at the earliest possible stage can be critical to the quality of the asylum determination and relocation eligibility process. Vulnerability screening should also include the identification of trafficking victims to mitigate trafficking risks. This is carried out by IOM in Italy but so far not seen as a priority in Greece. In their report “With Greece” ECRE and the AIRE Centre have documented the increasing risk of human trafficking in Greece in the transit sites in the mainland as well as the hotspots on the islands.9

> One of the main purposes of the hotspots approach in both countries has been to ensure that all newcomers are properly fingerprinted and identified in Eurodac. The target through the hotspots approach has been to reach 100% fingerprinting in both countries, particularly in Italy, which in the past two years received substantial pressure and criticism from the Commission for not implementing its obligations.10 This target seems to have been almost met in both countries through the provision of additional equipment, but worryingly, in the case of Italy, through the use of coercive measures, physical force and extended detention to obtain fingerprints, in violation of international and European law.11

2 EBCG, Article 2, para 10; Article 18 (4) defines the role that EBCG can play in hotspots, namely assistance in screening, identification, registration, decontamination, and where requested by Member States, the fingerprinting and providing information on these procedures, provision of information on the possibility to apply for asylum and refer to national authorities or to EASO, and assistance in returns.
4 These include Communications on the management of the refugee crisis, the implementation of priority actions under the European Agenda on Migration, periodic reports on Relocation and Resettlement, periodic Progress Reports on the implementation of the EU-Turkey Statement as well as the Annual Report on the EBCG on the EBCG budget and the follow-up by Greece in view of the suspension of Dublin transfers. The list is available here: ec.europa.eu/justice/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm
5 They provide updates on progress made with reception capacity, the resources available by Frontex and EASO, the development of national capacities, reception conditions and relocation data. In particular, with regards to Greece, the reports have focused on the construction of foreseen hotspot facilities and reception capacities in the islands and mainland, the staffing of national authorities, the availability of equipment to conduct registration and fingerprinting, the need to enhance the implementation of returns and relocation. In Italy, the reports have focused on the need to enhance and reach 100% fingerprinting, improve reception capacities, set up mobile hotspots to register those disembarked in non-hotspot areas, and address technical and coordination problems hindering relocation. The number of Member States experts deployed by EASO and Frontex is constantly reported as insufficient in both countries throughout this implementation period. Assessed against the hotspots’ stated objectives the following observations are made on the basis of findings from the field visits:
6 Hotspots are designed with the aim to swiftly identify, register and process migrants. Speed is not achieved at the same level in the two countries; also speed might not necessarily guarantee that procedural safeguards are in place to ensure that fundamental rights are sufficiently protected. In Italy, on average, migrants spend a few days in the hotspots before being transferred to reception or detention centres, whereas in Greece the hotspots also serve as receipt/detention centres where people stay for prolonged periods of time. In Greece, at the time of the field visits, the actual registration and identification phase and the inadmissibility procedures were not lengthy. Delays occurred primarily between registration/identification and the start of the asylum/admissibility procedure; for some nationalities in particular the delays have been significant, as they were not prioritised. While, in Italy, there were only nationalities fingerprinted, this gradually changed over the next months with other nationalities being processed as well, but the delays still remain. Delays have also been observed in the processing times of the appeals.
7 At the same time, striving for “swift procedures” should not undermine respect for essential guarantees to ensure full respect of applicants’ fundamental rights and the non-refoulement principle. One key aspect is reasonable time limits to ensure that refugees receive the necessary information during all stages of the process, have access to a lawyer and legal assistance and can prepare for the appeal as needed.
8 ECRE & The AIRE Centre, ‘With Greece’ ECRE and the AIRE Centre have documented the increasing risk of human trafficking in Greece in the transit sites in the mainland as well as the hotspots on the islands.
Hotspots were conceived as a tool directly related to the emergency relocation mechanism, in order to identify and channel asylum seekers in clear need of international protection. According to the ‘Explanatory Note’ sent by Commissioner Avramopoulos to JHA Ministers, the hotspot approach should contribute to the effective implementation of the relocation schemes established by the EU Decisions of 14 and 22 September 2015.10 With regards to Greece, however, the EU Turkey deal shifted the hotspots’ objective and functioning towards a filtering between the regular asylum procedure in Greece, or return to Turkey.11 Relocation was taken entirely out of the equation and only, approximately, 4,455 and 1,196 from Greece and Italy had responded from Member states in opening relocation places, the process slow, such as bottlenecks in security checks, the slow implementation period, with 4,455 from Greece and 1,196 from Italy.12 Despite the noted acceleration in relocation numbers at the end of the summer and in September 2016, the hotspots generally play a small role in implementing the emergency relocation Decisions. Different types of technical difficulties have also kept the process slow, such as bottlenecks in security checks, the slow response from Member states in opening relocation places, unjustified rejections, gaps in the capacity to register and prepare relocation applications from the side of Greece and Italy also have to be overcome.13

> There is legal uncertainty with certain aspects of the hotspot function, particularly regarding the role of the different actors, especially EU agencies in relation to national authorities.14

While executive powers rest with the Member States, and EASO has no power in decision making on individual applications or Frontex on the screening, registration and identification, both agencies increasingly interfere with national procedures through their operations on the ground. Increased involvement in individual decision-making processes through such operations generates greater accountability and liability for human rights violations. Under the EBCG Regulation, Frontex has an increased role and far-reaching responsibilities in the hotspots that may interfere to a certain degree with competences of national authorities.15 Similar enhanced competences in the asylum process are envisaged for the proposed EU Agency for Asylum (EUA). As per Article 16(3) of the proposal, the new Agency is entrusted with the organisation and coordination of a long list of operational activities that have a direct bearing on the examination of individual asylum applications, ranging from “assisting with the registration and identification of third-country nationals” and providing interpretation services to facilitating “the examination of applications for international protection that are underway by the competent national authorities.”16

In particular, when operating in the framework of management support teams in the hotspots, the technical and operational assistance that can be provided ranges from screening (including registration, identification and, where requested by Member States, fingerprinting), the provision of information on asylum procedures, the registration of asylum applications, and “where requested by Member States, the examination of such applications” (Article 21 (2)). As ECRE has noted, while the responsibility rests with the national authorities, this is clearly stretching the competences of the Agency’s staff and Member States’ experts from other Member States and raises questions of accountability. It also raises questions of quality and efficiency, in particular where they lack any practical experience in assessing and examining asylum applications.17

Reception conditions are inadequate and often below standard. Yet, even for those not yet registered as asylum seekers, reception conditions should respect human dignity and applicable international human rights law and standards. The 2013 Reception Conditions Directive should “apply during all stages and all types of procedures concerning applications for international protection and in all locations and facilities hosting asylum seekers”.18 This clearly includes those waiting to enter the regular asylum procedure or the admissibility procedures as soon as they have made an application for international protection and those who are in detention in these or other related facilities. Conditions in the hotspots do not entirely fulfil the demands for safety, health and the preservation of basic human dignity and freedom. Repeated security incidents in the two countries show that the safety of those accommodated in the hotspots cannot be fully guaranteed. Moreover, these transit sites are used for prolonged accommodation, whereas they should only be used for a few days. Further to that, reception in the hotspots does not cover for specialised services, for example, mental health and other specialised needs, such as those required by torture victims. Sadly, it is observed in both countries that the most vulnerable, such as unaccompanied minors, are the ones that stay in the hotspots the longest because there are no alternative facilities to host them in the mainland. This relates to the fact that reception capacity in Italy and Greece is not adequate, a situation which is unlikely to improve quickly in light of the slow processing in the hotspots, continuing arrivals and the increased number of applicants stranded in both countries, resulting in increased responsibilities under the Dublin Regulation.

11 Communication from the Commission to the European Parliament, the European Council and the Council, Next operational steps in EU-Turkey cooperation in the field of migration, Brussels, 16. 6. 2015 COM (2015) 186 final, p. 4: “In particular, the hotspots in the islands in Greece will need to be adapted with the current on registration and screening before transfer to the mainland and replaced the objective of implementing returns to Turkey. For instance, the infrastructure in the hotspots would need to be reinforced to accommodate the road in asum and asulm offices and to deal adequately with vulnerable groups.” Available at: ec.europa.eu/ home-affairs/what-we-do/political/european-agenda-migration/proposal-implementation-packackage/docs/2016/636_next_operational_steps_in_ou_turkey_cooperation_in_the_field_of_migration_en.pdf
15 4399/2016 expanded it
16 10 Ibid, p.14
17 Art.60(6)(a), 4375/2016 provided a supporting role for ECRE. The legal basis of the proposed Regulation on Asylum Procedures and the revised Reception Conditions Directive include provisions that will be essentially implemented in the context of hotspots, without however clarifying the respective legal responsibilities arising from the involvement of the EBCG and the proposed EUA in the implementation of the hotspot approach.
18 In the case of Greece, the functioning of the hotspots is governed by Law 4390/2015 adopted in April 2016, which foresees a supporting role for EASO in the inadmissibility interviews without specifying certain responsibilities.2 Further to that, Law 4390/2015 of 24 June 2015 amended Law 4390/2015 enables EASO officials to conduct interviews of applicants in merit in the context of the exceptional procedure applied at the border. In Italy, there is no dedicated legal framework on hotspots procedures and practices and conditions are governed by asylum legislation and the Constitution. Non-legislative documents, like the Italian Roadmap and the Standard Operating Procedures (SOP) define certain practices and responsibilities. However, while their involvement is noted in EASO’s operating plans with Greece and Italy, this does not amount to a definition of responsibilities with legal value, and corresponding procedural safeguards for applicants.
19 Some observers argue that the EUs must issue an additional legislative proposal covering the specific hotspots and the ways in which compliance with European asylum law and the EU Charter are to be guaranteed.19 Alternatively, and since different elements of the hotspots function are integrated in the asylum instruments, it might make sense, instead of a stand-alone legislative instrument, to suggest clearer definitions in national and EU law, and foresee and embed rigorous independent monitoring mechanisms, including by international organisations and NGOs, so as to oversee the compatibility of the hotspots with EU legal and rule of law standards.
20 In 2016 FRA has carried out regular visits to the hotspots, with one staff regularly present in Greece between April and September 2016 and visits carried out to Italian hotspots, providing expertise on fundamental rights issues.20
21 The role of FRA could be enhanced, through more structured participation in the EIRF in both countries and potentially a more systematic collection of information, mapping of practices and guidance on how to ensure fundamental rights compliance in hotspot implementation.21
Detention, disguised as restriction of freedom of movement of persons, is widely applied as standard practice in the hotspots. The recast Reception Conditions Directive defines any confinement of a person to a specific place as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”. This confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention".

Furthermore, discrimination between asylum seekers and migrants on grounds of nationality is observed in hotspots in Greece and Italy. In Greece, Syrians have been prioritised over all other nationalities in registration, identification and access to asylum. In Italy, certain African nationalities are treated as economic migrants and put in separate detention facilities in order to be returned, or collectively expelled. The pre-identification system de facto prevents certain nationalities from reaching the asylum procedure. Collective expulsions have been conducted in Italy in violation of the principle of non-refoulement. Yet, in line with the Geneva Convention’s premise of non-discrimination on the basis of country of origin, states should ensure the same accommodation standards and access to procedures irrespective of nationality. In Greece, in the context of the EU-Turkey deal, the systematic use of the safe third country (STC) concept in the admissibility procedure risks undermining the effectiveness of procedural safeguards and access to the asylum procedure. National authorities (and EASO) are under a lot of pressure to conclude the examination of applications as swiftly as possible. The expedited nature of the procedure further adds to the disadvantaged position of applicants resulting from an increased burden of proof to rebut presumptions of safety. However, in light of the current human rights situation in Turkey and the gaps in the national asylum framework, the country cannot be considered safe. Evidence by human rights organisations has shown that those returned face detention in places where lawyers, UNHCR and NGOs have no access, and have been taken to the Syrian-Turkish border in order to be returned to Syria.

A number of successful appeals against inadmissibility decisions taken by the Greek Asylum Service further challenged the concept of Turkey as “safe third country”. As will be explained in Chapter 4, after an increasing number of positive appeals decisions in the first three months following the EU-Turkey statement, Greece was pressed to modify the Committees’ composition which was undoubtedly with the intention to better align their outcome to the safe third country concept. The legality of the EU-Turkey deal itself has been challenged before the General Court of Justice of the European Union (CJEU), and it seems likely that the CJEU will be asked to interpret the notion of “safe third country” or “first country of asylum” under EU law to determine whether it may be applied to the EU’s neighbouring countries.

The proposal for a Regulation establishing a common procedure (revised Asylum Procedures Directive) goes one step further and foresees that the use of safe third country, safe country of origin and first country of asylum concepts will be mandatory for states. It may also be applied by Member States ad hoc, in individual cases in relation to a specific applicant. The hotspots experience displays the danger of such an approach effectively barring access to international protection and subjecting individuals to refoulement.

In light of the above, the provision of sufficient information and guidance, and legal assistance to migrants and refugees to accompany them throughout the procedure is all the more important. The provision of information in a language that refugees understand, and at all stages of the process, as per the Reception Conditions and Asylum Procedures Directives, still remains problematic in the context of the hotspots. In Italy, the pre-identification system with the use of the “foglio notizie” is problematic; migrants are insufficiently informed and often are not aware that this is their opportunity to state their intention to seek asylum. In theory, according to the Italian Standard Operating Procedures (SOP), what is stated during pre-identification in this document can be changed at a later time. No copy of the signed document is given however to the asylum seeker, although NGOs have been strongly advocating for it. Lack of information is prevalent throughout the procedures; there were even cases in which migrants had not been informed that they were granted a rejection order. In Greece, the multiplication of national and international actors, including with regard to the provision of information, seems to have led to a situation of confusion and misinformation. Our field visits have shown that despite the availability of various information tools, including by EASO, asylum seekers are generally ill-informed and the procedures seem to lack transparency and consistency.

Information needs to be provided by qualified and trained staff and should cover all aspects, the procedural steps and their implications. Cultural mediators play a pivotal role, but their presence in both countries is still insufficient. Written information (leaflets) and information provided through social media should be accompanied by oral explanation and guidance, as a group and individually. Lawyers and NGOs should have access to asylum seekers in detention, but in practice, this is not always guaranteed in the hotspots. The Italian SOP foresee that NGOs are granted access to the facilities following authorisation by the Ministry of Interior (MoI), but no specific reference is made to access for lawyers. Where access is ensured, the capacity of lawyers to respond to the needs still remains insufficient. More importantly, migrants are not provided with information prior to pre-identification which can impact on their legal status. Legal assistance needs remain high and capacity building and resources are needed for local lawyers and bar associations to be able to offer pro bono services.

The following Chapters present the practices applied in the hotspots in each country in more detail, listing key findings, concerns and recommendations at national level.

24 Amnesty International, Hotspot Italy: how EU’s flagship approach leads to violations of refugees and migrant rights, October 2016, available at: goo.gl/2gRl4j
25 For a discussion of this issue in Greece and Italy, see AIDA, Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe, March 2016, available at: goo.gl/6XH8XK
27 See www.aireurope.org/sites/default/files/resources/with_greece.pdf
28 For an copy of the foglio notizie, see: www.asylum.europa.eu/sites/default/files/resources/foglio_notizie.pdf
29 On page 4 Paragraph B.2 “Access in hotspots” of the SOP it is stated “Subject to authorisation of the Department for Civil Liberties and Immigration of the Ministry of the Interior and on the basis of specific agreements, international and non-governmental organisations will be guaranteed access in compliance with the Italian and European legislation for their respective mandates and for the provision of specific services. Authorised humanitarian organisations will provide support to the Italian authorities in the timely identification of vulnerable persons who have special needs, and will carry out information activities according to their respective mandates.”
3. The hotspots in Italy

Key findings

Most disembarkations happen in non-hotspot areas where practices are less clear and where the possibility to provide information before identification is not always guaranteed. No mobile hotspots have been set up so far for this purpose, as suggested by the Commission.

Migrants are often not sufficiently informed before pre-identification and identification about the procedures and the possibility to apply for asylum, or the purpose of the *foglio-notizie* form.

Pre-identification through the *foglio notizie* form is used to “filter” applicants for international protection but frequently results in impeding access to the asylum procedure.

Information about the asylum procedure is provided mostly by international organisations, even if that remains the responsibility of the authorities.

There is significant lack of cultural mediators/interpreters in all languages, especially the Sub-Saharan languages.

Medical screening carried out on board is not always coordinated with further medical examinations later on, and there is no continuity of medical care; medical information and vulnerability screening are also not always well coordinated.

Coercive measures, including physical force and prolonged detention, are used in the case of persons refusing to be fingerprinted.

In case of doubt, age assessment is conducted frequently through X-ray examination and not as a method of last resort.

Clear referral mechanisms in general and specific referral mechanisms for vulnerabilities are not systematically in place. The non-visible and non-declared vulnerabilities are usually identified at a later stage in the regional hubs, and the EASO vulnerabilities tool is not used systematically.

Detention in the hotspots tends to last longer than 48 hours, and is unregulated and arbitrary. There is no access to effective remedy.

Unaccompanied minors are placed in hotspots despite the fact that this is against Italian law.

Vulnerable cases, including unaccompanied minors and victims of trafficking, are placed in hotspots as specialised shelter capacity remains limited.

In practice, unaccompanied minors have no access to relocation. The timeline for appointment of guardian for unaccompanied minors takes longer than the relocation timeline, making the two incompatible.

The slow pace of relocation makes it unattractive as an option, with the result that those eligible refuse to be fingerprinted and prefer to continue the journey to another Member State through irregular means, rather wait. Lack of transparency also lead to mistrust in the relocation programme.

Reception capacity in Italy still remains insufficient; facilities are often used for mixed purposes, accommodating asylum seekers outside the relocation programme and relocation candidates. There is a lack of reception facilities close to disembarkation areas.

The hotspots approach in Italy has primarily served as a measure to better control migration and ensure Italy’s compliance with fingerprinting requirements. The implementation of the approach however raises a number of concerns, analysed in this chapter: fundamental rights violations in the implementation of identification and registration practices, including the use of arbitrary detention and coercive measures for photo-fingerprinting purposes; impeded access to the asylum process through pre-identification measures conducted by the police immediately after disembarkation, without sufficient information provided; differentiated treatment and returns based on national-ity; insufficient reception capacity, especially regarding vulnerable groups requiring specialised shelter; and finally, slow and limited implementation of relocation that contributes little to alleviate the pressure on Italy.

The “hotspot” approach aims to channel the arrivals of mixed migration flows and to apply the pre-identification, registration, photo and fingerprinting operations. Subsequently, those identified as undocumented migrants are notified with a rejection/expulsion order and, where places are available, they are detained in the identification and expulsion centres. Asylum seekers are channelled to the reception centre, including Regional Hubs. Reception candidates are accommodated in regional hubs or other centres.

3.1. The legal framework for the functioning of hotspots

The hotspots approach has been implemented with use of existing reception facilities in selected areas, as well as more broadly in disembarkation areas, where most arrivals happen. In other words, the ‘hotspots’ are not specific centres set up for this purpose but existing reception structures used to implement the approach.

The reception system is coordinated by the Department of Civil Liberties and Immigration of the Ministry of Interior (MoI) and regulated with the LD 142/2015. Newly arrived persons are placed in first line reception centres run by the government, that include centres for accommodation of asylum seekers (CARA), first aid and reception centres (CPSA), first accommodation centres (CPIA) and temporary centres for emergency reception (CAS). The CAS are used when asylum applicants cannot be accommodated in other facilities. Accommodation in these temporary facilities is strictly limited to the necessary time to transfer the applicants to the CPA or SPRAR centres. They were set up to channel large scale arrivals, without much planning about the location, safety and standards.30


Existing facilities, including hotels, have been converted to CAS centres.31 There are 32 CAS only in the area of Trapani. Second line reception is provided by the system for the protection of asylum seekers and refugees (SPRAR) centres, managed by the Carabinieri, which are used when asylum seekers cannot be accommodated in other facilities.

Asylum seekers are channelled to the reception centre, including Regional Hubs. Reception candidates are accommodated in regional hubs or other centres.

The hotspot in Lampedusa is the first one set up in Italy following the publication of the European Agenda on Migration and the Italian Roadmap. In May 2016, part of the facility was burned down and 180 places were lost.

31. EC State of Play of the hotspots in Italy and Greece | 17

The implementation of the hotspots in Italy and Greece | 16

The hotspot in Lampedusa is the first one set up in Italy following the publication of the European Agenda on Migration and the Italian Roadmap. In May 2016, part of the facility was burned down and 180 places were lost.32

32. Interview with DlMI Legal Expert, 2 of June 2016.

This is a publicly funded network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection. This system exists to provide care to asylum seekers, including food and a medical assessment, when first arriving.33

33. Interview with DlMI Legal Expert, 2 of June 2016.

The hotspot in Lampedusa is the first one set up in Italy following the publication of the European Agenda on Migration and the Italian Roadmap. In May 2016, part of the facility was burned down and 180 places were lost.34

34. Interview with DlMI Legal Expert, 2 of June 2016.
The hotspot in Trapani is the second one that opened after Lampedusa in the premises of an identification and expulsion centre (CIE), which was converted into a hotspot and doubled its capacity from 200 to 400 places with the possibility to accommodate an additional 120 people in cases of exceptional circumstances. Two nursing homes in the area of Trapani can also accommodate 200 people, and a further 700 to 800 places are provided by SPRAR centres and reception centres for unaccompanied minors nearby.37

According to the Roadmap, each hotspot must be equipped with six national immigration officers, two investigative police officers, three Frontex officers for interviews, six cultural mediators, four EA50 experts, ten forensic Italian police officers for photo-identification and fingerprinting and ten Member States experts for Frontex or EA50 to support Italian authorities in photo-identification and fingerprinting.

Regional hubs are operational in Villa Sikania, Bari and Crotone. Other centres were also used for relocation candidates in Rome, Milan, Foggia, Mineo, Cagliari, as also CAS centres.38 Since the number of relocations carried out is low, the turnover in such centres is also low. For example, the CARA of Mineo (Catania, Sicily), with capacity up to 4,000 people, has been progressively used as a regional hub.41 It has a capacity that can be used for three different aims (hotspot, regional hub and reception centre for asylum seekers).42

The reception centre of Villa Sikania is a former hotel that in April 2014 was set up as CAS and since November 2015 converted into a regional hub.43 It has a capacity of 278 places. At the time of the visit there were 198 candidates for relocation and 80 asylum seekers not eligible for relocation. Villa Sikania is used to complement the Lampedusa hotspot when that is overcrowded, newcomers are identified and registered in the hotspot and then transferred to Villa Sikania to be transferred to another destination centres.43

The Centre of Castelnuovo di Porto has been used as a pre-departure centre for relocation (58% of the places), since it is located close to Fiumicino airport (RM). Its official capacity was 650 places but at the moment of the visit there were 821 persons.

Still, most disembarkation in Italy takes place far from the hotspots; according to MoI, only around 30% of disembarkation takes place in hotspot areas, and 70% in other harbours, as the table below shows.43

| Table 1: Number of arrivals in harbours, 1 January–31 October 2016 |
|------------------|-------|
| Augusta          | 21,822 |
| Pozzallo         | 18,808 |
| Palermo          | 15,199 |
| Messina          | 15,485 |
| Catania          | 14,229 |
| Reggio Calabria  | 13,301 |
| Trapani          | 11,859 |
| Lampedusa*       | 10,923 |
| Crotone          | 7,264  |
| Cagliari         | 6,628  |
| Taranto*         | 6,250  |
| Salerno          | 4,405  |
| Vibo Valentia    | 4,405  |
| Brindisi         | 4,040  |
| Corigliano Calabro| 3,013  |
| Porto Empedcole  | 2,430  |
| Porto Torres     | 387    |

* This data does not include migrants transferred to other facilities before fingerprinting

Source: MoI, Department Civil Liberties and Immigration

For this reason, five mobile hotspots were planned to be set up for photo-identification, fingerprinting and provision of information to those disembarked in non-hotspot areas, according to the Roadmap. Up to the time of writing, these mobile hotspots had not been set up; a mobile team consisting of EA50, Frontex and Europol with the support of UNHCR and IOM was operational, but fingerprinting activities had to be carried out in the closest Questura.

Non-hotspot areas are differently organized from one place to another. For instance, in Augusta the immigration office can carry out identification and registration and provide information, whereas in other harbours only part of the process is completed there. If the authorities are unable to conduct fingerprinting near the harbour, newcomers informed and pre-identified are transferred to a hotspot for fingerprinting. In case there is no place in hotspot facilities, they are transferred to the closest Questura.43

On 8 February 2016 Standard Operating Procedures (SOP) were published, outlining the procedures that apply in hotspot and non-hotspot areas where disembarkation takes place.46 SOP are not legislative acts, and in case of discrepancy between SOPs and current legislation, the latter applies. It is however difficult to apply uniform and detailed procedures for all disembarkation areas.47 It is planned that specific procedures on functioning of mobile hotspots will be adopted.

EU presence in the hotspots

EU presence in the hotspots is coordinated by the EU Regional Task Force (EURIFT). Set up in Catania in June 2015, it is composed of Italian Authorities (Guardia di Finanza, Coast Guards, Italian Police), a representative of the European Commission, EA50, Europol, Eurojust and Frontex.49 It is a platform where European agencies and national authorities can exchange information and works as a bridge between search and rescue activities, disembarkation and reception in hotspot or non-hotspot areas. Maritime incident reports by Frontex are used by EU agencies in the hotspots to allocate staff prior to disembarkation.45 EURIFT staff coordinate the guest officers of Italy, roughly 500 people per month. Since it is implementing Joint Operation Triton, Frontex is a situational picture provider to all Agencies present in the EURIFT.

Frontex is present in all disembarkation places in Italy. At the time of the visits in the hotspots Frontex had two debriefing and two screening teams (each composed of two guest officers by Member States, one Italian team leader and one cultural mediator), ten fingerprinting officers and one document expert.50

3.2 Hotspots function and procedures

From disembarkation to registration

Frontex participates in search and rescue activities in the programme Triton, under the mandate of the MoI, in cooperation with Guardia di Finanza and the Italian Coast Guard. In 2015 out of the 160,000 people arriving in Italy by sea, 40% were rescued with the contribution of Frontex deployed vessels.51 Many actors can be involved in rescue activities (Frontex, Mare Sicuro, LUHNAVFOR MED, NGO, Armed Forces) according to the proximity to the boat in distress, but the action is coordinated by the Italian authorities.

Refugees are separated in groups and given a colour bracelet with an identification number. Children and pregnant women are prioritized during disembarkation. Frontex sends a report listing nationalities, gender, number of minors, vulnerabilities and medical needs present in the vessel to the International Coordination Centre (ICC) and the Maritime Rescue Coordination Centre in Rome under the Italian Coast Guard (MRCC). The list helps local authorities prepare disembarkation and facilitate identification, registration in the hotspots, preparation of cultural mediators and reception.

52 Interview with Frontex Coordinating Officer, 14 May 2016
55 Interview with Frontex Coordinating Officer, 14 May 2016
56 Interview with Deputy Prefect of the MoI, 25 July 2016
57 Interview with Head of Dublin Unit, 31 May 2016
58 Interview with Frontex Coordinating Officer, 25 May 2016
59 Interview with Head of Dublin Unit, 31 May 2016
60 Interview with Frontex Coordinating Officer, 25 May 2016
When disembarkation takes place at night, especially in Lampedusa, following the medical screening at the port, people are transferred to the centre for preliminary information, pre-identification, fingerprinting and registration. In these cases the information provided before identification may be insufficient.

In Trapani and Lampedusa the information is provided by UNHCR and IOM under the project “Access” (UNHCR) and “Assistance” (IOM), EASO and Save the Children. IOM provides support to the identification of vulnerable cases, especially victims of trafficking. EASO leaflets are also distributed in six languages (English, Arabic, Italian, German, Arabic, Sorani), describing the procedures following rescue and disembarkation, the consequences of refusing fingerprinting, the possibility to seek asylum, the safeguards for vulnerable people, the consequences of irregular entry and stay in Italy and in Europe, and return. There is also a separate leaflet on relocation.

The national provision transposing Article 8 of the EU Procedures Directive 32/2013 ensures a right to information only to those who express the intention to seek asylum, stating that “when a person claims asylum, police authorities must inform the applicant about the asylum procedure and his or her rights and obligations, and of time-limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet”. However, according to Article 10 of the Schengen Handbook, also referred to in the SOPs, the intention to apply for international protection does not need to be expressed in any particular way and the word ‘asylum’ does not have to be explicitly pronounced. The police officer should not only inform the person who has the intention to apply according to his/her degree of understanding but also ensure that the person has understood the information provided. There is a double positive obligation on the police authorities, on the one hand to understand whether the person wants to apply for international protection regardless of their expressed intention, and on the other hand to make sure that the person is aware of the content of the information provided.

In practice it is not only the police but the international organisations present that eventually provide this information, as for example in Lampedusa. But organisations can provide information as long as they are granted access to migrants before identification. In Crotone, for example, UNHCR can only intervene after identification.

In terms of cultural mediators, national authorities deploy cultural mediators/interpreters but only few languages are usually available. Cultural mediators for sub-Saharan African countries are less available, as for example for Somalis, and this is sometimes addressed through double translation.

Pre-identification

The practice of pre-identification, which is filtering newly arrived persons between those wanting to apply for international protection and those that can be returned, is conducted in ways that are quite arbitrary and can prevent people from accessing asylum. What is more, no monitoring of practices takes place during pre-identification that could spot shortcomings and irregularities.

For the hotspots, pre-identification is conducted by the police in the presence of Frontex and a cultural mediator. In non-hotspot areas pre-identification takes place at the port; procedures in this case are less clear.

Third country nationals are photographed and given the so-called “foglio-notizie” to fill in with name, surname and nationality and for returning the country of origin. It is a multiple choice question with mutually exclusive options such as “In Italy for work”, “to reach family”, “to escape poverty”, “for asylum” and “other”. Once filled in, the “foglio-notizie” is signed by the police officer, the interpreters and the person concerned. It has been noted by some NGOs that are more widely reported by other organisations that migrants are insufficiently informed about the purpose of the “foglio-notizie”, and do not necessarily know that this is the moment that the intention to seek asylum is declared. They also do not receive a copy of the filled form. Sometimes they receive the form during the pre-identification phase and give it back during the identification phase.

The following organisations participate in the national roundtable: Acti, Arco, Arci, Caritas Italiana, Casa dei diritti sociali, Centro Astalli, Comitato Italiano per i Rifugiati, Comunità di S. Egidio, Federazione delle Chiese Evangeliche in Italia, Medici del Mondo, Medici SENza FrONte, Medici del MONdo, Centri di studio e documentazione, Mozione 2013/0113/IT, Commissione aulina per la tutela dei diritti umani, RAPPORTO SULL’IDENTIFICAZIONE E DISTRIBUZIONE INIZIALE DELLA PERSONA, available at: www.asylumlawdatabase.eu/en/content/european-court- protección-de-los-derechos-y-libertades-de-refugiados-y-niños.html

70 See Oxfam Rights Denied report, p. 12. According to the Frontex Coordinating Officer in Lampedusa however the “foglio-notizie” produced by the Questura can be seen as having a legal value, even if it is mandatory. This change has been altered on a later stage of the discussions. Interview with Frontex Coordinating Officer in Lampedusa, 28 May 2016.

71 The following organisations participate in the national roundtable: Acti, Arco, Arci, Caritas Italiana, Casa dei diritti sociali, Centro Astalli, Comitato Italiano per i Rifugiati, Comunità di S. Egidio, Federazione delle Chiese Evangeliche in Italia, Medici del Mondo, Medici SENza FrONte, Medici del MONdo, Centri di studio e documentazione, Mozione 2013/0113/IT, Commissione aulina per la tutela dei diritti umani, RAPPORTO SULL’IDENTIFICAZIONE E DISTRIBUZIONE INIZIALE DELLA PERSONA, available at: www.asylumlawdatabase.eu/en/content/european-court- protección-de-los-derechos-y-libertades-de-refugiados-y-niños.html

72 Interview with Save the Children legal expert in Lampedusa 25 May 2016

73 Some asylum seekers from Somalia (among whom a person who declared at the time of disembarkation to be an unaccompanied minor) assisted by CIR in Rome reported that in Lampedusa there was no cultural mediators for them and that they understood only very little through otherSomali who speaks a bit of English. One of them reported how to apply for international protection only after having slept for many days on the street. He reported he did not receive information on asylum either in Lampedusa or in the reception centre for minors in Sicily where he was accommodated for a month. Two other Somalis assisted CIR, who had been identified and registered in Lampedusa, were notified with an expulsion decision and reported they had no information on asylum within the hot spot. They received the expulsion order in Arabic written in Italian and Arabic and they could not understand the meaning of the document. All three cases reported had stayed in Lampedusa for more than one month. The person who said to be an unaccompanied minor stayed in Lampedusa in the reception centre for minors in Sicily where he was accommodated for a month. Two other Somalis assisted CIR, who had been identified and registered in Lampedusa, were notified with an expulsion decision and reported they had no information on asylum within the hot spot. They received the expulsion order in Arabic written in Italian and Arabic and they could not understand the meaning of the document. All three cases reported had stayed in Lampedusa for more than one month. The person who said to be an unaccompanied minor stayed in Lampedusa in the reception centre for minors in Sicily where he was accommodated for a month. Two other Somalis assisted CIR, who had been identified and registered in Lampedusa, were notified with an expulsion decision and reported they had no information on asylum within the hot spot. They received the expulsion order in Arabic written in Italian and Arabic and they could not understand the meaning of the document. All three cases reported had stayed in Lampedusa for more than one month. The person who said to be an unaccompanied minor stayed in Lampedusa in the reception centre for minors in Sicily where he was accommodated for a month. Two other Somalis assisted CIR, who had been identified and registered in Lampedusa, were notified with an expulsion decision and reported they had no information on asylum within the hot spot. They received the expulsion order in Arabic written in Italian and Arabic and they could not understand the meaning of the document. All three cases reported had stayed in Lampedusa for more than one month. The person who said to be an unaccompanied minor stayed in Lampedusa in the reception centre for minors in Sicily where he was accommodated for a month. Two other Somalis assisted CIR, who had been identified and registered in Lampedusa, were notified with an expulsion decision and reported they had no information on asylum within the hot spot. They received the expulsion order in Arabic written in Italian and Arabic and they could not understand the meaning of the document. All three cases reported had stayed in Lampedusa for more than one month. The person who said to be an unaccompanied minor stayed in Lampedusa in the reception centre for minors

74 Interview with Save the Children legal officer in Lampedusa 25 May 2016

75 Article 10 bis of Decree 25/2008 as added by the Procedure Decree 142/2015

76 Directive 32/2013 ensures a right to information only to those who express the intention to seek asylum, stating that “when a person claims asylum, police authorities must inform the applicant about the asylum procedure and his or her rights and obligations, and of time-limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet”. However, according to Article 10 of the Schengen Handbook, also referred to in the SOPs, the intention to apply for international protection does not need to be expressed in any particular way and the word ‘asylum’ does not have to be explicitly pronounced. The police officer should not only inform the person who has the intention to apply according to his/her degree of understanding but also ensure that the person has understood the information provided. There is a double positive obligation on the police authorities, on the one hand to understand whether the person wants to apply for international protection regardless of their expressed intention, and on the other hand to make sure that the person is aware of the content of the information provided.

In practice it is not only the police but the international organisations present that eventually provide this information, as for example in Lampedusa. But organisations can provide information as long as they are granted access to migrants before identification. In Crotone, for example, UNHCR can only intervene after identification.

In terms of cultural mediators, national authorities deploy cultural mediators/interpreters but only few languages are usually available. Cultural mediators for sub-Saharan African countries are less available, as for example for Somalis, and this is sometimes addressed through double translation.

In theory, the “foglio-notizie” even if issued by the Questura, has no legal value in determining the status, as also clarified by the MoI. However, as several organisations have pointed out, the use of the “foglio-notizie” form as a filter oversimplifies and distorts access to the procedure. The ‘national asylum roundtable’, an NGO advocacy group, has advocated for the full application of Articles 6 and 8 of the Asylum Procedures Directive to allow for effective and immediate access to information. The pre-identification practice and lack of access to information has also been strongly criticised by the Human Rights Commission of the Italian Senate, in its report on CIE centres in March 2016.

It seems that return decisions have been largely based on the information provided in the pre-identification phase. In the first months of implementation of the hotspots, the Questura of Agrigento issued several rejection orders which according to critics was likely based on wrong declarations in the pre-identification phase and selection based on nationality. In particular, according to MoI data, from 1 October to 31 of December 2015 out of 3,147 people accommodated in hotspots, more than one third (1,280) received a rejection order and 397 of them were sent to CIE. This alarming practice of blanket returns has raised criticism, and it seems that many rejection orders were then suspended by the Tribunal of Palermo; for the next five months this fell to 17 receiving an expulsion order and 864 rejected (out of which 140 effectively returned) among 5,539 people who passed through the hotspots.
The hotspot's managing body also provides information, for example, in Villa Sikania and in Trapani. Newcomers receive a brochure in four languages (Italian, English, French and Arabic) on the asylum procedure and types of status granted. A legal officer is present in the centre during the week, conducting collective information sessions and, upon request, individual interviews. 84

Debriefing interviews are carried out by the Frontex debriefing team at the port. They are conducted on a voluntary basis and anonymously, and serve to collect information on the journey, the reasons for leaving the country of origin or transit and smuggling networks. 85 A new IOM project entitled “Displacement Tracking Matrix” will collect data on migratory flows.

Following pre-identification, people are provided with food, water and aid kits. Another medical examination takes place in the hotspots, that serves to identify vulnerabilities.

Registration and identification
Registration, identification and fingerprinting normally takes place after the information sessions. The rate of fingerprinting in Italy has been a major concern for the EU over the last couple of years, culminating in the launch of infringement proceedings against Italy for failure to implement the Eurodac Regulation in December 2015. 86 With the hotspots approach the fingerprinting rate has gradually increased. The Commission has openly encouraged Italy to use force and prolonged detention in order to obtain fingerprints. 87

84 Interview with Director of the managing body 15 May 2016
85 According to the SOPs “in addition to interviews, debriefing activities include other activities such as the collection of information and evidence found inside the boats (such as GPS, navigation systems and satellite phones) as well as any other relevant article found in the possession of indivi-
duals, best(des)personal belongings, so that they can be examined for the purpose of risk assessment, archive contact data of the Italian intervention bodies present.” In this regard, Frontex Guest Officers may inform the Italian authorities on the suspected smuggler but only the Italian competent authority can carry out the investigations. Interview Frontex Coordinating Officer 25 May 2016
87 “Further efforts, also at legislative level, should be accelerated by the Italian authorities in order to provide an amicable legal framework to perform hotspots activities and to include provision on longer term retention for those migrants who resist fingerprinting.” ANEX to the Communication from the Commission to the European Parliament and the Council on the State of Play in the Implementation of the Priority Actions under the European Agenda on Migration Italy - State of Play Report, Brussels, 10.2.2016/COM(2016) 85 final ANEX J 3.2. available at: europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_23_en.pdf

In Trapani, on the other hand, few expulsion and rejection notices were issued up to 31 May 2016. 78 This practice led to a circular issued by the MoI to the prefectures, highlighting the right to be informed in order to access asylum procedures. 79

TABLE 2: Nationals declared at disembarkation in hotspots 1 January – 31 October 2016

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nigeria</td>
<td>20%</td>
</tr>
<tr>
<td>Eritrea</td>
<td>12%</td>
</tr>
<tr>
<td>Guinea</td>
<td>7%</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>6%</td>
</tr>
<tr>
<td>Gambia</td>
<td>6%</td>
</tr>
<tr>
<td>Sudan</td>
<td>6%</td>
</tr>
<tr>
<td>Senegal</td>
<td>5%</td>
</tr>
<tr>
<td>Mali</td>
<td>5%</td>
</tr>
<tr>
<td>Somalia</td>
<td>4%</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>5%</td>
</tr>
<tr>
<td>Other</td>
<td>24%</td>
</tr>
</tbody>
</table>

Source: Department Civil Liberties and Immigration, MoI

According to the SOPs, during the pre-identification phase, Frontex Guest Officers are present for nationality assessment along with cultural mediators. However, the responsibility lies with national authorities. The SOPs specify that in case of doubt a further interview will be held at a later stage, and what has been declared can be changed upon request by the person concerned without jeopardizing the asylum request or relocation. The final decision on nationality assessment rests with the authorities. 77

It was mentioned in the interviews that information is provided through group sessions between pre-identification and identification by UNHCR and IOM (respectively on international protection, irregular stay and return under the “Access” and “Assistance” programs). 73 This effectively means that no information and legal assistance is provided at the stage of pre-identification where people are asked to state the intention to seek asylum. Oxfam’s report also confirms that during this phase the migrants are left on their own. 70 IOM also informs about the possibility to appeal the expulsion or referred rejection orders, by contacting a lawyer once the person is transferred to the mainland. However, information provided might be shaped according to the nationality of the target group and also on the basis of their personal situation. For instance, people belonging to nationalities for which a readmission or bilateral agreement is in place are informed in a different way, considering the risk to be immediately returned. Legal officers may try to detect grounds for international protection through more individualized information session. However, given that the authorities’ intention is to return them to their country of origin or transit, accessing information will prove more difficult for them. The provision of information is also particularly difficult in the case of persons that arrive to the shore on their own, outside search and rescue activities. For them, the usual chain of organisations and actors present at the harbour to assist with disembarkation and information is not there. 88

The content of the information provided however may vary depending on the group’s nationality; IOM also provides information to potential victims of trafficking (mainly Nigerian women). Finally, UNHCR provides information on relocation under the “Relocation” project. 89 UNHCR monitors the identification process and during the group sessions provides information about the possibility to have an individual interview. 90

Group info sessions before identification are allowed in hotspots where there is good cooperation between local authorities and international actors, as for instance in Trapani. On the contrary, according to interviews, UNHCR staff in Taranto had no possibility to carry out such sessions. 83

83 Interview with UNCHR Senior Protection Associate in Rome 28 April 2016
88 Interview with Director of the managing body 10 May 2016
89 According to the SOPs “in addition to interviews, debriefing activities include other activities such as the collection of information and evidence found inside the boats (such as GPS, navigation systems and satellite phones) as well as any other relevant article found in the possession of indivi-
duals, best(des)personal belongings, so that they can be examined for the purpose of risk assessment, archive contact data of the Italian intervention bodies present.” In this regard, Frontex Guest Officers may inform the Italian authorities on the suspected smuggler but only the Italian competent authority can carry out the investigations. Interview Frontex Coordinating Officer 25 May 2016
90 Interview with the Prefect of Trapani, 10 May 2016

The capacity in Trapani is 170 photo-fingerprints per day. Interview with the Prefect of Trapani, 10 May 2016, Interview with Frontex Coordinating officer 25 May 2016

The capacity in Trapani is 2,5 photo-fingerprints per day. Interview with the Prefect of Trapani, 10 May 2016, Interview with Frontex Coordinating officer 25 May 2016

80 Interview with UNCHR legal officer in Trapani on 26 October 2016
81 This project started at the end of October 2015 and it will run until 31 March 2016. Interview with the Prefect of Trapani, 10 May 2016, Interview with Frontex Coordinating officer 25 May 2016
82 Interview with UNCHR legal officer in Trapani 10 May 2016
83 Interview with UNCHR Senior Protection Associate in Rome 28 April 2016

Debriefing interviews are carried out by the Frontex debriefing team at the port. They are conducted on a voluntary basis and anonymously, and serve to collect information on the journey, the reasons for leaving the country of origin or transit and smuggling networks. A new IOM project entitled “Displacement Tracking Matrix” will collect data on migratory flows.

Following pre-identification, people are provided with food, water and aid kits. Another medical examination takes place in the hotspots, that serves to identify vulnerabilities.

Registration and identification
Registration, identification and fingerprinting normally takes place after the information sessions. The rate of fingerprinting in Italy has been a major concern for the EU over the last couple of years, culminating in the launch of infringement proceedings against Italy for failure to implement the Eurodac Regulation in December 2015. 86 With the hotspots approach the fingerprinting rate has gradually increased. The Commission has openly encouraged Italy to use force and prolonged detention in order to obtain fingerprints. 87

In principle, if someone refuses to be fingerprinted, police and Frontex should and usually do seek the assistance of cultural mediators and inform about the obligation to be fingerprinted and the procedure that will be followed. 88 However, in a recent report, Amnesty International reveals that the use of force to obtain fingerprints is recurrent, including beatings, ill-treatment, deprivation of basic assistance such as food and water. According to the SOP, in case of persisting refusal, the proportionate use of force is allowed and no one can leave the hotspot premises without being fingerprinted. 89 The possibility to use coercive measures and force is based on Circular 404/2014/310/3 of 28 September 2014, which however is not legally binding.

87 ‘Further efforts, also at legislative level, should be accelerated by the Italian authorities in order to provide an amicable legal framework to perform hotspots activities and to include provision on longer term retention for those migrants who resist fingerprinting.” ANEX to the Communication from the Commission to the European Parliament and the Council on the State of Play in the Implementation of the Priority Actions under the European Agenda on Migration Italy - State of Play Report, Brussels, 10.2.2016/COM(2016) 85 final ANEX J 3.2. available at: europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_23_en.pdf
88 SOP, page 15
89 The capacity in Trapani is 2,50 photo-fingerprints per day. Interview with the Prefect of Trapani, 10 May 2016, Interview with Frontex Coordinating officer 25 May 2016
90 Interview with the Prefect of Trapani, 10 May 2016
91 Interview with Frontex Coordinating officer 25 May 2016
92 SOPs state that the Circular 404/2014/130/24 of 09.12.2014 and the relat ed “provisions” on photo-fingerprinting will apply until a new Italian legis-
lation will be adopted (B.7.2.c SOPs).
The General Union of Police Workers (UGLP) have expressed their concerns about being asked to use force without a legal basis.\(^\text{103}\) It was mentioned in interviews that sometimes persons who refuse to be fingerprinted are transferred to the Questura. This practice concerns, in particular, certain nationalities.\(^\text{104}\)

Indicatively, in Trapani, 8 persons refused to be fingerprinted among 4,459 persons transferred to the hotspot between January and May 2016. In Lampedusa, 184 Eritreans and some Ethiopians refused to be fingerprinted, as reported by the Extraordinary Commission for the protection of human rights of the Italian Senate.\(^\text{105}\) They entered a vicious circle of being kept on the island in order to complete the identification process, which could not be finalised without fingerprinting.\(^\text{95}\)

Following pre-identification, migrants are registered under ‘CAT 2’ for irregular entry. Those eligible for relocation are fingerprinted and registered, and following their transfer to the regional hub or any other centre, they are registered as asylum seekers by filling in the C3 modello form (CAT 3).\(^\text{96}\)

According to Mola data, 11,520 unaccompanied minors disembarked in Italy in the first six months of 2016, which is 15% of all disembarkations in that period.\(^\text{106}\) Identification and registration of minors over 14 follows the same procedure as for adults but minors under 14 are not fingerprinted. Age assessments are conducted in case of doubt, using declarations of the person concerned, documentation of X-ray examination. Sometimes minors bring birth certificates with them, but as these are usually conducted in case of doubt and performed in the hospital. A recent agreement between the Mol and national health authorities will add two specialists – a child neuro-psychiatrist and a paediatrician – to the hotspot premises, to conduct X-ray examinations there, aligning age assessment with the procedure recommended by the SOP.\(^\text{107}\)

The bill was put before Parliament in 2013 but blocked at the State-Regions Budget, and it is still under scrutiny.\(^\text{108}\) The proposal A.C. 1658 was discussed by the Parliament Commission on the 3rd of August 2016.\(^\text{109}\)

The procedure recommended by the SOP is a holistic approach which envisages age assessment through phases, applying non-invasive methods in the first instance, and medical age methods only as a last resort. Age assessment by medical examinations should be arranged in case of reasonable doubt about the actual age being less than 18 or the possible age being over 18. Interviews with director of the managing body Castelnuovo di Porto, 21 July 2016.

According to the SOP, referral mechanisms should be in place for persons expressing the intention to apply for asylum.\(^\text{110}\) Clear referral mechanisms were however not observed with respect to certain nationalities at the time of the field visits, on the assumption that they have no protection needs. It seems that nationals of Nigeria, Gambia, Senegal, Morocco, Algeria and Tunisia were directed to detention centres on the assumption that they have no protection needs.\(^\text{111}\) This filtering is only done on the basis of a summary assessment, either through a succinct questionnaire or oral questions upon arrival, without the necessary presence of cultural mediators. In cases where they were ultimately released, they faced undue obstacles to securing an identification document, as was the case of a group of Nigerians nationals released from the CIE of Bari and Restinco.\(^\text{112}\)

While the Italian Roadmap foresees that newcomers are placed in ‘closed’ centres, Italian legislation does not provide a legal basis for detention in the hotspots. Outside the scope of the law on administrative detention in CIE (art.13 Immigration Law 288/98) no restriction of liberty is allowed for identification purposes. According to Article 3 of the Italian Constitution, restriction of liberty can take place only after a reasoned judicial authorization and in a procedure provided by law. In cases of necessity and urgency – exhaustively provided by law – public authorities can temporarily restrict personal freedom, but the decision has to be communicated to the judicial authority within 48 hours in order to be validated, otherwise it has no legal value and has to be revoked and be considered null and void. Nevertheless, detention in the hotspots is not considered by law as urgent or necessary.

In addition, detention in the hotspots with the purpose of identification and nationality screening usually lasts more than 48 hours, in violation of the aforementioned Constitutional provision. The use of detention for the purpose of enforcing fingerprinting in the hotspots is arbitrary and unlawful; it happens without a detention order, judicial review or possibility to challenge its lawfulness.

The average stay reported in Trapani is generally 2.5 days but according to interviews in May the average was 5-6 days.\(^\text{113}\) Usually, transfers of relocation candidates out of Trapani faced more delays due to the limited number of places in regional hubs. Regional hubs receive both relocation and non-relocation candidates. For example, Castelsepide di Porto receives relocation candidates from other regional hubs and those directly transferred from a hotspot or non-hotspot area.\(^\text{114}\) They may stay for long periods of time – more than one year in case of a positive decision (and then transferred to a SPRAR centre), and more than two years in case of a negative decision and appeal. The social-psychological service of the centre stated that much of their work is dedicated to appellants, due to the high level of stress deriving from the long waiting time.\(^\text{115}\) Villa Sikania also hosts asylum seekers not eligible for relocation coming from Lampedusa and other ports of Sicily for a few days until they are transferred to the reception centre where they will complete their asylum application. With the exception of those that have undergone the age assessment, unaccompanied minors are usually not allowed in regional hubs.

In terms of identification of vulnerabilities and special needs, the Italian authorities exchange information of screened and identified persons at different stages of the procedure. This is facilitated by medical staff together with EASO, UNHCR, IOM and Save the Children. It was noted however that specific referral mechanisms for identification of vulnerabilities, needs and services are not applied. According to interviews, the EASO tool for identification of vulnerabilities is in place, but not used in a systematic way in each hotspot.\(^\text{116}\) Visible vulnerabilities such as pregnant women or single-headed households, unaccompanied minors or people with disabilities are usually identified already at the port.

93 In the letter of 16 February 2016 from the ISEL and National Observatory of Forensic Police to the head of the police, the police said that the current practice may expose them to the risk of being penalized for perpetrating gender violence according to Article 124, c.p. 205-S T.U.R. c.p. in case of personal injury deriving by the coercion of the police officer. The Union underlined that, according to the law, tying in the presence of a responsible person who was later fingerprinted, by using the physical force or even traumatically coercing her/his will, is a serious offence. On 16 March 2016 the Ministry of Interior’s Department of Public Security answered through a Circular informing that an amendment to the current legislation on international protection is planned adding specific provisions on identification and forced fingerprinting is in the field mission in Castelnuovo di Porto reported that in April 2016, where was in Trapani, some Eritreans were subject to pressure by the police to be fingerprinted.

94 Ibid, page 21. An interview in Castelnuovo di Porto during the field mission in Castelnuovo di Porto reported that in April 2016, where was in Trapani, some Eritreans were subject to pressure by the police to be fingerprinted.

95 Ibid, page 22

96 According to Article 13 of the Italian Constitution, restriction of liberty can take place only after a reasoned judicial authorization and in a procedure provided by law. In cases of necessity and urgency – exhaustively provided by law – public authorities can temporarily restrict personal freedom, but the decision has to be communicated to the judicial authority within 48 hours in order to be validated, otherwise it has no legal value and has to be revoked and be considered null and void. Nevertheless, detention in the hotspots is not considered by law as urgent or necessary.

97 In addition, detention in the hotspots with the purpose of identification and nationality screening usually lasts more than 48 hours, in violation of the aforementioned Constitutional provision. The use of detention for the purpose of enforcing fingerprinting in the hotspots is arbitrary and unlawful; it happens without a detention order, judicial review or possibility to challenge its lawfulness.

98 Ibid, page 41

99 Ibid, page 41

100 Interview with Director of the managing body Castelnuovo di Porto, 21 July 2016.


102 Interview with UNHCR officer 28 April 2016


104 Ibid, page 22


106 Ibid, page 41

107 AIDA, Interview with Director of the managing body Castelnuovo di Porto, 21 July 2016.

108 There are ideas of a cards system with different colours marking the first arrival and the nationalities at the time of the field visits, on the assumption that they have no protection needs. It seems that nationals of Nigeria, Gambia, Senegal, Morocco, Algeria and Tunisia were directed to detention centres on the assumption that they have no protection needs. This filtering is only done on the basis of a summary assessment, either through a succinct questionnaire or oral questions upon arrival, without the necessary presence of cultural mediators. In cases where they were ultimately released, they faced undue obstacles to securing an identification document, as was the case of a group of Nigerians nationals released from the CIE of Bari and Restinco.

109 Ibid, page 41

110 AIDA, Interview with psychologist of the managing body Castelnuovo di Porto, 21 July 2016.

111 Interview with Director of the managing body Castelnuovo di Porto, 21 July 2016.

112 Interview with psychologist of the managing body Castelnuovo di Porto, 21 July 2016.

113 Interview with Director of the managing body Castelnuovo di Porto, 21 July 2016.
in Italy and other EU countries is steadily increasing.119 According to IOM data, 2015 4,371 Nigerian women arrived by sea in Italy, in hotspots the medical screening is usually very general, while for the first and second line centres; they also vary from one CAS to another. Internal monitoring of the reception conditions in Italy is conducted for the Mol by UNHCR and IOM, UNHCR monitoring focuses on CAS emergency reception centres, and IOM monitors other first line reception centres.

According to the Commission, the existing reception capacity in Italy still needs to be improved especially regarding the difference in quality between first and second line reception, and the availability and quality of specialised reception of unaccompanied minors. Monitoring systems also need to be enhanced across the country.119 During the last six months, the Commission has suggested that Italy should set up more hotspots to increase the capacity of 5,600 persons, along with mobile hotspots for disembarkation in non-hotspot areas. In addition, adequate reception facilities should also be set up in ports in non-hotspot areas.119

Reception conditions in the hotspots of Lampedusa, Taranto and Pozzallo face systemic problems, as also observed by Amnesty’s report.119 The reception conditions in the Lampedusa hotspot have been criticised since the centre’s opening.120 The centre is divided in compounds with a dedicated part for men and women, the immigration office from the Questura of Agrigento, administrative offices of the managing body, the offices for the international organizations operating within the centre and the health unit. Medical staff were present. Following the inspection carried out by the Senate Extraordinary Commission for the Promotion of Human Rights it was noted that toilets were not heated or cleaned properly, and the space in the dormitories was insufficient. According to the organizations present on the island that we interviewed, toilets did not have doors and in some compounds the lights were out. There were no communal rooms. Prolonged stay also makes accommodation more difficult. While the Lampedusa hotspot is a closed centre, people exit from a hole in the fence and this seems to be tolerated. In May the men’s compound was set on fire and 180 places were lost.

Conditions were better in Trapani and in line with standards provided by law at the time of the visit. Spaces were sufficient and clean, daily meals were served in a big canteen; children had a playground. The centre has a playroom for children, offices and a separate part for infectious diseases.125 Yet, the compounds, toilets, doors and windows were often had to stay in the compound for adults. In Trapani unaccompanied minors were separated from adults if numbers allowed. During the last six months, the Commission has suggested that Italy should set up more hotspots to increase the capacity of 5,600 persons, along with mobile hotspots for disembarkation in non-hotspot areas.120

The centre had two medical rooms and medical staff present.120 There were six compounds, with a capacity of 36-48 places each, dormitories had a common room and bathrooms, dining room, a playground for children, offices and a separate part for infectious diseases.125 Yet, the compounds, toilets, doors and windows were in need of substantial maintenance125. The conditions in Pozzallo, however, have been much worse, as documented by different organisations. In December 2015, MSF pulled out of Pozzallo criticizing the lack of political will and policy response from the side of the Italian authorities after months of advocacy to improve reception conditions.120 Much of this echoes previous criticism by MSF on the reception system and living conditions in Pozzallo during 2015, primarily on the availability of services for the most vulnerable, hygiene and overall standards and maintenance. Despite MSF’s withdrawal, conditions were similar a few months later.120 Men, women and children were still not accommodated in separated areas.119

It was mentioned in the interviews that in case of overcrowding, migrants are transferred to other parts of the country. The possibility of transfer usually creates tensions among newcomers, who are still recovering from the journey and are reluctant to travel further.

With regards to unaccompanied minors in particular, they are placed in hotspots, even though IOM should not be accommodated in CIE or in reception centres for adults. Instead, unaccompanied minors should be accommodated in first reception facilities as per legislative decree of 27 August 1997 and then enter second line reception (SPPR), regardless of an international protection request.120

The overall capacity of first reception facilities for IOM is 641 places, while the SPRAR network for unaccompanied minors has 1,852 places.121 The majority of IOM is accommodated in communities under the responsibility of municipalities. In Lampedusa unaccompanied minors were accommodated in a separated compound, but this was not equipped with showers and toilets were often broken. As a result, unaccompanied minors often had to stay in the compound for adults. In Trapani unaccompanied minors were separated from adults if numbers allowed. Due to the sharp increase in the number of unaccompanied minors arriving over the last three years it is increasingly difficult to find specialised shelter. In practice, unaccompanied minors are obliged to remain in the hotspots, and ironically, they wait longer than adults before being transferred to a reception centre. In Lampedusa, while adults stayed for a few days, minors might stay for a couple of months. It has been reported that more than 135 unaccompanied minors were circulating on the island at any time without guardianship.120 Before the implementation of the hotspot approach unaccompanied minors were transferred immediately from ports to municipality centres. It was mentioned that the Trapani municipality now acts with less readiness in finding specialised accommodation, given the possibility to temporarily accommodate them in the hotspot. The prefecture also has trouble finding places.120 Article 19 of Law 62/2015 was amended on 7 August 2016 by Law 168 introducing a new paragraph which, in the case of increased arrivals of unaccompanied minors and lack of available places, the prefectures can set up temporary structures for up to 50 IOM over 14. Nevertheless, if that takes the form of a, or other, temporary structure it would be just another emergency solution without any integration prospects.

Contrary to hotspot facilities, regional hubs are open centres. Villa Sikania was guarded by the police, asylum seekers and relocation candidates were provided with a badge to enter and exit the premises.122 Families and women are accommodated in rooms, single men in a separate area. Medical assistance is provided by a doctor and a nurse. According to the managing body of the centre, the funds available are not sufficient to cover the costs of prolonged stay.

118 Officers specialized in the identification of victims of trafficking are few, and the time in hotspots too short to detect such vulnerabilities and develop a relationship of trust. The Mol can also refer a potential victim of trafficking to the IOM, when the person is in front of the Territorial Commission (CTRPI) during the personal hearing. The phenomenon of Nigerian women that undergo sexual exploitation in Italy and other EU countries is steadily increasing.119

With regards to trafficking victims, IOM informs the anti- trafficking national network and the prefecture. Once a place in a specialized shelter is found, IOM will assist the person with the next steps. However, the number of available places in such centres is limited.119 As a result, victims of trafficking stay longer than others in the hotspots. Sometimes they are moved to a CAS until a place is available.119 Officers specialized in the identification of victims of trafficking are few, and the time in hotspots too short to detect such vulnerabilities and develop a relationship of trust. The Mol can also refer a potential victim of trafficking to the IOM, when the person is in front of the Territorial Commission (CTRPI) during the personal hearing. The phenomenon of Nigerian women that undergo sexual exploitation in Italy and other EU countries is steadily increasing.119

114 Interview with EASO Process Support Officer in Rome 26 May 2016.
115 Interview with medical director of the managing body Castelnuovo di Porto, 21 July 2016.
116 Interview with medical director of the managing body Castelnuovo di Porto, 21 July 2016.
117 As emerge from the art. 13 of the Law 15 August 2013, n. 238 “Measures against trafficking of persons” and the art. 18 of the same law: “Bomba unica delle disposizioni concernente la disciplina dell’immigrazione e stare di diritto” and by the art. 17 of d.lgs. 286/98 “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e stare di diritto”.
118 Interview with IOM Legal Expert in Rome 24 June 2016.
119 IOM, “Il sistema hotspot e la negazione dello stato di diritto in Europa”, minority report on the hotspot approach in the frame of the reception system and identification, p. 51, 4 November 2016;
120 See E. Palazzotto, “Il sistema hotspot e la negazione dello stato di diritto in Europa”, minority report on the hotspot approach in the frame of the reception system and identification, p. 51, 4 November 2016;
122 Commissione Straordinaria Per La Tutela e La Promozione Dei Diritti Umani, Rapporto di Inquadramento e Valutazione dello Sviluppo del Progetto Pilot di Identificazione e Equitazione In Italia, February 2016;
123 Interview with Prefect of Trapani 10 May 2016.
124 Interview with Director of the managing body in Agrigento 24 May 2016.
3.5 Relocation

The implementation of relocation in Italy throughout this first year has faced a number of challenges and its impact has, overall, been limited. By October 2016, half-way through the implementation of the Council Decisions, 1,196 have been relocated from Italy. Challenges include the limited number of offers made by Member States and consequently transfers, which increased only gradually and more significantly after the summer 2016; the slow pace of registrations and processing of the applications from the Italian side, including bottlenecks with security checks; and the lack of relocation for unaccompanied minors.

According to the Commission, some progress has been made over the summer. A relocation protocol and workflow aims to facilitate procedures; EuroC will be involved in supporting exchange of information on security checks; and some steps have been taken to support relocation of vulnerable persons including unaccompanied minors. Italy has announced a pilot relocation exercise for unaccompanied minors which, however, still needs to take shape.135

Yet, the main challenges are still there, namely the limited scope of relocation in relation to nationalities, the slow pace in processing due to limited Italian capacities and insufficient EASO support, and as a result of these two, the difficulty in gaining trust and keeping candidates in the pipeline. Secondary movements within the country have emerged as a major consequence of slow relocation processes; lately, the Italian authorities have been moving people from the North of Italy, where they were found, back to the hotspots in the South.

According to the relocation Decision, the nationalities eligible are those for which the proportion of positive decisions granting international protection has been 75% or more, based on average information on security checks; and some steps have been taken to support relocation of vulnerable persons including unaccompanied minors which, however, still needs to take shape.135

The selection criteria for relocation based on nationality have been strongly criticized by CIR and other NGOs. The majority of migrants arriving in Italy come from sub-Saharan Africa; only Eritreans reach the aforementioned threshold. The presence of Syrians is in any case very low.

Registration of the relocation application

Relocation procedures can start in hotspot and non-hotspot areas. EASO can be asked by the MoI to deploy its experts in different locations according to the Hotspot Relocation Operating Plan. EASO has Asylum Support Teams in Bari, Crotone, Villa Sikania and Mineo and in the Questura of Rome and teams are sometimes deployed to other areas depending on needs.137

Those who accept to be relocated are registered in the VESTANET system as CAT and transferred within 24–48 hours to the regional hubs. Asylum seekers’ requests are verbalized through a specific model “C3” in English and used for the matchmaking process conducted at the Dublin Unit in Rome. The immigration officer or EASO enters the applicant’s data in the C3 form, attaching the agreement to participate to relocation signed by the applicant, the security check, the medical check and any other forms (vulnerability and exclusion form).138 Identified vulnerabilities are reported in a dedicated form and attached to the C3 form together with the medical examination paper. The form can also include specific needs and requirements to ensure continuity of exercise for the relocation Member State.139 The form is printed and signed by the applicant, the cultural mediator, the immigration police and the EASO expert. A scanned electronic version of the file is sent to the Dublin Unit.

Vulnerable persons are prioritized in the registration, and flagged to the Dublin Unit. However, prioritising them for registration does not necessarily mean being prioritised for relocation. Member States can reject cases on the basis that they lack the capacity or facilities to receive vulnerable persons. There have also been cases where Member States were asked to extend their quotas in order to include vulnerable persons and they did.140

In terms of EASO’s involvement, EASO experts assist with the registration of applications for relocation and support the Dublin Unit in processing, but the responsibility lies with the Italian authorities. EASO also supports with nationality assessment in this context, together with Frontex, but does not have the competence or the tools to carry out the assessment.

Processing the relocation application

For the matching process, EASO experts prepare the relocation request and record candidates’ preferences, family links and vulnerabilities or special needs. The liaison officer checks the relocation request against the pledge of the Member State. Matchmaking takes place before the official relocation request is sent and no relocation request can be sent to a Member State if the application does not fit with the pledge of the Member State concerned. The relocation request is officially sent by the Dublin Unit. EASO supports the Dublin Unit in processing relocation and Dublin procedures.141

The great majority of EU Member States’ liaison officers carry out their tasks remotely from capitals. At the time of the interview with the head of the Dublin Unit in May 2016 only five liaison officers were permanently deployed in Italy by Member States. Member States can reject relocation requests on exclusion grounds or for security reasons. In both cases, in line with the relocation Decisions, the Member State should provide reasons to justify the rejection. There is no appeals procedure in case of unreasoned rejection and the only available means is infringement proceedings. Member States have rejected relocation requests with general reference to threat to national security and public order, or the exclusion clause provided by the EU Directive 95/2011. According to interviews, some rejections are reported to have been completely unfounded.142

National authorities, with the support of Frontex, conduct security checks and exchange information with the support of EuroPol. The European Commission has suggested that Italy allows relocation Member States to do additional direct interviews for security purposes. According to the Commission, EASO can also carry out additional exclusion interviews to detect exclusion grounds during the registration of applications.143 However, such an assessment should take place once the asylum application is examined on its own merits and by the competent authority for international protection in the Member State of relocation. This assessment used as a mechanism of admissibility is not in line with UNHCR guidelines on the application of the exclusion clauses.144

135 The percentage applies to a very few nationalities present in Italy.
136 Article 1F of the 1951 Convention relating to the Status of Refugees.
137 Interview with EASO Process Support Officer in Rome 26 May 2016.
138 Interview with EASO Process Support Officer in Rome 26 May 2016.
139 Interview with EASO Process Support Officer in Rome 26 May 2016.
140 Interview with EASO Process Support Officer in Rome 26 May 2016.
141 Under the mandate of the MoI EASO has two officers, one coordinator and one officer in the Dublin Unit and there is the intention to extend their presence up to 15 officials.
142 Interview with UNHCR officer in Rome 28 April 2016.
144 2003 - GUIDELINES ON INTERNATIONAL PROTECTION: Application of the Exclusion Clauses: Article 17 of the 1951 Convention relating to the Status of Refugees. UNHCR’s guidelines on the application of the exclusion clauses, the 1951 Convention relating to the Status of Refugees.
145 The information session lasts a few hours and is usually provided in groups. However, in some circumstances it could be necessary to provide information individually. Counselling is more intense when the country of relocation is seen as less attractive. In Castelnuovo di Porto a brief presentation is given in different languages, including videos on the destruction of hotspots. Interview with head of the Dublin Unit in Rome 31 May 2016.
146 Interview with EASO Process Support Officer in Rome 26 May 2016.
147 Interview with Save the Children Legal Expert in Lampedusa 25 May 2016.
148 Interview with Director of the management body Castelnuovo di Porto, 2 July 2016.
Once asylum seekers agree to relocate in the designated country, travel arrangements are made with the assistance of IOM (usually within a week from the notification of transfer). Further identification of vulnerabilities is conducted at this point to prepare the transfer and reception in the relocation country.

Candidates that decide to withdraw from relocation are allowed to seek asylum in Italy. Since the regional hubs are not fully dedicated to relocation, they may remain there or be transferred to other reception centres, often to CAs. There have been cases that withdrew and had the possibility to be considered again for relocation when the quotas were reopened at a later stage.150

How long applicants will stay in the regional hubs depends on the opening of quotas by the Member States and at which stage of the procedure they arrive to the centre. On average, they stay in the regional hub of Villa Sikania for at least three months, and may spend another four months in the pre-departure centre of Castelnuovo di Porto;151 or may be transferred from other regional hubs and reception centres (or CAs) or directly sent from the hotspot to Castelnuovo di Porto.

Long waiting times can however be frustrating. On 8 July, asylum seekers organized a demonstration in front of Castelnuovo di Porto against the long waiting times and differential treatment between those who arrived first but departed soon, while others who had arrived first were still waiting eight months later.152 The slow pace of relocation combined with high numbers of arrivals has led to the identification of vulnerabilities is conducted at this point to prepare the transfer and reception in the relocation country.

The slow pace of relocation combined with high numbers of arrivals has led to the identification of vulnerabilities is conducted at this point to prepare the transfer and reception in the relocation country.

3.6 Returns

According to Article 19 of the Consolidated Act on Immigration, third country nationals or stateless persons arriving in hotspots who have not applied for international protection and are not in a position that justifies their lawful stay on the Italian territory must be returned under the Police Commissioner’s rejection order, or when legal conditions no longer exist, if any, under the Prefect’s forced return administrative order.154 According to the SDPs, when the forced return or expulsion order is notified, it is necessary to ensure that migrants have understood the consequences of these measures and that they have understood the possibility to benefit from assisted voluntary return. It is also necessary to evaluate whether the conditions for granting a period of voluntary departure exist, or whether detention in a pre-removal facility (CIE) should be considered.

In practice, the hardened practice of pre-identification described earlier is the one that draws the distinction between those stating the intention to seek asylum and the rest, who according to the hotspot approach should be returned. Identifying and returning those not in need of protection before they continue their journey further has been one of the main objectives of the hotspots.

Moreover, practically speaking, this selection is often based merely on nationality, which may in practice result in collective expulsions without having assessed individual circumstances.155 Neither practices are legitimate or in line with international law, and face substantial criticism by different organisations.

A report by a lawyer’s office in Eastern Sicily shows that from 2014 up to July 2021—starting prior to the hotspots and during the hotspots implementation—overall rejections were standardised and issued on the basis of nationality without any individual examination of the case156. It was observed that in the first months of 2016, migrants who landed in Sicily were directly transferred from the hotspots to the CIE of Ponte Galeria (Rome) with no possibility to express their intention to seek asylum.

They lodged their asylum requests after information sessions carried out in the CIE of Ponte Galeria.157 Such a practice is quite dangerous considering that according to Law 142/2015, Article 6, in case an asylum request is lodged during the stay in a CIE, detention is prolonged up to 12 months.

It was reported in Lampedusa that some migrants were notified with a rejection order during the transfer from the island to the mainland. Due to lack of information, they were convinced to have applied for international protection instead of being considered as irregular migrants and rejected.158

For Lampedusa, during the last 3 months of 2015 (from 1 October to 31 December 2015), out of the 3,147 migrants who passed through the hotspot, 1,280 received a rejection order and 329 were transferred to CIE. In the next five months, from 1 January 2016 to 31 May 2016, the 5,559 migrants disembarked in Lampedusa, 17 were expelled and sent to CIE by the Prefecture of Agrigento and 614 received a rejection order by the Questura; 58 were sent to CIE and 140 returned.159 In Trapani, for a similar period (22 December 2015 to 31 May 2016), of the 5,730 people who passed through the hotspot, 26 were expelled by the prefecture of cut off which 8 sent to CIE; 138 were rejected by the Questura, out of which 51 sent to CIE. Among them were effectively returned.160

Migrants returned from Italy were for the most part Tunisian, Moroccan, Nigerian and Egyptian, countries with which Italy has signed bilateral readmission agreements. In the first five months of 2016 (1 January 2016–31 May 2016) 2,127 migrants were returned, 310 from Egypt, 381 from Morocco, 70 from Nigeria, 393 from Tunisia and 553 from Albania.161

It was mentioned in interviews, that in Lampedusa, nationals from Gabon, Tunisia, Morocco, Egypt and Nigeria do not receive rejection orders, they are immediately transferred to the Questura in the mainland that takes the decision to send them to CIE or to the Consular authorities in order to be returned to their country of origin. However, available places in CIE are limited. Regarding the possibility to meet Consular authorities it should be stressed that migrants who orally express the intention to apply for international protection have to be considered asylum seekers. The possibility to meet Consular authorities of the countries of origin is in violation of asylum seekers’ right to contact with consular representatives.

If for some reason they have not been able to express the intention to seek asylum but might nevertheless be in need of protection, bringing them in contact with Consular authorities poses real risks of refoulement.

In addition to existing readmission agreements, Italy has started concluding bilateral cooperation agreements with selected African countries that include technical cooperation on identification and return. While they are not proper readmission agreements, they enable bilateral police cooperation to bring identified individuals to the airport and send them back to their countries. More importantly, they allow the consular authorities to come and identify persons that should be returned, if they have not applied for asylum. Two such agreements have been concluded in 2016 with Gambia and Sudan; the latter has already been put into practice, with the unlawful return of a group of Sudanese, sparking strong reactions from NGOs and numerous MEPs.162 It is unclear if this group had been informed about the possibility to apply for asylum before being returned; the practice amounts to collective expulsion in violation of international and EU law.163

Such agreements should be read in the context of the EU Partnership Framework of cooperation with countries of origin and transit in the area of migration, adopted in June 2016, which, amongst others, proposes the possibility for the EU and Member States to pursue bilateral agreements other than classic readmission to enhance cooperation on returns, EU and Member States’ efforts are seen as a joint venture.164 The main concern with regards to such ‘light’ agreements, however, is the lack of transparency and all necessary elements ensuring their legality, namely through parliamentary scrutiny, monitoring and human rights safeguards for the persons being returned.

154 The rejection order is referred to in Article 19, paragraphs 1 and 2, of Legislative Decree No. 288/98 and means an order to leave the country autonomously within seven days, whereas the return administrative order, referred to in Article (1), paragraph 2, if the same decree, is an expulsion order that needs to be enforced.

155 See also Khafra and Others vs Italy, as well as collective expulsion without having assessed individual circumstances, www.asylumsudanese.it/en/content/rectr-khafra-and-others-vs-italy-no-034921-1-5-2015

156 Rejection orders issued until 30 April 2016. Among the 6,790 people who passed through the hotspots in the first five months of 2016, migrants who expressed the intention to apply for international protection have to be considered asylum seekers. The possibility to meet Consular authorities of the countries of origin is in violation of asylum seekers’ right to contact with consular representatives.

157 Interview with the Director of the Managing Body (Gbpsa Acuarinto) of the CIE of Ponte Galeria, 29 September 2016

158 Interview with the Director of the Managing Body (Gbpsa Acuarinto) of the CIE of Ponte Galeria, 29 September 2016

159 Interview with the Director of the Managing Body (Gbpsa Acuarinto) of the CIE of Ponte Galeria, 29 September 2016

160 Interview with the Director of the Managing Body (Gbpsa Acuarinto) of the CIE of Ponte Galeria, 29 September 2016

161 Data provided by the Analysis Office of Public Security department of the MOI


RECOMMENDATIONS FOR THE HOTSPOTS IN ITALY

- Italian law, including constitutional provisions, must be strictly applied in the hotspots approach; hotspots should remain open facilities and respect the constitutional limit of 48 hours detention of third country nationals for the purpose of identification.

- Non admission to the asylum procedure on the basis of nationality is in violation of the asylum legislation and should never take place.

- Italy should refrain from collective expulsions.

- Monitoring should cover all practices, from pre-identification to screening, to identification, access to the asylum procedure. Independent bodies should be present during fingerprinting activities; this could be the newly established Ombudsman for the rights of detainees.

- Reception conditions should be regularly monitored by independent actors, and reports should be made public.

- Unaccompanied minors should never be detained, and after identification should be immediately transferred to specialised accommodation in line with current legislation. A centralized system for the reception of unaccompanied minors should be set up and adequate capacity should be created in second-line reception (SPRAR).

- Sufficient information on international protection should be given before pre-identification in a language that migrants understand. The use of the foglio notizie and the possibility to apply should be sufficiently explained before pre-identification. Individual information should be provided along with group sessions.

- Identification and registration should take into account the health conditions and psychological stress which people experience following disembarkation.

- Sufficient staff should be made available to provide information upon arrival, also through the involvement of well-experienced civil society organizations. However, this remains the authorities’ primary responsibility, and can be assisted by, but not substituted, by EASO and organisations.

- More interpreters and cultural mediators are needed, especially for sub-Saharan nationalities.

- Referral mechanisms need to be in place and used as standard practice to identify protection needs and vulnerabilities.

- The identification of vulnerabilities and special needs could be supported by NGOs in the hotspots or disembarkation areas.

- Information sharing tools need to be established to facilitate medical referrals and continuity of care, when people are transferred from one place to the other; EASO can assist with exchange of information on vulnerabilities between EASO Asylum Support Teams in the hotspots and in the hubs.

- The access of NGOs and lawyers in the hotspots should be ensured in order to provide information and legal counselling before and during identification and access to the asylum procedure.

- Relocation of unaccompanied minors needs to be implemented without delay; relocation procedures should be speeded up to keep candidates in the programme.

The hotspots in Italy have primarily aimed to identify and return those not in need of protection before they continue their journey further to Western Europe. They have also served to ensure Italy’s compliance with the fingerprinting requirements, following persistent EU pressure. Yet, the implementation of the hotspots raises a number of concerns in terms of respect for fundamental rights in identification and registration practices, the impact of pre-identification in accessing the asylum procedure, differential treatment based on nationality and adequate reception and assistance to vulnerable groups. The slow pace of relocation has not managed to prevent secondary movements. Finally, the use of ‘light’ bilateral agreements for the return of specific African nationalities is an worrisome development that allows swift expulsions without any legality and transparency.
4. The hotspots in Greece

The implementation of the hotspots in Greece paints a much more confusing and tense picture than in Italy. This is a result of the EU-Turkey Statement that came into effect on 20 March 2016 and brought about major changes to the administrative procedures in the hotspots and enormous pressure to the national asylum system as a whole. While deficiencies and challenges in the Greek asylum system are still multiple, Greek reforms and developments are highly politicised at national and EU level. This, combined with a tense security situation in the hotspots and legal uncertainty concerning certain practices, has led to substantial confusion and insufficient information at all levels, ranging from the authorities and organisations providing services to the refugees entering the centres.

The implementation of the hotspots in Greece is analysed in this chapter in terms of the legal framework governing its procedures, the inadmissibility examination and access to asylum, the use of detention, reception conditions, access to relocation and returns.

The first issue in relation to the entry into effect of the EU-Turkey Statement is the scale of arrivals on the islands. The total number of sea arrivals in Greece during 2015 is estimated to be 856,723 people, with another 170,815 for 2016.165 The number of arrivals dropped significantly after the signing of the EU Turkey Statement. In particular, while 113,395 persons arrived in Greece in the first two months of 2016, in March the arrivals decreased to 26,971, in April to 3,650, in May to 1,721, in June to 1,554 and in July to 1,920.166 Nevertheless, the numbers increased again in late summer and September. According to the Commission’s Progress Report on Turkey, 22,836 irregular crossings from Turkey to Greece occurred between April and September.167 In total 165,202 persons arrived in the country between January and September 2016.

The implementation of the hotspots in Greece reflects the limited capacity of the Greek Asylum Service to process asylum applications in the hotspots leading to excessive delays and prolonged stay, both of which contribute to the deteriorating situation.

The key findings are:

- The limited capacity of the Greek Asylum Service to process asylum applications in the hotspots leads to excessive delays and prolonged stay, both of which contribute to the deteriorating situation.
- The role of EASO in the Greek hotspots has increased in individual decision-making processes (inadmissibility and in merit examination of claims) and generates greater accountability and liability for the Agency; in practice, the division of labour with the national authorities is sometimes blurred.
- The systematic use of the safe third country (STC) concept in the inadmissibility procedure risks undermining the effectiveness of procedural safeguards and access to the asylum procedure.
- The practice of mandatory detention, applied indiscriminately, even to vulnerable cases, is not in line with legal standards and the EU acquis.
- Certain nationalities are prioritised, while the asylum claims of others, such as Iraqis and Afghans, are not examined; this differentiation creates frustration and inter-ethnic tensions.
- Reception conditions are inadequate and often below standard in the Greek hotspots.
- Prolonged stay in facilities that were foreseen for a period of a few days is problematic and inappropriate, and one of the factors behind the deteriorating situation and the constant tensions.
- The most vulnerable, such as unaccompanied minors, are those that stay in the hotspots the longest because the places in specialised shelters remain insufficient.
- The lack of proper guardianship hinders the access of unaccompanied minors to the asylum procedure.
- There is substantial confusion, lack of information and guidance to the camp residents about the procedures, due to frequent change of practice and the multitude of different and loosely coordinated actors present in the camps.
- There is lack of clarity about the duration of their stay and their prospect of leaving the island for the mainland.
- The number of interpreters and cultural mediators on the islands still remains insufficient.
- Legal information and assistance is accessible, but as the needs have substantially increased, the capacities of local actors delivering such assistance, including civil society organisations needs to be strengthened.
- There is no clear referral pathway in the identification of vulnerabilities by FRS/RIS and EASO. Non-visible vulnerabilities are often not sufficiently detected, while identification of trafficking victims is not included in the scope.
- With the shift of focus of the Greek hotspots towards asylum and return, access to relocation is only possible for some – the Greek authorities, EASO and Member States – still render the process slow.

| Source: Greek Police, available at: tinyurl.com/ctfexfx |

The border closure of the Balkan route and the implementation of the EU-Turkey Statement have also had an impact on arrivals in terms of nationality, gender and age.168 Still, according to the UNHCR, since January 2018, 87% of the arrivals came from the world’s 10 refugee producing countries.

| Table 4: Arrests for irregular entry as stay in Lesvos and Chios (2016)169 |

The number of deaths during the first six months of 2016 also decreased but still remains significant (346 dead, out of which 47 since the activation of the EU Turkey Statement, and 31 missing up to November 2016).170 According to Frontex, this decrease should be attributed to increased patrolling since the Statement and the closure of the Balkan route.171 According to the Lesvos Coast Guard, the decrease is due not only to increased border patrols on the Turkish side, but also the presence of NATO and increased assets provided by Member States and Frontex (almost double compared to 2015) and deployed for search and rescue in Greek waters.172

165 Data up to 22 November, see UNHCR, Refugees/Migrants Emergency Response - Mediterranean, Greece, accessed on 21 November. Data in this portal is updated daily. Available at: data.unhcr.org/mediterranean/country.php?id=63
168 Source: Greek Police, available at: tinyurl.com/ctfexfx
171 Interview with Coast Guard in Lesvos, 23 May 2016
172 According to the police interviewed in Chios, since the VIAL hotspot started operating on 16 February and until 15 June, 1,554 arrivals have been reported to Chios, of which only 2,993 following the EU-Turkey Agreement. Interview with the police in Chios, 15 June 2016

171 Interview with Coast Guard in Lesvos, 23 May 2016
172 According to the police interviewed in Chios, since the VIAL hotspot started operating on 16 February and until 15 June, 1,554 arrivals have been reported to Chios, of which only 2,993 following the EU-Turkey Agreement. Interview with the police in Chios, 15 June 2016
174 Source: Greek Police, available at: tinyurl.com/ctfexfx

The five hotspots set up in the islands close to the sea border with Turkey (Lesvos, Samos, Chios, Leros and Kos) have a capacity of 7,450 places. They have been consistently exceeding the capacity and by end October 2016 the islands have been hosting more than 15,000. The hotspot in Lesvos (Moria) was established on 16 October 2015, and is the first hotspot established in Greece in the place of a previous first reception centre (FRC). The hotspot in Chios (VIAL) started operating on 14 February 2016.

### 4.1 The legal framework for the functioning of hotspots

For the sake of clarity, it is necessary to describe the role of the different actors involved in the hotspots before discussing the legal framework and the procedures applied.

The Asylum Service (AS) has offices or mobile units in the hotspots and is responsible for the admissibility interview, access to the asylum procedure and in merit examination of the claims. The function of the AS is governed by law 4375/2016.

In Chios the Asylum Service at the moment of the visit had seven staff conducting registrations, three of which were seconded from the police, and three case-workers. The Regional Asylum Office (RAO) in Moria, Lesvos, had six staff for registration, four case-workers and around 12-14 police officers. The Regional Asylum Office (RAO) of Leros processes applications from persons applying in the islands of Lesvos, Leros and A-Stratis. In the interviews the AS stated that current capacity is sufficient to cover needs. Various actors and the Commission have however repeatedly commented on capacity shortages throughout this period, leading to delays in processing the cases, prolonged stays and frustration in the camp population.

The Reception and Identification Service, former First Reception Service (FRS/RIS), handles the management of Reception and Identification Centres (RIC) in the hotspots. The FRS/RIS conducts identification and nationality screening, medical screening, a basic provision of information, and referrals. Longer term reception of asylum seekers is the responsibility of the Directorate of Reception and Social Integration at the Ministry of Interior. This in itself confirms that in theory accommodation in the hotspots should be distinguished from accommodation for asylum seekers in the asylum procedure, even if in practice the types of facilities used are similar and the length of stay for the two categories prolonged. In Chios, at the time of the visit, the FRS/RIS was composed of the Head of the FRS/RIS – Site Manager, four staff, two police staff per day for registration and six police staff as guards.

### 4.2 The role of different actors in the hotspots

The police, port authorities and the army are involved in various parts of the procedures in an auxiliary way, assisting through staff capacities or facilitating access; the army has been entrusted with logistics aspects of camp construction and management. The legal basis for their involvement is also governed by L 4375/2016, as described below.

**EU presence in the hotspots**

The EUTF office in Pireaus is staffed with officers from Frontex, EASO, Europlast and FRAN and the Hellenic Coast Guard, and collaborates with the Commission’s Special Support Reform Service (SSRS) based in Athens. Little information was provided on the role of the Commission’s ‘EC support teams and only a few actors in the interviews mentioned having collaboration/exchange with them.

Frontex was present in Lesvos during fieldwork with 264 staff from Member States, a Support Officer and an Operational Coordinator. In Chios, Frontex was present with 80 staff. According to the Commission by November Frontex had 115 Officers in Lesvos and 92 in Chios.

EASO at the time of the visit had five admissibility experts in Chios and four interim EASO staff deployed to the Asylum Service to support registrations. By November there were 12 Member State experts, 3 interpreters, 3 EASO experts and five interim staff seconded to the Greek Asylum Service. In Lesvos, EASO had two inadmissibility experts, four case workers and 40 interpreters. Vulnerability experts were also among the staff present. By November there were six Member State experts, 11 interpreters, 4 EASO staff and 6 interim staff seconded to the Greek Asylum Service. The Commission has repeatedly commented that the contribution of EASO guest officers remains insufficient to cover the needs; there is a shortage of experts provided by Member States, and those guest of ficers who were sent off lacked the right profile. The short period of deployment also mitigates against providing sustainable assistance.

While an analysis of the legal framework has been conducted by different actors, two issues stand out and need to be mentioned here; the use of detention, and the role of EASO in inadmissibility interviews and, gradually, in merit examination of asylum claims.

In particular, Article 46 of L 4375/2016 brings Greek law overall in line with the grounds for detention under Article 8 of the recast European Convention on Human Rights. The short period of deployment also mitigates against providing sustainable assistance.

The implementation of the hotspots in Italy and Greece | 37

---

**Note:**

175. Only two out of all reception centers in function have been legally founded places. 176. Reception centres for asylum seekers with a capacity of 32,700

---

**TABLE 5: Arrivals by nationality per month January – October 2016**

<table>
<thead>
<tr>
<th>Nationalities</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Oct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria</td>
<td>20639</td>
<td>2942</td>
<td>14299</td>
<td>1288</td>
<td>278</td>
<td>219</td>
<td>295</td>
<td>240</td>
<td>304</td>
<td>499</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>1084</td>
<td>2364</td>
<td>1313</td>
<td>398</td>
<td>110</td>
<td>80</td>
<td>72</td>
<td>80</td>
<td>104</td>
<td>97</td>
</tr>
<tr>
<td>Pakistan</td>
<td>2240</td>
<td>1539</td>
<td>1800</td>
<td>937</td>
<td>231</td>
<td>233</td>
<td>245</td>
<td>345</td>
<td>573</td>
<td>513</td>
</tr>
<tr>
<td>Iraq</td>
<td>1184</td>
<td>1314</td>
<td>2551</td>
<td>382</td>
<td>262</td>
<td>283</td>
<td>204</td>
<td>327</td>
<td>467</td>
<td>575</td>
</tr>
<tr>
<td>Iran</td>
<td>219</td>
<td>76</td>
<td>73</td>
<td>43</td>
<td>61</td>
<td>68</td>
<td>71</td>
<td>110</td>
<td>124</td>
<td>122</td>
</tr>
<tr>
<td>Other</td>
<td>1880</td>
<td>1445</td>
<td>1751</td>
<td>311</td>
<td>269</td>
<td>263</td>
<td>275</td>
<td>204</td>
<td>258</td>
<td>254</td>
</tr>
<tr>
<td>Total</td>
<td>67145</td>
<td>6705</td>
<td>67926</td>
<td>32915</td>
<td>2211</td>
<td>2154</td>
<td>2354</td>
<td>3287</td>
<td>3988</td>
<td>4200</td>
</tr>
</tbody>
</table>

---

**Source:**

Hellenic Police and Coast Guard, available at UNHCR Factsheet Greece 1-31 October 2016. tngurl.com/4g604k

Greece has increased its reception capacity, which, according to government data, currently stands at 69,218 places in temporary reception facilities for both irregular migrants and asylum applicants. It needs to be pointed out, however, that there is a lack of clarity in terms of the types of facilities included under the overall term reception capacity. Recently Greece announced the plan to revamp the reception system and establish 39 open reception centres for asylum seekers with a capacity of 32,700 places.

**EU countries’ contributions to Greece**

While an analysis of the legal framework has been conducted by different actors, two issues stand out and need to be mentioned here; the use of detention, and the role of EASO in inadmissibility interviews and, gradually, in merit examination of asylum claims.

In particular, Article 46 of L 4375/2016 brings Greek law overall in line with the grounds for detention under Article 8 of the recast European Convention on Human Rights.

The short period of deployment also mitigates against providing sustainable assistance.
Concerns arise however with regards to the provisions foreseen for the Reception and Identification Centres in hotspots and the mainland (Article 14). In particular, new arrivals are subject to a restriction on freedom of movement within the premises of the centres during the reception and identification procedure. For asylum seekers, their entire asylum procedure can be conducted within the centre. Field information shows that, practically, this means that those staying in the centres are deprived of their liberty.

The practice of mandatory detention has been applied indiscriminately even to vulnerable cases, such as unaccompanied minors, families with small children, or persons with disabilities. After their release, they are obliged to remain on the island until their application for asylum is examined.

This practice is clearly in line with the relevant legal standards and the EU acquis, especially since the grounds provided in Article B(3)(c) of the recast Procedures Reception Conditions Directive (which the law aims to transpose) relating to detention during a border procedure for the purpose of deciding on an applicant’s right to enter the territory, has not been transposed into Article 46 of Law 4375/2015.\(^{193}\)

In fact, while the border procedure (Article 60) resembles the procedure previously applied at airports (Presidential Decree 11/2013), this is no more limited to admissibility or to the substance of claims processed under an accelerated procedure, as required by Article 43 of the recast Asylum Procedures Directive. Importantly, the merits of an asylum application can now be examined at the border.

The Ministers of Interior and Defence can adopt exceptional measures in case of large numbers of asylum applications at the border or in Reception and Identification Centres. Police and unarmed soldiers can conduct registration of asylum applications; an expedient version of the border procedure is foreseen which lasts no more than 14 days at first and second instance, including a 1–day deadline for asylum seekers to prepare for the interview and a maximum 3–day deadline for lodging an appeal. Such short time limits may undermine the procedural and quality guarantees provided by national and EU law.\(^{199}\)

The Asylum Service can be assisted by EASO during the admissibility interview. However, GCR is aware of a number of cases where the interview has been conducted exclusively by EASO staff not in the country’s official language, but in English. Similarly, the minutes of the interview are also kept in English. Apart from practical difficulties in reviewing the procedure and decisions, this raises issues of competence, relating to Article 2 (6) of the EASO Regulation. The EASO Regulation and the Operational Guidelines for EASO and Greece do not include any procedural rights in this regard. While procedural safeguards provided for in the Greek legislation (L 4375/2015; art 52 para 2 to 7) should be applied regardless of who is conducting the interview, including EASO experts, cases have been reported where, in practice, EASO experts have disregarded such safeguards (such as the right to a lawyer’s applicant to be present during the interview). In addition, it has been reported that these identified by FRS as vulnerable may, again, be subject to vulnerability assessment – within the scope of the examination of their claim – by an EASO vulnerability expert, but it is unclear whether that is conducted in line with Greek legislation.

Moreover, according to GCR, the majority of first instance decisions issued seem to have an identical, short and unjustified reasoning, rejecting the applications as inadmissible, considering Turkey as a “safe third country”.\(^{198}\)

It is remarkable, that the “safe third country” concept was never used by the Asylum Service or the Appeals Committees for Turkey until the 20th of March 2016; it is difficult to see how Turkey could be considered a “safe third country” for those having entered the 20th of March and not for those having entered the day before.\(^{199}\)

Moreover, Law 4399/2016 amending Law 4375/2016 gives EASO the right not only to assist but also to conduct the first degree interviews.\(^{200}\) Similar competence and sovereignty issues apply here too, as also the concerns about procedural rights for interviews in line of national law.\(^{201}\)

With respect to the procedure foreseen before the Appeals Authority, the right of the applicant to be examined in person, second instance, was further restricted. According to L. 4375/2016 an appellant has the right to ask for an examination in person, yet it is at the discretion of the Appeals Committees to accept the request. Moreover, even if accepted, the procedure was not without shortcomings, considering that the appellants are detained in the islands and all Committees are placed in Athens; the interview takes place in distance and the interpreter is only present at the Committee instead of the place of the appellant. These have often led to delays, poor communication between the Committee members and the applicant and lack of privacy, hampering the quality of the procedure.\(^{199}\) Since the amendment of L. 4375/2016, applicants have no right to ask for a hearing. However, it remains at the discretion of the Appeals Committees to decide to hold one.

The Appeals Committees seized to operate in September 2015.\(^{200}\) As a transitional measure, L. 4375/2016 transferred the competence for the examination of appeals for post-20 March cases to the Committees of the Boards of Appeal who were examining appeals for asylum applications from the backlog (lodged before June 2013). The latter were composed by one civil servant and two members, one appointed by the UNHCR and one proposed by the National Commission of Human Rights. By the end of June, 70 positive decisions had been published by the Appeals Committees, and only in two cases was the appeal rejected.\(^{200}\) Following a growing number of decisions overturning the presumption of Turkey as a safe third country, political pressure led to an amendment with L. 4399/2016 which provides that Appeals Committees will, instead, be comprised of two judges and one person proposed by UNHCR or the National Commission of Human Rights. The participation of judges in an administrative body raises constitutional concerns, as well as concerns regarding the possibility of a rejected appellant to have an effective remedy.\(^{200}\)

The new Appeal Authority and Appeals Committees have been tasked to examine at second-instance appeals lodged since 20 July against the first instance decisions of the Greek Asylum Service. According to Commission figures based on the Asylum Service, 1,013 appeals were submitted by September 2016 against first instance decisions on admissibility and on merits. 311 appeal decisions were issued on admissibility, out of which six confirmed the inadmissibility and 305 reversed it; at least 35 decisions concerned cases on the islands – most of which (32) on merits, and three on admissibility, which were positive. A higher level of appeal to the Hellenic Council of State has now been launched by a Syrian seeking to challenge the decision establishing the Appeal Committees.\(^{200}\)
4.2 Hotspots function and procedures

From disembarkation to registration

The Coast Guard is usually alerted as soon as a boat approaches Greek waters, and this way the boats are detected early; unlike in the past, only a few people reach the shore on their own. This is a positive development and has, at least, led to a decreasing number of deaths at sea.\(^2\) First aid is provided and the persons are embarked on the Coast Guard/ Frontex vessel, or escorted to the shore, if the boat is still in good condition. In Chios, the Hellenic Rescue Team and Spanish rescue teams are also active. According to the Lesvos Coast Guard, the number of Syrians has been gradually decreasing and other nationalities increasing (Pakistanis, Moroccans, Algerians, Afghans, Iraqis etc) in spring and summer 2016, even if, overall, this year, the Syrians remained the top nationality arriving to the islands every month.\(^3\) Frontex assists with land and sea patrols, under the Coast Guard’s command.

In Lesvos the Coast Guard also transfers newcomers by bus to Moria for registration. In Chios the Coast Guard has also cooperated with NGOs such as HRC and East Shore volunteers to facilitate transfers to VIAL. Also, the local bus service conducts the transfers, accepting an ordinary ticket. The Coast Guard conducts the arrest of all newcomers for irregular entry and alerts the Public Prosecutor; the latter generally abstains from initiating a prosecution process.

Registration and identification

Registration and identification takes place inside the hotspot. At the time of the fieldwork, new arrivals were being prioritised for registration in Lesvos. Once people arrive in Moria, they are taken to the area designated by the FRS/RIS as ‘registration area’.\(^4\) UNHCR provides basic information on the procedure, the steps to follow, and the rights of asylum seekers. This information is then shared with Europol.

People are then guided to fingerprinting. This is conducted by the police with Frontex fingerprinting experts present. Different interviewees stated that fingerprinting is carried out smoothly and that no resistance has been observed by the migrants to fingerprinting on any of the two islands. Fingerprints are not taken for minors born after 2003. There were six Eurodac machines in the room we visited in Moria in May, and we were told that earlier this year, when arrival numbers were still high (prior to the EU-Turkey statement) there were 21 machines. The equipment is considered sufficient. In VIAL, there were nine Eurodac machines. Apart from fingerprinting, refugees also have a photo taken and a more detailed interview with the police and the FRS/RIS.

The first step in registration is nationality screening, conducted jointly by Frontex and the Greek police.\(^5\) Before 20 March, this screening was conducted entirely by Frontex.\(^6\) In the absence of travel and ID documents, which is the case for most, nationality screening is conducted using a set of questions on language, geography, history, society and customs.

An interpreter is also present and provided by Frontex. In the first month following the EU Turkey Statement, as Syrians were prioritised, there was a tendency by some to say they are Syrian, but, this, according to the police, could be quickly detected.\(^7\) A document fraud expert is also present by Frontex. A screening booklet defines the procedure. According to Frontex, a screening form is filled, containing the nationality, age, language spoken, and an indication whether the person intends to apply for asylum (ticking the box ‘asylum’/’no asylum’).\(^8\) Even though Greek authorities may rest their decision exclusively on Frontex’s assessment, documents issued by the latter are considered not to have a legal value and, therefore, individuals are not given access to them. This renders the challenge to Frontex’s findings extremely difficult. The presumed nationality can be changed up to five days after registration. The person may bring proof (original documents), in which case he/she is screened again and additional questions are made. Interpreters (for Farsi, Arabic and dialects) are also available.

In addition to the Frontex staff for screening, there are also Frontex debriefing officers who may ask additional questions in order to collect information on smuggling networks and foreign fighters. Debriefing is optional and is conducted after the screening. Should Frontex and the Greek police detect useful information, this is then shared with Europol.

The practice is the same in Chios.

204 Interview with police in Lesvos, 25 May 2016; Interview with GCR and Prodiag lawyers in Lesvos 24 and 25 May 2016, Interview with Frontex in Lesvos, 25 May 2016.
205 UNHCR FactSheet 1-31 October 2016, available at: data.unhcr.org/mediterranean/country.php?id=83
207 Interview with Frontex and police in Moria, Lesvos, 25 May 2016; Interviews with Frontex in VIAL and police in Chios, 18 June 2016
208 According to GCR, numerous cases of individuals misregistered by the police due to problematic screening by Frontex had been reported in the period 20 March, this is sometime extended to the next months, even though new cases were registered and applied for asylum and could challenge any wrongful registrations before the Asylum Service.
209 Interview with Frontex in Moria, Lesvos, 25 May 2016
210 Interview with Frontex in Moria, Lesvos, 25 May 2016
211 Interview with Frontex in Moria, Lesvos, 25 May 2016 and in Chios 15 June 2016
212 According to NGOs in Lesvos, the Police did not communicate deportation/detention decisions for a while and there were people not in possession of such documents.

This interview covers personal details, possible family links in other countries and a first sense of vulnerability. Information is stored in an online database operated by the Greek Police (Alkion, database of the Aliens Office), where the intention to apply for asylum is also noted, as well as a second local database stored by the police on the island, serving as a registry of persons present.\(^9\) Following nationality screening, reception and identification procedures start by the FRS/RIS with registration, referrals and medical screening (as per Article 9, 437/2016).

During the registration and identification process interpreters and information are provided by IDM. According to the Chios Coast Guard, registration may be completed in 10 hours unless a boat arrives during the weekend, when interpreters are not available and processes are delayed. According to the Ministry, the availability of interpreters and cultural mediators is still a major concern in Lesvos; some NGOs like ActionaId, McActIon and Zanabuya have assisted with interpretation and cultural mediation.

Law provides that FRS/RIS issues a decision ordering the restriction of liberty until the completion of the procedures, that shall not exceed 25 days. In practice, in the majority of the cases, the procedures within the scope of FRS/RIS are completed within a very short period of time (usually within a day). Following that, a decision in view of deportation is issued by the competent General Regional Police Director for each island. Once 25 days have been passed, the General Regional Police Director issues a decision suspending the execution of the deportation decision and imposing the restrictive condition of non-departure from the island for those that apply for asylum (almost everyone).\(^10\) The intention to apply for asylum is indicated by a “Number of Interest for Asylum”, noted on the Police order of restriction of movement. According to migrants and NGOs, sometimes both decisions are communicated together, although the first may have an earlier date of issuance and include a right to appeal, of which the deadline is already passed at the time the decision is communicated. The latter is only waived if the AS allows the person to go to Athens.

Even though someone might have been identified as vulnerable by the FRS/RIS, the restrictive condition to remain on the island is not waived until the registration of his asylum claim. In particular, following an assessment by the Asylum Service regarding the persons’ vulnerability, the person can be referred to the regular procedure and travel to the mainland.

The practice is similar in Chios and has started after 25 April 2016.\(^11\) Asylum seekers waiting for the examination of their asylum application on admissibility remain in the centre where they resided prior to the registration of their asylum application.

If someone is a minor, a macroscopic medical examination is conducted.\(^12\) It was stated in interviews that while previously the assumption of minority was almost standard practice, following the 20th of March there has been the tendency by the FRS/RIS in Lesvos to assume, in case of doubt, that the refugees are adults in order to prevent that they will have to be detained in Moria.\(^13\) In Chios, when age is contested by the FRS/RIS, minors are referred to the medical unit of NGO Praksis for age assessment. According to Praksis staff, age assessment is only conducted upon referral of the FRS/RIS or when the medical unit’s staff themselves doubt the alleged age. Medics and social workers involved sign the result.\(^14\) Similarly in Lesvos, where persons claiming to be minors are not considered as such by the Police or the FRS/RIS, they are referred to Medecins du Monde (MdM), who are present in Moria, for age-assessment. MdM have often been hesitant to reach a safe conclusion on age and therefore the FRS/RIS referred the persons of concern to the hospital for dental examination. Appeals against the FRS/RIS conclusion on age-assessment are usually rejected.

It was mentioned in interviews that, for EASO, age is usually registered as stated. When the authenticity of documents is contested, then there is the possibility to address the case to Frontex document experts.

In Chios, unaccompanied minors (UAM) are referred to the Public Prosecutor, who serves as a temporary guardian, according to the law, and a placement in a special shelter is searched for. UAM do not receive the decision imposing restriction of movement to the island as adults. In Lesvos, at the time of the visit, there were 97 UAM in Moria, all boys, of which the majority had applied for asylum (mostly Pakistani, Afghan, Ethiopian, Syrian etc.). According to the FRS/RIS in Lesvos, around 5,800 UAM had passed through the centre from the beginning and up to the time of our visit.

There is lack of clarity with regards to the way registration, identification and referral was conducted in Lesvos from the moment the hotspot started and up to 20 March.
According to interviews, some sort of basic registration was conducted, but not systematically, with the result that it is hard to trace arrival dates retrospectively. People were given a piece of paper with a registration number and date of arrival. This system was not fool-proof and there was mention of fake registration cards. Besides, some refugees that arrived in the weeks prior to March were given colour bracelets with dates of entry. It is unclear how long this system lasted. Those in possession of the bracelet could prove their date of entry, but for the rest it was unclear. The FRS/RIS started registrations a couple of weeks after the 20 March, meanwhile, new arrivals lead to some 4,100 persons blocked altogether on Lesvos, only half of which (around 2,500) had been screened and registered by the FRS/RIS at the moment of the visit in May. In practice, residents in the Moria camp were waiting in detention in possession of different types of documents, which created confusion, uncertainty and tensions, lasting for months. In Lesvos these registrations were completed by June, while in Chios new arrivals were registered more swiftly. Once the 25 days expired, detention was no more strictly applied, this was the case for most at the time of the visit. Moreover, as registration and identification could gradually be speeded up and completed within a couple of days, or less, the 25 days neither applied to newcomers.

The next step is medical screening, conducted by Medecins du Monde (MdM) in Lesvos and the NGO Praxis in Chios. MdM mentioned seeing about 80-100 persons daily. The medical screening marks the end of the FRS/RIS registration cycle in the hotspot. Those interested to apply for asylum (literally everyone) then (re)state their intention to apply, usually already indicated earlier in the process. As a result they are given a suspension of expulsion order.

Vulnerable cases in Lesvos are transferred out of Moria to the Kara Tepe centre or PKAP, a shelter for vulnerable cases. Similarly in Chios, vulnerable cases can leave VIAL. According to the FRS/RIS in Chios, Standard Operating Procedures (SOPs) and Protocols are in place to EASO, UNHCR, the A5 and vulnerability identification tools are used by EASO.

4.3 Access to the asylum procedure

The main filtering mechanism in the Greek hotspot system is the inadmissibility procedure that selects between those that can be re-admitted, those that can enter the asylum system in Greece and among them, those that are eligible for relocation.

According to A5 data, 7,395 asylum applications were registered between January and September 2016 in the hotspots (3,391 in Lesvos, 1,327 in Samos, 1,841 in Chios, 329 in Kos, 417 in Leros). The number of persons having stated the intention to seek asylum may be still higher but the applications not yet registered. According to the Chios police, 2,423 persons expressed the intention to apply for asylum from February until the time of the visit in June. Similarly, in Moria, Lesvos, everyone there at the time of the visit in May (around 3,200) had already expressed the intention to apply for asylum. In other hotspots the situation is more critical; in Kos, for example, as the AS did not start operating until mid-June 2016, newcomers detained could not even access the asylum procedure.

Despite substantial staff growth overall, A5 capacity to register and process asylum applications in the hotspots still faces challenges. By the end of October, close to 15,000 persons were waiting on the islands, a number that exceeds the reception capacity designed to receive 7,450 people. In the first months following the EU-Turkey Statement, procedures exclusively prioritised Syrians, while other nationalities, including both adults and UAMs, were put on hold despite having stated their intention to seek asylum. Since August 2016, the Asylum Service registers applications of other nationalities too.

However, it seems that certain nationalities are still prioritised – Syrians, followed by Pakistanis and North Africans – while Iraqi and Afghan requests are not being dealt with. Family reunification for Iraqis and Afghans is thus being hindered. In Chios, following the EU-Turkey Agreement, people willing to apply for asylum were gradually transferred to VIAL in order to have their intention to apply registered by the Police. No appeal had been submitted on admissibility up to the summer because no decision assessing the case as inadmissible had yet been communicated to any applicant.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria</td>
<td>8,104</td>
<td>2,716</td>
<td>128</td>
<td>98.4%</td>
<td>3,149</td>
<td>9,823</td>
</tr>
<tr>
<td>Pakistan</td>
<td>1,183</td>
<td>581</td>
<td>10</td>
<td>3.4%</td>
<td>51</td>
<td>1,334</td>
</tr>
<tr>
<td>Iraq</td>
<td>942</td>
<td>42</td>
<td>21</td>
<td>65.2%</td>
<td>113</td>
<td>1,271</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>966</td>
<td>384</td>
<td>33</td>
<td>7.7%</td>
<td>59</td>
<td>254</td>
</tr>
<tr>
<td>Albania</td>
<td>372</td>
<td>129</td>
<td>68</td>
<td>20.4%</td>
<td>20</td>
<td>413</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>429</td>
<td>219</td>
<td>53</td>
<td>3.4%</td>
<td>18</td>
<td>577</td>
</tr>
<tr>
<td>Iran</td>
<td>392</td>
<td>69</td>
<td>33</td>
<td>54.6%</td>
<td>31</td>
<td>386</td>
</tr>
<tr>
<td>Pakistan</td>
<td>346</td>
<td>72</td>
<td>9</td>
<td>97.1%</td>
<td>31</td>
<td>377</td>
</tr>
<tr>
<td>Palestine</td>
<td>155</td>
<td>56</td>
<td>25</td>
<td>64.0%</td>
<td>0.0%</td>
<td>17</td>
</tr>
<tr>
<td>Georgia</td>
<td>148</td>
<td>174</td>
<td>130</td>
<td>64.0%</td>
<td>17</td>
<td>175</td>
</tr>
<tr>
<td>Other</td>
<td>1,271</td>
<td>422</td>
<td>198</td>
<td>21.1%</td>
<td>90</td>
<td>1,405</td>
</tr>
<tr>
<td>Total</td>
<td>15038</td>
<td>5,125</td>
<td>928</td>
<td>25.3%</td>
<td>1,642</td>
<td>17,493</td>
</tr>
</tbody>
</table>


Admissibility Interview

Applications of persons entering Greece after 20 March are examined first in terms of admissibility by EASO and the AS. Until the end of the summer, applicants under admissibility examination were not provided with an asylum seeker’s card (according to the AS this is because they were considered ‘detainees’ and not yet asylum seekers). Currently, asylum seeker cards are provided, but with a geographical limitation.

According to interviews, the time between pre-registration and the appointment in Athens is a few weeks. This pre-registration seems to be done rather quickly, even though no precise information was provided about the waiting time between completing the registration and registering the application with the AS.

Inadmissibility Decisions also include: a) Decisions where other MS take charge of the application (Relocation/ Dublin Regulation) and b) Decisions under the concept of ‘safe third country’ (Readmission Procedures). Recognition rates based on merit examination (inadmissible not included).

223 Interview with the Police in Chios, 16 June 2016 and with the Asylum Service in Lesvos, 24 May 2018
226 According to GCR, individuals from Maghreb countries were registered by mid-July. Pakistanis even earlier, by end May, and examined by both the AD and AS. By the end of July, decisions for Pakistanis, who have been examined by AS staff, had already been issued. However, EASO was not issuing recommendations for the cases examined by them, since there were no official templates of decisions for Pakistan, as there is for Syria.

228 Vulnerable groups in Greek law include unaccompanied children, disabled or severely ill persons, elderly, pregnant women or new mothers, single parents with minor children, victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, persons suffering from post-traumatic stress disorder (PTSD) such as survivors or relatives of victims, and victims of trafficking. Article 48(1) 1 April 2016
It was stated in the interviews that in the effort to speed up the process, the AS may also proceed with asylum pre-registration even if the registration and identification has not been completed by FRS/RIS and the police, as long as the person has already stated the intention to apply for asylum. They could then pass through FRS/RIS at a later stage. Inadmissibility interviews are conducted by AS caseworkers and EASO, and interpreters from EASO and NGOs (MetaAction at the time of the visit). So far only Syriacs have had their applications examined for admissibility under the prism of the safe third country/first country of asylum concepts. According to interviews, AS could conduct 85–90 registrations of asylum claims and 50 interviews per day. Decisions were normally taken within 1–2 days. The languages spoken were Arabic, Farsi, Dari, Urdu, Pashto, Kurmanji, English and French. The interview was transcribed in English but the transcript was not translated into Greek, the country’s official language. EASO staff then submitted an opinion on the case to the AS, and the decision was taken by the AS and published roughly within 15 days. It was mentioned that the final decision is in Greek, even though some decisions were also served in English, possibly using the EASO opinion. ASO mentioned that each expert was conducting around two interviews per day. EASO did not carry out age-assessments, as this is covered by the FRS/RIS. Opinions could differ between what EASO and the AS consider admissible in relation to the definition of vulnerability as per Greek law. No SOPs or templates were mentioned for this procedure.

Non-visible vulnerabilities, such as shipwreck survivors, or victims of torture, are more difficult to identify. It was mentioned in the interviews that there is no clear referral pathway between vulnerability assessment conducted by EASO and the one conducted by the FRS/RIS and that someone identified as vulnerable by FRS/RIS may be assessed again by EASO. A person is considered inadmissible for a number of reasons, including the existence of a “first country of asylum” or “safe third country”. According to interviews, the documents used to make this assessment are CDI material prepared by the AS and EASO, internet searches and the letters sent by the European Commission and UNHCR to the Greek authorities describing the status of temporary protection for Syrians in Turkey. The proportion of inadmissible cases to the interviews conducted was roughly about one third in Spring, according to interviews. If negative, asylum seekers have the possibility to appeal within five days, which almost all of them do. EASO experts help with the appeals submission, based on a template. For this, asylum seekers can be supported and represented by a lawyer. Lawyers have access to Moria and are able to identify and follow up on the cases. All appeals have automatic suspensive effect against return orders.

According to the AS in Chios, UAM under 14 years old cannot be registered by the AS unless their guardian signs on their behalf. However, as no guardians are appointed permanently by the Public Prosecutor, the AS cannot register the claim of the child and thus, asylum procedures cannot be initiated. It is also an issue regarding young children travelling with an “uncle” or other relative, who the Public Prosecutor does not acknowledge as suitable to be appointed as a guardian, leading asylum procedures to an impasse, as these persons are not provided with the power to do so on the child’s behalf. Meanwhile in Lesvos, no registration of UAMs was conducted by AS for a long time because most of AS staff had been deployed to the admissibility procedure. At the time of the visit, only family reunification cases under Dublin I had started being registered.

** Provision of information and legal assistance

The complexity of the procedures and the fact that practices followed by the authorities change quite often renders the provision of accurate and concrete legal information rather difficult. The multiplication of organisations and different actors present in the camps, who are only loosely coordinated and are involved in the provision of information has been making this even more challenging. There is substantial confusion, lack of information and guidance to the camp residents about the procedures, as well as lack of clarity about the duration of their stay and their prospects.

UNHCR is monitoring and facilitating the process by providing information and accompanying refugees throughout the procedure.

Different types of Information leaflets by the AS are distributed in the hotspots in Lesvos and Chios, from general leaflets about asylum in Greece to more specific leaflets about the procedure on the islands and in the reception facilities in the mainland, Dublin and unaccompanied minors. ASO information leaflets are distributed in different languages, along with NGO and other organisations’ leaflets.

Three big distribution campaigns have taken place in Chios. Group information sessions have also been organised at times by the AS and EASO, at the building of the main Bus Station, where asylum seekers and immigrants pass through, leading to regular discussions with the municipality. According to the AS, a group of refugee representatives took the initiative to address questions to the AS at VIAL. In the centre in Souda, German volunteers have also provided information on asylum.

There is currently no state funded legal aid scheme in place, but a Ministerial Decision of September 2016 introduces free legal assistance in asylum appeals procedures. In addition, a EUR 30 million grant agreement was awarded to UNHCR under EU emergency assistance for the provision, among other things, of free legal assistance at the appeals stage for a period up to four months until the state-funded free legal aid scheme starts.

Legal information and legal assistance in Lesvos is provided by individual lawyers or lawyers supported by organisations (GC, ProAsyl, MetaAction). MFS has shortly funded lawyers from the Lesvos Bar Association for a restricted number of cases at 2nd instance. A volunteers’ charity, Zainabugya, identified the cases. NGO Praksis provided a lawyer for legal advice to UAM residing in its shelter (under 14 years old). In terms of access to the hotspots, despite occasional challenges, the lawyers we interviewed were generally given access to Moria to meet clients and conduct interviews.

** Coordinating Body for the refugee crisis management, Spokesperson, summary statement of refugee flows, 21 November 2016, media.gov.gr/index.php/component/content/article/258-npocypoyseis-%3C-%3E-en%3A%3Smunici- pality%3A%3C%3E-immigration%3A%3C%3E-sum -mary-statement-of-refugee-flows-2016-11-21-003?Itemid=105

The conditions in the Greek hotspots have been criticised repeatedly throughout 2016 and described in detail in numerous articles. Nevertheless, conditions do not seem to have improved by autumn 2016. At the time of the field visit, the site of Moria in Lesvos hosted, to its capacity, around 800 additional personas.
many using their own tents to sleep in the courtyard. 241 While the containers were air-conditioned and included private WCs and showers, persons residing in tents only had access to common-use WCs and showers. Refugee communities were separated by compounds. There was a family compound with three sets of dormitories (houses), containers and tents. During our visit, meals were brought in three times a day by a catering company contracted by the Army. A number of canteens and food trucks were parked outside the entrance. Taxis were also parked outside and waiting to take refugees to town. Residents often exited the centre through holes in the fence, a practice that was tolerated.

As already documented in various published reports and confirmed through our field visits, reception conditions in Moria are substandard. The most significant problem is prolonged detention for minors, and the fact that people stay in a facility that is designed for a short period of time and lacks the elements necessary for proper reception; this is made all the more difficult by overcrowding. NGOs have reported dirt, bad food quality and refugees queuing for hours under the sun for food distribution. Differential treatment of nationalities that can access the asylum procedure also causes a lot of frustration. Police in Moria control the entrance and are present during the day; night patrols are organised on the island, but the police are not present in the camp. Tensions have been widely reported, with riots and security incidents triggered by different reasons over the last months. Inter-ethnic tensions, sexual harassment, disputes over the food, wearing of clothes and personal belongings, overcrowding and waiting to take refugees to town. Residents often exited the centre through holes in the fence, a practice that was tolerated.

The Kara Tepe site is an open facility run by the Municipality that hosts the most vulnerable persons waiting to leave for the mainland. According to the Municipality, UHCR identifies the vulnerable persons to be transferred out of Moria to Kara Tepe. People reside there until procedures are completed. At the time of fieldwork, around 20 persons would leave the camp every day for the appointment with the AS in Athens while a similar number would be transferred over from Moria to the Kara Tepe. 241 Before the EU-Turkey Statement, only Syrian families were hosted in Kara Tepe, but since March, nationalities have been mixed.

Kara Tepe has the capacity to accommodate around 1,400–1,500 people. Conditions in Kara Tepe were overall good at the time of the visit. According to the Site Manager, the food was delivered door-to-door and there were no queues, people were accommodated in containers and some tents, while common areas were organised: a special area for families with children, a special space for non-food items, mother and baby areas, child friendly spaces, clothes donations storage area, special areas where people can be served tea, sports area, cinema etc. There seemed to be a rather comprehensive set of services available and care was taken for access to the disabled. 242 Sixteen organisations were present in Kara Tepe at the time of the visit. 243

Nevertheless, the Kara Tepe is also a temporary facility, and prolonged stays raise challenges for individuals and families spending months there. Moreover, the overwhelming majority (98%) are vulnerable cases, such as female headed single parent families, mentally disabled and very young children.

In terms of the presence and role of UNHCR in Lesvos, UNHCR conducts protection monitoring and facilitates access to procedures. While they were initially in charge of camp management together with NGOs, UNHCR formally pulled out of Moria in reaction to the EU-Turkey Statement but remained on site to facilitate referrals. UNHCR conducts needs assessment and referrals, prior to registration, interpretation and assistance with UAM. UNHCR has an MoU with the police to provide information and runs a “Blue Dot” for counselling, child protection and case management.

According to interviews with the UNHCR in the camp, the overwhelming majority of adults, and even more so, of children (95%), have mental health issues and other vulnerabilities that need proper follow up and psychological assistance. Short-term services are provided by international organisations, like Save the Children and Action Aid, Praksis and MetaAction, and local associations; but most of these needs require medium to long term assistance outside the camp, in a stable environment.

In VIAL, reception conditions have been overall similar if not worse than Moria. Overcrowded centres, lacking basic activities such as beds, appalling hygiene conditions, lack of medical care and basic infant nutrition and poor food quality have been reported in the first months of its operation, leading to hunger strikes. 244 Some of these needs were gradually addressed, like medical care. VIAL has a capacity of 1,150 persons. The centre opened its doors in mid-February, a few days before the (then) First Reception Centre started operating in March. There is a branch in the site reserved to families, vulnerable persons and UAM; some UAM also reside in the Kivotos shelter outside. Following riots in VIAL in March, the majority of Sylhrams were moved to the centres Souda and DIPTHE. VIAL is now functioning as an open centre. Inter-ethnic tensions and riots have been on the rise, reflecting the frustration of certain nationalities waiting for months without being given access to the asylum procedure.

With regards to unaccompanied minors in particular, at the time of the visit in Moria they were held in a separate barbed-wire area inside the camp, whose door remained locked. Previously, the number of UAM was over 150, but gradually some were transferred to alternative accommodation. The unaccompanied minors remaining in Moria were 97 teenagers between 14-17. They were held there awaiting for a place outside, in the island or in the mainland. Many had been detained for periods exceeding by far the 20 days limit set in law 4375/2016. UAM have to be referred to a dedicated shelter by EKA, the National Centre for Social Solidarity. 245 According to MetaAction and Save the Children, the UAM of Moria face substantial mental health and anxiety issues and in need of psychosocial counselling, information and support. The impact of prolonged detention is visible in the tensions and clashes that often erupt. The FRS/RIS mentioned in the interviews that they organised excursions and other outdoor activities and sightseeing visits in the island, together with the local association “Sprygnirio.”

241 Interview with UNHCR in Kara Tepe, 24 May 2016

242 Interview with Municipality Site Manager in Kara Tepe, 23 May 2016

243 At the time of the visit, in Moria Save the Children provided activities for children, child friendly spaces and mother-baby areas; Praksis assisted UAMs, provided non-food items and facilitated transfers between Kara Tepe and Moria; Euronefte provides cultural mediators and needs identification, Mercy Corps provides classes and activities for children and adults and provides psychological support. The Municipality provided non-food items, food and non-food items and facilitated transfers between Kara Tepe and Moria; Euronefte provides cultural mediators and needs identification, Mercy Corps provides classes and activities for children and adults and provides psychological support. The Municipality provided non-food items, food and non-food items and facilitated transfers between Kara Tepe and Moria; Euronefte provides cultural mediators and needs identification, Mercy Corps provides classes and activities for children and adults and provides psychological support.

244 Interview with UNHCR in Kara Tepe, 24 May 2016


248 State organisation under the Ministry of Labour and Social Welfare that provides support and referrals to relevant services for vulnerable cases

249 Interview with Save the Children in Lesvos 24 May 2016, interview with MetaAction in Lesvos 25 May 2016 and interview with FRS/RIS Camp Manager in Moria, 25 May 2016

Outside the hotspot, the alternative shelters were used temporarily until a proper shelter would be found in the mainland; these were Mantamados, Iliaraki, a shelter run by MetaAction (addressed to children under 15 years old, girls and children until 18 years old accompanying other children) and one by Praksis.

In Chios, around 75 UAM had been registered by the FRS/RIS, of which a number had already been placed in shelters out of Chios and around 85 remained on the island pending placement. According to the Site Manager, it was difficult to register all UAM as certain among them were afraid to appear before the authorities. 246

4.5 Relocation

Table 7: Relocation in numbers up to 23 October 2016

| Relocation applications | 15,384 |
| Applications referred to MS | 10,156 |
| Pledges by MS | 10,755 |
| Approvals | 7,423 |
| Rejections | 516 |
| Transfers performed | 4,952 |
| Transfers already scheduled | 5,511 |

Source: Asylum Service, Statistical Data- Relocation Procedures, available at: tinyurl.com/jhy7ctz

The hotspots were initially set up with the purpose to support, inter alia, the channelling of candidates into the relocation system, since the 20th of March however no relocation is processed anymore in the Greek hotspots, as they shifted towards a filtering between asylum and readmission. In the same sense, while EASO initially arrived at the hotspots in order to support and encourage relocation, post 20 March, EASO’s function also shifted to the fast track inadmissibility procedure. Currently, persons eligible for relocation can only enter the relocation system from the mainland. NGOs however report that some newly arrived persons in the islands considered admissible have been able to enter the relocation scheme until mid-June.

Despite a slow start and relative mistrust from the side of the asylum seekers, relocation out of Greece has made some small but steady progress over the last three months. Still, the numbers remain low compared to the commitments made and the targets set in the relocation Decisions of 2015/1523 and 2015/1801. A year into implementation, 4,852 persons have been relocated out of Greece of the target to relocate 66,400 by September 2017 (see Table 7 above).

250 Interview with the head of the Reception and Identification Centre in VIAL/ Site Manager, 18 June 2016
The AS has issued internal guidelines for implementation, procedural issues are provided merely by analogy to the Dublin III regulation and internal guidelines, without specific and binding legislation.

Relocation applications are filed in Athens, Thessaloniki and Alexandroupoli. Interviews are conducted simultaneously by AS and EASO Officers. EASO interpreters assist with interviews and information sessions with relocation candidates. The matching has so far been done by the Dublin limit, while a dedicated Relocation limit has now been set up. Member States liaison officers are based in their embassies and are usually present at coordination meetings between the AS and UNHCR; they may participate in the “matching” process.251 After the initial acceptance of the candidate some Member States may conduct additional interviews and security checks. Since this practice is not officially foreseen, it can be arbitrary. The procedure takes over an average 3 to 4 weeks, from the moment the relocation application is filed to the issuing of the positive relocation decision.

With regards to rejection, the only ground communicated is Article 5 paragraph 7 of Council Decision 2015/1523, reasonable grounds for being a risk to national security or public order or falling under the exclusion provisions of articles 12 and 17 of the Qualification Directive. The Commission has repeatedly raised the issue of unjustified rejections by Member States.252

Priority is given to vulnerable applicants, those with health problems and IAM. There is no standard tool or procedure used. The identification of vulnerable cases is based either on visible elements or documents provided. Cultural and social characteristics are also taken into account, such as language skills. It was mentioned in interviews that the AS aims for a fair distribution to Member States, taking into account each country’s capacities, for example by trying not to send all single men or all families to the same Member State.

Dublin has priority over Relocation. When family reunification under Dublin applies and if the applicant consents, a Dublin application request is sent instead of a relocation application.

There is no effective remedy against the relocation decision. To address this gap the AS gives candidates the opportunity to appeal against the inadmissibility in case they do not agree with the Member State offering them a place. After being accepted by a Member State the candidates are referred to IOM, that conducts the health checks before departure, the issuance of the tickets and pre-departure information regarding the destination MS. This pre-departure information is also provided by Member States Liaison Officers. Some Member States have also sent informative leaflets to the AS. The Commission has observed that transfers are generally delayed, partly due to initial mistrust in the system, and partly due to the fact that Member States do not open enough places quickly. The situation seems however to have improved as of August/ September, according to Commission reports.253

4.6 Returns

The first returns following the EU Turkey Statement took place from the Greek islands to Turkey on 4 April 2016.254 It has been noted that individuals were readmitted back to Turkey without being able to exercise their right to seek asylum, due to the administrative chaos prevailing at the hotspot facilities at the time.255 By the end of June, 481 individuals have been readmitted to Turkey under the EU Turkey Statement, 1,055 under the bilateral Readmission Protocol between Turkey and Greece, and 43 Turkish nationals in line with the EU Turkey Readmission Agreement.256

According to the Commission, the total number of persons returned under the EU Turkey Statement up to September was 3,738, which included negative asylum decisions (including negative decisions at second instance), cases that had withdrawn their application or had not applied for asylum at all.257 When a person asks to return to Turkey, a request for readmission is sent to the Turkish authorities who then respond with a readmission decision based on the bilateral (Greece-Turkey) readmission agreement, normally within a week to ten days. Returnees are grouped together for the next departure. The police issues a decision for deportation on the grounds of readmission. According to the Police in Lesvos and the Ministry, all migrants have been provided with a police decision, imposing the restriction of movement to the island, and residence at the premises of the camps of Moria and Kara Tepe, while suspending the execution of deportation/decision previously issued until the readmission process is completed or the asylum claim is examined. However, during the first weeks following the EU-Turkey Statement, it was reported by NGOs that people were held in de facto detention in Moria without having received any information or decision on their detention. In fact, decisions imposing a restriction of movement started being communicated to the residents of Moria and Kara Tepe only after some weeks.

Turkish Liaison Officers have been deployed on behalf of the Turkish Ministry of External Affairs to monitor the process, they had stopped the failed Operation Petas in Turkey in July 2016, but have now returned and readmissions have resumed. Each person returned is escorted by one Frontex officer. No information was provided on the situation of the persons after their return.

The Hellenic Coast Guard is participating in returns by sea (to Dikeli), by escorting vessels conducting the returns up to the border line.

The waiting period for return is unclear; the refugees awaiting to return reside in the same place in Moria and Kara Tepe as before, together with everyone else. According to interviews, no detention is used for the purpose of return, except for one group related to the first return operation (Pakistan) which was detained in a separate place in Moria. According to interviews, there seemed to be no need for information or assistance for the return (AIR) as persons had themselves asked to return to Turkey, and Turkey was not their country of origin. There have been cases of refugees who preferred to go back to Turkey than stay in Moria.258

The hotspots in Greece operate within the context of the EU-Turkey Statement and have so far served to distinguish between those that could be potentially returned back to Turkey and those that can access the asylum procedure. Substantial reception conditions, overcrowding and mandatory detention applied indiscriminately, together with the prioritisation of certain nationalities in accessing asylum procedures have created a volatile environment. The confusion and lack of clarity and information about the procedures have only exacerbated the situation, making it unsustainable. The involvement of EASO in the examination of individual asylum claims have raised substantial concerns about competence and accountability that could be carefully examined and addressed in view of the extended role envisaged for the EUNA and EBCG.


255 The 202 first returns were already scheduled and were thus not related to the first return operation (Pakistani) which was related to the fact that Member States do not open enough places quickly. For more information on the different returns, see www.amnesty.org/en/latest/news/2016/10/greece-evidence-points-to-illegal-forced-returns-of-syrian-refugees-to-turkey/ and www.unhcr.org/news/briefing/2016/10/5809e78d4/unhcr-concern-recovery-of-syrian-refugees-in-turkey.html.


257 According to GCR, relocation interviews are conducted either by Greek Officers or by EASO Officers alone. Also interviews are being conducted by liaison officers inside embassies, especially the French one. No legal councilor is present and interview transcript is available. When we asked the Asylum Service Officer for these interviews, she clarified that the two Council Decisions do not mention any specific methods of identification of a possible danger to national security or public order, so MS are free to choose measures that suits them better. For more information on the different arrangements made by Member States, see AIDA, Admissibility, responsibility and safety in European asylum procedures, September 2010, 28-29.


RECOMMENDATIONS FOR THE HOTSPOTS IN GREECE

- Substantial investment should be made in human and financial resources, following a needs assessment by the Greek authorities, to enhance the capacity of the Asylum Service to register and examine asylum applications, as well as the capacity of the Appeals Authority to examine appeals.

- The involvement of EASO in individual asylum examinations should be clarified in terms of legal responsibilities via a vis the national authorities and the application of Greek legislation. The EASO experts and staff involved in such processes should have the practical experience and relevant expertise to ensure quality and efficiency.

- Similarly, the role of Frontex should also be clarified in terms of legal responsibilities, including in the scope of its broader mandate as EBCG.

- Effective and swift access to the asylum procedure should be granted to all individuals arriving in the hotspots, irrespective of nationality.

- It must be ensured that any detention of persons arriving in the hotspots is for a lawful purpose, necessary and proportionate and is decided on the basis of an individual assessment in compliance with Greece’s obligations under international and EU law. Any restriction of the right to freedom of movement must be compliant with the EU Charter and Article 2 of Protocol 4 ECHR.

- The provision of legal information and assistance in the hotspots should be strengthened by supporting the capacities of lawyers, local bar associations and civil society initiatives.

- Clear referral mechanisms should be used and coordination should be ensured in the identification of vulnerabilities between FRS/RIS, EASO and other actors involved in referrals such as UNHCR and international organisations.

- Unaccompanied minors should not be detained in the hotspots but moved to adequate accommodation facilities as soon as identification has taken place; guardianship systems need to be strengthened.

- The duration of stay in the hotspot facility needs to be as short as possible and procedures need to be swifter, without undermining procedural safeguards. Open reception centres providing longer stay and specialised shelters for vulnerable cases need to be foreseen on the islands and the mainland.

- Adequate information needs to be provided to camp residents about each step in the process; the provision of information needs to be better coordinated between the different actors involved. The number of interpreters and cultural mediators in the hotspots must be significantly increased in order to ensure proper communication of such information.

- Regular and independent monitoring of registration and identification practices and reception conditions should be conducted by international organisations, NGOs and the Ombudsman, and monitoring reports should be made public.

5. Conclusion and Recommendations

This study has presented an overview of the practices and the challenges in the implementation of the hotspots in Greece and Italy so far. In both countries the hotspots approach has served as a measure to control migration, ensure identification and fingerprinting and limit the number of those that will eventually enter the asylum system.

Among the most concerning issues in Italy is the use of coercive measures to obtain fingerprinting, with the encouragement of the European Commission. Another point of concern is the fact that the police are essentially tasked to do a first selection between those in need of protection and those who are not, which places a disproportionate level of responsibility upon an authority that is not competent or trained to do so; and which, through the use of the ‘foglio notizie’ often results in impeding access to asylum. In Italy, the hotspots refer more to an approach that is implemented rather than a specific type of facilities; as more and more people are disembarked in non-hotspot areas, there is a need to develop clearer guidance on practices and strengthen coordination for the provision of information to these populations entering procedures from there.

In Greece, one of the main concerns in the hotspots is the prolonged stay under detention and the excessive delays as a result of the lack of capacity of the Greek Asylum Service to process applications, as well as the lack of available accommodation in open reception centres, including specialised shelters for vulnerable groups. Implemented in the context of the EU–Turkey Statement, the hotspots have exacerbated an already challenging situation with the stranded population in the mainland.

Certain similarities can be identified in the two countries in relation to a number of issues, namely:

- Firstly, both countries use some sort of filtering of newly arrived migrants before they enter the asylum procedure; in Italy this is done through pre-identification with the use of the ‘foglio notizie’ form, in Greece through the admissibility interview and the application of the ‘safe third country’ concept, which selects between those that can be readmitted and those that can enter the asylum system. In Greece this is regulated by law, while in Italy this is conducted in ways that are quite arbitrary. Still, in both cases, the implementation of this ‘filtering’ has often prevented people from accessing asylum.

- Among the most concerning issues in Italy is the use of coercive measures to obtain fingerprinting, with the encouragement of the European Commission. Another point of concern is the fact that the police are essentially tasked to do a first selection between those in need of protection and those who are not, which places a disproportionate level of responsibility upon an authority that is not competent or trained to do so; and which, through the use of the ‘foglio notizie’ often results in impeding access to asylum. In Italy, the hotspots refer more to an approach that is implemented rather than a specific type of facilities; as more and more people are disembarked in non-hotspot areas, there is a need to develop clearer guidance on practices and strengthen coordination for the provision of information to these populations entering procedures from there.

- In Greece, one of the main concerns in the hotspots is the prolonged stay under detention and the excessive delays as a result of the lack of capacity of the Greek Asylum Service to process applications, as well as the lack of available accommodation in open reception centres, including specialised shelters for vulnerable groups. Implemented in the context of the EU–Turkey Statement, the hotspots have exacerbated an already challenging situation with the stranded population in the mainland.

Secondly, in both countries there is a second level of filtering based on nationality, which in Greece results in prioritising certain groups over others in the access to the asylum procedure, while in Italy it is reflected in the practice of providing different type of information assuming that there is no protection need, in transferring people to detention centres and in carrying out collective expulsions without having assessed individual circumstances.

The role and competences of EU Agencies, and particularly EASO, is a point of concern in Greece. The increasing role of EASO in individual decision-making processes (admissibility and in merit examination of claims) raises questions in terms of accountability and liability for the Agency and compliance with the national legislative framework. In Italy, also, EASO can be involved in carrying out additional exclusion interviews to detect exclusion grounds during the registration of applications for relocation.

There is substantial need to strengthen the provision of information to newly arrived migrants in both countries from the very early stage, and before they enter registration and identification procedures. It is the responsibility of the national authorities to provide this information, even though they can be assisted by EU agencies, international organisations and NGOs. In Italy it has been reported that on many occasions people are not aware at pre-identification that they are asked to state the intention to seek asylum. In Greece there is substantial confusion due to ineffective provision of information and the multitude of different and loosely coordinated actors present in the camps. People should be properly informed about their rights, the procedures that will be followed and the help that they can seek through lawyers and cultural mediators. Linked to this is the fact that the number of interpreters and cultural mediators in both countries still remains insufficient.

Detention is used in both countries as a key measure to ensure the hotspots function. In Italy prolonged detention is used as a coercive measure to ensure fingerprinting. Detention of third country nationals beyond the 48 hours limit is against the Constitution, and its use for the hotspots is irregular and arbitrary. There is also no access to effective remedy. In Greece, the practice of mandatory detention, applied indiscriminately even to vulnerable cases, such as families and small children, is against legal standards and the EU acquis.
What is more, no monitoring of practices takes place in the hotspots that could spot shortcomings and irregularities and ensure human rights compliance. Monitoring by independent bodies is needed in Italy, starting with pre-identification, as well as during registration and identification, particularly regarding the fingerprinting practices that reportedly have been often relying on coercive measures, including the use of force. Monitoring of practices and conditions is needed in Greece throughout the procedure.

Referral mechanisms to identify vulnerabilities and special needs may be in place but are not systematically used in both countries, and there is no clear pathway between identification of vulnerabilities between different actors. Medical screening is not always coordinated with further medical examinations later on, and there is no continuity of medical care. Non-visible vulnerabilities are often not sufficiently detected, and in Greece trafficking risks are not emphasised.

Among the most concerning issues is the detention of unaccompanied minors in hotspots and the fact that they end up staying there for prolonged periods of time, as specialised shelter capacity remains limited. Proper guardianship appointments are still cumbersome, and hinder access to the asylum procedure in Greece and access to relocation in Italy. The systematic use of X-ray examination for age assessment in Italy, rather than as a method of last resort, is another point of concern.

Reception capacity remains insufficient in both countries and reception conditions are inadequate and often below standard in the hotspots. Prolonged stay in facilities that were foreseen for a period of a few days is problematic and inappropriate, and one of the factors behind the deteriorating situation and the constant tensions in Greece. The mixed use of facilities in Italy including both relocation candidates and asylum seekers not eligible for relocation also nurtures tensions. In terms of relocation, common challenges in both countries include the slow pace of the process, technical delays and the sometimes arbitrary rejection of relocation applications by Member States. In Italy, mistrust in the programme and the slow pace have led to secondary movements, as people prefer to continue the journey to another Member State through irregular means, rather than wait.

Finally, there is the issue of readmission without access to asylum. In Italy, it seems that many return decisions have been issued based on the information provided in the pre-identification phase and the assumption that certain nationalities are not in need of protection. In addition to existing readmission agreements, Italy has started concluding bilateral cooperation agreements such as those with Gambia and Sudan that enable swift returns of individuals in an unlawful and non-transparent manner. In Greece, while most returns out of the hotspots have been voluntary and compliant with access to asylum, a couple of incidents have raised concerns about persons in need of protection being sent back without the possibility to seek asylum.

More broadly, if the objective of the hotspots is to serve as a referral mechanism at the points of entry, the main question to ask would be whether the hotspots have helped ensure access to asylum. The research shows that while for some individuals this may have been the case, for many others it was not; many newly arrived migrants have been trapped in prolonged detention without access to asylum, have not received the right information in order to do so, or have been swiftly returned as a result of the hotspots approach.

If the objective was to relieve the pressure from Italy and Greece, the hotspots have certainly not helped in this regard either: instead, they have led to an increase in the number of asylum applicants in Italy and Greece, consolidating the challenges and shortcomings already inherent in the Dublin system. As long as the Dublin system is in place, and without large scale relocation, the hotspots approach is unlikely to assist Member States at the points of arrival but only shift the responsibility to them. The hotspots approach has also led to more repressive measures, often disrespecting fundamental rights, which are applied by national authorities as a result of EU pressure to control the arrivals; yet despite EU pressure, it is the Member States that are held ultimately responsible for this implementation. The implementation of the EU-Turkey deal is a prime example of this EU pressure shifting responsibilities to the national level.

In conclusion, the implementation of the hotspots approach should be understood in relation to the broader reform of the CEAS, and an overarching strategy to end irregular migration flows into the EU. In the new CEAS, through the streamlining of safe third country and safe country of origin concepts and the priority given to inadmissibility over Dublin, the hotspots are expected to filter applications before they even reach the Dublin procedure. Without a broader responsibility sharing mechanism in place, the pressure on the success of this filtering in the first Member States of entry will be disproportionate, and there is high risk of repressive measures becoming the norm to enforce them.

If the hotspots approach is to be consolidated as a permanent referral mechanism and the points of entry, a number of elements need to be in place to ensure that this is compatible with the EU acquis and legal standards. There is also need for substantial investment in human and financial resources, following a needs assessment by the national authorities, to enhance the capacity of the authorities not only to register and identify migrants, but also proceed to examine asylum applications and relocation. The support of EU agencies in this regard is essential, but the terms of reference and legal responsibilities need to be clearly defined.

The following recommendations can be put forward for the implementation of the hotspots approach:
RECOMMENDATIONS

- The hotspots should be designed as referral mechanisms and coupled with investment in proper reception facilities, in order to reduce the duration of stay in the hotspots to the absolute minimum as they are not conducive to organise appropriate procedures.
- Effective and swift access to the asylum procedure should be granted to all individuals arriving in the hotspots irrespective of nationality.
- Rigorous monitoring mechanisms, including independent monitoring by international organisations, NGOs, and independent bodies like the Ombudsman, should be in place to ensure that the hotspots function is compatible with EU legal and rule of law standards.
- It must be ensured that any detention of persons arriving in the hotspots is for a lawful purpose, necessary and proportionate, and is decided on the basis of an individual assessment in compliance with Greece’s obligations under international and EU law. Any restriction of the right to freedom of movement must be compliant with the EU Charter and Article 2 of Protocol 4 ECHR. Reception and detention are distinct frameworks and should not be blurred.
- If hotspots premises are used as accommodation for longer stay beyond the first few days, reception standards need to be improved to ensure that they are adequate and dignified; these need to meet certain needs beyond safety, health and hygiene, security and basic amenities. Specialised services also need to be available for physical and mental health needs.
- Alternative shelters and other accommodation arrangements should be used for unaccompanied minor and asylum seeking children adapted to their age and suited to address their special needs. Detention is never in the best interest of the child.
- Swift identification and registration should not be at the expense of procedural safeguards as required under EU law and the EU Charter of Fundamental rights.
- Procedures should not discriminate on the basis of nationalities, equal treatment in reception conditions, and in registration and identification procedures should be guaranteed.
- Tools for the early identification of vulnerabilities and special needs, including the non-visible and non declared ones or mental health should be used systematically and streamlined. Identification of trafficking and trafficking risks in the hotspots context should be emphasised. Information sharing tools could be put in place to facilitate medical referrals and ensure continuity of care. Since they are present in the different facilities, EU agencies could assist national authorities with such tools.
- Accurate and up to date information throughout the whole process in a language that the refugees understand, both written and oral, along with guidance for every step with the facilitation of cultural mediators needs to be enhanced.
- Strengthened legal information and legal assistance is necessary though local practitioners; capacity building, case-law information and country of origin information can be useful support.
- Clarity is needed with regards to the relationship between national authorities and EU agencies, their legal responsibilities and the procedural rights available for the asylum seekers; the EASO experts and staff involved in such processes should have the practical experience and relevant expertise to ensure quality and efficiency.

ANNEX: Interviews in Italy and Greece

Field visits and interviews in Italy

UNHCR in Rome 28 April 2016
EASO in Rome 28 May 2016
Head of the Dublin Unit in Rome 31 May 2016
IGM in Rome 24 June 2016
IGM in Rome 28 June 2016
Head of the Cabinet Department for Civil Liberties and Immigration – Ministry of Interior in Rome, 05 July 2016
Deputy Prefect Cabinet Department for Civil Liberties and Immigration – Ministry of Interior in Rome, 25 July 2016
Director of the CIE Ponte Galeria in Rome, 29 September 2016

Fieldwork in Trapani has been conducted by CIR between 09 and 13 of May 2016.
Prefect in Trapani 10 May 2016
Responsible of the Area IV Immigration and Asylum of the Prefecture in Trapani 10 May 2016
Managing body hotspot in Trapani 10 May 2016
EASO in Trapani 10 May 2016
UNHCR in Trapani 10 May 2016
MSF in Trapani 10 May 2016
UNHCR in Trapani 28 October 2016

Fieldwork in Villa Sikania and Lampedusa (Agrigento) has been conducted by CIR between the 23 and 25 of May 2016.
Director managing body Regional hub Villa Sikania in Agrigento 24 May 2016
Lawyer managing body Regional hub Villa Sikania in Agrigento 24 May 2016
UNHCR in Agrigento 24 May 2016
Frontex in Lampedusa 25 May 2016
UNHCR in Lampedusa 25 May 2016
IOM in Lampedusa 25 May 2016
Save the Children in Lampedusa 25 May 2016
Mediterranean Hope in Lampedusa 25 May 2016

Fieldwork in Castelnuovo di Porto has been conducted by CIR on the 21 of July 2016.
Director managing body in Castelnuovo di Porto 21 July 2016
Medical director of the Managing body in Castelnuovo di Porto 21 July 2016
Legal operator of the Managing body in Castelnuovo di Porto 23 July 2016
Psychologist of the Managing body in Castelnuovo di Porto 23 July 2016
4 Eritrean as random seekers transferred from the hotspot of Trapani and Lampedusa in Castelnuovo di Porto 21 July 2016

Field visits and interviews in Greece

Fieldwork in Leros was conducted by ECRE and GCR between 23-25 May 2016. The two organisations visited Moria twice and Kara Tepe once and had interviews with the following organisations and actors:
- Coast Guard 23/05
- Municipality 23/05
- Asylum Service (AS), Fast track readmission procedure (inadmissibility) 24/05
- First Reception Service (FRS), Camp Manager 25/05
- Police (Lesvos Police Director and Moria police staff) 25/05
- FRONTEX staff in Moria (25/05)
- UNHCR staff in Moria (25/05)
- UNHCR staff in Kara Tepe (24/05)
- EASO coordinators in Moria (24/05)
- Army in Moria (25/05)
- Save the Children (24/05)
- MSF (25/05)
- Praksis lawyer (24/05)
- MetaAction lawyer (25/05)
- GCR and Proasial lawyer (23-24-25/05)

Fieldwork in Chios was conducted by GCR between 13-17 June 2016. GCR visited VIAL and Souda
Hellenic Red Cross, Field Coordinator (meeting in the UNHCR Office in Athens prior to the visit) 13/6
MetaAction lawyers (Chios) 13/6
EASO, (VIAL) 13/6
Praksis (staff outsourced to the RIS (VIAL)) 13/6
Save the Children 13/6
Frontex VIAL) 16/6
Head of the Reception and Identification Centre – RIC - Site Manager FRS/RIS (VIAL) 16/6
Member of the local society (VIAL) 16/6
Police, Director of Chios Police Directorate (Chios) and Head of Alleen Department, (VIAL) 16/6
Municipality staff (Souda) 16/6
Medecins du Monde (Souda) 16/6
Praksis (Souda) 16/6
Hellenic Red Cross (Souda) 16/6
Asylum Service (VIAL) 17/6
Asylum seekers residing in VIAL (VIAL) 17/6
Public Prosecutor in charge of UAM 17/6
UNHCR 17/6
Hellenic Coastguard 17/6