

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



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# On the frontline: the hotspot approach to managing migration

STUDY



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

# **On the frontline: the hotspot approach to managing migration**

## **STUDY**

### **Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, places the new "hotspot approach" to managing migration within its policy framework. It examines the way in which EU agencies provide support to frontline Member States, with particular focus on Greece, and assesses the chief challenges identified to date in both the policy design and operational implementation of hotspots.

## **ABOUT THE PUBLICATION**

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Policy departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

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## LIST OF ABBREVIATIONS

- AMIF** Asylum, Migration and Integration Fund
- CEAS** Common European Asylum System
- CJEU** Court of Justice of the European Union
- EASO** European Asylum and Support Office
- EBCG** European Border and Coast Guard
- ECtHR** European Court of Human Rights
- EMSC** European Migrant Smuggling Centre
- Eurodac** European Dactyloscopy database
- Eurojust** European Union Judicial Cooperation Unit
- Europol** European Police Office
- EURTF** European Union Regional Task Force
- FRA** European Union Agency for Fundamental Rights
- Frontex** European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
- FYROM** Former Yugoslav Republic of Macedonia
- ISF** Internal Security Fund
- JOT MARE** Joint Operation MARE (against migrant smuggling at sea)
- MMST** Migration Management Support Team
- PACE** Parliamentary Assembly of the Council of Europe
- SIS** Schengen Information System
- SOPs** Standard Operating Procedures (for hotspots)

**TFEU** Treaty on the Functioning of the European Union

**UNHCR** United Nations High Commissioner for Refugees

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## EXECUTIVE SUMMARY

The migration and refugee crisis has brought multiple challenges for the European Union's migration, asylum and border management policy architecture. The sheer number of new arrivals, together with their concentration on certain migration routes (first into Italy and subsequently into Greece and then onwards along the Western Balkan route), have placed the EU and particularly frontline Member States under considerable strain. The crisis has thus exposed shortcomings both in EU policy and its implementation. And – as some Member States resort to national responses, such as internal border checks, and countries along the Western Balkan route effectively close their borders – more and more migrants and refugees have found themselves trapped in Greece, sparking a humanitarian crisis.

The unprecedented migration flows have generated substantial policy and legislative activity centred around the European Commission's May 2015 European Agenda on Migration. The Agenda sets out five priority actions to manage migratory flows, since backed up by a number of initiatives – for example to combat migrant smuggling and enhance border management – with further initiatives to overhaul the asylum system, to improve reception conditions and to bolster resettlement in the pipeline. The Agenda emphasises specifically the need to return those with no right to remain and to relocate some of those in clear need of international protection out of frontline Member States as part of a responsibility-sharing mechanism. Both on return and relocation, initiatives have followed. These include two decisions, adopted by the Council in September 2015, to provide for the relocation of 160,000 people in clear need of protection from Greece and Italy to other EU Member States. In particular the need to cooperate with third countries to bring order to migratory flows, stressed repeatedly by the European Council, led to the EU-Turkey statement of 18 March 2016. The statement, which aimed to drive down the number of irregular and dangerous migrant crossings from Turkey to the Greek islands, established a mechanism governing the return of irregular migrants from Greece to Turkey and the resettlement of Syrians from Turkey to the EU.

As part of the immediate response to assist frontline Member States facing disproportionate migratory pressure, the Commission outlined a new hotspot approach to migration in its European Agenda on Migration. Located at key arrival points in frontline Member States, hotspots are designed to inject greater order into migration management by ensuring that all those arriving are identified, registered and properly processed. Hotspots thus link inextricably both to the relocation programme and to the aim of ensuring effective returns. Hotspots are based on the operational deployment of multiple EU agencies, notably Frontex, EASO and Europol, and are coordinated by a Regional Task Force in each Member State where hotspots are in operation – currently Italy and Greece. Rollout of the hotspots proved initially sluggish, due in part to the need to build them from scratch and to remedy infrastructure shortcomings, but has gathered pace significantly since early 2016. Four of the five planned hotspots in Greece are now operational as are four of the six planned in Italy. There seems to be consensus that hotspots have delivered greater order and substantially improved registration and fingerprinting rates.

And yet criticism of the hotspots has been vehement in certain quarters. Critics point, for example, to a lack of clarity about what happens to those who do not qualify for relocation, but nonetheless wish to apply for international protection. The new mechanism agreed with Turkey has also prompted NGOs formerly providing essential services in the hotspot on Lesbos to pull out in protest at the conversion of the hotspot into a closed facility and at what they regard as a move to collective expulsions. Their withdrawal has reportedly led to a worsening of conditions in the hotspot centres. The Commission itself also acknowledges that the EU-Turkey Statement has shifted the focus in the Greek hotspots from identification and registration to return.

Nevertheless, for all the difficulties to date, the hotspot approach remains fundamentally valid. By providing on-the-ground operational support from EU agencies, it can help to ensure that migration is effectively managed on the frontline. In order to meet this challenge, however, a number of policy recommendations might merit consideration by the European Parliament:

### **On hotspots:**

**The European Parliament could consider the need to regulate hotspots through a stand-alone legal instrument, taking into account its interaction with other relevant instruments, such as the EU Asylum Procedures and Reception Conditions Directives.** The loose policy framework surrounding hotspots may provide operational flexibility, but the absence of a stand-alone legal instrument may in turn lead to a lack of legal certainty. **Regulating agencies' roles in hotspots through separate legal instruments** – such as a new European Border and Coast Guard Regulation – could undermine the multi-agency foundation.

**Members could call for a clearer role for individual agencies and clearer framework for their cooperation within hotspots.** While both Frontex and EASO are heavily engaged in the hotspots, there is considerable disparity in terms of their respective **staff deployment and budgetary resources**. **Europol's on-the-ground deployment** appears to be patchy, while the role of Eurojust seems even less well developed. The Fundamental Rights Agency is invited to provide input through existing cooperation agreements, though there is no mainstreaming of its role.

**Mainstreaming fundamental rights in the hotspots.** A clearly designated role for the FRA in the hotspot approach could help to address the obvious fundamental rights challenges in the pressurised environment of the hotspots. This is especially important given the need to protect the fundamental rights of vulnerable groups, such as women and children. Equally, while executive powers may rest with Member States, the enhanced operational support provided by EU agencies in hotspots calls for much clearer rules on the extent to which they can be considered liable and accountable for their actions.

**Members should insist that proper procedures for all protection seekers are guaranteed in hotspots as enshrined in the EU Asylum Procedures Directive.** Swift processing of migrants and refugees within hotspots must not come at the expense of their rights and proper safeguards. Migrants must always be given the opportunity to apply for international protection and applications must be assessed on an individual, objective and impartial basis. Returns can only be carried out subject to a prior non-refoulement and proportionality check. Hotspots cannot provide a binary choice between relocation and

return, but must have clear procedures for those wishing to apply for international protection, but not qualifying for relocation.

**Members should insist that efforts to register and identify all migrants arriving in the hotspots continue in order to enhance both relocation and return procedures and to improve overall security.** In both Italy and Greece, registration and fingerprinting rates have improved considerably, reaching 100% in both countries. The Commission has also stated that the hotspot workflow and relocation process include systematic security checks. It is important to redouble efforts and ensure that everyone arriving is registered and checked against relevant Interpol and EU databases.

#### **On the Dublin Regulation:**

**The European Parliament should, in its role as co-legislator, insist on a fundamental change to the Dublin Regulation and a binding distribution system.**

The natural extension of the relocation policy and the deployment of EU agencies in hotspots would seem to be a fundamental overhaul of the Dublin Regulation with a binding system for distributing asylum seekers among the Member States, using a fair, compulsory allocation key.

**Any resumption of transfers to Greece under the existing Dublin Regulation should take into account that Greece still receives a large number of protection seekers on a daily basis.** Regardless of the Commission's proposed Dublin reform, plans to reinstitute Dublin transfers to Greece under the existing Dublin Regulation in June 2016 seem to contradict the idea of an emergency relocation mechanism to transfer those in need of international protection out of Greece. Resumption of Dublin transfers before pressure has been alleviated and adequate reception conditions are guaranteed appears premature.

#### **On a possible new mandate for EASO:**

**EASO should be given a stronger mandate and enhanced resources.** In parallel with the creation of a European Border and Coast Guard with a reinforced mandate, the Parliament could support the Commission's **proposal to enhance EASO's** mandate in line with its operational role in hotspots and increase parliamentary oversight. If the agency is to play a new policy implementation role and a greater operational role, it will require sufficient financial resources and adequate legal means.

#### **On the EU-Turkey statement:**

**Members should call on the Commission to monitor carefully the implementation of the EU-Turkey statement.** The Commission must be vigilant in monitoring implementation of the mechanism and respect for human rights, not least in light of the criticism from NGOs and other international organisations. Reports of illegal detention or deportation must be fully investigated. The Parliament should fulfil its role as co-legislator when it comes to the visa liberalisation process and budgetary aspects.

## 1. INTRODUCTION

In its December 2014 resolution<sup>1</sup>, the European Parliament asked the Committee on Civil Liberties, Justice and Home Affairs (LIBE) to “assess the various policies at stake, [...] develop a set of recommendations and to report to Plenary in the form of a strategic initiative report” on the situation in the Mediterranean and the need for a holistic approach to migration. The request came in the wake of a series of tragedies at sea – 3,279 people lost their lives trying to cross the Mediterranean in 2014<sup>2</sup> - and a growing sense that the EU and its Member States were failing to deal with the migration management and humanitarian challenge facing them.

According to the United Nations High Commissioner for Refugees (UNHCR)<sup>3</sup>, in **2014, 216,054 people reached Europe’s shores**. This was already a jump from the annual average of just under 60,000 between 2008 and 2013. Yet, it proved to be only the beginning. As the LIBE Committee carried out its work on the strategic own-initiative report under the co-rapporteurship of Roberta Metsola (EPP) and Cécile Kyenge (S&D) **in 2015, the number of arrivals soared to over one million** (see Figure 1 below). The death toll rose too, with 3,770 lives lost<sup>4</sup>. It was against this backdrop and particularly following a series of tragedies at sea in April 2015, culminating in the sinking of a vessel on 19 April with an estimated 600-700 victims<sup>5</sup>, that the EU response developed rapidly. First, at a special meeting on 23 April 2015, the European Council committed to a series of measures<sup>6</sup>, with the European Parliament in turn adopting a resolution in response to the European Council meeting.<sup>7</sup> **Both positions fed into the European Commission’s European Agenda on Migration published on 13 May 2015**. While the Agenda had already been slated for publication and was not therefore a direct response to the tragedies, the context in which it was presented is noteworthy.

In the **first three months of 2016, fully 170,537** people reached the EU by sea, **a more than sevenfold increase** compared to the first three months of 2015<sup>8</sup>. And yet, by the time the strategic own-initiative report was adopted by the Parliament’s plenary on 12 April 2016<sup>9</sup>, a new dynamic was beginning to play out. 12,325 people arrived in April 2016 as against 29,864 in April 2015, with the EU-Turkey Statement<sup>10</sup>, agreed between the European Council and Turkey, being applied since 20 March 2016.

<sup>1</sup> European Parliament resolution of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration.

<sup>2</sup> See <http://missingmigrants.iom.int/mediterranean>.

<sup>3</sup> [http://data.unhcr.org/mediterranean/regional.php#\\_ga=1.268639923.391985686.1457969959](http://data.unhcr.org/mediterranean/regional.php#_ga=1.268639923.391985686.1457969959).

<sup>4</sup> <http://missingmigrants.iom.int/mediterranean>.

<sup>5</sup> See <http://www.unhcr.org/5533c2406.html> and <http://www.bbc.com/news/world-europe-32371348>.

<sup>6</sup> Statement from the Special meeting of the European Council, 23 April 2015.

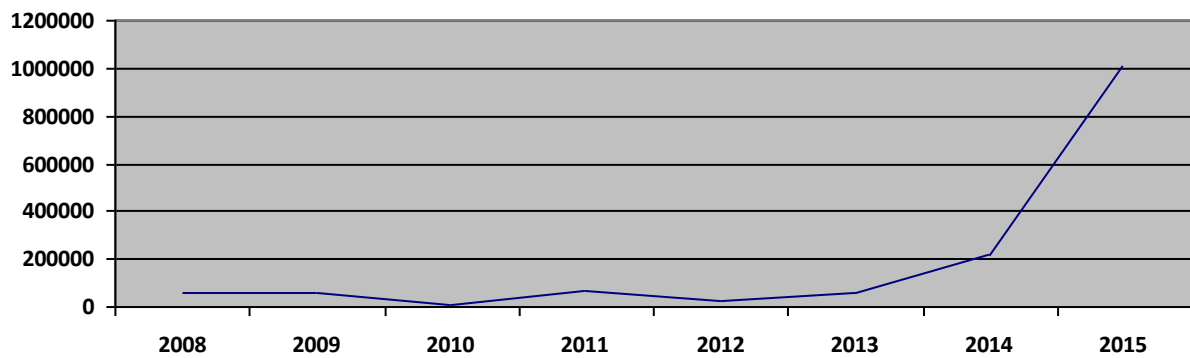
<sup>7</sup> European Parliament resolution on the Extraordinary European Council meeting (23 April 2015) - The latest tragedies in the Mediterranean and EU migration and asylum policies available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0176+0+DOC+XML+V0//EN>.

<sup>8</sup> [http://data.unhcr.org/mediterranean/regional.php#\\_ga=1.268639923.391985686.1457969959](http://data.unhcr.org/mediterranean/regional.php#_ga=1.268639923.391985686.1457969959).

<sup>9</sup> The final text is not yet available, though will be shortly at

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2095\(INI\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2095(INI)).

<sup>10</sup> European Council, EU-Turkey statement, 18 March 2016.

**Figure 1 – Arrivals by sea into the European Union (2008-2015)**

Source: Figures from the UNHCR

Another fundamental dimension of the evolving migration challenge has been the **dramatic shift in migratory routes**. Thus, in 2014 Frontex reported that some 170,000 of the 280,000 irregular migrants detected crossing the external border used what is termed the Central Mediterranean route (chiefly departing from Libya and arriving in Italy)<sup>11</sup>. In 2015 no fewer than 885,386 irregular border crossings were detected via the Eastern Mediterranean route and 764,038 via the Western Balkan route<sup>12</sup>, with obvious double counting due to the fact so many people were arriving in Greece from Turkey, crossing the Western Balkans and then re-entering the EU. First Italy and then Greece have therefore found themselves at the forefront of the migration challenge. Indeed, to borrow the **Commission's own terminology, Greece and Italy have become "hotspots", the gateway to the European Union for thousands of people and the focal point of migratory movements.**

It is against this backdrop that considerable recent policy and legislative activity in the EU has taken place. This study – prepared ahead of the **LIBE Committee's delegation visit to Greece from 18 to 20 May 2016** – sets out the broader policy framework surrounding the migration and refugee crisis (Chapter 2), explores briefly the current situation in Greece (Chapter 3) and then examines one of the central tenets of the EU policy response: the hotspot approach to migration. It asks whether the policy and legal framework have been developed with sufficient detail and clarity (Chapter 4) and examines how hotspots have been implemented on the ground and what challenges are apparent (Chapter 5). Finally, it **records the Parliament's position on hotspots** and related policy measures to date (Chapter 6) and concludes with some policy recommendations (Chapter 7).

Of course, the EU-Turkey Statement agreed in March 2016 has altered to a large degree the focus of Greek hotspots. And indeed, this represents one of the central challenges of this study. This is a fast-moving area, with abrupt changes in migratory patterns and in policy implementation and its impact. This paper is based on desk research and an extensive literature review backed up by semi-structured interviews and discussions, notably with NGOs operating on the ground in Greece.

<sup>11</sup> Frontex, *Annual Risk Analysis 2015*.

<sup>12</sup> Frontex *Risk Analysis for 2016*.

## 2. THE POLICY FRAMEWORK SURROUNDING HOTSPOTS

For the proper management of the exceptionally high migration flows, the European Commission has stressed the need to implement priority actions under the European Agenda on Migration in five key areas: establishing functioning hotspots, implementing the relocation programme, ensuring effective returns of migrants not entitled to international protection, improving border management and creating sufficient and adequate reception capacity.<sup>13</sup> While hotspots will be analysed in chapters 4 and 5, this chapter focuses on the other key areas that form the policy framework surrounding hotspots.

### 2.1. Relocation and resettlement programmes

According to the European Commission<sup>14</sup>, the hotspot approach will contribute to the implementation of the **emergency relocation mechanisms to assist Italy and Greece**, which were proposed by the Commission based on Article 78 (3) TFEU and adopted by the Council on 14 September<sup>15</sup> and 22 September<sup>16</sup> 2015 after consulting the European Parliament. In total, 160,000 people in need of international protection should be identified in those frontline Member States for relocation to other EU Member States where their application for international protection will be processed. Relocation pursuant to the Council Decisions can only be applied to protection seekers belonging to a nationality for which the Union-wide average recognition rate of international protection is 75% or higher. Relocation from Italy and Greece to other Member States has started very slowly and is, with fewer than 1,500 persons relocated, still far behind the rate necessary to achieve the overall target in two years.<sup>17</sup> In addition to the emergency relocation mechanisms, the Commission also put forward in September 2015 a proposal for a Regulation establishing a **permanent crisis relocation mechanism**<sup>18</sup> and amending the Dublin III Regulation<sup>19</sup>, which lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (in principle the first country of entry). The Commission also presented a proposal for **further reform of the Dublin III Regulation**<sup>20</sup> on 4 May 2016. Under the proposal the current criteria in the Dublin system would be preserved, though supplemented with a corrective allocation mechanism to relieve Member States under disproportionate pressure.<sup>21</sup> Since the recast Dublin proposal has a similar objective as the September 2015 Commission proposal on the permanent crisis relocation mechanism, the Commission announced that it could consider withdrawing the September proposal, depending on the results of the discussions. The Commission's

<sup>13</sup> European Commission, Progress Report on the Implementation of the hotspots in Greece, COM(2015) 678, 15 December 2015.

<sup>14</sup> European Commission, Factsheet "The hotspot approach to managing exceptional migratory flows", 8 September 2015.

<sup>15</sup> Council Decision (EU) 2015/1523 of 14 September 2015.

<sup>16</sup> Council Decision (EU) 2015/1601 of 22 September 2015.

<sup>17</sup> European Commission, Member States' Support to Emergency Relocation Mechanism (Communicated as of 3 May 2016)

<sup>18</sup> Proposal from the European Commission, COM(2015) 450, 9 September 2015.

<sup>19</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013.

<sup>20</sup> Proposal from the European Commission, COM(2016) 270, 4 May 2016

<sup>21</sup> Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016) 197, 6 April 2016.

**proposal for reform of the Eurodac Regulation**<sup>22</sup>, establishing the EU asylum fingerprint database, includes changes to reflect those proposed for the Dublin Regulation on 4 May 2016 and to assist in better controlling irregular migration. In order to facilitate the functioning of the Common European Asylum System (CEAS) and of the revised Dublin distribution mechanism, the Commission also submitted a **proposal to amend EASO's mandate**<sup>23</sup> on 4 May 2016. The proposal should provide it with sufficient financial resources and the legal means to play a new policy-implementing and strengthened operational role.

While intra-EU relocation of persons seeking international protection is carried out primarily for the purpose of responsibility-sharing among EU Member States, resettlement of refugees from outside EU territory to an EU Member State is an expression of solidarity by the EU towards third countries. In July 2015 the Council adopted **Conclusions on resettling, through multilateral and national schemes, 20,000 persons in clear need of international protection**<sup>24</sup>, based on a Commission recommendation. Member States are encouraged to make use of the **EU's financial assistance for resettlement programmes** under the Asylum, Migration and Integration Fund (AMIF). A Commission **proposal framing the EU's policy on resettlement** is expected before the summer. This will put in place a horizontal mechanism for launching targeted EU resettlement initiatives, by setting out common EU rules for admission and distribution, on the status to be accorded to resettled persons, on financial support, as well as on measures to discourage secondary movements.<sup>25</sup>

## 2.2. Irregular migration and return

In particular the need to cooperate with Turkey to secure the borders, to bring order to migratory flows, and to stem irregular migration has been stressed repeatedly by the European Council. This led to the ad referendum agreement of an **EU-Turkey Joint Action Plan**<sup>26</sup> on 15 October 2015, which was negotiated by the European Commission and activated at the Meeting of Heads of State or Government with Turkey<sup>27</sup> on 29 November 2015. Building on this Action Plan, a **statement was agreed between the Members of the European Council and Turkey** on 18 March 2016<sup>28</sup>. Pursuant to this statement, a mechanism has been established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, with the aim of substituting irregular and dangerous migrant crossings from Turkey to the Greek islands with the legal channel of resettlement from Turkey to the EU. For every Syrian being returned to Turkey, another Syrian will be resettled from Turkey to the EU. On the EU side, resettlement under this mechanism will take place in the first instance by honouring the commitments taken by Member States in the above-mentioned Council conclusions of 20 July 2015, of which 18,000 places for resettlement remain. The Commission has proposed an **amendment to**

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<sup>22</sup> Proposal from the European Commission, COM(2016) 272, 4 May 2016

<sup>23</sup> Proposal from the European Commission, COM(2016) 271, 4 May 2016

<sup>24</sup> Conclusions of the Representatives of the Governments of the Member States meeting within the Council, Doc. 11130/1522, July 2015.

<sup>25</sup> Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016) 197, 6 April 2016.

<sup>26</sup> European Commission - **Fact Sheet "EU-Turkey joint action plan", 15 October 2015.**

<sup>27</sup> European Council, Meeting of heads of state or government with Turkey - EU-Turkey statement, 29 November 2015.

<sup>28</sup> European Council, EU-Turkey statement, 18 March 2016.

**the relocation decision of 22 September 2015** to ensure that 54,000 places earmarked for relocations will also now be available for the purpose of resettling Syrians from Turkey to the EU in case there is any further need for resettlement.<sup>29</sup> Once irregular crossings between Turkey and the EU have ended or at least have been substantially and sustainably reduced, a **Voluntary Humanitarian Admission Scheme with Turkey**, as recommended by the Commission<sup>30</sup>, will be activated. The participating EU Member States will, on a voluntary basis, admit and grant subsidiary protection to persons in need of international protection displaced by the conflict in Syria and registered by the Turkish authorities. The European Council on 17-18 March 2016<sup>31</sup> agreed that the Commission will coordinate and organise together with Member States and agencies the necessary support structures to implement the EU-Turkey statement effectively, as explained further in Chapter 5.

In parallel with the launch of the Visa Liberalisation Dialogue with Turkey in December 2013, the EU and Turkey also signed an **agreement on the readmission of persons residing without authorisation**<sup>32</sup>, which entered into force on 1 October 2014 after the European Parliament gave its consent. The agreement includes provisions related both to the readmission of the nationals of the EU Member States and Turkey, and to the readmission of any other persons, including the third country nationals and the stateless persons that entered into, or stayed in, the EU from Turkey or vice-versa. Both sides agreed at the Meeting of Heads of State or government with Turkey in November 2015 that the EU-Turkey readmission agreement will become fully applicable, including to third country nationals, from June 2016 instead of the initially proposed date of October 2017.

In response to the European Council's invitation to set up a dedicated European Return Programme, the Commission presented in September 2015 an **EU Action Plan on return**<sup>33</sup>. The **EU Asylum Procedures Directive**<sup>34</sup>, which establishes common procedures for granting and withdrawing international protection, allows Member States, in certain clearly defined circumstances, to declare an application inadmissible after an accelerated examination procedure. This is possible, for instance, where the person has already been recognised as a refugee in a third country or otherwise enjoys sufficient protection there (**first country of asylum**, in Article 35 of the Directive); or where the person has not already received protection in the third country but the third country can guarantee effective access to protection to the readmitted person (**safe third country**, in Article 38 of the Directive). In September 2015, the Commission published a proposal for a Regulation establishing an **EU common list of safe countries of origin**<sup>35</sup> and amending the Asylum Procedures Directive, in order to support the swift processing of asylum applications from persons originating from countries designated as safe and allow for faster returns if the individual assessments of the applications confirm no right of asylum. The Commission concluded that Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey should be included in the EU common list of safe countries of origin. The Commission's proposal, which has triggered criticism from human rights organisations<sup>36</sup>, is currently being discussed by the co-

<sup>29</sup> Proposal from the European Commission, COM(2016) 171, 21 March 2016.

<sup>30</sup> Commission Recommendation for a voluntary humanitarian admission scheme with Turkey, C(2015) 9490, 15 December 2015.

<sup>31</sup> European Council meeting, Conclusions, 17 and 18 March 2016.

<sup>32</sup> Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, 16 December 2013.

<sup>33</sup> EU Action Plan on return, COM(2015) 453, 9 September 2015.

<sup>34</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013.

<sup>35</sup> Proposal from the European Commission, COM(2015) 452, 9 September 2015.

<sup>36</sup> See, for example, Opinion of the European Union Agency for Fundamental Rights concerning an EU common list of safe countries of origin, 23 March 2016.



legislators. In April 2016, the Commission also announced plans to propose **a new Regulation establishing a single common asylum procedure in the EU** and replacing the Asylum Procedures Directive.<sup>37</sup>

The new hotspot approach is also designed to contribute to the EU's fight against smugglers and traffickers, where cooperation with third countries is also of crucial importance. The Commission presented an **EU Action Plan against migrant smuggling**<sup>38</sup> in May 2015 to prevent the exploitation of migrants by criminal networks and reduce incentives for irregular migration. A public consultation<sup>39</sup>, launched by the Commission in January and closed in April 2016, to underpin the ongoing evaluation of the EU legislation on migrant smuggling is expected to give more information about possible proposals to improve the existing EU legal framework. Europol also launched its **European Migrant Smuggling Centre (EMSC)**<sup>40</sup> in February 2016. An essential part of the EMSC is the **Joint Operational Team Mare (JOT MARE)**<sup>41</sup>, a specialised team of experts launched by Europol in March 2015 to combat migrant smuggling by boat across the Mediterranean Sea. At the request of the European Council, the military operation **EUNAVFOR Sophia**<sup>42</sup> was launched by the Council in the Mediterranean in June 2015, with the aim of undertaking systematic efforts to identify, capture and dispose of vessels used by migrant smugglers or traffickers.

### 2.3. Improving border management

While the primary responsibility for the control of external borders lies with the EU Member States, the task of the EU border management agency **Frontex** is to coordinate joint operations at the external borders of the EU. Triton and Poseidon, EU-funded joint external border management operations coordinated by Frontex, will be financed with EUR 176 million in 2016. Their primary purpose is to control irregular migration flows towards the territory of the EU Member States and to tackle cross-border crime. However, their vessels are subject to international law obligations on rescue at sea. According to Frontex, from the launch of **Triton** in the Central Mediterranean on 1 November 2014 to October 2015 19,000 people were rescued, including 6,000 "saved using vessels and other equipment financed by Frontex."<sup>43</sup> **Poseidon Rapid Intervention** was launched by Frontex in December 2015, replacing the Joint Operation Poseidon Sea at the external sea borders of the Eastern Mediterranean region with a larger number of officers and technical equipment to support Greece in handling the unprecedented number of migrants arriving on its islands. The total Frontex budget was increased in 2015 with the support of the European Parliament. However, operational success ultimately depends on equipment and personnel from Member States.

Following a request from Germany, Greece and Turkey, **NATO** defence ministers decided, on 11 February 2016, to assist with the growing refugee and migrant crisis in Europe, inter

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<sup>37</sup> Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016) 197, 6 April 2016.

<sup>38</sup> EU Action Plan against migrant smuggling (2015 - 2020), COM(2015) 285, 27 May 2015.

<sup>39</sup> Consultation on "Tackling migrant smuggling: is the EU legislation fit for purpose?", Deadline: 06/04/2016 at [http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting\\_0031\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting_0031_en.htm).

<sup>40</sup> [https://www.europol.europa.eu/content/EMSC\\_launch](https://www.europol.europa.eu/content/EMSC_launch).

<sup>41</sup> <https://www.europol.europa.eu/content/jot-mare>.

<sup>42</sup> Council Decision (CFSP) 2015/972 of 22 June 2015.

<sup>43</sup> Frontex, 10 February 2015 at <http://frontex.europa.eu/news/dramatic-rescue-operation-off-the-coast-of-libya-29-dead-EDomPH>

alia, by **deploying a maritime force in the Aegean Sea** to conduct reconnaissance, monitoring and surveillance of illegal crossings, in support of Turkish and Greek authorities and Frontex.<sup>44</sup>

In December 2015 the Commission proposed the **Borders Package**<sup>45</sup>, a set of measures to **manage the EU's external borders and protect the Schengen area without internal borders**. The package includes a proposal for a Regulation establishing a **European Border and Coast Guard**<sup>46</sup>, **based on an agency built from Frontex** and bringing together Member States' authorities responsible for border management with more competences in the fields of external border management and return. It also beefs up the agency's fundamental rights apparatus, including notably an expanded role for the Fundamental Rights Officer and a new complaints mechanism for alleged fundamental rights breaches during activities carried out by the Agency. The file is currently being discussed by the co-legislators, with the aim of reaching a political agreement during the Dutch Presidency.

## 2.4. Creating adequate reception capacity and conditions

The **EU Reception Conditions Directive**<sup>47</sup> lays down standards for the reception of applicants for international protection in Member States, including access to housing, food, clothing, health care and employment. An amended Directive was adopted in 2013 under the ordinary legislative procedure to provide better and more harmonised reception standards throughout the EU. In the European Agenda on Migration, the Commission committed to prioritise transposition and implementation of the recently adopted legislation on asylum rules. In September 2015, the Commission adopted **infringement decisions** against 19 Member States for not having communicated the national measures taken to fully transpose the updated Reception Conditions Directive and subsequently issued reasoned opinions to Greece, Malta and Germany for failure to transpose the Directive.<sup>48</sup>

Changes to the Reception Conditions Directive were announced by the European Commission in April 2016.<sup>49</sup> **A legislative proposal amending the Reception Conditions Directive** is expected for the summer of 2016 to further harmonise the treatment of asylum seekers across the Member States. As a benchmark to facilitate monitoring, the Commission has also asked the European Asylum Support Office (EASO) to develop common technical standards and guidance for the reception systems of the Member States, in cooperation with a newly-created Network of EU Asylum Reception Authorities and the Fundamental Rights Agency.<sup>50</sup>

<sup>44</sup> NATO, 24 March 2016 at [http://www.nato.int/cps/en/natohq/topics\\_128746.htm](http://www.nato.int/cps/en/natohq/topics_128746.htm).

<sup>45</sup> Securing EU borders, 15 December 2015 at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/index_en.htm)

<sup>46</sup> Proposal from the European Commission, COM(2015) 671, 15 December 2015.

<sup>47</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013.

<sup>48</sup> ANNEX 8 to the Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, Implementation of EU law - State of Play, COM(2016) 85, 10 February 2016.

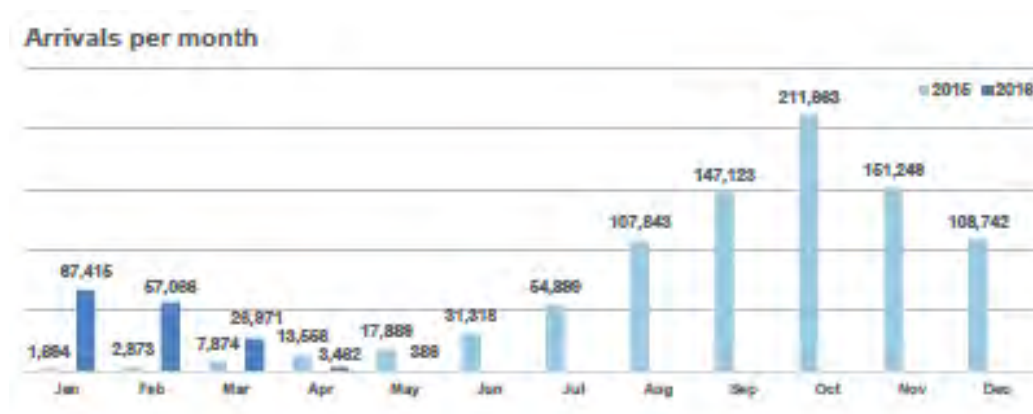
<sup>49</sup> Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016) 197, 6 April 2016.

<sup>50</sup> *Ibid*

### 3. THE SITUATION IN GREECE

As illustrated in the introduction, Greece, owing to its geographical location, has found itself at the forefront of the migration and humanitarian challenge. The sheer number of people arriving in Greece – particularly from 2015 onwards – and their determination to travel via the Western Balkan route into Western Europe have complicated Greece's already difficult position as a frontline Member State at the EU's external border. According to the United Nations High Commissioner for Refugees (UNHCR), up to 5 May 2016, 155,300 migrants had arrived in Greece by sea in 2016 following the 1,015,078 in 2015<sup>51</sup> (see Figure 1 below). It is estimated that just under 54,000 migrants are currently on Greek soil<sup>52</sup>.

**Figure 2 – Migrant arrivals in Greece by month (2015-2016)**



Source: UNHCR (up to 5 May 2016)

This chapter charts the current situation in Greece with regard to the Greek asylum and reception procedure (section 3.1), the situation at Greece's borders and its impact on the Schengen area (section 3.2), budgetary support for Greece (section 3.3) and the recent EU-Turkey deal and its implications (section 3.4).

#### 3.1. Reception and asylum in Greece

Even before the migration and refugee crisis developed in 2014 and 2015, the Greek asylum system was already under severe pressure. The transfer of applicants for international protection to Greece under the Dublin Regulation was suspended by Member States in 2011, following two **rulings – by the European Court of Human Rights (ECtHR)<sup>53</sup> and the Court of Justice of the European Union (CJEU)<sup>54</sup> – which identified systemic deficiencies in the Greek asylum system that could constitute a violation of the fundamental rights of applicants for international protection transferred from Member States to Greece.** The European Commission adopted on 10

<sup>51</sup> For up-to-date figures, see <http://data.unhcr.org/mediterranean/regional.php>.

<sup>52</sup> <http://data.unhcr.org/mediterranean/country.php?id=83>.

<sup>53</sup> *M.S.S. v. Belgium & Greece*, Grand Chamber, ECtHR, 21 January 2011, application n° 30696/09

<sup>54</sup> *N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, Court of Justice of the European Union, 21 December 2011.

February 2016 a Recommendation on the urgent measures to be taken by Greece in view of the resumption of Dublin transfers<sup>55</sup>. Recognising that responsibility for deciding whether or not to resume transfers of applicants for international protection to Greece under the Dublin rules rests “exclusively with Member States’ authorities under the control of the courts”<sup>56</sup>, the Commission announced in March that the resumption of Dublin transfers to Greece is envisaged for June 2016<sup>57</sup>. This seems a particularly ambitious target especially as pressure on the Greek asylum system has increased exponentially since the court rulings and the suspension of Dublin transfers.

### 3.1.1. Reception capacity in Greece

According to the UNHCR<sup>58</sup>, on 6 May 2016, a total of 53,901 migrants and refugees were present in reception centres on Greek soil, 46,660 on the mainland and 8,241 on the islands. While the bulk of people on the islands are in hotspot centres, all those on the mainland are in government-run sites – or else, as detailed below, outside any proper facilities or in makeshift camps. **On the Greek mainland, overall capacity across all sites is for 34,150 people – as against 46,660 currently in the sites – meaning that there is significant overcrowding**<sup>59</sup>. Given that one of the grounds for suspending Dublin transfers in the first place was the dire reception conditions, this does not augur well for the resumption of Dublin transfers in the near future.

**Figure 3 – Reception centres in Greece (6 May 2016)**



Source: UNHCR

<sup>55</sup> Commission Recommendation addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013, C(2016) 871, 10 February 2016.

<sup>56</sup> *Ibid.*

<sup>57</sup> See LIBE Committee meeting of 21 March 2016 on the situation of the Schengen area at <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20160321-1500-COMMITTEE-LIBE>.

<sup>58</sup> <http://data.unhcr.org/mediterranean/country.php?id=83>

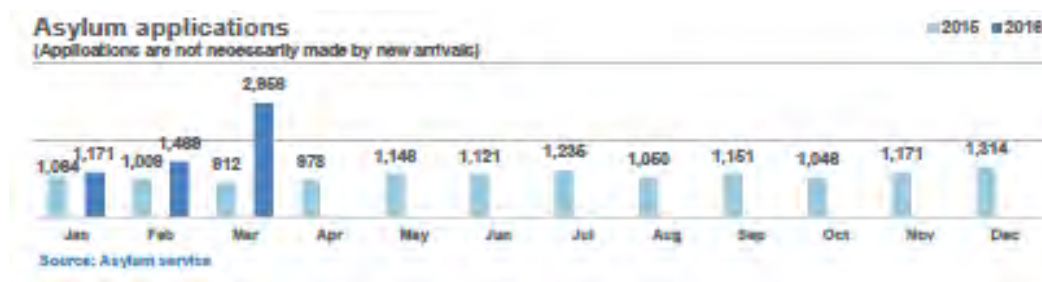
<sup>59</sup> *Ibid.*

### 3.1.2. Asylum applications in Greece

Despite the extremely high numbers of people arriving in Greece, it is clear from the statistics that the vast majority of those seeking asylum in the EU continue (or at least continued until the effective closure of the Western Balkan route – see below) their journey to other EU countries where they lodge asylum applications. As such, **while over one million people arrived in Greece in 2015, only 13,197 people applied for asylum in Greece**<sup>60</sup>. This compares to 476,510 in Germany, 177,135 in Hungary and 162,450 in Sweden<sup>61</sup>. According to Human Rights Watch<sup>62</sup>, those wishing to apply for asylum in Greece face serious problems. It also reports that the Greek Asylum Service has set up a system for appointments almost exclusively through Skype, though with significant booking and connection problems.

As can be seen from Figure 4 below, March 2016 – when the EU-Turkey statement entered into operation (see chapter 2 and section 3.4 below) – witnessed a spike in asylum applications in Greece. Figures for April are not available.

**Figure 4 – Asylum applications in Greece (2015-2016)**



Source: UNHCR

## 3.2. The situation at the Greek borders and the Schengen area

As outlined in the introduction, the unprecedented influx of refugees and migrants in 2015, particularly from the summer onwards, saw the vast majority of people arriving in Greece and then continuing their journey onwards through the Western Balkans and back into the EU. As has been well documented, the migratory flow prompted a number of EU countries to reintroduce temporary internal border controls pursuant to articles 23-25 of the Schengen Borders Code from September 2015 and non-Schengen countries like Croatia, Serbia and the Former Yugoslav Republic of Macedonia (FYROM) to tighten border controls or even shut border crossings. The Western Balkan route had effectively closed, leaving thousands of migrants and refugees penned in in Greece and sparking a humanitarian crisis in Idomeni on the Greece-FYROM border.

### 3.2.1. The situation at the Greece-FYROM border: the makeshift camp of Idomeni

It was in early March 2016 that the FYROM authorities decided to close **the country's** border with Greece<sup>63</sup>. Since then, **conditions at the border have worsened significantly.**

<sup>60</sup> <http://data.unhcr.org/mediterranean/country.php?id=83%20>

<sup>61</sup> <http://appsso.eurostat.ec.europa.eu/nui/show.do>

<sup>62</sup> Human Rights Watch, "EU/Greece; Share Responsibility for Asylum Seekers", Press Release, 28 January 2016

<sup>63</sup> The Times of Change, "FYROM closes border "completely" to illegal migrants", 9 March 2016.

Currently more than 11,000 refugees<sup>64</sup> (including around 4,000 children<sup>65</sup>) are waiting at a makeshift camp meant for 2,000 people, close to a railway track in Idomeni, a border village (see Figure 3 below). They are currently sleeping in the open without adequate reception, services or information<sup>66</sup>. The challenges this represents are legion. The UNHCR has described the environment as "very challenging", with hygiene poor and people burning rubbish (including plastic) to keep warm.<sup>67</sup> NGOs interviewed for this study also pointed to serious safety concerns, particularly for children. Indeed, such are the safety issues that *Médecins sans Frontières* abandoned the Idomeni camp on 22 March. Since then, violent clashes have been reported between migrants and the FYROM police, with some migrants trying to break down the fences which separate Greece from FYROM and the police allegedly responding with tear gas and rubber bullets<sup>68</sup>. Recent media reports suggest that the Greek government intends to clear the camp at Idomeni<sup>69</sup>.

**Figure 5 – Idomeni on the Greece-FYROM border**



Source: BBC

As well as support for Greece under the Union Civil Protection Mechanism<sup>70</sup>, **the humanitarian crisis has also seen fresh EU emergency aid provided. On 13 April 2016, the European Parliament approved €100 million in emergency aid for refugees (i.e. food, emergency healthcare, shelter, water, sanitation and hygiene, protection and education)**<sup>71</sup>. This is the first tranche of a €700 million Emergency

<sup>64</sup> "UNHCR disappointed by scenes of violence at Idomeni", 11 April 2016.

<sup>65</sup> UNHCR, Briefing notes, 22 March 2016.

<sup>66</sup> UNHCR, Press Release, 4 March 2016.

<sup>67</sup> UNHCR, Briefing notes, 22 March 2016.

<sup>68</sup> Le Monde, 12 April 2016.

<sup>69</sup> See, for example, Der Spiegel, "Lager an griechischer Grenze: Flüchtlinge in Idomeni wehren sich gegen Räumung" (in German), 7 May 2016 and New York Times "Greece Holds Activists as Migrants and Police Clash Anew at Macedonia Border", 13 April 2016.

<sup>70</sup> See [http://ec.europa.eu/echo/files/Refugee\\_Crisis/EUCPM\\_Support\\_en.pdf](http://ec.europa.eu/echo/files/Refugee_Crisis/EUCPM_Support_en.pdf)

<sup>71</sup> European Parliament resolution of 13 April 2016 on the Council position on Draft amending budget No 1/2016 of the European Union for the financial year 2016, New instrument to provide emergency support within the Union.

Assistance instrument proposed by the European Commission on 2 March 2016<sup>72</sup> (see section 3.3 below for further details of budgetary support to Greece). While the Parliament adopted the first tranche of aid under the instrument<sup>73</sup>, LIBE decided in April 2016 to ask **the Parliament's** Legal Service for an evaluation of the legal base for the emergency assistance – article 122(1) of the Treaty on the Functioning of the European Union – for possible future emergency support. Under article 122(1) the Council, on a proposal from the Commission, **may provide assistance to Member States as "in a spirit of solidarity", though the article refers particularly to "the area of energy"**.

### 3.2.2. Greece and the Schengen area

As detailed above, a number of Schengen Member States have reintroduced temporary border controls under the former articles 23-25 (now 25-28) of the Schengen Borders Code owing to the influx of refugees and migrants<sup>74</sup>. On 4 May 2016, the Commission proposed a Recommendation<sup>75</sup> – to be decided by the Council – that Austria, Germany, Denmark, Sweden and Norway maintain internal border controls at selected crossing points for six months. The procedure for triggering longer-term border controls is laid down in article 29 (formerly 26) of the Schengen Borders Code, introduced as part of the 2013 reform of Schengen governance<sup>76</sup>. **Under article 29, longer-term reintroductions of internal border controls are possible where there are "persistent serious deficiencies relating to external border control", which "constitute a serious threat to public policy or internal security within the area without internal border control"**. The Council, acting on a Commission proposal, may recommend that "one or more Member States decide to reintroduce border control at all or specific parts of their internal borders" for an initial period of six months, renewable up to a maximum of two years.

Under the Schengen evaluation and monitoring mechanism<sup>77</sup>, the Commission adopted on 2 February 2016 the Schengen Evaluation Report for Greece<sup>78</sup>, which found just such "serious deficiencies". On 12 February, the **Council then issued 50 recommendations to Greece to remedy the deficiencies<sup>79</sup>. It underlined that adequate functioning of the identification and registration procedure and appropriate reception conditions are of paramount importance**. This gave Greece three months to take action. Greece presented its Action Plan on 12 March and the Commission published a first assessment on 12 April 2016<sup>80</sup> and conducted a Schengen evaluation visit from 10 to 16 April. In its 4 May

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<sup>72</sup> "Commission proposes new Emergency Assistance instrument for faster crisis response within the EU", Press Release, 2 March 2016.

<sup>73</sup> Council Regulation (EU) 2016/369 of 15 March 2016

<sup>74</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union code on the rules governing the movement of persons across borders (Schengen Borders Code) has recently entered into force, engendering a renumbering of the articles regulating the temporary reintroduction of internal border controls.

<sup>75</sup> Proposal for a Council Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, COM(2016) 275, 4 May 2016.

<sup>76</sup> Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013.

<sup>77</sup> Regulation (EU) No 1053/2013 of the European Parliament and of the Council of 7 October 2013.

<sup>78</sup> "Commission adopts Schengen Evaluation Report on Greece and proposes recommendations to address deficiencies in external border management", Press Release, 2 February 2016.

<sup>79</sup> Council Implementing Decision 5876/1/16 REV 1, 12 February 2016.

<sup>80</sup> Communication from the Commission to the Council - Assessment of Greece's Action Plan to remedy the serious deficiencies identified in the 2015 evaluation on the application of the Schengen *acquis* in the field of management of the external border, COM(2016) 220 final, 12 April 2016.

proposal<sup>81</sup>, the Commission pointed to “significant progress”, particularly in terms of improvements to the migrant registration process. However, it ultimately concluded that some of the serious deficiencies still need to be properly addressed and that the risk of secondary movements of migrants – the initial cause of the reintroduction of border checks – remains present. The Commission has been quick to describe the move as one of the “next steps towards lifting of temporary internal border controls”<sup>82</sup>, in keeping with its March 2016 roadmap charting a return to the proper functioning of the Schengen area<sup>83</sup>.

The Greek government initially reacted angrily to what it regarded as its potential de facto suspension from Schengen<sup>84</sup>, but, as detailed above, seems to be redoubling its efforts to respond to the deficiencies identified.

### 3.3. Budgetary support to Greece

Leaving aside humanitarian aid to Greece under the newly adopted Emergency Assistance Instrument (see above), Greece already receives substantial financial support under existing instruments.

Under the Greek multiannual national programmes, Greece has been allocated €509 million for 2014-2020 (€294.5 million from the Asylum Migration and Integration Fund (AMIF) and €214.7 million from the Internal Security Fund (ISF)). Since the beginning of 2015, Greece has also been awarded €181 million in emergency assistance. **For 2016, the emergency assistance budget under AMIF and the ISF has increased substantially to €464 million overall for the refugee crisis. €267 million has been earmarked for Greece, of which €193.7 million is still available to support the Greek authorities and international organisations operating in Greece.** This money can fund reception centres on the islands, as well as provide support for return operations (transport and accompanying measures). This funding can also be used for the temporary deployment of additional Greek staff or Member States’ experts.

Finally, the Commission has estimated that implementing the new mechanism agreed between the EU and Turkey in March 2016 will entail costs of some €280 million over the first six months of its operation. These will be borne by the EU budget<sup>85</sup>.

### 3.4. The EU-Turkey statement – the consequences of the new mechanism

As explained in chapter 2, the EU-Turkey statement of 18 March 2016 has introduced a new dynamic into the situation in Greece. Its impact on the operation of hotspots is examined in chapter 5, but this section looks at some specific changes it has brought about in Greece. What is certain is that the new arrangement has attracted considerable criticism from NGOs and international organisations. The Parliamentary Assembly of the Council of

<sup>81</sup> Proposal for a Council Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, COM(2016) 275, 4 May 2016.

<sup>82</sup> European Commission, Press Release, “Back to Schengen: Commission takes next steps towards lifting of temporary internal border controls”, 4 May 2016.

<sup>83</sup> Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, 4 March 2016.

<sup>84</sup> Politico, “Greece hits out at ‘distorted’ migration claims”, 2 December 2015.

<sup>85</sup> For a good summary of funding for Greece in relation to the migration and refugee crisis, see European Commission Factsheet, “Implementing the EU-Turkey Agreement: Questions and Answers”, 20 April 2016.



Europe (PACE), for example, has raised "serious human rights concerns" both with regard to the substance and implementation of the statement<sup>86</sup>. It voices misgivings, for example, about the new Greek asylum law enacted to implement the new arrangements between the EU and Turkey.

### 3.4.1. The revised Greek law on asylum

In order for the new arrangements with Turkey to be implemented effectively, **the Greek Parliament adopted law 4375/2016 on 1 April 2016 under urgent procedure**<sup>87</sup>. The new law, which aims to transpose the provisions of the EU Asylum Procedures Directive<sup>88</sup> into Greek legislation, introduces new provisions to apply the concepts of safe third country and first country of asylum, as well as ensuring fast-track procedures for the examination of asylum applications, including appeal procedures. Transitional arrangements are in place for six months pending the creation of a new Appeals Authority and Appeal Committees<sup>89</sup>.

Some NGOs have criticised the new law, arguing that it weakens protection standards. Under article 55, for example, an **application is considered inadmissible where the asylum seeker has entered Greece from a "first country of asylum"**. Whereas previously, under article 19(2) of Presidential Decree 113/2013, a country could only be deemed a "first country of asylum" if it met the "**safe third country**" criterion, the revised law requires a "first country of asylum" to provide "**sufficient protection**" to asylum seekers (mainly **protection against refoulement** - being sent back to a country which is unsafe).<sup>90</sup> While the revised law appears to be in line with Article 35 of the Asylum Procedures Directive, NGOs thus criticise the weakening of protection under Greek law. PACE, for its part, recommends that Greece "refer the question of interpretation of the concept of "sufficient protection" in Article 35 of the European Union Asylum Procedures Directive to the Court of Justice of the European Union and, until such interpretation has been given, refrain from involuntary returns of Syrian refugees to Turkey under this provision"<sup>91</sup>. The picture is further clouded by reports that Turkey has in fact been returning refugees to Syria, which would clearly be in breach of the principle of non-refoulement<sup>92</sup>.

Another critical aspect of the new law is the new provisions for fast-track procedures. Pursuant to article 60, the merits of an asylum application can be examined at the border. Article 60(4) then provides for **a fast-track procedure: one day for an applicant to prepare for the first instance interview and three days for a decision on an appeal**. Article 43 of the Asylum Procedures Directive refers only to decisions being taken "within a reasonable time", the question being whether such speed is really reasonable and offers

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<sup>86</sup> Parliamentary Assembly of the Council of Europe, Resolution of 20 April 2016 on the situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016.

<sup>87</sup> **Law 4375 (O.G. A'51 / 03-04-2016)** On the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC on common procedures for granting and withdrawing the status of international protection (recast) (L180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions.

<sup>88</sup> Directive 2013/32/EU on common procedures for granting and withdrawing the status of international protection (recast).

<sup>89</sup> Communication from the Commission to the European Parliament, the European Council and the Council, First report on the progress made in the implementation of the EU-Turkey Statement, 20 April 2016.

<sup>90</sup> "Greece urgently adopts controversial law to implement EU-Turkey deal", ECRE, 8 April 2016 and "Greece: asylum reform in the wake of the EU-Turkey deal", AIDA, 4 April 2016.

<sup>91</sup> Parliamentary Assembly of the Council of Europe, Resolution of 20 April 2016 on the situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016.

<sup>92</sup> See, for example, Amnesty International Press Release, "Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal", 1 April 2016.

sufficient procedural guarantees.<sup>93</sup> A related concern is the absence, under Article 60(3) of the new law, of any "automatic suspensive effect" for appeals against return orders in border procedures. It has been argued that **because applicants must apply to a judge in order to remain in Greece during their appeal, they are being deprived of the right to an effective remedy enshrined in article 46 of the recast Asylum Procedures Directive**. Equally, pursuant to article 46(7) of the Directive, there must be a minimum time-limit of one week for the lodging of appeals in cases where suspensive effect is not automatic. However, under article 61 of the Greek law, appeals submitted in a border procedure or in a reception and identification procedure are subject to a 5-day deadline.<sup>94</sup>

### 3.4.2. The Greece-Turkey Readmission Agreement

The mechanics of returning irregular migrants from Greece to Turkey under the EU-Turkey Statement are in fact governed by a bilateral readmission agreement between Greece and Turkey (as explained in chapter 2, the EU-Turkey Readmission Agreement applies only to Turkish and EU citizens for the time being). The bilateral readmission protocol was signed between Athens and Ankara in April 2002. This readmission agreement allows for migrants who are not eligible for international protection to be returned to Turkey if this is the country of departure for Greece. On 8 March 2016, ahead of the revised EU-Turkey mechanism, the bilateral readmission protocol was amended, allowing Greek authorities to send back those migrants immediately.<sup>95</sup> The plan is that, as of 1 June 2016, the bilateral readmission agreement will be succeeded by the EU-Turkey Readmission Agreement, following the entry into force of the provisions on readmission of third country nationals.

### 3.4.3. Initial impact on migration flows

According to the European Commission<sup>96</sup>, up to 20 April 2016, a total of **325 persons who entered the EU irregularly after 20 March and did not apply for asylum after 20 March had been returned from Greece to Turkey**. The bulk of them were Pakistani (240) and Afghan (42). Over the same period, there was a marked drop in the number of people arriving in Greece. 1,667 arrived on 20 March (the date the new arrangement began) and 2,839 in the week from 20 to 26 March. By contrast, 488 arrived in the week from 27 April to 3 May<sup>97</sup>. Similarly, while 275 people died trying to cross the Eastern Mediterranean in January 2016, just 10 died in April 2016<sup>98</sup>. Though criticism of the new mechanism is considerable (as will be further explored in chapter 5), there is no doubt that it seems to have reduced the number of arrivals and the number of deaths at sea – at least in the short term.

<sup>93</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

<sup>94</sup> For further discussion of these points, see, for example, "Greece: asylum reform in the wake of the EU-Turkey deal", AIDA, 4 April 2016.

<sup>95</sup> Ekathimerini, "Greece and Turkey build on plan for return of refugees", 23 March 2016.

<sup>96</sup> Communication from the Commission to the European Parliament, the European Council and the Council, First report on the progress made in the implementation of the EU-Turkey Statement, 20 April 2016

<sup>97</sup> European Commission, Fact Sheet, "Implementing the EU-Turkey Agreement: Questions and Answers", 4 May 2016.

<sup>98</sup> See <https://missingmigrants.iom.int/mediterranean>.

## 4. THE LEGAL AND POLICY FRAMEWORK GOVERNING HOTSPOTS

As we have seen above, the notion of providing coordinated on-the-ground operational support to frontline Member States in dealing with the immediate challenge of large-scale arrivals of migrants was articulated in the May 2015 Agenda on Migration<sup>99</sup>. The Agenda, published by the European Commission in the wake of a series of tragedies at sea in April 2015, culminating in the sinking of a vessel on 19 April with an estimated 600-700 victims<sup>100</sup>, proposed to deploy this operational support through what it described as a "hotspot approach".

The Agenda says specifically that:

"The European Asylum Support Office, Frontex and Europol will work on the ground with the frontline Member States to swiftly identify, register and fingerprint incoming migrants. The work of the agencies will be complementary to one another. Those claiming asylum will be immediately channelled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks."<sup>101</sup>

The 25-26 June European Council endorsed the "hotspot" idea, concluding that it will make it possible "to determine those who need international protection and those who do not"<sup>102</sup>. It also tasked the Commission with setting out in greater detail some of the principles and practicalities of the "hotspot" approach by July 2015.

### 4.1. Hotspots: the policy framework

While hotspots are a centrepiece of the EU response to the migration challenge, it is noteworthy that the policy framework governing how they operate was initially set out in an unofficial "explanatory note" sent by Commissioner Avromopoulos to Justice and Home Affairs Ministers on 15 July 2015<sup>103</sup>, the principles of which were restated in an annex to the 29 September 2015 Commission Communication on managing the refugee crisis<sup>104</sup>. According to the note, the hotspot approach should contribute to the effective implementation of the relocation scheme under article 78(3), enhance law enforcement analysis on the ground and thereby boost efforts to counter people smuggling and achieve more effective implementation of returns policy. The "hotspot" response is triggered at the request of a Member State facing a "crisis due to specific and disproportionate migratory

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<sup>99</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, COM(2015) 240, 13 May 2015.

<sup>100</sup> See <http://www.unhcr.org/5533c2406.html> and <http://www.bbc.com/news/world-europe-32371348>.

<sup>101</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, COM(2015) 240, 13 May 2015.

<sup>102</sup> European Council Conclusions, EUCO 22/15, 26 June 2015, point 4.

<sup>103</sup> Explanatory note available at <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>

<sup>104</sup> Annex 2 to the Communication from the Commission to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, 29 September 2015.

pressure at their external borders”, though the Commission may also propose such a response.

In the wake of the terrorist attacks in Paris and Brussels – some of the perpetrators of which appear to have entered and moved through the EU under cover of the refugee and migrant influx in the early autumn of 2015, using fraudulent documents to pose as refugees<sup>105</sup> – the European Commission has also underscored the security role of hotspots. Indeed, as the Commission states in its April 2016 Communication on delivery of the European Agenda on Security<sup>106</sup>, the hotspot workflow and the relocation process include integrated and systematic security checks: 1) physical and belongings checks, 2) checks in various national and international databases (in particular the Schengen Information System (SIS) and Interpol Stolen and Lost Travel Documents (SLTD) database), and 3) where there are indications that grounds for exclusion, or a threat to security and public order exist, secondary checks of asylum applicants conducted in databases, through interviews or online.

#### 4.1.1. Coordination of the hotspot approach

**An EU Regional Task Force (EURTF), headquartered in the requesting Member State, is responsible for coordinating operational support.** The EURTF is supposed to bring together officers from Frontex, EASO and Europol, as well as host Member State authorities. Additionally, representatives from Eurojust and other EU agencies may be deployed to the EURTF. To deal with the relocation of asylum seekers, representatives from other Member States may also be present. Finally, the EURTF is charged with liaising with other international organisations (UNHCR, Interpol etc) and relevant NGOs.

Since different sections of the external border may be deemed “hotspots”, the EURTF may be operationally responsible for more than one “hotspot” at any given time. This is the case in both Greece and Italy as outlined in the next chapter.

#### 4.1.2. Tasks to be performed in the hotspots

As detailed above, the hotspots, from the outset, were seen as a tool to inject some order into migration management at the external borders. While the term is not used in the July 2015 explanatory note, the September 2015 Communication denotes the agencies working on the ground as Migration Management Support Teams (MMSTs). In specific terms, the EU agencies operating in hotspots fulfil the following functions:

1. Frontex provides assistance with the **registration and screening of irregular migrants**, though fingerprinting and EURODAC registration remain primarily a task for Member State authorities. After a screening interview, EASO then provides support in identifying those persons who wish to apply for asylum, Frontex provides support for immediate returns and national authorities deal with persons whose situation is unclear.

<sup>105</sup> See, for example BBC News, , “Paris and Brussels bombers’ links exposed”, 26 March 2016 and “Paris attacks: who were the attackers?”, 18 March 2016.

<sup>106</sup> Communication from the Commission to the European Parliament, the European Council and the Council, Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union, COM(2016) 230, 20 April 2016.

2. Frontex provides support in **debriefing migrants to gather intelligence** (e.g. routes, modus operandi) on smuggling networks. Europol is given and shares relevant intelligence.
3. Europol and, where relevant, Eurojust, work to **enhance intelligence exchange on smuggling networks** and thereby step up investigative efforts.
4. EASO provides **asylum support – in line with the concept of joint processing – by channelling asylum seekers into the appropriate asylum procedure** (including those to be relocated under the Article 78(3) TFEU mechanism). EASO also helps with the registration of asylum seekers and preparation of case files.
5. Frontex assists in **coordinating the swift return of migrants who have no right to remain in the EU**. This includes pre-return support, coordination of return flights, identifying the country of return and acquiring necessary travel documents.
6. **Interpreters are provided** by the agencies and national authorities to enable the core tasks to be carried out.

Frontex thus focuses its support on identifying migrants (including “nationality screening”), referring people in need of international protection, providing assistance with registration and fingerprinting, and organising the logistics of return<sup>107</sup>. It deploys, therefore, Joint Screening Teams for registration and identification, fingerprinting officers, and Joint Debriefing Teams for interviewing migrants and gathering intelligence on smuggling routes and networks. It also provides return officers, though, as the agency is at pains to underscore, Frontex has no mandate to examine the merit of return decisions (see below)<sup>108</sup>.

The primary role of EASO, meanwhile, is to “assist the EU relocation process, in particular through the provision of information on relocation, assistance provided to the Dublin unit, and detection of possible document fraud”<sup>109</sup>. In this regard, EASO has also acquired mobile units, including equipment, to support relocation.

The role of Europol centres on intelligence gathering on migrant smuggling. Intelligence gathered, for example, in debriefing interviews feeds specifically into its Joint Operation MARE and its new European Migrant Smuggling Centre<sup>110</sup>. Beyond the three central agency players, Eurojust also supports the hotspot-based work on tackling migrant smuggling through its role in enhancing judicial cooperation to dismantle and prosecute smuggling networks. Greece, for example, has appointed two national prosecutors as contact points for the hotspots to channel relevant information and cases to Eurojust<sup>111</sup>.

The Commission also points out that “the expertise of the Fundamental Rights Agency (FRA) and its advice on how to address fundamental rights challenges can be used by all EU agencies, in line with existing bilateral cooperation agreements”<sup>112</sup>. And, finally, euLISA – the agency responsible for large-scale justice and home affairs-related IT systems –

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<sup>107</sup> See <http://frontex.europa.eu/pressroom/faq/situation-at-external-border/>.

<sup>108</sup> *Ibid.*

<sup>109</sup> EASO Press Release, “EASO Executive Director a.i. visits Greece and the Hotspot in Lesbos”, 24 February 2016.

<sup>110</sup> For an overview of Joint Operation MARE, see <https://www.europol.europa.eu/content/jot-mare>. See also Europol Press Release, “Europol launches the European Migrant Smuggling Centre”, 22 February 2016.

<sup>111</sup> Eurojust Press Release, “Eurojust in Greece to support fight against illegal immigrant smuggling”, 17 December 2015.

<sup>112</sup> Explanatory note available at <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>

provides expertise on the registration of biometric data from asylum seekers and on the optimal use of technology in registration<sup>113</sup>.

The hotspot approach therefore appears to be conceived as the very model of joined-up agency cooperation. However, as becomes clear from on-the-ground implementation (see chapter 5), not all EU agencies have an equal role or deploy comparable staffing numbers to the hotspots.

## 4.2. Hotspots: the legal framework

Beyond the very loose policy framework governing hotspots, **no specific legal framework has been established for hotspots or for the work of MMSTs**. Rather, the deployment of both EASO and Frontex to provide operational support is regulated by the respective Regulations on the two agencies.

As such, pursuant to articles 8 to 8h of the Frontex Regulation<sup>114</sup>, Frontex may “deploy its experts to support the competent national authorities” in Member States “facing specific and disproportionate pressures” and can also deploy European Border Guard Teams “at the request of a Member State faced with a situation of urgent and exceptional pressure”. Similarly, under Chapter 3 of the EASO Regulation<sup>115</sup>, EASO may deploy Asylum Support Teams at the request of a Member State “subject to particular pressure”. **Operational support provided in the hotspots by both EASO and Frontex is therefore explicitly provided for in existing legislation.**

Whereas the workings of hotspots and the actors involved in them are not laid down in EU legislation<sup>116</sup>, this has not prevented EU legislation adopted since the creation of hotspots from referring to them. Thus, **articles 7 and 8 of the two relocation decisions** from September 2015<sup>117</sup> states that “Member States shall increase their operational support in cooperation with Italy and Greece in the area of international protection through relevant activities coordinated by EASO, Frontex and other relevant Agencies”.

The **European Commission’s proposal for a new European Border and Coast Guard (EBCG)**<sup>118</sup> goes one step further. It defines MMSTs as “teams of experts which provide operational and technical reinforcement to Member States at hotspot areas and which are composed of experts deployed from Member States by the European Border and Coast Guard Agency and the European Asylum Support Office, and from Europol or other relevant Union Agencies”. **Article 17 of the Regulation then lists the hotspot-related tasks** that would be entrusted to the new Border and Coast Guard Agency, which essentially reprise those already listed in the above-mentioned policy documents.

## 4.3. Hotspots: outstanding policy and legal questions

Some commentators have been unforgiving in their criticism of the hotspot approach, considering that its very design is flawed since it piles pressure on frontline Member States

<sup>113</sup> See <http://frontex.europa.eu/pressroom/faq/situation-at-external-border/>.

<sup>114</sup> Regulation (EU) No 1168/2011 of the European Parliament and of the Council.

<sup>115</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council.

<sup>116</sup> See Chapter 4 below for national measures enacting hotspots.

<sup>117</sup> Council Decision (EU) 2015/1523 of 14 September 2015.

<sup>118</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard.

and, for this very reason and in light of the poor relocation rates (see chapter 1), creates a built-in disincentive to roll out the necessary measures for on-the-ground implementation<sup>119</sup>. In the end, hotspots were conceived as a policy response to deal with an emergency situation and their location within frontline states is simply a reflection of geographical reality and the need to establish some degree of orderly migration management. Whether the policy mix as described in chapter 2 works in the longer term remains to be seen. That said, the framework governing hotspots as outlined above does throw up a number of important questions.

#### 4.3.1. Ensuring proper procedures for all asylum seekers

As detailed above, there is an inextricable link between the emergency relocation mechanism and the hotspots. However, as explained in chapter 1, whether or not an international protection seeker qualifies for relocation depends on his/her nationality. This leaves large numbers of protection seekers outside the scope of relocation and the manner in which they are dealt with in the hotspot context appears to lack clarity<sup>120</sup>. Of course, **one of the central tenets of the hotspot approach is to identify, register and process migrants quickly** in order to determine whether they are to be relocated, returned or else dealt with through the regular asylum procedure in the country of arrival. However, as some commentators have noted, **speed is not typically synonymous with due care, with the result that the "hotspots" screening procedures could result in large numbers of people being returned into unsafe or unviable situations without proper consideration of their claims**<sup>121</sup>. Indeed, as the Fundamental Rights Agency points out in its Opinion on the proposed EU common list of safe countries or origin<sup>122</sup>, requested by the Parliament, the shift towards swifter procedures (of which the safe countries of origin list is part) must guard against a "reduction of legal standards" and "an increased risk of collective expulsions", including in hotspots.

#### 4.3.2. The absence of a stand-alone legal instrument

While the Commission's preference to create a loose policy framework for the operation of hotspots is understandable from a purely practical and operational perspective, the absence of a specific legal framework for hotspots leaves a lack of legal certainty and clarity as to how EU and national rules interact. As has been observed<sup>123</sup>, the **Commission's decision to regulate the new EBCG's role in hotspots without an over-arching legal framework risks turning the new agency into a "primus inter pares" in the hotspot context and thus "puts an undue focus on border control over the obligation to provide international protection"**<sup>124</sup>. As such and for other reasons, an independent legal instrument governing the operation of hotspots seems an important step, with particular attention paid to its interaction with other related instruments, such as the EU Asylum Procedures and Reception Conditions Directives.

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<sup>119</sup> See, for example, Maiani, F, "Hotspots and Relocation Schemes: the right therapy for the Common European Asylum System?", EU Migration Law Blog, 3 February 2016 and Maccanico, Y, "EU/Italy: Commission requires large scale abuse of migrants for relocation to proceed", Statewatch Analysis, February 2016.

<sup>120</sup> See, for example, Webber, F, "Hotspots for asylum applications: some things we urgently need to know", EU Law Analysis, 29 September 2015.

<sup>121</sup> *Ibid.*

<sup>122</sup> Opinion of the European Union Agency for Fundamental Rights concerning an EU common list of safe countries of origin, 23 March 2016

<sup>123</sup> See, for example, *The proposal for a European Border and Coast Guard: evolution or revolution in external border management?*, Rijpma, J, European Parliament, March 2016.

<sup>124</sup> *Ibid.*, p. 19.

### 4.3.3. The enduring question of fundamental rights liability

One compelling reason for providing a clear legal framework for hotspots is the question of the extent to which EU agencies operating on the ground can be considered liable for actions within hotspots. Indeed, this notion of accountability where EU agencies provide direct operational support has long been vexed. **There has been considerable discussion and disagreement, for example, on whether Frontex itself can be held accountable for possible fundamental rights breaches in joint operations it coordinates (but, by definition, does not command)<sup>125</sup>. The same basic liability question applies to EASO**, which, under article 2 of the EASO Regulation<sup>126</sup>, has “no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection”, though clearly provides advice and support to national asylum services in Greece and Italy<sup>127</sup>. While executive powers may rest with Member States, **the enhanced operational support provided by EU agencies in the pressurised environment of the hotspots calls for much clearer accountability and liability provisions** – once again ideally laid down in a separate legal instrument.

### 4.3.4. Mainstreaming fundamental rights in the hotspots

The obvious pressure of operations in the hotspots and the considerable focus on the work of the EU agencies seems to call for more mainstreaming of fundamental rights aspects in the hotspots. This is especially important given the large number of children arriving in the EU (an estimated 38% of people arriving in Greece in 2016 have been children<sup>128</sup>) and the focus on returns. Hotspots are designed around a multi-agency approach, yet seem to have no dedicated role for the Fundamental Rights Agency. Though loose coordination between the FRA and agencies operating in the hotspots is envisaged, **the presence of the FRA – either in the hotspots themselves or in the EURTF – would help to ensure a more fundamental rights-focused approach to such on-the-ground operational support.**

### 4.3.5. The policy focus of hotspots

It is inherent in the very idea of hotspots that they provide a holistic approach to migration management at the external border. As such, through proper registration and processing, they are designed to contribute to providing international protection for those in need, to facilitate relocation and to ensure effective returns. Right from the outset, **critics have wondered whether hotspots are to be seen more as reception or removal centres<sup>129</sup>**. And again, while one can understand the Commission’s desire to retain a loose policy framework to allow for swift reactions to fast-moving situations, the **absence of legal clarity as to the fundamental objectives of hotspots is worrying**. Indeed, as will be elaborated on in the next chapter, with the new EU-Turkey Statement now being implemented and the Commission itself acknowledging that “hotspots on islands in Greece will need to be adapted – with the current focus on registration and screening before swift

<sup>125</sup> See, for example, Parliamentary Assembly of the Council of Europe, “Frontex: human rights responsibilities”, Report of 8 April 2013, Doc. 13161 or Pasconau, Y and Schumacher, P, “Frontex and the respect of fundamental rights: from better protection to full responsibility”, European Policy Centre, June 2014.

<sup>126</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council.

<sup>127</sup> See, for example, Drakopoulou, A, “Hotspots: the case of Greece” in *Searching for Solidarity in EU Asylum and Border Policies*, Odysseus Network, February 2016.

<sup>128</sup> See <http://data.unhcr.org/mediterranean/country.php?id=83>.

<sup>129</sup> Webber, F, “Hotspots for asylum applications: some things we urgently need to know”, EU Law Analysis, 29 September 2015.



transfer to the mainland replaced **by the objective of implementing returns to Turkey**<sup>130</sup>, criticism of hotspots has grown considerably louder.

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<sup>130</sup> 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, 16 March 2016.

## 5. HOTSPOTS IN PRACTICE – GREECE AND ITALY

Both the advent of the emergency relocation scheme and the decision to initiate the hotspot approach to migration management could be seen as a substantial departure from existing EU policy in the field. Perhaps for this reason, uptake of both initiatives was slow. The Commission's offer to relocate people from Hungary and establish hotspots on the external border there was even rejected outright<sup>131</sup>. Sluggish relocation rates seemed to go hand-in-hand with pedestrian roll-out of the hotspots in Greece and Italy. Indeed, such was the concern with on-the-ground progress that the Commission issued a series of "state of play" reports between December 2015 and March 2016, with extremely detailed coverage of the measures undertaken by Italy and Greece – both on hotspots and on related policy areas, such as relocation and return<sup>132</sup>.

**It is clear that, from the beginning of 2016, there has been a concerted effort to roll out hotspots in both Greece and Italy.** The two sections below provide a more detailed overview of the hotspots in both countries.

### 5.1. Hotspots in Greece

There are five planned hotspots in Greece coordinated from the EU Regional Task Force headquarters in Piraeus (see Figure 4 below). According to the latest information provided by the Commission, "all hotspots are currently operational with the exception of Kos"<sup>133</sup>.

**Figure 6 – The location of hotspots in Greece**



Source: European Commission, DG HOME

<sup>131</sup> Financial Times, "Why Hungary wanted out of EU's refugee scheme", 22 September 2015.

<sup>132</sup> For Italy, see European Commission, Progress Report on the Implementation of the hotspots in Italy, COM(2015) 679, 15 December 2015 and European Commission, Italy - State of Play Report, COM(2016) 85 ANNEX 3, 10 February 2016. For Greece, see European Commission, Progress Report on the Implementation of the hotspots in Greece, COM(2015) 678, 15 December 2015, European Commission, Greece – State of Play Report, COM(2016) 85 ANNEX 2, 10 February 2016 and European Commission, Progress Report on the Implementation of the hotspots in Greece, COM(2016) 141, 4 March 2016.

<sup>133</sup> European Commission, Second report on relocation and resettlement, COM(2016) 222, 12 April 2016.

This bears testimony to a clear drive on the part of the Greek authorities between 10 February (when none of the hotspots was operational) to 4 March (when four were, subject to some further actions)<sup>134</sup>. The facility on Kos is reportedly still under construction and has been a flashpoint for protests from residents on the island<sup>135</sup>. As detailed in Table 2 below, Lesvos hosts the largest hotspot centre, with a capacity of 1,500, and Samos the smallest, with a capacity of 850.

**Table 1 – Reception capacity in Greek hotspots (6 May 2016)**

	<b>Lesvos</b>	<b>Chios</b>	<b>Samos</b>	<b>Leros</b>	<b>Kos</b>
Capacity	1,500	1,100	850	1,000	1,000
Current Occupancy	Not available <sup>136</sup>	2,283	1,054	494	151

Source: European Commission, DG HOME<sup>137</sup> and UNHCR<sup>138</sup>

#### 5.1.1. Agency presence in Greek hotspots

While the policy documents charting the hotspot approach refer clearly to a multi-agency deployment, the actual staffing numbers show something of an imbalance among the three primary agencies: Frontex, EASO and Europol (see Table 3 below). There are considerably more Frontex officers across the board. EASO only has substantial representation in the Lesvos hotspot and has no staff on the ground in either Leros or Kos, although it has deployed further officers elsewhere in Greece<sup>139</sup>. Europol has an on-the-ground presence in all hotspots bar Kos, though its numerical deployment is limited. The discrepancy in staffing numbers is in line with current levels of budgetary support to the agencies in Greece. Whereas some **€60 million** is available in funding for Frontex (for return experts, transport costs and police officers acting as return escorts), only **€1.9 million is available under the EASO budget** to provide, for example, asylum experts and mobile containers<sup>140</sup>. The tasks of each agency are listed in chapter 4.

<sup>134</sup> *Ibid.*

<sup>135</sup> See, for example, "In Greece, protests against EU refugee hot spot on Kos", *Deutsche Welle*, 15 February 2016 at <http://www.dw.com/en/in-greece-protests-against-eu-refugee-hot-spot-on-kos/a-19050397>

<sup>136</sup> According to the UNHCR, total reception capacity on Lesvos is 3,500, including both the hotspot at Moria and the government facility at Karatepe. On 6 May 2016, the UNHCR reported the total number of people in both facilities to be 4,152. No extrapolated data for the number of people in the hotspot facility is available.

<sup>137</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

<sup>138</sup> <http://data.unhcr.org/mediterranean/country.php?id=83>

<sup>139</sup> EASO Press Release, "EASO intensifies its efforts on relocation", 7 March 2016.

<sup>140</sup> European Commission, Fact Sheet "Implementing the EU-Turkey Agreement – Questions and Answers", 20 April 2016.

**Table 2 – Agency staffing in Greek hotspots (3 May 2016)**

<b>Lesvos</b>	<b>Chios</b>	<b>Samos</b>	<b>Leros</b>	<b>Kos</b>
<b>Frontex:</b> 293 officers	<b>Frontex:</b> 95 officers	<b>Frontex:</b> 84 officers	<b>Frontex:</b> 32 officers	<b>Frontex:</b> 35 officers
<b>EASO:</b> 51 Member State experts (under EU-Turkey agreement); 3 members of EASO staff; 55 interpreters; 2 press officers; 1 expert for information provision on relocation	<b>EASO:</b> 4 Member State experts (under EU-Turkey agreement); 1 member of EASO staff; 4 interpreters	<b>EASO:</b> 4 Member State experts (under EU-Turkey agreement); 1 member of EASO staff; 1 interpreter	<b>EASO:</b> 0	<b>EASO:</b> 0
<b>Europol:</b> 4 officers	<b>Europol:</b> 2 officers	<b>Europol:</b> 1 officer	<b>Europol:</b> 2 officers	<b>Europol:</b> 0

Source: European Commission, DG HOME<sup>141</sup>

### 5.1.2. The legal and regulatory framework

As explained in chapter 4, there is no stand-alone EU legislative instrument regulating hotspots. Nonetheless, in Greece, **Law 4357/2016, which entered into force on 3 April 2016, governs implementation of the EU-Turkey statement (see below for more detail), new asylum procedures and operation of the hotspots.** Under this new law, people can in principle be detained in hotspots for up to three days for identification purposes, though this may be extended up to 25 days if the process is not complete. Appeals against the detention decision must be lodged with the administrative court in the region where the hotspot is located.

Although, according to the Commission progress reports, the Greek authorities are due to adopt Standard Operating Procedures (SOPs) for the hotspots, the changes in approach brought about by the EU-Turkey agreement reportedly mean that this process is on hold for the time being.

<sup>141</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf%20](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf%20)

### 5.1.3. The EU-Turkey statement: a shift in focus for hotspots

As the Commission unequivocally acknowledges, the new EU-Turkey mechanism has brought about an abrupt change in policy focus for the hotspots in Greece. As the Commission says, **“the hotspots on the islands in Greece will need to be adapted – with the current focus on registration and screening before swift transfer to the mainland replaced by the objective of implementing returns to Turkey”**<sup>142</sup>. The Commission also details the need for a significant upscaling of human resources, with a total of some 4,000 staff from Greece, the Member States, EASO and Frontex required to deliver the agreement<sup>143</sup>. In terms of day-to-day oversight, President Juncker appointed **Maarten Verwey**, Director-General of the European Commission's Structural Reform Support Service, to act as the **EU coordinator to implement the EU-Turkey statement**. He is “supported by a coordination team responsible for the overall strategic direction and relations with key stakeholders, an operations group responsible for analysing all relevant data, planning and deployment of Member State experts, and a team focused on resettlement”<sup>144</sup>. A steering committee, chaired by the Commission with Greece, EASO, Frontex, Europol, and representatives of the Council Presidency, France, the United Kingdom and Germany, oversees the implementation of the Statement.

**The shift in focus and the transformation of the hotspot centre on Lesbos (Moria) into a closed facility has entailed one very tangible outcome: all NGOs operating there have suspended operations there.** While the International Rescue Centre, for example, said it could not “knowingly participate in the transportation of some of the world’s most vulnerable to a place where their freedom of movement is in question”<sup>145</sup>, *Médecins Sans Frontières* was far more damning, saying it would have no part in “a mass expulsion operation” in “a system that has no regard for the humanitarian or protection needs of asylum seekers and migrants”<sup>146</sup>. The UNHCR, while retaining a human rights monitoring role within the Lesbos hotspot, has suspended other activities (such as transport provision) in line with its “policy on opposing mandatory detention”<sup>147</sup>.

### 5.1.4. Hotspots in Greece – a brief assessment

**The creation of hotspots in Greece has fulfilled its primary goal of injecting greater order into migration management.** The Commission itself has been keen to point to the significant increase in fingerprinting rates from just 8% in September 2016 to 78% in January<sup>148</sup> and 100% by March 2016<sup>149</sup>. However, while the Commission has identified hotspots as key settings for carrying out systematic security checks against

<sup>142</sup> European Commission, Next operational steps in EU-Turkey cooperation in the field of migration, COM(2016) 166, 16 March 2016.

<sup>143</sup> See European Commission, Factsheet – EU-Turkey Agreement: Questions and Answers, 19 March 2016 for the full breakdown of anticipated staffing needs.

<sup>144</sup> European Commission, Fact Sheet “Implementing the EU-Turkey Agreement: Questions and Answers”, 20 April 2016.

<sup>145</sup> “The International Rescue Centre Will Not Transport Refugees to Closed Facility at Moria, Lesbos”, Press Release, 23 March 2016.

<sup>146</sup> “Greece: MSF ends activities inside the Lesbos hotspot”, Press Release, 22 March 2016.

<sup>147</sup> “UNHCR redefines role in Greece as EU-Turkey deal comes into effect”, Briefing Notes, 22 March 2016.

<sup>148</sup> European Commission, “Implementing the European Agenda on Migration: Commission reports on progress in Greece, Italy and the Western Balkans” 10 February 2016.

<sup>149</sup> European Commission, Progress Report on the Implementation of the hotspots in Greece, COM(2016) 141, 4 March 2016.

databases, its latest progress report on Greece points to some persistent problems in this regard<sup>150</sup>.

It is clear from the staffing levels in the respective hotspots that the focus to date has been on identification, registration and border control (hence the larger-scale presence of Frontex). The predominance of Frontex is unlikely to change with the increased focus on returns. Nevertheless, **the multi-agency design of hotspots seems to call for a greater on-the-ground deployment of EASO and a more clearly defined role for Europol, as well as the Fundamental Rights Agency** (see above).

The majority of NGOs interviewed for this study concurred that the hotspots had achieved greater order, ensuring more consistent registration and also greater safety for refugees and migrants. The EU-Turkey statement, however, has significantly altered perceptions. The withdrawal of all NGOs formerly operating in the Lesvos hotspot can only be regarded as a public relations disaster. The impact, however, appears to be more serious than that. Some NGOs interviewed for this study reported that **conditions in the hotspots are overcrowded, sanitation and hygiene inadequate and food poor**. Indeed, the conditions have reportedly sparked several instances of physical violence, thus undermining the physical safety of those in the hotspot centres. A recent research visit to Lesvos and Chios by Amnesty International pointed to poor quality food, inadequate medical care and insufficient blankets<sup>151</sup>. In fact, since NGOs were often providing such services themselves, their departure has left a gap in service provision, which, they claim, has not been plugged by the Greek government or international organisations operating there. Even if, as the numbers cited in chapter 2 suggest, fewer people are now arriving in Greece, the operation of hotspots for those that do come presents a number of challenges.

## 5.2. Hotspots in Italy

Owing to the migratory patterns described in the introduction and owing also to the existing Italian model of handling migrants arriving on Italian soil<sup>152</sup>, Italy was really the starting point for the hotspot approach. As the Commission itself says, the roll-out of hotspots in Greece was in fact modelled on initial experience in Italy<sup>153</sup>. As shown in Figure 5 below, there are six planned hotspots in Italy coordinated from the EU Regional Task Force headquarters in Catania, which officially acquired new premises on 27 April 2016<sup>154</sup>. Additionally, mobile hotspot capacity – again based in Catania – is currently being finalised, the idea being to deploy teams to landing sites that are some distance from the main hotspot locations. According to the latest Commission information, four of the six hotspots are fully operational, with those in Porto Empedocle and Augusta not yet in place<sup>155</sup>. The last to come on stream was Taranto, which officially opened on 17 March 2016.

<sup>150</sup> *Ibid.*

<sup>151</sup> Amnesty International, "Greece: refugees detained in dire conditions amid rush to implement EU-Turkey deal", 7 April 2016.

<sup>152</sup> See European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States, Italy Country Report*, EMN Focussed Study, 2013.

<sup>153</sup> European Commission, Fact Sheet, "The hotspot approach to managing exceptional migratory flows".

<sup>154</sup> Frontex Press Release, "EURTF Office in Catania Inaugurated", 27 April 2016.

<sup>155</sup> European Commission, Second report on relocation and resettlement, COM(2016) 222, 12 April 2016.

As with Greece, there has been considerable progress over recent months after a slow start. While none of the hotspots was operational in December 2015, four of the six are now up and running. As Table 4 below illustrates, the Italian hotspots have a considerably smaller capacity than the Greek centres.

**Figure 7 – The location of hotspots in Italy**



Source: European Commission, DG HOME

**Table 3 – Reception capacity in Italian hotspots (3 May 2016)**<sup>156</sup>

	<b>Lampedusa</b>	<b>Pozzallo</b>	<b>Porto Empedocle</b>	<b>Augusta</b>	<b>Taranto</b>	<b>Trapani</b>
Capacity	500	300	300	300	300	400

Source: European Commission, DG HOME<sup>157</sup>

### 5.2.1. Agency presence in Italian hotspots

Agency staff numbers in the Italian hotspots are considerably lower than in Greece, which is consistent with the migration patterns since the advent of hotspots in the summer of 2015. As we have already witnessed for Greece above, the actual deployment of agency staff to the hotspots in Italy shows a clear focus on Frontex-related tasks. Once again, this is in line with the initial policy focus of establishing effective identification and registration procedures. Nonetheless, purely in numerical terms, EASO presence in the hotspots is limited, while Europol is entirely absent – though it does have a presence in the EURTF

<sup>156</sup> The figures for occupancy of the Italian hotspot centres are not published.

<sup>157</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

coordinating hotspots in Italy<sup>158</sup>. The recently agreed Standard Operating Procedures for hotspots in Italy do, according to the Commission, provide for Europol's on-the-ground engagement<sup>159</sup>. For more detail on the tasks assigned to each agency, see chapter 4.

**Table 4 – Agency staffing in Italian hotspots (3 May 2016)**<sup>160</sup>

Lampedusa	Pozzallo	Porto Empedocle	Augusta	Taranto	Trapani
<b>Frontex:</b> 14 officers	<b>Frontex:</b> 14 officers	<b>Frontex:</b> 0	<b>Frontex:</b> 0	<b>Frontex:</b> 4 officers	<b>Frontex:</b> 15 officers
<b>EASO:</b> 2 Member State experts	<b>EASO:</b> 3 Member State experts	<b>EASO:</b> 0	<b>EASO:</b> 0	<b>EASO:</b> 2 Member State experts	<b>EASO:</b> 3 Member State experts
<b>Europol:</b> 0	<b>Europol:</b> 0	<b>Europol:</b> 0	<b>Europol:</b> 0	<b>Europol:</b> 0	<b>Europol:</b> 0

Source: European Commission, DG HOME<sup>161</sup>

### 5.2.2. The legal and regulatory framework

Unlike in Greece, no specific legislation or legislative amendment has been adopted to regulate the operation of hotspots in Italy. Instead, **the Italian Interior Ministry, together with the European Commission, has adopted Standard Operating Procedures for hotspots**, which are not yet publicly available, but should be – both in English and Italian – in the coming weeks. The Italian authorities drew up a roadmap<sup>162</sup> in September 2015, detailing, inter alia, its plans for the hotspots. Italy sent a revised roadmap to the Commission on 31 March 2016, though this is not publicly available<sup>163</sup>.

While no specific legislation has been adopted on hotspots, Italy appears to have heeded the European Commission's call for "a more solid legal framework to perform hotspot activities and in particular to allow the use of force for fingerprinting"<sup>164</sup> by drawing up a **legislative proposal<sup>165</sup> on the use of force to ensure fingerprinting**. It is perhaps noteworthy, in this regard, that the many critics of this approach include the Italian police

<sup>158</sup> See "Europol Deputy Director Visits the EU Regional Task Force In Sicily", Press Release, 26 June 2015.

<sup>159</sup> European Commission, Italy - State of Play Report, COM(2016) 85 ANNEX 3, 10 February 2016

<sup>160</sup> As detailed, the hotspots planned for Porto Empedocle and Augusta are not yet operational, hence no EU agency deployment.

<sup>161</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

<sup>162</sup> Ministero dell'Interno, Roadmap Italiana, 28 September 2015 (in Italian). For an annotated commentary of the roadmap in English, see "The Italian Roadmap 2015", Macchiano, Y, Statewatch Briefing.

<sup>163</sup> European Commission, Second report on relocation and resettlement, COM(2016) 222, 12 April 2016.

<sup>164</sup> European Commission, Italy - State of Play Report, COM(2016) 85 ANNEX 3, 10 February 2016.

<sup>165</sup> Alfano: "Sì alla forza per le impronte digitali" (in Italian), Si24.it, 17 March 2016.



officers' union – *Unione Generale Lavoratori di Polizia* – which sent a letter to the Head of the Italian Police deploring the move<sup>166</sup>.

### 5.2.3. Hotspots in Italy – a brief assessment

As in Greece, it is clear that the **creation of hotspots has helped to provide greater order in migration management in Italy**. Again, as in Greece, fingerprinting rates have gone up significantly, with the Commission reporting that overall rates had reached 87% in January and 100% in recent disembarkations prior to the 10 February progress report<sup>167</sup>. And, in line with developments in Greece, some issues remain with the interconnectivity of databases and thus the ability to perform systematic checks against those databases<sup>168</sup>.

There is similar evidence of a focus on identification, registration and border control in the Italian hotspots, which explains the larger-scale presence of Frontex. However, since there is nothing comparable to the EU-Turkey agreement, the focus of hotspots should, in Italy, remain multi-faceted. This would logically involve a greater **on-the-ground deployment of EASO and a more clearly defined role for Europol, as well as the Fundamental Rights Agency** (see above).

Yet, for all the practical progress in evidence, a number of NGOs have voiced criticism and concern over the manner in which the implementation of the hotspots is in fact depriving people of their right to international protection and breaching their fundamental rights. Indeed, at a press conference held in the Italian Senate, twelve NGOs<sup>169</sup> that sit on the **Italian National Asylum Board (*Tavolo Nazionale d'Asilo*) presented a document calling for an end to some of the abuses being witnessed in hotspots**<sup>170</sup>. Chief among its list of complaints were detention, the use of force in obtaining fingerprints and the issuing of orders to leave the country without any proper hearing or access to the asylum procedure. The **criticism really focuses on the hotspots' inextricable link to relocation and failure to properly deal with people coming from non-qualifying countries (such as Gambia, Nigeria and Senegal) who are treated as "non-refugees"**. This criticism underscores the point made in chapter 4 that the hotspot approach, with its tie to relocation, needs to do more to establish clear access to the asylum system for international protection seekers that do not qualify for relocation.

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<sup>166</sup> [http://www.uglpoliziadistato.it/index.php?option=com\\_content&view=article&id=6394:fotosegnalamento-forzoso-la-risposta-del-dipartimento&catid=1:ultime&Itemid=50](http://www.uglpoliziadistato.it/index.php?option=com_content&view=article&id=6394:fotosegnalamento-forzoso-la-risposta-del-dipartimento&catid=1:ultime&Itemid=50) (in Italian).

<sup>167</sup> European Commission, Italy - State of Play Report, COM(2016) 85 ANNEX 3, 10 February 2016.

<sup>168</sup> *Ibid.*

<sup>169</sup> Including *Centro Astalli*, Caritas, *MSF Italia*, *Medici per I diritti umani* and CIR.

<sup>170</sup> The document, "Hotspot: Luoghi Di Illegalità", is available (in Italian) at <http://centroastalli.it/wp-content/uploads/2016/02/Documento-Tavolo-Asilo-1.3.2016.pdf>.

## 6. EUROPEAN PARLIAMENT POSITION AND ACTIVITIES

In its resolution of 10 September 2015 on migration and refugees in Europe<sup>171</sup>, the European Parliament welcomed the operational support which the European Commission provides to frontline Member States such as Greece and Italy via hotspots by using expertise from the EU agencies to help Member States with the registration of people arriving. It reminded the Member States that the success of such registration centres depends on their **willingness to relocate refugees from the hotspots** to their territories.

At the same time, the European Parliament called for closer monitoring of migrant reception and detention centres, of the treatment of migrants and of asylum formalities in the Member States in its resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014)<sup>172</sup>. It called on Members of the European Parliament and of national parliaments to pay regular visits to reception and detention centres for migrants and asylum seekers, and on the Member States and the Commission to facilitate access to these centres for NGOs and reporters. In the resolution, the European Parliament also expressed concern at **'hot return' procedures** and at the **violent incidents occurring at various border points in southern Europe**, necessitating the immediate launch by the Commission of political dialogue with countries engaging in such practices with a view to upholding the rule of law.<sup>173</sup>

As mentioned in Chapter 1, the European Parliament's LIBE Committee prepared a strategic own-initiative report on the situation in the Mediterranean and the need for a holistic EU approach to migration, which was adopted in plenary on 12 April 2016.<sup>174</sup> Numerous debates were held in the LIBE Committee while preparing the report, including a meeting with national parliaments on the hotspots approach and on addressing migration at the national and local level on 23 September 2015. In its report, the European Parliament:

- calls for the **hotspots to be set up as soon as possible in order to give concrete operational assistance to Member States**; calls for the **allocation of technical and financial resources and support to Member States of first arrival**, such as Italy and Greece; considers that quick and effective support by the Union to Member States and the acceptance of such support is important for mutual trust;
- notes that both of the **Relocation Decisions provide for operational support at the hotspots to be provided to Italy and Greece** for the screening of migrants when they first arrive, registration of their application for international protection, provision of information to applicants on relocation, organisation of return operations for those who did not apply for international protection and are not otherwise entitled to remain or those who applied unsuccessfully, and the facilitation of all steps involved in the relocation procedure itself;

<sup>171</sup> European Parliament resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014) (2014/2254(INI)).

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*

<sup>174</sup> European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)).

- points out that the **Union agencies require the resources** necessary to allow them to fulfil their assigned tasks; and insists that the Union agencies and the Member States **keep the Parliament fully informed of work undertaken at the hotspots**;
- recognises that **one of the main purposes of hotspots is to allow the Union to grant protection and humanitarian assistance in a swift manner to those in need**; emphasises that great care needs to be taken to ensure that the categorising of migrants at hotspots is carried out in full respect for the rights of all migrants; acknowledges, however, that proper identification of applicants for international protection at the point of first arrival in the Union should help facilitate the overall functioning of a reformed Common European Asylum System;
- points out that one option for a **fundamental overhaul of the Dublin system** would be to establish a central collection of applications at Union level – viewing each asylum seeker as someone seeking asylum in the Union as a whole and not in an individual Member State – and to establish a central system for the allocation of responsibility for any persons seeking asylum in the Union. It suggests that such a system could provide for certain thresholds per Member State relative to the number of arrivals, which could conceivably help in deterring secondary movements, as all Member States would be fully involved in the centralised system and no longer have individual responsibility for allocation of applicants to other Member States. The European Parliament believes that such a system could function on the basis of **a number of Union 'hotspots' from where Union distribution should take place**.<sup>175</sup>

The EU-Turkey statement agreed by the European Council and Turkey on 18 March 2016 was debated in the Parliament plenary on 28 April 2016 with a focus on its legal aspects, democratic control and its implementation.

The refugee and migration situation on the ground has also been an element of several official parliamentary visits to Greece and Italy. For example, the Parliament President travelled to Athens and Lesbos in Greece in November 2015, while the LIBE and BUDG Committees sent a joint delegation to Sicily in July 2015. LIBE is also sending a delegation to the Northern border and hotspots in Greece in May 2016 (for which this study has been prepared). An Inter-Parliamentary Conference organised in cooperation with the European Parliament's AFET and LIBE Committees and with Members of the Hellenic Parliament on "The EU immigration and asylum policy: Implications for the Parliaments of the enlargement countries" is scheduled for 20-21 June 2016.

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<sup>175</sup> *Ibid.*

## 7. CONCLUSIONS AND POLICY RECOMMENDATIONS

There is no doubt that the unprecedented migration flows into the EU over the last couple of years have placed enormous strain on the Union collectively and on certain Member States in particular. As more people have arrived, so flaws in the Common European Asylum System (CEAS) – and in its implementation – and in external border management have been cruelly exposed. Indeed, as the EU and its Member States have tried to remedy these flaws and plug holes in the system, some Member States **have chosen to “go it alone”** by reintroducing temporary border controls at their internal Schengen borders. Yet, this nationalisation of the response to a Europe-wide phenomenon risks further exacerbating the challenge and merely prompts a shift in routes rather than a lasting solution. The result of successive border closures can be seen in the form of the deplorable humanitarian situation facing thousands of refugees and migrants stranded in Greece.

Indeed, as the European Parliament has frequently underscored, a holistic approach to the migration challenge is urgently needed. Stopping people from resorting to dangerous sea crossings and criminal smugglers requires real ambition on creating **safe and legal avenues** for refugees to reach the EU – whether in the form of a compulsory resettlement programme, humanitarian visas and corridors, the possibility to apply for asylum in embassies and consular offices, enhanced family reunification, private sponsorship schemes and so on. While the merits of the various schemes are not examined in this paper, they are clearly essential parts of a long-term migration and asylum policy. Other steps towards that longer-term policy are already in train. The Commission has proposed a **European Border and Coast Guard (EBCG)** with a significantly enhanced mandate and greater resources, which, it is hoped, will be operational in the near future and provide a proper European capacity to respond to pressure at the external border. Similarly, on 4 May 2016 the Commission put forward proposals to overhaul the **Dublin Regulation** and give a stronger mandate to **EASO** as part of a wider reform of the CEAS.

**Hotspots form an important dimension of this broader policy response**, not least because people will continue to arrive in the EU’s frontline Member States irrespective of other policy measures that are put in place. They are an essential hub both in managing the **relocation of those in need of international protection** and in organising the **return of those who have no right to stay**. And, despite all the unacceptable delays in setting up the hotspots, the approach remains fundamentally valid as a one-stop-shop located where pressure is most severe at the external border. Identification and registration are essential if migration is to be managed and orderly.

And yet, as this study has highlighted, questions about the governance and functioning of the hotspots persist, aggravated considerably by the shift in policy focus since the EU-Turkey statement took effect in March 2016. With that in mind – and looking ahead to the LIBE delegation visit to Greece from 18 to 20 May 2016 – the following policy recommendations for the European Parliament might merit consideration:

### **On hotspots:**

**The European Parliament could consider the need to regulate hotspots through a stand-alone legal instrument, taking into account its interaction with other relevant instruments, such as the EU Asylum Procedures and Reception Conditions Directives.** While the loose policy framework surrounding hotspots may

provide operational flexibility, the absence of a stand-alone legal instrument may lead to a lack of legal certainty and clarity as to how EU and national rules interact. The Council's and Commission's preference for regulating agencies' roles in hotspots through separate legal instruments – such as a new EBCG Regulation – could risk undermining the multi-agency foundation and focusing excessively on one dimension of the hotspot approach. A stand-alone legal instrument could help to implement some of the other recommendations below.

**Members could call for a clearer role for individual agencies and clearer framework for their cooperation within hotspots.** While both Frontex and EASO are heavily engaged in the hotspots, there is considerable disparity in terms of their respective staff deployment and budgetary resources. Europol's on-the-ground deployment appears to be patchy, while the role of Eurojust seems even less well developed. While the FRA is invited to provide input through existing cooperation agreements, there is no mainstreaming of its role. Greater clarity of roles and modes of cooperation, as well as a structural role for the FRA, would seem to constitute important improvements.

**Mainstreaming fundamental rights in the hotspots.** A clearly designated role for the FRA in the hotspot approach could help to address the obvious fundamental rights challenges in the pressurised environment of the hotspots. This is especially important given the need to protect the fundamental rights of vulnerable groups, such as women and children. It would also be helpful to clarify in law the extent to which EU agencies operating on the ground in hotspots can be considered liable for their actions. While executive powers may rest with Member States, the enhanced operational support provided by EU agencies calls for much clearer rules on accountability and liability.

**Members should insist that proper procedures for all protection seekers are guaranteed in hotspots, as enshrined in the EU Asylum Procedures Directive.** It is vital that the swift processing of migrants and refugees within hotspots does not come at the expense of their rights and proper safeguards. Migrants must always be given the opportunity to apply for international protection and applications must be assessed, in accordance with the EU's international obligations, on an individual, objective and impartial basis. Returns can only be carried out subject to a prior non-refoulement and proportionality check. It is particularly important that hotspots do not provide a binary choice between relocation and return, but also have clear procedures for those that wish to apply for international protection, but do not qualify for relocation.

**Members should insist that efforts to register and identify all migrants arriving in the hotspots continue in order to enhance both relocation and return procedures and to improve overall security.** It is clear that, in both Italy and Greece, registration and fingerprinting rates have improved considerably, reaching 100% in both countries. The Commission has also stated that the hotspot workflow and relocation process include systematic security checks. It is important to redouble efforts in this regard so that everyone arriving is registered and checked against relevant Interpol and EU databases.

#### **On the Dublin Regulation:**

**The European Parliament should, in its role as co-legislator, insist on a fundamental change to the Dublin Regulation and a binding distribution system.** The natural extension of the relocation policy and the deployment of EU agencies in hotspots would seem to be a fundamental overhaul of the Dublin Regulation with a binding

system for distributing asylum seekers among the Member States, using a fair, compulsory allocation key.

**Any resumption of transfers to Greece under the existing Dublin Regulation should take into account that Greece still receives a large number of asylum seekers on a daily basis.** Regardless of the outcome of the Commission's deliberations on a reform of the Dublin Regulation, plans to reinstitute Dublin transfers to Greece under the existing Dublin Regulation in June 2016 – in the midst of considerable pressure on the Greek asylum system – raise questions. It also seems to contradict the idea of an emergency relocation mechanism to transfer those in need of international protection out of Greece. Until such time as the pressure has been alleviated and adequate reception conditions can be guaranteed, resumption appears to be premature.

**On a possible new mandate for EASO:**

**EASO should be given a stronger mandate and enhanced resources.** In parallel with the creation of a European Border and Coast Guard with a reinforced mandate, the Parliament could support the Commission's **proposal to enhance EASO's** mandate in line with its operational role in hotspots and ensure parliamentary oversight. The agency's need for sufficient financial resources and the legal means to play a new role in policy implementation and a strengthened operational role should be considered, thereby facilitating the proper functioning of the CEAS.

**On the EU-Turkey statement:**

**Members should call on the Commission to monitor carefully the implementation of the EU-Turkey statement.** Since the arrangement between the European Council and Turkey takes the form of a statement, the question of proper democratic scrutiny is moot. The Commission must be vigilant in monitoring implementation and respect for human rights, not least in light of the criticism from NGOs and other international organisations. Reports of illegal detention or deportation must be fully investigated. The Parliament should fulfil its role as co-legislator when it comes to the visa liberalisation process and budgetary aspects.

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