

# FUNDAMENTAL RIGHTS AND THE EU HOTSPOT APPROACH

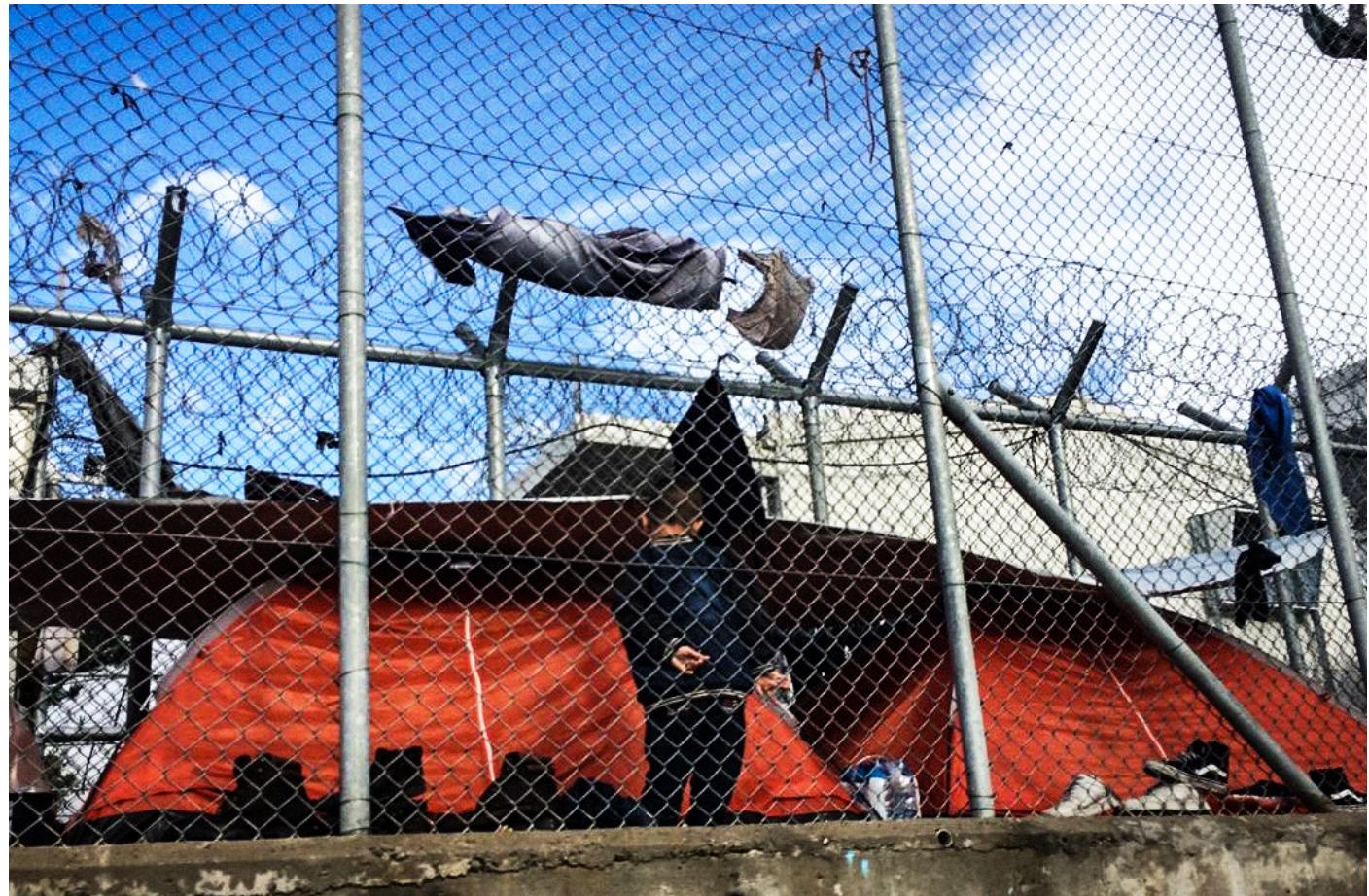


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A legal assessment of the implementation of the EU hotspot approach and its potential role in the reformed Common European Asylum System.



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## 1 EXECUTIVE SUMMARY

This report provides a legal assessment of the current operation of the European Union (EU) hotspot approach, a Union–member state hybrid approach to the registration, identification and filtering of new arrivals into asylum and return procedures. It analyses three main themes: fundamental rights challenges with the hotspot approach; the role of the hotspot approach in the proposed reform of the Common European Asylum System (CEAS); and the hotspot approach as a form of externalisation and deterrence. The report is a desk study complemented with selected interviews<sup>1</sup>. While the report generally has greater weight on the situation in the Greek islands based on DRC operational presence there, it draws on and points to practices in the Italian hotspots as well. The report concludes with a number of recommendations for the future implementation of the EU hotspot approach.

The research provides an **overview of current fundamental rights issues** in the hotspots, with a focus on concerns related to access to asylum procedures and reception conditions.

There are *gaps in information* about international protection in the hotspots. In some cases, new arrivals are provided information within a few hours of disembarkation without the opportunity to rest, while in other hotspots there is a lack of interpreters for less common languages.

Moreover, there is currently a *lack of legal assistance* for refugees and migrants in some hotspots. In Lesvos, legal aid providers have recently reduced their presence, leaving a significant gap in legal assistance to asylum seekers on the island, including in the appeals procedure.

*Nationality-based approaches* in the hotspots have shifted from blanket, *ad hoc* practices to targeted, formalised approaches. In the Greek hotspots, new arrivals from countries with asylum claim recognition rates below 25 per cent are channelled into the fast-track border procedure on the basis of nationality. A concerning development in the Italian hotspots is the presence of third country consular officials during registration procedures. Both Gambian and Nigerian consular authorities are present in some Italian hotspots supporting the Italian authorities in identification procedures.

Reception conditions in the hotspots raise serious fundamental rights concerns. The *under-identification of vulnerable persons* remains a persistent problem in both Italy and Greece. There are currently significant delays in vulnerability screenings in Greece, while in the Italian hotspots less visible vulnerabilities risk being overlooked altogether.

In the Greek hotspots, *restricted freedom of movement* limits asylum seekers to the islands. Most new arrivals are issued with asylum seeker cards with geographical restriction, meaning they cannot leave for the mainland.

*Detention* of refugees and migrants in the hotspots remains a major concern, with all new arrivals prevented from leaving the Greek hotspots for 25 days, a policy that amounts to *de facto* detention. In addition, a pilot project launched in Lesvos places new arrivals from countries with EU asylum recognition rates below 25 per cent in closed detention with limited access to lawyers.

The report includes a spotlight on the Lesvos hotspot, drawing on DRC protection monitoring reports. Refugees and migrants in the Moria centre currently experience overcrowding, inadequate reception conditions, limited access to healthcare, lack of information, delays in the asylum procedure and lack of support for vulnerable asylum seekers. In DRC's opinion, the cumulative effect of these factors amounts to *inhuman and degrading* conditions.

The **future role of the hotspot approach in the reformed CEAS** is also assessed, including the *operational roles of Frontex and the European Asylum Support Office (EASO)*. Frontex continues to play a leading role in the hotspots, with the Agency's presence dwarfing that of all other EU agencies.

In the Greek hotspots, EASO currently plays an active role in asylum processing, producing admissibility opinions on individual applications which are then presented to the Greek Asylum Service for final decision. This active role in individual applications goes beyond EASO's mandate.

1 List of interviews available in Annex A.

The proposed regulation establishing an EU Asylum Agency would expand the competencies of EASO to concrete assistance to member state authorities in the examination of individual asylum claims. The formation of the Agency would bring EU regulation in line with existing practice in the Greek hotspots. Under the proposed regulation, the final decision would remain with the member state.

The substantive reforms to the CEAS propose the mandatory use of *safe third country* and *first country of asylum* concepts, which – if implemented – would influence the operation and capacity of the hotspots. Safe country concepts allow the return of an asylum seeker to a particular country without a substantive asylum procedure. Rather than assessing the individual claim, member states instead assess whether the individual could access protection in that third country.

The proposed Asylum Procedures Regulation makes mandatory the safe third country and first country of asylum concepts for member states, already in place in Greek law but not in Italian law. The introduction of mandatory safe third country concepts at the EU level would thus change the legal landscape in the Italian hotspots. The introduction of a mandatory application of the safe third country concept raises the risk of deportation to third states that are not capable of ensuring protection and externalises responsibility for asylum to states outside the EU. Further, the proposed Asylum Procedures regulation lowers the standard required by the safe third country and first country of asylum concepts. This would likely result in a higher rate of inadmissibility decisions in the hotspots. The insertion of a mandatory admissibility screening into the proposed Dublin IV regulation would massively increase the administrative burden on Greece and Italy, including in the hotspots.

Finally, the hotspot approach is placed within the **broader context of deterrence and externalisation** of asylum processing and responsibility.

The Greek hotspots have become a form of *deterrence policy* by virtue of the remoteness of the islands from the mainland, inadequate reception conditions, restricted freedom of movement, use of detention, and the threat of return to Turkey. This *containment* approach is considered a necessary condition for the return of migrants and refugees under the EU-Turkey Statement.

The report locates the hotspot approach along three pillars of *externalisation*: territorial reception; containment at the border; and extraterritorial asylum processing. The hotspot approach falls under the second pillar, whereby the EU retains responsibility for refugees and migrants in the hotspots, while their remote location allows for inadequate reception conditions, delayed access to asylum procedures, and restricted freedom of movement. Containment at the border creates zones of exception in which violations of fundamental rights are more likely to occur.

DRC argues that in particularly on the Greek islands many of the current protection gaps and challenges are – rather than from the EU hotspot approach itself – derived from the fact that the approach in its implementation constitute a shift away from a territorial reception towards a model of containment at the EU's external borders coupled with policies of deterrence, not least due to its inter-linkage with the EU-Turkey deal in the Greek context.

Looking to the future, DRC recommends the following:

**Effective and rights-sensitive reception, identification and registration in the hotspots.**

- The duration of the stay in the hotspots must be reduced to an absolute minimum for all arrivals;
- Contingency plans must be in place in case of changes to the arrival patterns;
- A systematic approach to the early identification of vulnerabilities, including non-visible ones, and appropriate follow up on referrals must be ensured;
- A clear legal framework for roles and responsibilities of the EU agencies and Member States in the identification and registration process in the hotspots and for a monitoring mechanism must be in place.

**Access to asylum procedures in safe and dignified surroundings:**

- Timely and effective access to asylum procedures must be ensured for all, independently of nationality;
- The processing of asylum applications must take place in a safe and secure environment;
- Access to legal information upon arrival and free legal assistance at the appeal stage must be made available to all asylum seekers.
- Detention must only be used under exceptional circumstances, and as a last resort, and never for children;
- Those who do not apply for asylum and rejected asylum seekers must be treated humanely and in accordance with basic human rights.

**Sharing responsibility for providing protection:**

- The hotspot model must be supplemented with functioning solidarity measures ensuring responsibility sharing among Member States and respecting the rights of asylum seekers;
- The EU must uphold and safeguard the right to seek asylum with the focus on rights and non-refoulement and carefully consider the broader implications of the proposed changes of safe country concepts;
- The EU must find common solutions, and accept a fair share of the responsibility to provide international protection to those in need.

## 2 INTRODUCTION

Two years ago, the first hotspot was opened in Lesvos. First introduced as a means to assist Greece and Italy ensure registration and identification of new arrivals, today the hotspot approach encompasses registration, identification and filtering of new arrivals into asylum and return procedures, in Italy and Greece, and asylum processing centres that contain refugees and migrants in the Greek islands, limiting access to mainland Europe. As a result, conditions vary considerably between the hotspots and over time.

This report provides a legal assessment of the current operation of the EU hotspot approach along three main themes: current fundamental rights challenges with the hotspot approach; the role of the hotspot approach in the proposed reform of the Common European Asylum System (CEAS); and the hotspot approach as a form of externalisation and deterrence.

There are currently five hotspots in operation in Greece, located on the islands of Lesvos, Chios, Samos, Leros and Kos. Five hotspots are in operation in Italy, located in Lampedusa, Pozzallo, Taranto, Trapani and Messina. The total capacity of the ten hotspots is 7,181 people, with capacity for 5,450 in Greece and 1,731 in Italy.

As a significant volume of reporting exists in this area, this report focuses on the situation in the hotspots in 2017.<sup>2</sup> The report proceeds in four substantive sections. Part 3 provides an overview of the hotspot approach, including defining the hotspots and a chronology of their development. This part also sets out the legal framework in which the hotspot approach operates. Part 4 analyses fundamental rights concerns in the hotspots, with a focus on the right to asylum, freedom of movement and adequate reception conditions. Part 5 discusses the possible future role of the hotspot approach in the reformed CEAS, including the emergence of the hotspot approach as a permanent element of EU asylum policy. Finally, Part 6 places the hotspot approach in the context of externalisation and deterrence in asylum policy in the western world. In light of the externalisation policies of Australia and the United States, the hotspots can be seen as an incremental step toward externalisation on the part of the EU.

This report was produced through a combination of desk-based research and interviews with staff from NGOs and international organisations and researchers with experience in the hotspots. A field visit to the hotspot in Lesvos was also undertaken. A list of organisations interviewed can be found at Annex A.

### Map: The location of the hotspots in Greece and Italy



Source: EU Fundamental Rights Agency (FRA) 2016

<sup>2</sup> For previous reporting on the hotspots, see European Court of Auditors, Special report no 06/2017: EU response to the refugee crisis: the 'hotspot' approach, 25 April 2017; European Council on Refugees and Exiles (ECRE), The implementation of the hotspots in Italy and Greece - A study, December 2016; European Agency for Fundamental Rights (FRA), Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy, November 2016; Amnesty International, Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights, 3 November 2016; and Darren Neville, Sarah Sy, and Amalia Rigan, On the frontline: The hotspot approach to managing migration, Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, May 2016.

## 3 OVERVIEW OF THE HOTSPOT APPROACH

### 3.1 DEFINING THE HOTSPOT APPROACH

In May 2015, the Commission's European Agenda on Migration introduced the hotspot approach as an immediate action in response to the European migrant and refugee situation. The Agenda defines a hotspot as an area at the Union's external borders facing significant migratory pressure and spells out the hotspot approach as assistance from EU agencies to frontline Member States in identifying, registering and fingerprinting incoming migrants.<sup>3</sup> An explanatory note to the hotspot approach emphasises the emergency nature of the policy:

A "Hotspot" is characterized by specific and disproportionate migratory pressure, consisting of mixed migratory flows, which are largely linked to the smuggling of migrants, and where the Member State concerned might request support and assistance to better cope with the migratory pressure [...] In principle, an external border section should be considered to be a "Hotspot" for the limited period of time during which the emergency or crisis situation subsists and during which the support of the "Hotspot" approach is necessary.<sup>4</sup>

The Agenda places the hotspot approach alongside four other immediate actions: saving lives at sea through operations Triton and Poseidon; targeting criminal smuggling networks; a relocation scheme under the emergency response system contained in the Treaty on the Functioning of the European Union (TFEU);<sup>5</sup> and working with third countries to tackle migration upstream.<sup>6</sup>

#### 3.1.1 The hotspot approach and relocation

Initially, the hotspot approach was closely linked to relocation, a mechanism to relieve the pressure on frontline states Italy and Greece. The relocation scheme applies to asylum seekers who provide their fingerprints, apply for asylum in Italy or Greece, and are from states with an EU-wide average recognition rate of 75 per cent or higher. Asylum seekers from Eritrea, the Bahamas, Bahrain, Bhutan, Qatar, Syria, the United Arab Emirates and Yemen are currently eligible for relocation.<sup>7</sup>

The hotspot approach was intended to complement relocation, with early registration of asylum seekers in the hotspots allowing for transfer of likely refugees under the relocation scheme.<sup>8</sup> However, since the establishment of the hotspot approach and relocation scheme in September 2015, the two policies have become largely delinked due to a number of factors, including insufficient relocation pledges from member states, the limited number of nationalities eligible for relocation, and the shift from relocation to return in the Greek hotspots since the operation of the EU-Turkey Statement.<sup>9</sup>

#### 3.1.2 The hotspot approach and the EU-Turkey Statement

The EU-Turkey Statement of March 2016 fundamentally altered the function of the hotspots in Greece, placing the use of safe third country concepts at the centre of the hotspot approach and shifting the work of the hotspots from identification and registration to admissibility and return.<sup>10</sup> In its communication following the release of the EU-Turkey Statement, the Commission noted 'the hotspots in 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>11</sup>

<sup>3</sup> European Commission, A European Agenda on Migration, May 2015.

<sup>4</sup> Explanatory note on the "Hotspot" approach, 15 July 2015.

<sup>5</sup> Article 78(3).

<sup>6</sup> European Commission, A European Agenda on Migration, May 2015, 3-6.

<sup>7</sup> Article 3(2) Decision 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece. The relocation scheme is a partial derogation from the Article 13(1) of the Dublin Regulation, which allocates responsibility for the asylum application of a new arrival to the first member state of entry. The inclusion of the Bahamas and Bahrain appears to be a result of very low number of asylum applications, and a high acceptance rate of those few asylum seekers from these countries.

<sup>8</sup> European Commission, The hotspot approach to managing exceptional migratory flows; Darren Neville, Sarah Sy, and Amalia Rigon, On the frontline: The hotspot approach to managing migration, Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, May 2016, 30.

<sup>9</sup> AIDA, Country Report: Greece, 2016 update – March 2017, 13; ECRE, The implementation of the hotspots in Italy and Greece - A study, 28; Angeliki Dimitriadi, 'Governing irregular migration at the margins of Europe. The case of hotspots on the Greek islands' (2017) 10 *Etnografia e ricerca qualitativa* 75, 80.

<sup>10</sup> FRA, Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy, 16.

<sup>11</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, Brussels, 16.3.2016 COM (2016) 166 final, 4.

Further, since the operation of the EU–Turkey Statement, the Greek hotspot approach seeks to contain new arrivals to the islands, restricting access to mainland Europe. This containment policy restricts the movement of migrants and refugees to inadequate reception conditions and includes the use of detention.

The hotspots in Greece have become a necessary condition for the effectiveness of the EU–Turkey Statement. The carrying out of admissibility procedures on the islands raises the possibility of return to Turkey, a constant fear on the islands.<sup>12</sup> Further, containment of new arrivals in inadequate reception conditions, including detention, sends a message of deterrence to those considering the journey to Europe.

### 3.1.3 The hotspot approach as physical sites, working method and filtering mechanism

The hotspot approach has never been comprehensively defined, and there is no specific EU level legal framework designed to regulate the hotspots. While, recent legislation in Greek and Italian law makes reference to the hotspots<sup>13</sup>, the approach has no concrete legal definition. Instead, the approach is regulated by the CEAS and the national law of Italy and Greece. The hotspot approach in both countries can be understood as comprising three elements: physical sites, working method and a filtering mechanism to categorise new arrivals on the basis of their likely status.<sup>14</sup>

First, the hotspots are *physical sites* for the registration, identification and first assistance of new arrivals directly after disembarkation, located in European external border areas facing disproportionate mixed migration flows.<sup>15</sup> The European Border and Coast Guard regulation defines a hotspot area as ‘an area in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders.’<sup>16</sup> The Italian Standard Operating Procedures (SOPs) for the hotspots, provide that a hotspot site is ‘a designated area, usually (but not necessarily) in the proximity of a landing place where, as soon as possible and consistent with the Italian regulatory framework, new arrivals land safely.’<sup>17</sup> According to the European Commission, more than 261,000 migrants arrived in the hotspots between 1st January 2016 and 15 September 2017, 185,000 in Greece and more than 76,000 in Italy.<sup>18</sup>

Second, the hotspots are a *working method* allowing the deployment of EU agencies to support member state authorities. An EU Regional Task Force (EURTF) coordinates cooperation between the actors, with the European Asylum Support Office (EASO), Europol, Eurojust and the Frontex active in the hotspots. The European Agenda on Migration describes this method as follows:

The European Asylum Support Office, Frontex, Eurojust and Europol will work on the ground with 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>19</sup>

The European Council on Refugees and Exiles (ECRE) describes this working method as a ‘hybrid EU-Member States tool’ involving close operational cooperation between member state authorities and EU agencies.<sup>20</sup> This method comprises ‘inter-agency collaboration, where deployed national experts under the coordination of a specific agency operationally assist national administrations.’<sup>21</sup>

<sup>12</sup> Interview with RSA, 29 August 2017. As at June 2017, there had been 1,798 migrants returned to Turkey since the date of the EU-Turkey Statement. European Commission, Sixth Report on the Progress made in the implementation of the EU-Turkey Statement, 13 June 2017, 5.

<sup>13</sup> E.g. in the new amendment to the asylum procedure (L.4461/2017) in Greek national law, where EASO’s role in admissibility and asylum interviews is regulated.

<sup>14</sup> Amnesty International, Hotspot Italy: How EU’s flagship approach leads to violations of refugee and migrant rights, 3 November 2016, 11-12.

<sup>15</sup> Explanatory note on the “Hotspot” approach, 15 July 2015.

<sup>16</sup> Article 2(10) Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard.

<sup>17</sup> Italian Ministry of the Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, February 2016.

<sup>18</sup> European Commission, Communication on the Delivery of the European Agenda on Migration, 27 September 2017, 12.

<sup>19</sup> European Commission, A European Agenda on Migration, May 2015, 6.

<sup>20</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study, 7.

<sup>21</sup> Lillian Tsourdi, Hotspots and EU Agencies: Towards an integrated European administration?, EU Immigration and Asylum Law and Policy blog, 26 January 2017, available at <http://eumigrationlawblog.eu/hotspots-and-eu/> accessed 25 September 2017.

According to the EU Fundamental Rights Agency (FRA), the hotspots function with 'an unprecedented level of operational EU support'. For example, Frontex presence in the hotspots is marked: there are currently 464 Frontex officers in the Greek hotspots alone. In Italy, there are currently 81 Frontex officers in the hotspots.<sup>22</sup>

Third, the hotspots act as a *filtering mechanism* aimed at registering, identifying and channelling new arrivals into asylum or return procedures.<sup>23</sup> This aim is driven by a number of factors, including security concerns following terrorist attacks in Brussels and Paris that appear to have been carried out by persons entering the EU alongside refugees.<sup>24</sup> The hotspot approach is considered an effective return mechanism for migrants not requiring international protection, with the possibility of rapid return from the hotspots themselves due to the use of initial filtering processes and, in the Greek context, fast-track border procedures.<sup>25</sup>

A Centre for European Policy Studies (CEPS) report describes this filtering as:

a process of sorting out/screening people into categories at the moment of arrival. It screens for 'who you are' at the moment of disembarkation, determining not only your nationality but also whether you are an 'economic migrant' or an 'asylum seeker'.<sup>26</sup>

This filtering mechanism represents the basic risk inherent in the hotspot approach, as it seeks to screen between likely refugees and likely migrants at the point of arrival. According to the Asylum Information Database (AIDA), this filtering process 'can be simplistic and misleading', raising the risk of refoulement.<sup>27</sup>

The work of the hotspots can be set out in the following main categories, with some variation from hotspot to hotspot:

1. Registration and screening of new arrivals, carried out by national authorities and Frontex;
2. The provision of information on irregular entry and international protection, carried out by national authorities, UNHCR<sup>28</sup> and Frontex;
3. Debriefing of refugees and migrants to understand smuggling routes and methods, carried out by Frontex and Europol;
4. Investigation and intelligence gathering on smuggling, carried out by Europol and Eurojust;
5. Transfer of asylum seekers to reception centres for status determination or relocation, carried out by EASO, UNHCR and national authorities;
6. Return or transfer of migrants that do not have the right to stay in the EU legally to pre-deportation centres, carried out by national authorities with Frontex support;
7. In Greek hotspots, asylum procedures, carried out by the Greek Asylum Service and EASO.<sup>29</sup>

Since its introduction, the hotspot approach has been used in different contexts as both a preliminary registration and filtering mechanism for irregular arrivals and a containment approach limiting access to mainland Europe. Finally, despite the introduction of the hotspot approach as an emergency response to the European migration and refugee situation, the hotspots are likely to become a long-term part of EU border policy.<sup>30</sup>

22 Hotspot State of Play, 11 September 2017, available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf) accessed 25 September 2017. In November 2016, FRA reported 474 Frontex deployed staff present in the Greek hotspots. FRA, Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy, 14.

23 Amnesty International, Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights, 3 November 2016, 11; Leonie Ansems de Vries, Sergio Carrera and Elspeth Guild, Documenting the Migration Crisis in the Mediterranean Spaces of Transit, Migration Management and Migrant Agency No. 94 / September 2016.

24 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, 5.

25 See 3.2.3 below. Neville, Sy and Rigon, On the frontline: The hotspot approach to managing migration, 26.

26 Sergio Carrera, Steven Blockmans, Jean-Pierre Cassarino, Daniel Gros, Elspeth Guild and Enrico Letta, 'The European Border and Coast Guard Addressing migration and asylum challenges in the Mediterranean?' CEPS Task Force Report, 1 February 2017, 17.

27 Asylum Information Database (AIDA), Admissibility, responsibility and safety in European asylum procedures, September 2016, 10. See further 4.1 below.

28 In the Italian hotspots in accordance with ITA SOPs (B.6. and B.8.1) information provision on international protection is provided by UNHCR.

29 FRA, Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy, 14; Marie-Laure Basilien-Gainche, Hotspots, cold facts. Managing Migration by Selecting Migrants, in Carolus Grutters, Sandra Mantu & Paul Minderhoud (ed.), Migration on the Move. Essays on the Dynamic of Migration, Brill, 2017, 153-171.

30 The European Commission recently noted: 'The hotspot approach has shown itself to be a flexible and useful EU instrument that can be adapted to any Member State in the same situation. Based on the lessons learned in Greece and Italy, the Commission will present later in the autumn guidelines, including a template for standard operating procedures on how to set up and use hotspots in case of disproportionate migratory pressure at the external border of any Member State.' European Commission, Communication on the Delivery of the European Agenda on Migration, 27 September 2017, 12.

### Box 1: Chronology of the hotspot approach

In May 2015, the Commission's European Agenda on Migration introduced the hotspot approach as part of the response to the European migrant and refugee crisis. The Agenda also proposed a temporary relocation scheme for asylum seekers in clear need of international protection. In June 2015, the European Council endorsed the hotspot approach.

In July 2015 the Commission's Explanatory note on the hotspots spelled out the aim of the approach as 'to provide a platform for the agencies to intervene, rapidly and in an integrated manner, in frontline Member States when there is a crisis due to specific and disproportionate migratory pressure at their external borders, consisting of mixed migratory flows'.<sup>31</sup>

In September 2015, two Council Decisions established a temporary relocation mechanism, providing for the transfer of around 98,000 asylum seekers from Italy and Greece to other EU Member States by September 2017.<sup>32</sup>

In October 2015, the first hotspot, Lesvos, was established.

By February 2016, the four Italian hotspots were operational, i.e. Lampedusa (October 2015), Trapani (December 2015), Pozzallo (January 2016) and Taranto (February 2016). In February 2016, Standard Operating Procedures (SOPs) were also introduced in the Italian hotspots, and were published in May 2016 on MOI website.<sup>33</sup>

By March 2016, four hotspots were operational in Greece – Lesvos, Chios, Samos and Leros.

In March 2016, the EU-Turkey Statement came into operation, providing for the return of all new arrivals whose applications have been declared inadmissible or unfounded, crossing from Turkey to the Greek islands.

In April 2016, the European Commission put forward a proposal for a reform of the CEAS. The proposal included shifting asylum applications from national to EU level and establishing a central system for the allocation of responsibility for anyone seeking asylum in the Union.<sup>34</sup>

In June 2016, the Kos hotspot became operational.

By September 2017, the relocation scheme had transferred 27,412 asylum seekers, 19,200 from Greece and 8212 from Italy. Eligible asylum seekers who arrived in Greece and Italy before 26 September 2017 have the right to be relocated.<sup>35</sup> Around 37,000 people are expected to be relocated under the scheme.<sup>36</sup>

In October 2017, the Messina hotspot became operational.

31 Explanatory note on the "Hotspot" approach, 15 July 2015, available at <http://www.statewatch.org/news/2015/ju/eu-com-hotspots.pdf>.

32 Council Decisions (EU) 2015/1523 of 14 September 2015 (OJ L 239, 15.9.2015, p. 146) and 2015/1601 of 22 September 2015 (OJ L 248, 24.9.2015, p. 80), establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. Originally the relocation scheme provided for 160,000 places from Italy, Greece and Hungary, however the allocation of 54,000 asylum seekers to be relocated from Hungary was cancelled. See also European Commission, Relocation and resettlement: Sharing responsibility with the EU, September 2017.

33 Italian Ministry of the Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, February 2016.

34 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)).

35 European Commission, Relocation and resettlement: Sharing responsibility with the EU, September 2017.

36 European Commission, Communication on the Delivery of the European Agenda on Migration, 27 September 2017.

## 3.2 THE LEGAL FRAMEWORK

There is no overarching legal framework for the hotspot approach. However, the approach is regulated by the international and regional human rights law, notably the Charter of Fundamental Rights of the EU (CFREU) and European Convention on Human Rights (ECHR), the CEAS, in particular the Asylum Procedures Directive,<sup>37</sup> Reception Conditions Directive<sup>38</sup> and Qualification Directive,<sup>39</sup> and the national legal systems in Greece and Italy.

### 3.2.1 International and regional human rights law

The hotspot approach is also subject to the CFREU, which binds all EU institutions and agencies.<sup>40</sup> The EU agencies active in the hotspots operate under 'the general provisions of their founding regulations and operational plans agreed with the national authorities.'<sup>41</sup> Italy and Greece are, of course, also bound by the ECHR and international human rights treaties they have ratified, notably the Refugee Convention, International Covenant on Civil and Political Rights and Convention Against Torture.

A case communicated to the European Court of Human Rights in May 2017, JB v Greece, challenges the admissibility procedure in the Lesvos hotspot. The applicant claims that return to Turkey raises a real risk of inhuman and degrading treatment or punishment in violation of Article 3 of the ECHR. The case was communicated on 18 May 2017 and has been prioritised by the Court.<sup>42</sup>

### 3.2.2 CEAS: Asylum Procedures Directive

New arrivals in the hotspots are channeled into one of the asylum procedures provided for in the Asylum Procedures Directive, notably:

- A regular asylum procedure to examine international protection needs;<sup>43</sup>
- A prioritised procedure to examine protection needs of vulnerable or likely well-founded cases;<sup>44</sup>
- An accelerated procedure to examine protection needs of likely unfounded or security-related cases<sup>45</sup>
- A border procedure to speedily conduct admissibility or examine the merits under an accelerated procedure at the hotspots,<sup>46</sup>
- An admissibility procedure, for asylum seekers who may be the responsibility of another country on the basis of safe third country or first country of asylum concepts.<sup>47</sup>

The admissibility procedure gives member states the possibility not to examine the substance of an asylum claim where an applicant can instead seek protection in a safe third country, or has already received protection in a first country of asylum. If the application is declared inadmissible, a substantive examination of the claim does not go ahead, and the applicant may be returned from the hotspots. An appeal procedure is in place for admissibility decisions.

A safe third country is a state with which the applicant has a sufficient connection, is not at risk of persecution or serious harm, is protected against non-refoulement, and could apply for and receive international protection 'in accordance with' the Refugee Convention.<sup>48</sup> A first country of asylum is

<sup>37</sup> Directive 2013/32/EU on common procedures for granting and withdrawing the status of international protection (recast).

<sup>38</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

<sup>39</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 (recast).

<sup>40</sup> FRA, Opinion of the European Union Agency for Fundamental Rights On fundamental rights in the 'hotspots' set up in Greece and Italy, 12.

<sup>41</sup> FRA, Opinion of the European Union Agency for Fundamental Rights On fundamental rights in the 'hotspots' set up in Greece and Italy, 14.

<sup>42</sup> JB v Greece, Application No. 54796/16, communicated 18 May 2017. ECRE, Greece: Strasbourg Court halts return of rejected asylum seeker to Turkey, 30 June 2017, available at <https://www.ecre.org/greece-strasbourg-court-halts-return-of-rejected-asylum-seeker-to-turkey/> accessed 24 September 2017.

<sup>43</sup> Article 31(1).

<sup>44</sup> Article 31(7).

<sup>45</sup> Article 31(8).

<sup>46</sup> Article 43.

<sup>47</sup> Articles 33-34. See further AIDA, Admissibility, responsibility and safety in European asylum procedures, September 2016, 8.

<sup>48</sup> Article 38 Asylum Procedures Directive. According to UNHCR, 'application of the concept requires an individual assessment of whether the previous state will readmit the person; grant the person access to a fair and efficient procedure for determination of his or her protection needs; permit the person to remain; and accord the person standards of treatment commensurate with the 1951 Convention and international human rights standards, including protection from refoulement.' UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016, 2.

a state where the applicant has already been recognised as a refugee, or otherwise enjoys sufficient protection there, including freedom from refoulement.<sup>49</sup>

### 3.2.3 National legislation

In Greece, where the hotspots function as asylum processing centres as well as sites for the registration and identification of new arrivals, Law 4375/2016 transposes the provisions of the Asylum Procedures Directive into national legislation.<sup>50</sup> Following the EU-Turkey Statement, the safe third country and first country of asylum concepts contained in Law 4375/2016 were applied for the first time in relation to Turkey.<sup>51</sup>

On 22 September 2017, the Greek Council of State upheld the inadmissibility decisions of two Syrian applicants under the safe third country concept in relation to Turkey.<sup>52</sup> According to Refugee Support Aegean (RSA), who represented one of the applicants, the decision may lead to 'a large number of fast-track forcible returns of Syrian asylum seekers whose appeals have been rejected on the premise that Turkey is a 'safe third country''.<sup>53</sup>

If implemented, the Council of State decision will be the first transfer of asylum seekers from Greece to Turkey on the basis of the safe third country concept under the EU-Turkey Statement. Whether the Council of State decision will lead to large-scale returns is unclear. However, what is clear is that the use of the safe third country concept requires an individualised assessment of whether Turkey is a safe third country for in light of the applicant's circumstances.<sup>54</sup>

Since April 2016 a fast-track border procedure has been in operation in the Greek hotspots. Described by AIDA as 'an extremely truncated asylum procedure with fewer guarantees', the provision allows EASO experts to conduct the asylum interview and reduces the asylum procedure to less than two weeks.<sup>55</sup> While initially limited to six months, the fast-track border procedure has recently been extended to August 2019 by legislative amendment.<sup>56</sup>

In principle, shorter processing times are lawful, provided adequate safeguards are in place. However, according to AIDA, such a rapid procedure affects the guarantees available to asylum seekers in the fast-track border procedure.<sup>57</sup> Following his visit to Greece in May 2016, the Special Rapporteur on the human rights of migrants, François Crépeau, stated that the fast-track border procedure lacked 'adequate safeguards... the procedure's priorities should not be based on one's nationality'.<sup>58</sup>

Vulnerable applicants and Dublin family reunification cases are currently exempted from the fast-track border procedure in the Greek hotspots.<sup>59</sup> The December 2016 Joint Action Plan on the EU-Turkey Statement suggested the consideration of vulnerable applicants and Dublin family reunification under the fast-track border procedure.<sup>60</sup> The results of this suggested change would be the subjecting vulnerable asylum seekers to a fast-track procedure with extremely limited guarantees, creating serious risks of violating the right to asylum and the prohibition against refoulement.

The Joint Action Plan of December 2016 is an example of EU pressure on Greece to reduce new arrivals and increase returns. The Greek Asylum Service has thus far upheld the exemption of vulnerable asylum seekers from the fast-track border procedure, on the basis that the accelerated procedure lacks

49 Article 35 Asylum Procedures Directive.

50 Greece, Law No. 4375 of 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.

51 Articles 54 and 56.

52 Amnesty International, Greece: Court decisions pave way for first forcible returns of asylum-seekers under EU-Turkey deal, 22 September 2017, available at <https://www.amnesty.org/en/latest/news/2017/09/greece-court-decisions-pave-way-for-first-forcible-returns-of-asylum-seekers-under-eu-turkey-deal/> accessed 24 September 2017.

53 RSA, Greek court opens door for forcible returns of asylum seekers back to Turkey, 24 September 2017, available at <http://rsaegean.org/greek-court-opens-door-for-forcible-returns-of-asylum-seekers-back-to-turkey/> accessed 24 September 2017.

54 Articles 10(3)(a) and 38(2)(b-c) of the Asylum Procedures Directive; UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 5; DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016, paras 7-8.

55 Article 60(4)(a-e). AIDA, Country Report: Greece, 2016 update – March 2017, 14, 59-60.

56 Article 96(4) of Law 4485/2017 (official gazette 114A/4.8.2017).

57 AIDA, Country Report: Greece, 2016 update – March 2017, 60.

58 OHCHR, 'UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece', 17 May 2016.

59 Article 60(4)(f).

60 Joint action plan on the implementation of the EU-Turkey Statement, December 2016, 2.

sufficient procedural guarantees for vulnerable applicants. However, the Greek Asylum Service has suggested admissibility assessments for some vulnerable applicants could take place on the islands, within regular procedure deadlines.<sup>61</sup>

In Italy, domestic law provides for the right to seek asylum at any point during the procedure, including during the pre-deportation phase. Legislative Decree 142/2015 implements the Asylum Procedures Directive and Reception Conditions Directive into national law.<sup>62</sup> Under Legislative Decree 142/2015, the reception system is coordinated by the Department of Civil Liberties and Immigration of the Ministry of Interior.

At the policy level, the operation of the Italian hotspots is guided by SOPs, introduced in February 2016.<sup>63</sup> The SOPs, developed with the input of the European Commission, Frontex, Europol, EASO, UNHCR and the International Organization for Migration (IOM), are publically available and set out the role of national and EU agencies in the working of the Italian hotspots.

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61 European Commission, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, 6 September 2017, Annex I, 2-3.

62 Legislative Decree 142/2015 on Implementation of the Directive 2013/33/EU on standards for the reception of asylum applicants and Directive 2013/32 / EU on common procedures for the recognition and revocation of the status of international protection.

63 Italian Ministry of the Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, February 2016, available at [http://www.libertacivilimmigratone.dlci.interno.gov.it/sites/default/files/allegati/hotspots\\_sops\\_-english\\_version.pdf](http://www.libertacivilimmigratone.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-english_version.pdf) accessed 25 September 2017.

## 4 FUNDAMENTAL RIGHTS IN THE HOTSPOTS

There are a range of fundamental rights concerns in the hotspots in Greece and Italy, though not necessarily the same set of concerns in each country. In general, there are much greater concerns in Greece than Italy, where the hotspots function as more streamlined registration and identification sites.

In Italy, new arrivals generally spend just a few days in the hotspots before being channelled into reception hubs or permanent repatriation centres (CPR)<sup>64</sup>. Notwithstanding the efficiency of the Italian hotspots, subsequent reception is often inadequate, including the detention of children and the use of reception conditions for mixed purposes.<sup>65</sup>

In Greece, in contrast, the hotspots also function as asylum processing centres and, in many cases, long-term reception centres as a means of containment. The following section sets out the major challenges to the upholding of fundamental rights focusing on two areas: access to asylum procedures and adequate reception conditions.

### 4.1 ACCESS TO ASYLUM PROCEDURES

A persistent concern in the hotspots in both Italy and Greece is accessing the asylum procedure. International and European law requires that new arrivals to the hotspots be afforded access to asylum procedures as 'a prerequisite of the right to international protection'.<sup>66</sup> The duty of non-refoulement requires that states provide the procedural rights to *information* about international protection and an *individual assessment* of the claim, without *discrimination* as to the nationality of the asylum seeker.<sup>67</sup> Reporting indicates that access to asylum varies between hotspots, but three key concerns are addressed here: the provision of information; legal assistance; and nationality-based approaches.

#### 4.1.1 Provision of information

The Asylum Procedures Directive requires that member states provide new arrivals at the external borders who may wish to apply for asylum with information on doing so, in a language they understand.<sup>68</sup> However, many refugees and migrants arriving at the hotspots do not receive accurate, timely and effective information about international protection. Information gaps are partly due to a lack of interpreters and mediation services for less common languages and may hinder access to international protection as potential asylum seekers may not be able to comprehend all the information provided or be able to express their protection needs.<sup>69</sup>

Provision of information remains a persistent issue in the hotspots. In November 2016, Amnesty International reported that 'time available to provide information to newly arrived people is very short' in the Italian hotspots.<sup>70</sup> The Italian Council for Refugees reports that returns can be very rapid and some asylum seekers only heard of the opportunity to apply for international protection 'after several months in the country'.<sup>71</sup> In some Italian hotspots, refugees and migrants are provided information, interviewed and registered a few hours after disembarkation, with limited time to rest and concretely and meaningfully express their protection needs.<sup>72</sup>

In Italy, domestic law provides for the right to seek asylum at any point, including during the pre-deportation phase. However, the use of the 'foglio-notizie' form that asks new arrivals to identify their reason for entering the country is used to filter those who wish to apply for international protection

<sup>64</sup> Following Law no. 46/2017 the former identification and expulsion centres (CPI) has been converted and their name changed to Centri Permanent per il Rimpatrio (CPR).

<sup>65</sup> AIDA, Country Report: Italy, 2016 update – February 2017, 20; ECRE, The implementation of the hotspots in Italy and Greece - A study, 16.

<sup>66</sup> FRA, Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy, 29.

<sup>67</sup> Article 3 Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention); Article 18 Charter of Fundamental Rights of the European Union (CFREU); separate opinion of Judge Pinto de Albuquerque to Hirsi v. Italy, Hirsi Jamaa and Others v. Italy, European Court of Human Rights, Appl. No. 27765/09. 23 February 2012, 71.

<sup>68</sup> Articles 8(1) and 19.

<sup>69</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study, 25; Interview with UNHCR Rome, 31 August 2017.

<sup>70</sup> Amnesty International, Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights, 37.

<sup>71</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study 25; Interview with Italian Refugee Council, 5 September 2017.

<sup>72</sup> Interview with UNHCR Rome, 31 August 2017.

From those who do not. For example, new arrivals are asked to choose between options such as work, family reunion, escaping poverty and asylum. In 2016 ECRE reported the mechanism 'oversimplifies and distorts access to the procedure.'<sup>73</sup> Currently, the 'foglio-notizie' may still result in rejection at the border and transfer to a CPR for return.<sup>74</sup>

In Greece, asylum information has been an ongoing source of frustration for those in the hotspots. In recent months, the establishment of information kiosks in Lesvos, Chios, Samos and Kos have been a positive development.<sup>75</sup> However, information on asylum procedures and individual advice remains limited and requires the assistance of lawyers.<sup>76</sup> FRA and DRC report months-long delays in the provision of information for some new arrivals, related to a lack of interpreters for less common languages, such as Comorian and Hausa (spoken in Chad).<sup>77</sup>

#### 4.1.2 Provision of legal assistance

European law requires that member states provide legal assistance during the appeals stage of the asylum procedure.<sup>78</sup> The Asylum Procedures Directive includes the provision of legal assistance to asylum seekers at the appeals stage.<sup>79</sup> Legal assistance is an important legal safeguard against the refoulement of those in need of international protection.<sup>80</sup>

However, access to legal assistance is not guaranteed in the hotspots and varies markedly from site to site. At the Trapani hotspot, the Italian Council for Refugees has signed a memorandum of understanding with the Ministry of Interior to provide legal counselling, but not in the other Italian hotspots.<sup>81</sup>

In Lesvos, NGOs providing legal aid have recently reduced their presence due to a shift in EU funding from NGOs to the Greek government since 1 August 2017, leaving a substantial gap in legal assistance to asylum seekers on the island.<sup>82</sup> Until June 2017, METAdrasi, an interpretation and legal support NGO, was funded to provide free legal assistance at the appeals stage in Moria site. Since then, METAdrasi and DRC have continued to accept referrals at the appeals stage, but without a sustainable source of funding.<sup>83</sup>

#### 4.1.3 Non-discrimination and nationality-based approaches

Article 3 of the Refugee Convention sets out the principle of non-discrimination between refugees on the basis of nationality, providing: 'The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.' Article 18 of the CFREU embeds this right into EU law.

In 2015 and until mid-2016, nationality-based approaches in the hotspots were prevalent, with Syrians prioritised over other nationalities in registration, identification and access to asylum procedures. Conversely, some African nationalities were denied access to the asylum procedure and channelled into pre-deportation detention in Italy.<sup>84</sup> A number of NGOs expressed concern at the apparent use of nationality-based approaches, highlighting access to asylum issues for nationalities presumed to be economic migrants, notably North and West Africans.<sup>85</sup>

<sup>73</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study, 21.

<sup>74</sup> Interview with CIR, 5 September 2017.

<sup>75</sup> DRC, National Protection Monitoring Reports, January-July 2017; European Commission, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, 6 September 2017, 4.

<sup>76</sup> Danish Refugee Council, National Protection Monitoring Reports, January-August 2017.

<sup>77</sup> Interview with HIAS, Lesvos, 29 August 2017; Danish Refugee Council, National Protection Monitoring Reports, January-July 2017; FRA, Opinion of the European Union Agency for Fundamental Rights On fundamental rights in the 'hotspots' set up in Greece and Italy, 21.

<sup>78</sup> Article 47 CFREU provides a right to an effective access to a remedy in case of a negative asylum decision. See also FRA, Opinion of the European Union Agency for Fundamental Rights On fundamental rights in the 'hotspots' set up in Greece and Italy, 23.

<sup>79</sup> Article 21.

<sup>80</sup> Interview with HIAS, Lesvos, 29 August 2017.

<sup>81</sup> Interview with CIR, 5 September 2017.

<sup>82</sup> International Rescue Committee, 'Lack of handover plans for the response in Greece puts asylum seekers at risk, NGOs warn', 11 July 2017, available at <https://www.rescue-uk.org/press-release/lack-handover-plans-response-greece-puts-asylum-seekers-risk-ngos-warn?edme=true> accessed 4 October 2017.

<sup>83</sup> Interview with DRC Lesvos, 29 August 2017.

<sup>84</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study, 14; Association for Juridical Studies on Immigration (ASGI), Observations in Greece, July 2016, 18.

<sup>85</sup> UNHCR (2015), Europe's refugee emergency response: Update #17, 1–7 January 2016; FRA, Opinion of the European Union Agency for Fundamental Rights On fundamental rights in the 'hotspots' set up in Greece and Italy, 20; Caritas Europa, The Hotspot Approach, position paper, 24 February 2016, 2.

Currently, nationality-based approaches in the hotspots are more targeted and formalised. In Greece, lawyers reported no prioritisation of one nationality over another, though noted that Syrian applicants tend to have easier claims, resulting in faster procedures.<sup>86</sup> Three nationality-based approaches are discussed below, relating to relocation, fast-track border procedures, and the presence of consular officials during registration.

#### 4.1.3.1 Relocation scheme

In both Italy and Greece, the hotspots prioritise asylum seekers from nationalities with an EU-wide average recognition rate of 75 per cent by filtering them into the relocation scheme.<sup>87</sup> The relocation scheme establishes that applicants from these states are ‘in clear need of international protection’.

In Greece, the relocation scheme is currently only available to asylum seekers on the mainland.<sup>88</sup> In the hotspots, the relocation scheme is only available to asylum seekers who arrived before the commencement of the EU–Turkey Statement.

In the Italian hotspots, new arrivals are provided with information about the possibility of applying for the relocation scheme from EASO, UNHCR and Italian cultural mediators.<sup>89</sup> Asylum seekers eligible for relocation are currently spread out in reception centres across the country alongside asylum seekers from other nationalities. As a result, the relocation process in Italy is complicated and slow with designated relocation hubs often under-used.<sup>90</sup>

#### 4.1.3.2 Fast-track border procedure

In the Greek hotspots, since July 2016, nationality has been used as the basis to channel new arrivals into the fast-track border procedure.<sup>91</sup> New arrivals from countries with asylum claim recognition rates below 25 per cent are channelled into this accelerated procedure without an admissibility assessment, notably new arrivals from Pakistan, Bangladesh, Sri Lanka, Tunisia, Algeria, Morocco, and Nigeria. This nationality-based approach places the right to asylum at significant risk given the lack of procedural safeguards, accelerated nature of the procedure and lack of legal assistance.<sup>92</sup>

In the Italian hotspots, inaccurate or wrong nationality assessment may lead to hindered access to procedures.<sup>93</sup> For example, an asylum seeker wrongly identified as Egyptian rather than Palestinian may be channelled into a return procedure on the basis of mistaken nationality.

#### 4.1.3.3 The presence of consular officials

One very concerning development in some Italian hotspots is the presence of third country consular officials during registration procedures. The Commission reports that both Gambian and Nigerian consular authorities are present in the Italian hotspots ‘to facilitate the identification of irregular migrants’.<sup>94</sup> Further, there are plans for Senegal to deploy officials in Italy for the same purpose, though it is not confirmed whether they will operate in the hotspots.<sup>95</sup> The presence of consular officials from new arrivals’ countries of origin presents serious risks to the rights of asylum seekers to an effective and independent procedure and may expose them and their families to threats in their country of origin.

<sup>86</sup> Interview with HIAS, Lesvos, 29 August 2017; Interview with RSA, 29 August 2017; Interview with DRC Lesvos, 29 August 2017.

<sup>87</sup> See 3.1.1 above. Asylum seekers from Eritrea, the Bahamas, Bahrain, Bhutan, Qatar, Syria, the United Arab Emirates and Yemen are currently eligible for relocation. The vast majority of asylum seekers who benefit from the scheme are from Syria and Eritrea. In July 2016, Iraq dropped below the 75 per cent threshold meaning Iraqi nationals are no longer eligible for relocation.

<sup>88</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study, 12; Interview with RSA, 29 August 2017.

<sup>89</sup> Italian Ministry of the Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, 17.

<sup>90</sup> European Commission, Thirteenth report on relocation and resettlement, 13 June 2017, 5; European Commission, Fourteenth report on relocation and resettlement, 26 July 2017, 6.

<sup>91</sup> See 3.2.2 above. The fast-track border procedure in the Greek hotspots comprises a truncated asylum procedure, without a number of procedural guarantees. AIDA, Country Report: Greece, 2016 update – March 2017, 60; AIDA, Accelerated, prioritised and fast-track asylum procedures: Legal frameworks and practice in Europe, May 2017, 2, 10. Amnesty International, Greece: Lives on Hold: Update on Situation of Refugees and Migrants on the Greek Islands, 14 July 2017, 6.

<sup>92</sup> In Lesvos, new arrivals subject to the fast-track border procedure are also detained. See Box 2 below.

<sup>93</sup> Interview with UNHCR Rome, 31 August 2017.

<sup>94</sup> European Commission, Fifth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration, 6 September 2017, 4 and 8; Italian Ministry of the Interior, Standard Operating Procedures (SOPs) applicable to Italian hotspots, February 2016, 15.

<sup>95</sup> European Commission, Fifth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration, 6 September 2017, 5.

## 4.2 RECEPTION CONDITIONS

A persistent and ongoing fundamental rights concern in the hotspots is inadequate receptions conditions, especially for vulnerable refugees and migrants. Article 17 of the Reception Conditions Directive, transposed into both Italian and Greek law, requires member states to ensure that ‘material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.’ The following addresses issues relating to vulnerability, freedom of movement and detention.

### 4.2.1 Vulnerability

The Reception Conditions Directive requires member states to assess the vulnerability of an applicant ‘within a reasonable period of time after an application for international protection is made’.<sup>96</sup> Vulnerable persons as defined in the Directive include minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and torture, rape or other sexual violence survivors.<sup>97</sup>

The under-identification of vulnerable asylum seekers remains a persistent problem in the hotspots in both Italy and Greece.<sup>98</sup> There are currently significant delays in vulnerability screenings and less visible vulnerabilities risk being overlooked altogether. For example, in Italy, gaps in terms of dedicated areas, adequate settings and professional support in support of persons with specific needs combined with the procedures at the hotspots that often do not allow sufficient time for all vulnerable profiles to emerge, effecting victims of certain vulnerabilities which may disclose only at a later stage (as is the case with traumatic events such as gender-based violence).<sup>99</sup>

Greek law currently excludes vulnerable persons from the fast-track border procedure, meaning a vulnerability assessment is a ticket off the islands to the mainland.<sup>100</sup> However, reporting demonstrates significant delays in vulnerability assessments for new arrivals to the Greek hotspots. Previously, new arrivals first underwent a medical screening at a reception and identification centre (RIC), followed by a subsequent vulnerability screening. However, weeks-long delays in the carrying out of vulnerability screenings mean that asylum seekers remain in the hotspots and may begin the asylum procedure without a vulnerability assessment.<sup>101</sup> In some cases, vulnerable asylum seekers have had their asylum claim erroneously assessed under the fast-track border procedure.<sup>102</sup> In Lesvos, Medicines Sans Frontier (MSF) described in July 2017 a ‘grossly deficient vulnerability screening system and policies aimed at returning as many people as possible to Turkey’.<sup>103</sup>

### 4.2.2 Detention

Detention and the blurring of reception and detention in the hotspots has been a key source of concern since the commencement of their operation. In the Italian hotspots in 2015-16, there were widespread reports of the arbitrary detention for identification purposes of new arrivals, in order to pressure them into providing their fingerprints. Amnesty International reported that ‘coercive measures to force uncooperative individuals to provide their fingerprints has increasingly become the rule, through both prolonged detention and the use of physical force.’<sup>104</sup>

<sup>96</sup> Article 21.

<sup>97</sup> Article 20. Similarly, Article 14(8) of Law 4375/2016 in Greece defines vulnerable people as ‘Unaccompanied minors; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particularly survivors and relatives of victims of shipwrecks; victims of trafficking in human beings’.

<sup>98</sup> See for example, ECRE, The implementation of the hotspots in Italy and Greece - A study, 8.

<sup>99</sup> ECRE, The implementation of the hotspots in Italy and Greece - A study, 23-24; Interview with UNHCR Rome, 31 August 2017.

<sup>100</sup> Article 60(4) of Law 4375/2016. See also 3.2.3 above.

<sup>101</sup> Notably, the Reception and Identification Service (RIS) has yet to develop SOPs in the Greek hotspots. Interview with HIAS, Lesvos, 29 August 2017; DRC, National Protection Monitoring Reports, January-July 2017.

<sup>102</sup> ECRE, Greece: Strengthening NGO involvement and capacities around EU ‘hotspots’ developments: Update on the implementation of the hotspots in Greece and Italy, April 2017, 5.

<sup>103</sup> Medecins Sans Frontières (MSF), A Dramatic Deterioration for Asylum Seekers on Lesbos, July 2017, 3.

<sup>104</sup> Amnesty International, Hotspot Italy: How EU’s flagship approach leads to violations of refugee and migrant rights, 6. See also Oxfam, Hotspot, rights denied, May 2016.November 2016.

There are mixed reports of some positive developments in this area. Since January 2017, reports of the detention of new arrivals to force fingerprinting have decreased, though they have not disappeared altogether. This development may be caused by campaigns on the legal obligation to provide fingerprints and increased awareness among new arrivals about their obligation to do so.<sup>105</sup> A new Law n° 46/2017 adopted in April 2017 now equals “persistent refusal” to release fingerprints with “risk of absconding”, and provides for administrative detention up to 30 days<sup>106</sup>.

In Greece, Law 4375/2016 provides that detention should be carried out exceptionally, following an individual assessment and as a measure of last resort where no alternative measures can be applied.<sup>107</sup> However, Article 14(2) of Law 4375/2016 allows between three and 25 days restricted freedom of movement for new arrivals. In practice, upon arrival, all refugees and migrants are systematically prevented from leaving the hotspot for 25 days, until they receive their asylum seeker cards, a policy that amounts to detention.<sup>108</sup>

Finally, pre-removal detention of rejected asylum seekers occurs in the Kos and Lesvos hotspots. Since June 2017, a section of Moria centre has been used as a pre-removal detention centre detaining rejected asylum seekers, asylum seekers who have withdrawn their claims, individuals who wish to repatriate under the Assisted Voluntary Return and Reintegration (AVRR) program administered by the IOM, and some third country nationals who refused to apply for international protection.<sup>109</sup>

#### 4.2.3 Restrictions on freedom of movement

In Greece, there are staggered phases of restricted freedom of movement in the hotspots. After the initial 25 days, applicants are issued an asylum seeker card either with or without geographical restriction. Asylum seekers with geographical restriction cannot leave the hotspot until the determination of their application for international protection. Asylum seekers without geographical restriction, that is those with vulnerabilities or under a Dublin family reunification procedure, can leave the islands for the mainland.

The legal basis for restriction of movement is likely the Greek reservation to Article 26 of the Refugee Convention, which provides for the freedom of movement of refugees at the level afforded other aliens. The Greek reservation provides for derogation from Article 26 for reasons of national security or public order.<sup>110</sup>

The Greek hotspots have become *de facto* detention sites, indiscriminately detaining new arrivals for 25 days in already overcrowded sites and subsequently restricting freedom of movement to the islands. This tightening of freedom of movement may be understood as part of a broader containment and deterrence policy.<sup>111</sup>

<sup>105</sup> Interview with UNHCR Rome, 31 August 2017; Correspondence with Campagna Welcome Taranto, 23 August 2017.

<sup>106</sup> ECRE, Greece: Strengthening NGO involvement and capacities around EU ‘hotspots’ developments: Update on the implementation of the hotspots in Greece and Italy, April 2017

<sup>107</sup> Article 46(2).

<sup>108</sup> DRC, National Protection Monitoring Reports, January-August 2017; AIDA, Country Report: Greece, 2016 update – March 2017, 94. In addition, a ‘pilot project’ in Lesvos detains new arrivals from particular nationalities. See Box 2 below.

<sup>109</sup> DRC, National Protection Monitoring Reports, January-July 2017.

<sup>110</sup> Refugee Convention, Declarations and Reservations, available at [https://treaties.un.org/Pages/ViewDetailsll.aspx?src=TREATY&mtdsg\\_no=V-2&chap=ter=5&Temp=mtdsg2&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetailsll.aspx?src=TREATY&mtdsg_no=V-2&chap=ter=5&Temp=mtdsg2&clang=_en#EndDec).

<sup>111</sup> See 6.1.2 below.

### Box 2: Spotlight on the Lesvos hotspot

The Lesvos hotspot has been in operation since October 2015.<sup>112</sup> A recent rise in the number of new arrivals, in combination with a reduction in the capacity of NGOs, has led to severe conditions for the approximately 5100 asylum seekers in Lesvos.<sup>113</sup>

Currently, the Moria centre is experiencing **massive overcrowding** with approximately 3800 asylum seekers currently living at the site, which has a capacity of 1500.<sup>114</sup> With around 1100 new arrivals to Lesvos in August 2017, containers and life shelters in Moria centre are beyond their capacity. Rub-halls and tents are so overcrowded that new arrivals are sleeping on cement in the open. Further, pregnant women, children, and vulnerable asylum seekers live in tents in Moria, due to unavailability of space in alternative accommodation. Just outside the Moria centre, an area called the Olive Grove hosts around 190 asylum seekers. In the Olive Grove, there is currently no running water or electricity. Without running water, asylum seekers are forced to wash in the fields around the Moria site.

Overcrowding in Moria is exacerbated by **inadequate reception conditions** in violation of fundamental rights standards. Currently, only one latrine is functioning, which female asylum seekers cannot access, as it is used by men. **Hygiene conditions** place asylum seekers at risk, with no personal hygiene materials available inside the facilities. Water runs only 3-4 hours per day, and not at all on weekends. A chickenpox outbreak in August 2017 infected 18 asylum seekers, with full isolation of those infected not possible.

**Inadequate winterization** saw the deaths of three people living in tents in the Moria centre last winter. Currently, thousands of asylum seekers are living in tents due to overcrowding. Winterization planning is urgently required to ensure the tragic loss of life of last year is not repeated, including the early identification of alternative shelter arrangements.

Around 500 children currently live in Moria, which **lacks child-friendly spaces** as the site was reconstructed to meet the needs of male beneficiaries between February 2017 and April 2017. Overcrowding means families with children are forced to live in tents or alongside single men in congested rub-halls.

**Access to primary healthcare** is limited in Moria. Initial medical screenings take two weeks on average, raising serious risks for vulnerable asylum seekers, particularly survivors of gender-based violence. There is no medical actor present after 11pm, while interpretation for medical services is limited to French, Arabic, and English. Farsi and Dari speakers reported waiting for more than three weeks for a medical examination. Access to **secondary healthcare** in Lesvos takes months, due to the island's isolation from the mainland. Appointments for the hospital in Mytilene are given with a three-month wait time.

There are currently significant delays in the provision of **vulnerability screenings**, with many applicants choosing to undertake the asylum procedure without a prior vulnerability screening. The vulnerability assessment, administered by the Hellenic Centre for Disease Control and Prevention (KEELPNO) since July 2017, takes place on average two weeks after arriving to the island. As a result, vulnerable asylum seekers live in inadequate conditions at Moria for weeks before being screened.

112 DRC has been present in the Lesvos hotspot since November 2015.

113 See further MSF, A Dramatic deterioration for asylum seekers on Lesbos, July 2017.

114 Hotspot State of Play, 11 September 2017.

In relation to **access to asylum procedures**, asylum seekers and humanitarian actors have raised continuous concerns regarding **gaps in information provision** on legal issues and asylum procedures. The installation of two information billboards and an information kiosk in recent months represent positive developments, however information for some language groups continues to be a gap, due to the **lack of interpreters**.

There exists a **significant gap in legal assistance** to asylum seekers. NGOs providing legal aid have recently reduced their presence, leaving around 14 lawyers to provide counselling asylum seekers at Moria centre. The current wait times for asylum procedures are approximately six months. After asylum is granted, holders of international protection may leave for the mainland.

Since September 2016, all new arrivals, including children, have been **de facto detained** at the Moria centre for 25 days. After this period, new arrivals are issued an asylum seeker card with a geographical restriction **limiting their freedom of movement** to the island. Since June 2017, only Dublin family reunification cases and vulnerable Syrians are given cards without geographical restriction, allowing access to the mainland. Other vulnerable asylum seekers are issued cards without geographical restriction for one month to travel to the mainland and access medical services not available on the island. They are then obliged to return to Lesvos for their asylum procedure.

In October 2016, a **pilot project** was launched by the Greek police placing new arrivals from countries with asylum claim recognition rates below 25 per cent in closed detention in Moria centre.<sup>115</sup> The pilot project was initially ended before summer 2017, with some people released after being detained for 3-6 months.

However, the project was revived in August 2017 and remains in operation. According to RSA, some detained asylum seekers were handcuffed during their asylum interview.<sup>116</sup> Although those detained retain the nominal right to legal assistance, they are held in closed detention, without access to lawyers.<sup>117</sup> The project appears to amount to **arbitrary detention** in violation of relevant human rights standards.<sup>118</sup>

In addition, asylum seekers rejected at first instance have five days to choose between appealing the decision or taking up the **AVRR** program. Access to the AVRR program is thus only available to applicants who decide not to appeal first instance rejection of their claim.

In DRC's opinion, the cumulative effect of overcrowding, inadequate reception conditions, limited access to healthcare, lack of information, delays in the asylum procedure and lack of support for vulnerable asylum seekers at the Moria centre amount to **inhuman and degrading conditions**.

<sup>115</sup> DRC, National Protection Monitoring Reports, January-August 2017; International Rescue Committee, the Norwegian Refugee Council and Oxfam, The reality of the EU-Turkey Statement: How Greece has become a testing ground for policies that erode protection for refugees, 17 March 2017, available at <https://www.oxfam.org/sites/www.oxfam.org/files/bn-eu-turkey-statement-migration-170317-en.pdf> accessed 4 October 2017, 6.

<sup>116</sup> Interview with RSA, 29 August 2017.

<sup>117</sup> Interview with DRC Lesvos, 29 August 2017; Interview with RSA, 29 August 2017; DRC, National Protection Monitoring Reports, January-August 2017.

<sup>118</sup> See for example Rahimi v. Greece, application No. 8687/08, European Court of Human Rights, 5 July 2011.

## 5 THE HOTSPOT APPROACH IN THE REFORMED CEAS

### 5.1 OVERVIEW OF THE CEAS REFORM

Reform of the CEAS, flagged in the European Agenda on Migration and launched in 2016, seeks to further harmonise asylum procedures and standards across the Union, while adding a mechanism to distribute asylum applicants among member states. In its communication of April 2016, the Commission cited the need to address abuse of the asylum system and prevent secondary movements within the EU.<sup>119</sup>

In May 2016, the Commission adopted the first package of proposals for reform of the CEAS with the following initiatives:

- Proposal for a regulation to reform the Dublin system to better allocate asylum applications among member states and to guarantee timely processing of applications;
- Proposal for a regulation to amend EURODAC,<sup>120</sup> with the aim of increasing the efficiency of the EU fingerprint database for asylum seekers;
- Proposal for a regulation to establish an EU Asylum Agency strengthening EASO's mandate.

In July 2016, the Commission put forward the second package of proposals for the reform of the CEAS, including:

- The replacement of the Asylum Procedures Directive with a regulation to harmonise EU asylum procedure and reduce differences in recognition rates;
- The replacement of the Qualification Directive with a regulation to 'to harmonise protection standards and rights for asylum seekers';
- Reform of the Reception Conditions Directive, aiming to 'ensure that asylum seekers benefit from harmonised and dignified reception standards'.<sup>121</sup>

At the organisation level, reforms to EASO and Frontex are also likely to affect the operation of the hotspots. The current – and likely future – roles of the two agencies reflect the hotspots filtering approach: EASO operates in the hotspots to screen and examine asylum applications, while Frontex activities in the hotspots are focused on registration, identification and return of migrants, both persons not wishing to apply for asylum and rejected asylum seekers.

Frontex became the European Border and Coast Guard in 2016, with a mandate to assist in screening, debriefing, identification, fingerprinting and referring asylum seekers to EASO and national authorities in the hotspots.<sup>122</sup> In relation to EASO, the Commission proposed regulation on the European Union Agency for Asylum aims to 'amend and expand the mandate of EASO in view of turning it into a fully-fledged agency.'<sup>123</sup>

The inclusion of specific references to the hotspot approach in the 2016 Frontex regulation and the proposed European Union Agency for Asylum regulation indicate the long-term nature of the hotspot approach. The proposed reforms to the core CEAS directives do not include explicit references to the hotspot approach. However, it is highly likely that the hotspot approach – initially conceived as a short-term crisis response – will become a long-term element of EU border policy.

<sup>119</sup> European Commission, Towards a reform of the Common European Asylum System, April 2016, 6.

<sup>120</sup> The EURODAC Regulation establishes an EU-wide asylum fingerprint database.

<sup>121</sup> European Council, Reforming the common European asylum system, <http://www.consilium.europa.eu/en/policies/migratory-pressures/reforming-ceas/ceas-reform-timeline/>.

<sup>122</sup> Article 8(i)-(ii) Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard.

<sup>123</sup> European Parliament, Legislation in Progress Briefing: European Union Agency for Asylum, 10 March 2017, 2.

## 5.2 FRONTEX IN THE HOTSPOTS

The 2016, the European Border and Coast Guard regulation gives Frontex shared responsibility, along with national authorities, for border management of the Union.<sup>124</sup> At the hotspots, Frontex forms part of ‘migration management support teams’, composed of Union agency experts who provide technical and operational reinforcement to member states.<sup>125</sup>

Article 18 of the regulation formalises the role of Frontex at the hotspots, empowering the Agency to screen, register and provide initial information to persons who wish to apply for international protection and their referral to the competent national authorities of the Member State concerned or EASO, as well as facilitating return from a hotspot area.<sup>126</sup> Responsibility for providing information remains with the member state, with Frontex providing ‘technical and operational reinforcement’.

In addition, the regulation includes an accountability mechanism, introducing a complaints mechanism for allegations of breach of fundamental rights by any person directly affected by the actions of Frontex staff.<sup>127</sup> At time of writing, there are no reports of this complaints mechanism being used in the hotspots.

Frontex has played a leading role in the hotspots since their inception, with the Agency’s presence dwarfing that of all other EU agencies. As of 11 September 2017, a total of 546 Frontex officers were present in the hotspots, with 464 in Greece and 82 in Italy.<sup>128</sup>

## 5.3 EASO AND THE PROPOSED EU AGENCY FOR ASYLUM IN THE HOTSPOTS

The proposed role of the EU Agency for Asylum would consolidate the Agency’s mandate in line with EASO’s current activities in the hotspots. Currently, EASO issues admissibility opinions on individual asylum applications lodged in Greece, which are then presented to the Greek Asylum Service, for the final admissibility decision.<sup>129</sup> This form of joint processing appears to go beyond EASO’s mandate under its current regulation, which provides:

The Support Office should have no direct or indirect powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection.<sup>130</sup>

According to Greek lawyers, EASO staff are often not familiar with the Greek legal framework and procedure. For example, some EASO staff do not allow applicants’ lawyers to raise objections during the procedure, despite this being provided for in Greek law.<sup>131</sup> The European Center for Constitutional and Human Rights (ECCHR) argues that interviews conducted by EASO officers may not allow for a fair, individualised assessment, reporting:

EASO officers often stick to a rigid questionnaire without giving the applicant sufficient opportunity to elaborate on their personal history of harm or persecution. Interviews consist of an overwhelming number of closed questions, the inappropriate use of suggestive questions, and a failure to ask follow-up questions concerning the vulnerability of the applicant.<sup>132</sup>

Formally, the role of EASO officers and experts in the Greek asylum procedure in the hotspots retains the ultimate responsibility with the member state. The opinions issued by EASO on asylum applications in the Greek hotspots are not binding on the Greek Asylum Service, which may make a different final decision.

<sup>124</sup> Article 5 Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard.

<sup>125</sup> Articles 2(9) and 8(1)(i).

<sup>126</sup> Article 18(4)(a-c). See also <http://frontex.europa.eu/pressroom/faq/situation-at-external-border/>.

<sup>127</sup> Article 72. See also Herbert Rosenfeldt, Establishing the European Border and Coast Guard: all-new or Frontex reloaded?, EU Law Analysis blog, 16 October 2016, available at <http://eulawanalysis.blogspot.dk/2016/10/establishing-european-border-and-coast.html>.

<sup>128</sup> Hotspot State of Play, 11 September 2017.

<sup>129</sup> As of 11 September 2017, 166 EASO officers and deployed member state experts were present in the hotspots, with 142 in Greece and 24 in Italy. Hotspot State of Play, 11 September 2017 ECRI Comments on the Commission Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 COM(2016) 271, July 2016, 4; Interview with HIAS, Lesvos, 29 August 2017; Lilian Tsourdi, Hotspots and EU Agencies: Towards an integrated European administration?, EU Immigration and Asylum Law and Policy blog, 26 January 2017, available at <http://eumigrationlawblog.eu/hotspots-and-eu/> accessed 25 September 2017.

<sup>130</sup> Recital 14 Regulation No 439/2010 of 19 May 2010 establishing a European Asylum Support Office.

<sup>131</sup> Interview with HIAS, Lesvos, 29 August 2017.

<sup>132</sup> ECCHR, Case report: EASO’s influence on inadmissibility decisions exceeds the agency’s competence and disregards fundamental rights, April 2017, 2.

In April 2017, the ECCHR filed a complaint to the EU Ombudsman in relation to the role of EASO in the Greek hotspots. The complaint claims that EASO is overstepping its mandate in conducting admissibility interviews in the hotspots and that EASO opinions amount to de facto admissibility decisions. According to ECCHR, ‘it is regular practice for the Greek Asylum Service to rely on EASO’s record without posing any direct questions to the applicant’.<sup>133</sup>

A number of NGOs and scholars have raised concerns relating to the accountability for the activities of the proposed EU Agency for Asylum in the hotspots, particularly its role in examining international protection applications.<sup>134</sup> ECRE observes that the proposed regulation:

further extends the involvement of experts from other Member States in the status determination procedures for which host Member States formally have to assume full responsibility, while the outcome of the individual assessment in reality is increasingly dictated by other Member States’ experts of experts from the Asylum Agency, who are not accountable to the host Member State.<sup>135</sup>

According to the proposed regulation, the Agency would have the competence to deploy to the hotspots upon request from a member state facing disproportionate pressure at the border.<sup>136</sup> Along with Frontex, the Agency would form a part of migration management support teams at the hotspots.

In the hotspots, the proposed regulation envisages that the Agency would carry out registration and identification of third country nationals, registration of applications for international protection, examination of applications for international protection (where requested by the member state), and specific assistance related to relocation.<sup>137</sup> In particular, the proposed regulation refers to the Agency’s role in providing assistance to member state authorities in the examination of applications for international protection.<sup>138</sup> The proposed regulation provides that the ‘competence to take decisions by Member States’ asylum authorities on individual applications for international protection remains with Member States.’<sup>139</sup>

The proposed EU Agency for Asylum would expand the competencies of EASO beyond information exchange and expert advice to concrete assistance to member state authorities in the examination of individual asylum claims. In so doing, the formation of the Agency would bring EU regulation in line with existing practice in the Greek hotspots, where EASO already plays a key role in assessing individual asylum applications. The Agency would play a substantive role in examining individual asylum claims, while the final decision remains with the member state.

## 5.4 SAFE COUNTRY CONCEPTS IN THE CEAS REFORM

In its communication on the CEAS reform of April 2016, the Commission announced its intention to harmonise the ‘safe country’ mechanisms by removing member state discretion on its use.<sup>140</sup> The proposed Asylum Procedures Regulation makes mandatory the safe third country and first country of asylum concepts for member states,<sup>141</sup> and further introduces an EU-wide safe third country list.<sup>142</sup>

The introduction of mandatory safe country concepts represents a shift towards the externalisation of responsibility for international protection to third states outside the EU. According to ECRE, therefore:

...the obligatory application of the safe third country and first country of asylum concepts, as envisaged by the Commission proposal, is likely to have a significant adverse impact on access to protection in the EU, as it will result in increasing numbers of applicants being barred from a full examination of the merits of their claim.<sup>143</sup>

<sup>133</sup> ECCHR, Case report: EASO’s influence on inadmissibility decisions exceeds the agency’s competence and disregards fundamental rights, April 2017.

<sup>134</sup> Jesuit Refugee Service Europe, The CEAS reform package: the death of asylum by a thousand cuts? Working paper Number 6, January 2017, 16; Lilian Tsourdi, Hotspots and EU Agencies: Towards an integrated European administration? EU Immigration and Asylum Law and Policy blog, 26 January 2017.

<sup>135</sup> ECRE Comments on the Commission Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 COM(2016) 271, July 2016, 14-15.

<sup>136</sup> Article 16(3)(j) Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation, (EU) No 439/2010.

<sup>137</sup> Article 21(2) Proposal For a Regulation on the European Union Agency for Asylum and repealing Regulation, (EU) No 439/2010.

<sup>138</sup> Article 19(h).

<sup>139</sup> Recital 46.

<sup>140</sup> European Commission, Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, 6 April 2016, 10.

<sup>141</sup> Articles 44-45, 50 Proposal establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

<sup>142</sup> Article 46.

<sup>143</sup> ECRE Comments on the Commission Proposal for an Asylum Procedures Regulation COM (2016) 467, November 2016, 44.

The proposed Dublin IV Regulation also seeks to insert a mandatory admissibility screening. Currently the Dublin Regulation does not require the member state to conduct such an assessment, but the proposed Dublin IV regulation introduces an obligatory admissibility screening for all asylum seekers. Applicants found to come from a first country of asylum or a safe third country will be returned to that country.<sup>144</sup>

The introduction of an obligation for member states to employ the safe third country concept could have a profound effect on the hotspot approach in Italy, a country which does not currently apply the concept. The introduction of admissibility procedures at the Italian hotspots would likely require an immense increase in capacity, given the high number of arrivals to the country.

The likely result of this mandatory admissibility screening is increased delays at the hotspots and a greater burden on Italy and Greece, who are already responsible for the screening of the vast majority of new arrivals entering the EU.<sup>145</sup> Moreover, the introduction of a mandatory application of the safe third country concept raises the risk of deportation to third states that are not capable of ensuring protection.

#### 5.4.1 Safe third country concept

The proposed Asylum Procedures Regulation lowers the standard of protection required by the safe third country concept. The current Asylum Procedures Directive requires the applicant has the possibility to receive protection *in accordance* with the Refugee Convention, while that proposed regulation requires only of ‘protection in accordance with the *substantive standards* of the Geneva Convention’.<sup>146</sup> As ECRE points out:

What constitutes the substantive standards of the Geneva Convention remains undefined and therefore open to very broad and divergent interpretation. The distinction between substantive and less substantive provisions has no basis in the Geneva Convention...<sup>147</sup>

Finally, the criteria of whether there is a connection between the applicant and the third country, which would make it ‘reasonable’ to refer the person to that country is lowered. It now also includes mere transit through a third country, ‘which is geographically close to the country of origin of the applicant’.<sup>148</sup>

#### 5.4.2 First country of asylum concept

In relation to the first country of asylum concept, the proposed Asylum Procedures Regulation alters the standard of protection and connection required in the first country of asylum. The current Asylum Procedures Directive requires that an applicant be recognised in the first country of asylum as a refugee, or that the applicant otherwise enjoys sufficient protection, including benefitting from the principle of non-refoulement.<sup>149</sup>

The proposed regulation defines *sufficient protection* and changes the wording *recognized as a refugee to has enjoyed protection in accordance with Geneva Convention*.<sup>150</sup> This ambiguous wording appears to leave open the possibility of an asylum seeker being returned to a state that has not signed the Refugee Convention, on the basis that the person received a certain level of protection that may be characterised as ‘in accordance with’ the Convention.<sup>151</sup>

ECRE expresses concern:

that the reference to protection in “accordance with the Geneva Convention” leaves ambiguity as to the status the applicant should have obtained and may in practice constitute a lower standard than the recast Asylum Procedures Directive. The wording “in accordance with the Geneva Convention” in current Article 38(1) recast Asylum Procedures Directive on safe third countries, has

<sup>144</sup> Proposal for a regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 15. See in particular Recital 17 and Article 3(3).

<sup>145</sup> See further ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270, October 2016, 6-9.

<sup>146</sup> Article 45(1), emphasis added.

<sup>147</sup> ECRE Comments on the Commission Proposal for an Asylum Procedures Regulation COM(2016) 467, November 2016, 55.

<sup>148</sup> Article 45(3)(a).

<sup>149</sup> European Commission, Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, COM(2016) 85, 2 February 2016, 18.

<sup>150</sup> Article 44(1)(a), emphasis added.

<sup>151</sup> ECRE Comments on the Commission Proposal for an Asylum Procedures Regulation COM(2016) 467, November 2016, 52.

been interpreted by the Commission as including countries which have ratified the Geneva Refugee Convention with a geographical limitation". (s. 52)<sup>152</sup>

While the use of safe country concepts is already established in the Greek hotspots, following the EU–Turkey Statement, they do not currently exist in Italian law. The introduction of mandatory safe country concepts at the EU level would thus change the legal landscape in the Italian hotspots.

Further, the apparent lowering of the standard required by the safe third country and first country of asylum concepts in the proposed Asylum Procedures Regulation would likely result in a higher rate of inadmissibility decisions in the hotspots. Finally, the insertion of a mandatory inadmissibility screening into the proposed Dublin IV Regulation would massively increase the administrative burden on Greece and Italy, including in the hotspots.

## 6 THE HOTSPOT APPROACH AS A FORM OF DETERRENCE AND EXTERNALISATION

This final section places the hotspot approach in a broader context of externalisation of asylum responsibility and deterrence of asylum seekers. Particularly in Greece, the hotspot approach currently includes elements of deterrence and externalisation. Deterrence policies refer to approaches that both seek to prevent refugees and migrants reaching mainland Europe and also to persuade prospective refugees and migrants not to attempt to enter.<sup>153</sup> Externalisation refers to the shifting of responsibility for refugees beyond EU territory onto the high seas or the territories of third states.<sup>154</sup>

The emergence of the hotspot approach could be understood in the context of a broader trend of externalisation in traditional asylum states. Today, a range of deterrence measures seek to prevent refugees and migrants reaching asylum states. In recent years, the EU has sought to strike a balance between deterrence and the protection of asylum seekers.<sup>155</sup> Since the arrival of more than one million refugees and migrants in 2015, the EU and its member states have sought to stem the flow of new arrivals through a range of deterrence measures.

These measures include the June 2016 New Partnership Framework, to develop relationships with third country partners to better manage migration, the Khartoum Process, aimed at combatting migrant smuggling from the Horn of Africa into the EU,<sup>156</sup> and the signing of an Italy–Libya memorandum of understanding to fund reception centres in Libya, train Libyan border officials, and assist Libya in carrying out rescue and ‘pull-back’ operations.<sup>157</sup> Most recently, in August 2017, the EU, France, Germany, Italy, Spain, Niger, Chad and Libya released a joint statement following a mini-summit in Paris on cooperation mixed migration and strengthening Libya’s borders.<sup>158</sup>

Key among these is the EU–Turkey Statement, which has seen the number of refugees and migrants on the eastern Mediterranean route drop from 885,000 in 2015 to 175,000 in 2016, and fall again to 18,000 up to September 2017. However, arrivals have recently been on the rise, with 3,695 new arrivals in August, compared to 2,249 in July.<sup>159</sup> Clearly, the Greek hotspots play a crucial role in the operation of the Statement, as identified by the Commission in its report of September 2016:

Further efforts are urgently needed by the Greek administration to build a substantially increased and sustained capacity to return arriving migrants, which is considered to be the key deterrent factor for irregular migrants and smugglers.<sup>160</sup>

<sup>152</sup> ECRC Comments on the Commission Proposal for an Asylum Procedures Regulation COM(2016) 467, November 2016, 52.

<sup>153</sup> Thomas Gammeltoft-Hansen and Nikolas Feith Tan, ‘The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy’ (2017) 5 Journal on Migration and Human Security, 28.

<sup>154</sup> Frank McNamara, ‘Member State Responsibility for Migration Control within Third States–Externalisation Revisited’ (2013) 15 European Journal of Migration and Law, 319.

<sup>155</sup> Anna Triandafyllidou and Angeliki Dimitriadi, ‘Deterrence and Protection in the EU’s Migration Policy’ (2014) 49 The International Spectator, 146.

<sup>156</sup> EU–Horn of Africa Migration Route Initiative (Khartoum Process). See <https://www.khartoumprocess.net/>.

<sup>157</sup> Unofficial translation of the Italy–Libya Memorandum of Understanding, available at <http://www.statewatch.org/news/2017/feb/it-libya-memo-eng.htm>. See further Violeta Moreno-Lax and Mariagiovanna Giuffrè, ‘The Rise of Consensual Containment: From “Contactless Control” to “Contactless Responsibility” for Migratory Flows’ in S Juss (ed), Research Handbook on International Refugee Law (Elgar (forthcoming) 2017).

<sup>158</sup> Joint Statement, Addressing the Challenge of Migration and Asylum, Paris, August 28, 2017.

<sup>159</sup> UNHCR, ‘UNHCR urges action to ease conditions on Greek islands’, 8 September 2017.

<sup>160</sup> European Commission, Third Report on the Progress made in the implementation of the EU–Turkey Statement, 28 September 2017.

Further, the EU–Turkey Statement includes an undertaking from Turkey to ‘take any measures necessary’ to prevent new irregular arrivals on Greek islands in cooperation with the EU.<sup>161</sup>

The Greek hotspots, since the EU–Turkey Statement, have become a form of deterrence by virtue of a number of factors. Firstly, the geography of the islands of the Eastern Aegean is a deterrent factor, containing refugees and migrants and restricting access to mainland Europe. In this way, the Greek hotspots have become a ‘buffer zone’.<sup>162</sup> Secondly, the difficult and protracted reception conditions in the hotspots may serve to deter new arrivals. While the hotspots were established as emergency mechanisms in 2015, inadequate reception conditions remain two years on. Finally, in both the Italian and Greek hotspots, the very strong emphasis on systematic registration and fingerprinting limits the opportunity of gaining asylum further north, as the Dublin system allocates responsibility for the asylum procedure to Italy or Greece.

## 6.1 LOCATING THE HOTSPOT APPROACH ON A SPECTRUM OF EXTERNALISATION

Three pillars of externalisation can be identified: territorial reception; containment at the border; and extraterritorial asylum processing. The hotspot approach forms part of the second pillar, given its focus on filtering between likely refugees and migrants at the external borders of the EU.

### 6.1.1 Territorial reception

The traditional reception of irregular migrants is territorial. Territorial reception involves receiving refugees and migrants on the European mainland, where there is a higher likelihood of adequate resources providing for adequate reception conditions, access to livelihoods and legal assistance.

Of course, the hotspot approach is not the first use of islands to screen or detain new arrivals. Since the 1990s, the Spanish Canary Islands and Lampedusa, in Italy, have hosted irregular migrants and, in fact, the Lampedusa hotspot is a former identification and expulsion centre.<sup>163</sup> Nevertheless, earlier containment policies were the exception rather than the rule.

The shift away from territorial reception in the European context has been driven by a number of factors, including the reintroduction of border controls within the Schengen area due to the increase in arrivals in 2015, significant anxiety over the Europe’s capacity to integrate Middle Eastern refugees, security concerns following terrorist attacks in Brussels and Paris, and return processes that make the return of migrants without a need for international protection costly, inefficient and difficult.

### 6.1.2 Containment at the borders: the hotspot approach

This second pillar, exemplified by the hotspots in Greece, sits literally on the border of territorial and extraterritorial approaches to asylum responsibility. The hotspot approach shifts the reception of refugees and migrants from mainland Europe to the islands. The remote location of the Greek islands, coupled with containment of new arrivals there, prevents onward travel to mainland Europe.

The hotspots are within the jurisdiction of the EU, but at the external borders. As a result, the EU retains responsibilities towards all those who arrive at the hotspots, but their remote location leads – perhaps intentionally – to inadequate reception conditions, delayed access to asylum procedures, and restricted freedom of movement. Containment at the border creates zones of exception in which violations of fundamental rights are more likely to occur. The result is a deterrence policy that encourages return and deters those considering entering the EU.<sup>164</sup>

<sup>161</sup> European Council, EU–Turkey Statement, 18 March 2016, action point 3.

<sup>162</sup> Angeliki Dimitriadi, ‘Governing irregular migration at the margins of Europe. The case of hotspots on the Greek islands’ (2017) 10 Etnografia e ricerca qualitativa 75, 77.

<sup>163</sup> Angeliki Dimitriadi, ‘Governing irregular migration at the margins of Europe. The case of hotspots on the Greek islands’ (2017) 10 Etnografia e ricerca qualitativa 75, 81.

<sup>164</sup> A prototype of the hotspot approach may have been Australia’s use of Christmas Island for the registration, identification and detention of asylum seekers arriving by boat. Australia previously transferred asylum seekers arriving by boat to Christmas Island, an Australian external territory located 1500 kilometres north-west of the country. Between 2008 and 2012, new arrivals were transferred to Christmas Island, where applications for asylum were processed. Those who received international protection were transferred to the Australian mainland, while migrants denied international protection were deported. See for example, Norimutso Onishi, Australia Puts Its Refugee Problem on a Remote Island, Behind Razor Wire, New York Times, 4 November 2009, available at <http://www.nytimes.com/2009/11/05/world/asia/05island.html?mcubz=1>.

### 6.1.3 Extraterritorial asylum processing

The third pillar of externalisation is the shifting of asylum responsibility onto the territory of third states. The concept of extraterritorial asylum processing dates back to a 1986 Danish draft UN General Assembly resolution to create UN-administered regional processing centres.<sup>165</sup> In the early 1990s, the United States began intercepting and transferring Haitian asylum seekers to Guantanamo Bay, Cuba. The United States used Guantanamo Bay naval base to detain and screen asylum seekers. Rejected asylum seekers were then repatriated, while refugees were transferred to the United States.<sup>166</sup>

In Europe, proposals relating to extraterritorial asylum processing date back to the United Kingdom's 2003 New Vision for Refugees, which proposed the establishment of protected zones in origin and transit states for asylum processing. Since then, extraterritorial asylum processing has been repeatedly put forward as a means to prevent deaths at sea and control immigration into Europe<sup>167</sup>, and constitute a real element in the current political discourse.

While extraterritorial asylum processing is not unlawful per se, the approach is likely to risk the fundamental rights of asylum seekers for a number of reasons. Drawing on international practice of extraterritorial these risks include a lack of clarity regarding jurisdiction and responsibility; the link between extraterritorial processing and detention; the need for sufficient resettlement places for those asylum seekers found to be refugees; return of rejected asylum seekers from the processing country; and the great difficulties in establishing sufficient safeguards in relation to reception conditions and access to asylum in an extraterritorial context. Finally, given concerns of inadequate reception conditions and challenges in terms of access to asylum procedures in the Greek hotspots, there are grave questions as to whether the EU or one of its member states could establish asylum processing centres that protect the fundamental rights of refugees and migrants in third states outside European territory.

<sup>165</sup> Gregor Noll, 'Visions of the exceptional: legal and theoretical issues raised by transit processing centres and protection zones' (2003) 5 European Journal of Migration and Law, 303.

<sup>166</sup> Azadeh Dastyari and Libbey Effeney, 'Immigration Detention in Guantánamo Bay (Not Going Anywhere Anytime Soon)' (2012) 6 Shima: The International Journal of Research into Island Cultures.

<sup>167</sup> Madeline Garlick, 'The EU Discussions on Extraterritorial Processing: Solution or Conundrum?' (2006) 18 International Journal of Refugee Law 601; Madeline Garlick, 'The Potential and Pitfalls of Extraterritorial Processing of Asylum Claims' Migration Policy Institute, available at <<http://www.migrationpolicy.org/news/potential-and-pitfalls-extraterritorial-processing-asylum-claims>> accessed 25 September 2017.

## 7 CONCLUSIONS AND RECOMMENDATIONS

DRC is in principle in support of a European model for common registration and identification of people who are potential applicants for international protection. We believe that the hotspot approach has a role in the reformed CEAS and are not opposed to the overall principles behind the EU hotspot approach of mobilising resources from the EU, to enable an effective, rights-sensitive response and to alleviate the pressure on the Member States facing disproportionate migratory pressure.

The approach has potential for ensuring adequate first reception that includes referral of vulnerable cases to appropriate services, and although not fully implemented we acknowledge the attention being afforded to this. With a predominant focus on ensuring swift identification and registration the hotspot approach has with variations across hotspots achieved results in terms of establishing procedures that contribute to reducing wait times on the submission of applications and on decision making on status. The focus on speed has however to some extend been at the expense of access to rights including effective access to asylum procedures, as documented throughout the research. The report points to information gaps on access to international protection, lack of legal assistance, restriction of freedom of movement and extensive use of detention. Swift processing must never be on account of procedural safeguards.

Further, in the absence of a functioning solidarity measures in the Dublin system the focus on registration and identification of all arrivals results in disproportionate responsibility of the Member states at the external borders of the EU. Additionally, the mandatory admissibility screening foreseen by the proposed Dublin IV Regulation is likely to add further pressure on these Member States instead of alleviating and reducing it.

Finally, the proposed European Union Agency for Asylum will expand the competencies of EASO beyond information exchange and expert advice to concrete assistance to Member State authorities in the examination of individual asylum claims. The impact on the quality of asylum procedures must be monitored carefully.

DRC argues that in particularly on the Greek islands many of the current protection gaps and challenges are – rather than from the EU hotspot approach itself - derived from the fact that the approach in its implementation constitute a shift away from a territorial reception towards a model of containment at the EU's external borders coupled with policies of deterrence, not least due to its inter-linkage with the EU-Turkey deal in the Greek context.

DRC reiterates the need for a thorough and critical assessment of the implications of the current implementation of the hotspot approach, and argues that a well-functioning future implementation of the model as part of the CEAS must reflect the following:

### **Effective and rights-sensitive reception, identification and registration in the hotspots:**

- **The duration of the stay in the hotspots must be reduced to an absolute minimum for all arrivals.** The problem of continuous overstretched reception facilities on the islands in Greece is partly caused by the prolonged duration of stays in the hotspots. Similar to the situation in Italy, DRC recommends that the role of the hotspots is limited to first reception where identification, registration and early identification of vulnerabilities takes place within a few days. During this time access to legal information on asylum procedures must be made available for all.
- **Contingency plans must be in place in case of changes to the arrival patterns.** DRC recommends that investments in proper facilities for first reception are made and that a flexible model for up-scaling the level of staffing for identification; registration and early vulnerability screening that can accommodate sudden increases in arrivals is ensured and appropriately supported by the EU.

- **A systematic approach to the early identification of vulnerabilities, including non-visible ones, and appropriate follow up on referrals must be ensured.** DRC welcomes the attention to better address the needs of vulnerable groups through standardised vulnerability assessment by specialists, Child Protection Officers and separated areas, which is reflected in the Mid-term review of the European Agenda on Migration<sup>168</sup>, as well as legislative changes in Italian law on the safeguards of children<sup>169</sup>.
- **A clear legal framework must be in place for roles and responsibilities of the EU agencies and Member States** in the identification and registration process in the hotspots and for a monitoring mechanism. There must be no uncertainty in regard to the authority of supporting EU agencies, and independent monitoring (by e.g. the European Ombudsman) of the compatibility of the implementation of the hotspots with EU law must be in place.

### **Access to asylum procedures in safe and dignified surroundings:**

- **Effective access to fair asylum procedures must be ensured for all, independently of nationality.** Asylum procedures must respect procedural safeguards as required under EU law and the EU Charter of Fundamental Rights. Fast track procedures can be acceptable for claims that are indeed manifestly unfounded, as it can contribute to saving protection space and also spare asylum seekers deemed to be rejected from unnecessary waiting time. However, such a procedure must always respect legal safeguards, especially the possibility of rebutting the presumption that the claim is manifestly unfounded, in order not to risk refoulement. Further the procedure should only be applied to process claims that are indeed perceived to be manifestly unfounded. DRC therefore recommends the cancellation of the current nationality based procedure in the Greek hotspots that channels all nationalities with an EU average recognition rate below 25 per cent into a fast track border procedure. The procedure does not provide the necessary safeguards for those in need of international protection and is undermining the quality of the asylum procedures.
- **The processing of asylum applications must take place in a safe and secure environment.** DRC recommends that arrivals are transferred to adequate asylum centres in non-remote locations of the Member State after first reception and registration, where the asylum procedure can be carried out in a timely and appropriate manner, and where legal assistance and specialised medical services are available and accessible.
- **Access to legal information upon arrival and free legal assistance at the appeal stage** is an important legal safeguard against refoulement of those in need of international protection and must be made available to all asylum seekers. It is currently not consistently available and accessible in the hotspots although required by EU law.
- **Detention must only be used under exceptional circumstances, and as a last resort, and never for children.** The blurring of detention and reception and the automatic and lengthy use of detention in particularly the Greek hotspots without proper individualized assessment of the necessity and proportionality is problematic and contrary to EU law and fundamental rights. The pilot project in Greece that transfers all nationalities with an EU average recognition rate below 25 per cent directly from arrival to pre-removal centres appears to amount to arbitrary detention and should be abandoned.
- **Those who do not apply for asylum and rejected asylum seekers must be treated humanely and in accordance with basic human rights.** It is imperative that everyone has had access to legal information about the asylum procedure and access to legal assistance. Return of migrants without a regular stay in Europe and rejected asylum seekers must be conducted in safety, dignity and with respect for human rights, as well as primacy for voluntary return in accordance with fundamental human rights and the international protection regime.

168 [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927\\_communication\\_on\\_the\\_delivery\\_of\\_the\\_eam\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_communication_on_the_delivery_of_the_eam_en.pdf)

169 Law n. 47/2017.

## Sharing responsibility for providing protection:

- **The hotspot model must be supplemented with functioning solidarity measures ensuring responsibility sharing among Member States and respects the rights of asylum seekers.** DRC supports the idea of a matching-based system in which allocation of asylum seekers between Member States appropriately takes into account both the personal circumstances of an asylum seeker, as well as any meaningful links the person might have with a Member State, for example if there are family members with a legal presence<sup>170</sup>.
- **The EU must uphold and safeguard the right to seek asylum with the focus on rights and non-refoulement. The broader implications of the proposed changes of safe country concepts as put forward in the proposed Asylum Procedure Regulation must be carefully considered.** DRC is concerned that the proposed obligatory application of the safe third country and first country of asylum concepts coupled with a redefinition of the concepts with different basic standards will lead to a lowering of protection standards in Europe and increased risk of readmission to States that are not able to ensure protection. While at the same time adding an increased administrative burden on the Member States at the EU's external borders.
- **The EU must find common solutions and accept a fair share of the responsibility to provide international protection to those in need.** The shifting of protection responsibilities to transit countries through the efforts towards a fuller application of safe country concepts contravene current global efforts for global responsibility sharing and undermines solidarity with countries and regions hosting the majority of the World's refugees. The EU must contribute actively to improve refugee protection in regions of origin without undermining the right to seek asylum in Europe.

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<sup>170</sup> For further elaboration see DRC's position on the reform of the Dublin system: <https://drc.ngo/media/3717013/drc-policy-paper -drcs-position-on-the-reform-of-the-dublin-system.pdf>

**Acronyms**

CARA	Centre for the Reception of Asylum Seekers
CAS	Emergency Accommodation Centre
CEAS	Common European Asylum System
CEPS	Centre for European Policy Studies
CFREU	Charter of Fundamental Rights of the EU
CPR	Permanent Repatriation Centre
DRC	Danish Refugee Council
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECCHR	European Center for Constitutional and Human Rights
EU	European Union
EURTF	EU Regional Task Force
FRA	EU Fundamental Rights Agency
Frontex	European Border and Coast Guard
HIAS	Hebrew Immigrant Aid Society
IOM	International Organization for Migration
KEELPNO	Hellenic Centre for Disease Control and Prevention
RAO	Regional Asylum Office
RSA	Refugee Support Aegean
RIS/C	Reception and Identification Service/Centre
SOPs	Standard Operating Procedures
TFEU	Treaty on the Functioning of the European Union
UAM	Unaccompanied minor
UNHCR	United Nations High Commissioner for Refugees

## 8 GLOSSARY

### *Asylum seeker*

A person who has left his or her country seeking protection but has yet to be recognised as a refugee.

### *Migrant*

A person who moves for reasons not included in the refugee definition under the 1951 Refugee Convention.

### *Mixed migration*

The movement of refugees and migrants via the same channels.

### *Refugee*

A person fleeing persecution, armed conflict or torture. They are entitled to international protection under the 1951 Refugee Convention.

### *Relocation*

Relocation is the transfer of asylum seekers who are in clear need of international protection from Italy and Greece as envisaged by the EU Council Decision 2015/1523 and 2015/1601.

### *Safe third country*

A state where the applicant is not at risk of persecution or serious harm, is protected against non-refoulement, and could apply for and receive international protection in accordance with the 1951 Refugee Convention.

### *First country of asylum*

A state where the applicant has already been recognised as a refugee, or otherwise enjoys sufficient protection there, including freedom from refoulement.

### *Refoulement*

The forcible return of refugees or asylum seekers to a country where they face a real risk or persecution or serious harm.

## 9 ANNEX A: INTERVIEWS LIST

Anja Simonsen, University of Copenhagen, 25 September 2017

Camilla Ioli, researcher, 31 August 2017

Campagna Welcome Taranto, 23 August 2017 (email correspondence)

Danish Refugee Council (DRC) in Lesvos, 28-29 August 2017

European Lawyers in Lesvos, 27 September 2017 (email correspondence)

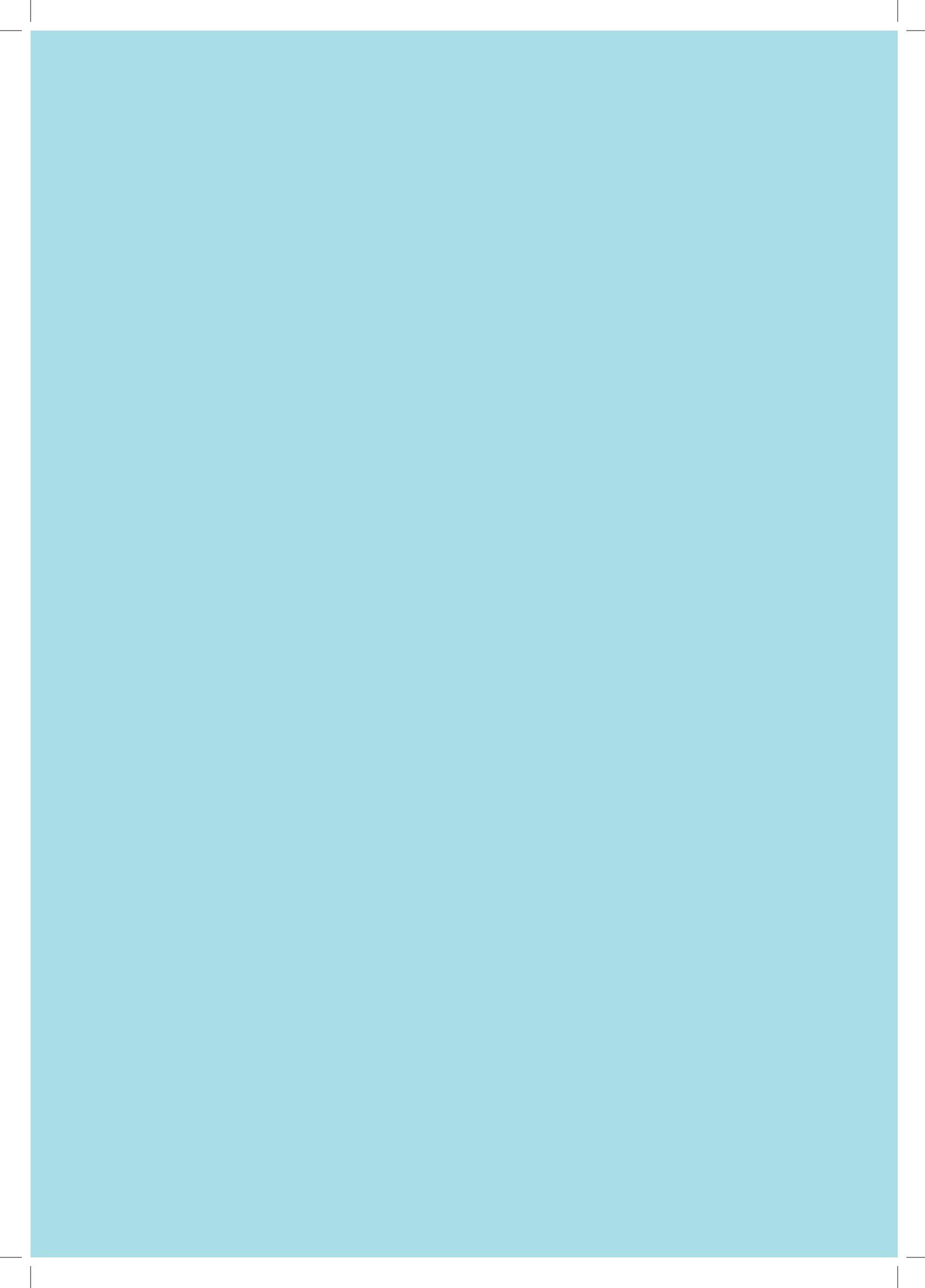
Hebrew Immigrant Aid Society (HIAS) in Lesvos, 29 August 2017

Hellenic Foundation for European and Foreign Policy (ELIAMEP), 5 September 2017

Refugee Support Aegean (RSA) in Lesvos, 29 August 2017

UNHCR Rome, 31 August 2017

Italian Council for Refugees (CIR), 5 September 2017



## About DRC

The Danish Refugee Council (DRC) is a humanitarian, non-government, non-profit organisation founded in 1956 that works in more than 30 countries throughout the world.

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