

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2016/193

of 10 February 2016

addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The transfer of applicants for international protection under Regulation (EU) No 604/2013 of the European Parliament and of the Council ⁽¹⁾ (hereafter ‘the Dublin Regulation’) has been suspended by Member States since 2011, following two judgments the European Court of Human Rights and the Court of Justice of the European Union ⁽²⁾ which identified systemic deficiencies in the Greek asylum system which risked to constitute a violation of the fundamental rights of applicants for international protection transferred from Member States to Greece under Council Regulation (EC) No 343/2003 ⁽³⁾.
- (2) The Committee of Ministers of the Council of Europe has been monitoring the situation in Greece since the *M.S.S v Belgium and Greece* judgment was delivered by the European Court of Human Rights in 2011 on the basis of progress reports that Greece is required to submit as evidence of the execution of the judgment and on the basis of evidence from NGOs and international organisations, such as the United Nations High Commissioner for Refugees (UNHCR), that operate in Greece.
- (3) As a result of the *M.S.S* judgment, Greece committed to reform its asylum system on the basis of a national Action Plan on Asylum Reform and Migration Management presented in August 2010 and revised in January 2013 (hereafter ‘the Greek Action Plan’).
- (4) With a view to addressing the serious shortcomings in the Greek asylum system, the Greek authorities also requested the European Asylum Support Office (EASO) to provide emergency support to Greece in 2011. Operational support was provided by EASO from 1 April 2011 to 31 December 2014. During this period, the deployment of Asylum Support Teams assisted Greece to support the establishment of the three new services, as well as with the reception of vulnerable persons, the treatment of the pending applications for international protection, in particular at second instance, and with capacity-building in absorption of European Union funds. On 4 December 2014, Greece made a further request to EASO for Special Support, and support is now committed to be provided until the end of May 2016.
- (5) The situation in Greece also prompted the Commission to bring a number of infringement proceedings against Greece, concerning, inter alia, insufficient access to the asylum procedure, insufficient reception capacity and poor reception conditions, including in detention facilities, failure to fingerprint irregular migrants and asylum applicants, the lack of appropriate treatment of unaccompanied minors, and the lack of adequate legal assistance for appeals. The present recommendation is without prejudice to any pending or future infringement proceedings which the Commission may bring related to matters raised in the present recommendation.

⁽¹⁾ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (OJ L 180, 29.6.2013, p. 31).

⁽²⁾ *M.S.S v Belgium and Greece* (No 30696/09) and *NS v Secretary of State for the Home Department* C-411/10 & C-493/10.

⁽³⁾ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1), which has been replaced by Regulation (EU) No 604/2013.

- (6) At the same time, the Commission has been taking concerted action to help remedy the shortcomings in Greece's asylum system. The Commission has monitored the implementation by Greece of the measures envisaged in the Greek Action Plan and provided financial and technical support, placing an emphasis, *inter alia*, on the actions aimed at addressing the concerns raised in its infringement proceedings. A Commission Staff Working Document was presented to the Council in October 2014 ⁽¹⁾ which provided an assessment of the implementation of the Greek Action Plan and highlighting the remaining short-comings in the Greek asylum system which needed urgent attention.
- (7) The Commission has worked very closely with all interested Member States and Norway, through regular *ad hoc* meetings of the so-called 'Friends of Greece' Group, chaired by the Commission. This Group is a forum for the exchange of information on the state of implementation of the Greek Action Plan, *inter alia*, allowing interested Member States to propose practical cooperation measures and was last held on 27 February 2015. In addition, the participation of EASO, Frontex, UNHCR and the International Organisation for Migration (IOM) aims to ensure the availability of up-to-date information on the situation on the ground.
- (8) Greece has been allocated a significant amount of European Union funding for the period 2014-2020 to assist it with national measures taken in the field of asylum and migration. Under the Asylum, Migration and Integration Fund it has been allocated a total of EUR 294,5 million, and under the Internal Security Fund — Borders and Visas a total of EUR 214,8 million. A further EUR 133 million has been awarded to Greece under emergency assistance since 2014. In addition, significant funding was provided to Greece under the European Refugee Fund in the years 2008-2013, including emergency funding totalling over EUR 50,6 million.
- (9) The challenges faced by Greece have been significantly exacerbated by the very large increase in arrivals of migrants during the course of 2015, placing enormous pressures on Greece's resources and capacity to deal with the large influx of migrants from outside the European Union, including large numbers of persons likely to be in need of international protection. In 2015, over 868 000 irregular migrants arrived in the Greek islands, creating an unprecedented migratory and humanitarian crisis requiring urgent action.
- (10) In May 2015, the Commission presented its European Agenda on Migration ⁽²⁾, and on 14 September 2015, the Council adopted a Decision to relocate 40 000 persons in clear need of international protection from Italy and Greece, of which 16 000 are to be relocated from Greece ⁽³⁾. On 22 September 2015, the Council adopted a Decision to relocate a further 120 000 persons from Italy and Greece, among which at least 50 400 persons are to be relocated from Greece ⁽⁴⁾. Altogether, under these two Council Decisions at least 66 400 persons are thus due to be relocated from Greece to other Member States over a period of 2 years ⁽⁵⁾.
- (11) In September 2015, the implementation of the 'hotspot' approach started in Greece and Italy, with support from the Commission, Frontex, EASO and Europol agencies. On 29 September 2015, the Commission adopted a Communication outlining the immediate operational, budgetary and legal measures under the European Agenda on Migration, and calling for the full roll-out of the Relocation Scheme and Migration Management Support Teams working in 'hotspot' areas. To this end, Greece presented a Roadmap on the implementation of the relocation scheme and hotspots to the Council on 1 October 2015 that outlines certain actions to be prioritised to ensure implementation of agreed pending actions in the areas of asylum and reception.
- (12) Following the European Leaders' Summit of 25 October 2015, Greece committed to increase reception capacity to 30 000 places by the end of 2015, and to provide rent subsidies and host family programmes for at least 20 000 more persons with the support of UNHCR. This total of 50 000 accommodation places is aimed at addressing the reception needs of both irregular migrants and asylum seekers in Greece, including of those potentially eligible for relocation to other Member States.
- (13) At its meeting on 8-9 December 2015, the Committee of Ministers of the Council of Europe assessed the execution of the M.S.S judgment. It welcomed the creation of the new administrative authority for immigration; took note of the increase of the accommodation capacity for asylum seekers as well as of the planned further

⁽¹⁾ SWD(2014) 316 final.

⁽²⁾ COM(2015) 240 final.

⁽³⁾ OJ L 239, 15.9.2015, p. 146.

⁽⁴⁾ OJ L 248, 24.9.2015, p. 80.

⁽⁵⁾ OJ L 248, 24.9.2015, p. 80 and OJ L 239, 15.9.2015, p. 146.

increase and called upon the authorities to ensure sustainable and undisrupted operation of open reception facilities and provision of services that meet adequate standards. It strongly invited the authorities to pursue their efforts, regarding the living conditions of asylum seekers generally and unaccompanied minors in particular ⁽¹⁾.

- (14) On 15 December 2015, the Commission adopted a Communication on the progress made by Greece on the implementation of the hotspots that outlined the developments in Greece in connection with the establishment of the hotspots scheme on the Aegean islands ⁽²⁾. This report highlighted the new commitments made by Greece and the UNHCR to increase reception capacity, but also stressed the need for Greece to improve reception capacity at the hotspots and on the mainland, in particular for unaccompanied minors and vulnerable persons.
- (15) There have been some significant improvements in the Greek asylum system, as part of Greece's reforms under its Action Plan (2010-2014). Three new administrative services independent from the Hellenic Police have been established: the First Reception Service, the Appeal Authorities (established in 2011, but currently not operational) and the Asylum Service (since 2013). Material conditions in reception and detention centres have shown some improvement since 2011, and some of the detention facilities with the poorest conditions have been shut down. However, further efforts still need to be made by Greece in order to ensure that its asylum system is functioning in full alignment with the requirements of Union law.
- (16) The Greek Asylum Service has seven operational Regional Offices in Attica, Lesbos, Northern Evros, Southern Evros, Rhodes and Thessaloniki, including a newly opened Regional Asylum Office at the island of Samos in 2016. Three Asylum Units are also operational in the areas of Amygdaleza, Patra and Xanthi, which examine applications for international protection submitted by irregular migrants in detention. Adequate staffing needs to be in place for these offices and units to be fully operational. The Greek authorities have moreover committed to open a total of 13 Asylum Regional Offices. Greece still needs to complete the establishment and adequate staffing of all remaining Regional Asylum Offices, as foreseen in the 2015 Relocation Roadmap, in order to allow for effective access to the asylum procedure throughout the whole country.
- (17) Some increase in the reception capacity for asylum seekers in Greece took place but it is not yet sufficient. Greece should ensure that the reception conditions in open and closed reception accommodation, including psychosocial services and access to the necessary health care and treatment, are in compliance with the standards required under the relevant Union legislation, notably the Reception Conditions Directive 2013/33/EU of the European Parliament and of the Council ⁽³⁾, and that they are continuously maintained. Greece should also ensure sustainability of the reception conditions through appropriate funding from the national budget or, to the extent available, through allocated EU funds.
- (18) In order to guarantee access to an effective remedy for asylum seekers, Greece established an Appeals Authority, responsible for the operation of Appeal Committees, competent for examining the appeals submitted against the negative first instance decisions of the Asylum Service. At the end of September 2015, the Appeal Committee ceased to operate because their mandate expired, with the result that first instance rejection decisions can be lodged but cannot be dealt with. Consequently, no access to a system of effective remedy is currently available in practice. This situation also undermines the effective implementation of the Relocation procedure, in the cases where an applicant submits an appeal against a relocation or transfer decision.
- (19) Many asylum-seekers are currently not provided with the necessary free legal aid to enable them to pursue an appeal against a first instance asylum decision, in accordance with the EU rules. The relevant provisions of Directive 2013/32/EU of the European Parliament and of the Council ⁽⁴⁾ have not yet been transposed into national law or implemented.
- (20) There have been improvements in the procedures for identifying vulnerable persons in Greece. The Asylum Service, in cooperation with EASO and UNHCR, has put in place a screening procedure aimed at identifying vulnerable applicants, such as unaccompanied minors with a view to ensuring their support during the procedure. For unaccompanied minors, Greece has reported that an identification and age assessment procedure for unaccompanied minors is being followed within the first reception procedure and the asylum procedure. Additionally, a procedure is being established for the treatment of unaccompanied minors by the Hellenic Police, the First Reception Service and the Asylum Service.

⁽¹⁾ 1243rd meeting of the Committee of Ministers of the Council of Europe (8-9 December 2015).

⁽²⁾ COM(2015) 678 final, 15 December 2015.

⁽³⁾ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96) and OJ L 348, 24.12.2008, p. 98.

⁽⁴⁾ 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 (OJ L 180, 29.6.2013, p. 60).

- (21) The guardianship system for unaccompanied minors should receive further attention, as Public Prosecutors appointed to represent minors do not have the necessary resources to handle the large number of cases referred to them and there is no institution or body in place that prosecutors can refer to in order to appoint permanent guardians. Concrete steps should also be taken to ensure that all unaccompanied minors are immediately referred to special accommodation centres and assisted by specialised personnel.
- (22) The suspension of transfers under the Dublin Regulation to Greece since 2011 has significantly undermined the effectiveness of the functioning of the Dublin system in the European Union. The inability to carry out such transfers also undermines the effectiveness of the relocation measures adopted for the benefit of Greece in September 2015, in particular by removing one of the main incentives for migrants not to engage in secondary movements to other Member States.
- (23) Greece has taken important steps to improve the functioning of its asylum system but shortcomings remain. Greece should therefore as a matter of urgency undertake all the necessary steps to allow a resumption of Dublin transfers, in particular, that persons transferred under the Dublin Regulation would enjoy all of the rights to which they are entitled under the European Union's asylum *acquis*, including access to an effective remedy against a negative decision on an application for international protection and adequate reception conditions.
- (24) This recommendation identifies the main actions that should be taken by Greece on the outstanding shortcomings.
- (25) Regular reporting by Greece on the progress being made in implementing these actions, as well as other relevant elements including any forthcoming reports from UNHCR and other relevant organisations, should clarify the assessment of whether the conditions are such as to allow for Member States to resume individual transfers to Greece under the Dublin Regulation, bearing in mind that the volume of transfers and the categories of persons to be transferred should correspond to the specific progress made.
- (26) Any resumption of Dublin transfers to Greece should also take into account that Greece still receives a large number of potential asylum seekers on a daily basis, and it should be avoided that an unsustainable burden is placed on Greece.
- (27) The responsibility for deciding on such resumption of transfers lies exclusively with Member States' authorities under the control of the courts, which may make preliminary references to the European Court of Justice on the interpretation of the Dublin Regulation,

HAS ADOPTED THIS RECOMMENDATION:

- (1) Greece should ensure that the reception conditions provided to applicants for international protection in Greece meet the standards required by Directive 2013/33/EU.
- (2) Greece should take the necessary steps to ensure effective access to the asylum procedure throughout the territory of Greece, by the establishment of all 13 Regional Asylum Offices and their maintenance. The Regional Offices of the Asylum Service should in particular be sufficiently staffed to allow for these offices to be fully operational and capable of processing all asylum applications. The necessary human resources required should be calculated by reference to the number of asylum applications made in Greece over the last year. To this end, the necessary recruitment procedures should be finalised as a matter of urgency.
- (3) Greece should ensure that the Appeal Committees are fully operational and adequately staffed, so as to ensure an effective remedy before them against all newly taken administrative decisions on applications for international protection and that they clear all pending requests for judicial review of administrative decisions on applications for international protection as soon as possible and in any event by the end of 2016.
- (4) Greece should ensure that all asylum-seekers are provided with the necessary legal aid in procedures for judicial review of administrative decisions on applications for international protection, in accordance with the requirements of EU law and that the legislative framework for the provision of legal aid is adopted and implemented swiftly.

- (5) Greece should ensure that the current structures for the identification and treatment of vulnerable applicants, including unaccompanied minors, are brought up to the standards required by the EU asylum *acquis* and specified in particular in Articles 21 to 25 of Directive 2013/33/EU and Article 25 of Directive 2013/32/EU. This means that Greece should ensure that the necessary legal framework is in place and that it is fully implemented so as to guarantee that the needs of vulnerable persons, including unaccompanied minors, are suitably catered for, in particular in terms of accommodation and guardianship.
- (6) Greece should ensure that all 50 000 reception places which Greece had committed to putting in place by the end of 2015, in cooperation with the UNHCR, are fully operational as soon as possible and that adequate funding is made available so that essential maintenance and services such as catering and sanitation are continuously ensured.
- (7) Greece should ensure that programming of EU funds and funding from the national budget caters for the implementation of these recommendations.

Reporting on Actions Taken

- (8) Greece is requested to report to the Commission by 4 March 2016 and then on a monthly basis on its progress in implementing the measures identified in this Recommendation.

Done at Brussels, 10 February 2016.

For the Commission
Dimitris AVRAMOPOULOS
Member of the Commission
