

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2016/1871

of 28 September 2016

addressed to the Hellenic Republic on the specific 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 to Greece 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 of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU) ⁽²⁾, which identified systemic deficiencies in the Greek asylum system, resulting in a violation of the fundamental rights of applicants for international protection transferred from other 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 ECHR 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'). On 1 October 2015, Greece presented a Roadmap on the implementation of the relocation scheme and hotspots to the Council, which also outlines certain actions to be prioritised to ensure implementation of agreed pending actions in the areas of asylum and reception.
- (4) At the same time, the current refugee and migration crisis continues to place pressure on the Greek asylum and migration systems as the main country of first entry from the Eastern Mediterranean route. Between January and 12 September 2016, 165 202 migrants arrived irregularly in Greece ⁽⁴⁾. Even if the EU-Turkey Statement ⁽⁵⁾ has led to a significant decrease in the number of daily arrivals to Greece from Turkey ⁽⁶⁾, it has also placed new responsibilities on the Greek authorities. Furthermore, the situation in Greece has also changed significantly following the de facto closure of the Western Balkans route, preventing third-country nationals from onward travel. As a result, 60 528 irregularly arrived third-country nationals have become stranded in Greece ⁽⁷⁾. At the same time, the relocation schemes have not yet been fully implemented by Member States and have only partially relieved Greece of the pressure it is facing ⁽⁸⁾.

⁽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).

⁽⁴⁾ Frontex data of 12 September 2016.

⁽⁵⁾ EU-Turkey Statement, 18 March 2016.

⁽⁶⁾ See the Commission reports on the progress made in the implementation of the EU-Turkey Statement, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm

⁽⁷⁾ <http://www.media.gov.gr/index.php>, accessed on 27 September 2016.

⁽⁸⁾ Communication from the Commission to the European Parliament, the European Council and the Council, Sixth Report on Relocation and Resettlement, COM(2016) 636 final.

- (5) On 10 February 2016, the Commission addressed a first Recommendation to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under the Dublin Regulation, hereinafter 'the first Recommendation' ⁽¹⁾. On 15 June 2016, the Commission addressed a second Recommendation to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under the Dublin Regulation, hereafter 'the second Recommendation' ⁽²⁾. The Recommendations concluded that the situation in Greece still needed considerable improvement before a further assessment could be made by the Commission on the possible resumption of transfers to Greece under the Dublin Regulation.
- (6) On 14 July 2016, the Commission received from Greece a general overview of the situation of asylum applicants in Greece and the progress made on the outstanding issues identified in the second Recommendation.
- (7) The Greek authorities have received 28 752 lodged asylum applications from 1 January until 18 September 2016. On 1 September 2016, Greece informed the Commission of the successful ending of the so called pre-registration exercise which had begun on 8 June 2016 ⁽³⁾. The aim of this exercise was to register all those irregular third-country nationals having arrived in Greece before 20 March 2016 who wanted to apply for international protection but who had not yet been channelled into the asylum procedure by the Greek authorities. According to the available information ⁽⁴⁾, the Greek authorities have pre-registered 27 592 persons in the mainland during June and July 2016 as asylum seekers whose application remains to be lodged. Since 1 September 2016, the process of lodging these applications has commenced. A further 15 253 persons were pre-registered on the islands from 20 March to 18 September 2016, of whom 6 298 have now lodged an asylum application.
- (8) By letter of 19 September 2016, Greece provided the Commission with further information regarding the latest situation of asylum applicants in Greece and of the progress it has made to reform its asylum system. Greece also expressed concerns about the prospect of a possible resumption of Dublin transfers, given the current number of migrants stranded in Greece, most of whom have now been channelled into the asylum procedure, and the challenges it faces in implementing the EU-Turkey Statement. Greece equally pointed out that the number of relocations from Greece to other Member States remains well below the level foreseen in the Relocation Decisions.
- (9) The Commission has noted the improvements that Greece has made to national legislation to ensure that the new legal provisions of the recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council ⁽⁵⁾ and some of the recast Reception Conditions Directive 2013/33/EU of the European Parliament and of the Council ⁽⁶⁾ have been transposed. A new law (Law 4375/2016) was adopted by the Greek Parliament on 3 April 2016, but not all provisions have entered into force ⁽⁷⁾. On 22 June 2016, the Parliament approved an amendment to the Law 4375/2016 which, inter alia, modified the composition of the Appeals Committees and the right of asylum seekers to an oral hearing before them (Law 4399/2016) ⁽⁸⁾. On 31 August 2016, the Greek Parliament also adopted a law regarding school-aged refugee children residing in Greece (Law 4415/2016) ⁽⁹⁾.
- (10) Since the adoption of the two Recommendations, Greece has significantly increased its overall reception capacity for both irregular migrants and applicants for international protection. According to the daily information

⁽¹⁾ Commission Recommendation 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 — C(2016) 871 final.

⁽²⁾ Commission Recommendation of 15 June 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 — C(2016) 3805 final.

⁽³⁾ <http://asylo.gov.gr/en/wp-content/uploads/2016/08/EN-01.08.2016-Press-Release-end-pre-registration.pdf>

⁽⁴⁾ http://asylo.gov.gr/en/wp-content/uploads/2016/08/Preregistration-data_template_5_EN_EXTERNAL.pdf

⁽⁵⁾ 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).

⁽⁶⁾ 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).

⁽⁷⁾ 'Law 4375/2016 on the Structure and Operation of the Asylum Service, The Appeals' Authority and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions', available at: <http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/o-prosf-pap.pdf>

Implementing acts in the form of Ministerial or Co-Ministerial Decisions need to be adopted in order for the Greek authorities to be able to implement the Law in its entirety.

⁽⁸⁾ http://www.asylumineurope.org/sites/default/files/resources/n_4399.2016.pdf

⁽⁹⁾ https://www.alfavita.gr/sites/default/files/attachments/fek_ellinoglosi.pdf

released by the Greek authorities on 14 September 2016, there are 62 987 places available in temporary reception facilities for both irregular migrants and applicants for international protection in Greece ⁽¹⁾. On 14 July 2016, Greece informed the Commission that it is 'in a position to provide shelter, food and all basic services to the overwhelming majority of irregular migrants and asylum seekers stranded in Greece' and that it is engaged to 'provide adequate standard of living for the whole refugee population'.

- (11) Furthermore, Greece also provided information on 14 July about the plan to increase the accommodation for vulnerable applicants, in particular for unaccompanied minors. The intention was to establish 700 more places by the end of summer, in addition to the 622 places that existed in July, as well as to use separate spaces within the current sites with the help of EU financial support until new sites for unaccompanied minors are identified. However, this target was not attained: on 19 September 2016 Greece informed the Commission that 891 places are available in shelters for unaccompanied minors. These facilities are currently full and there is a waiting list for 1 487 unaccompanied minors who need to be placed in appropriate facilities ⁽²⁾. The progress is, therefore, slow in this area, and it is clear that Greece needs to step up its efforts to ensure that an appropriate number of reception facilities for unaccompanied minors are in place and deal with the demand for such accommodation.
- (12) Moreover, there are serious challenges as regards new arrivals in the Aegean islands. Maximum reception capacity remains 7 450 while the total number of registered migrants on the islands was 13 863 as of 27 September 2016. The reduced — though continuous — pace of new arrivals leads to safety, security and hygiene concerns, as well as inappropriate conditions for vulnerable groups.
- (13) Furthermore, the majority of the facilities in Greece are only temporary facilities and some provide only the most basic reception conditions for those who are accommodated there, such as food, water, sanitation and basic medical care. Whilst this may be sufficient for a very short period until individuals can be moved to better facilities, the conditions in some facilities still fall far short of the requirements stipulated in the Reception Conditions Directive 2013/33/EU for applicants for international protection.
- (14) In January 2016, a Delegation Agreement for a total of EUR 80 million was signed between the Commission and the UNHCR in order to establish 20 000 places in open accommodation (rental apartment schemes, hotel vouchers and family host programmes) primarily for the benefit of applicants for international protection eligible for relocation ⁽³⁾. The Delegation Agreement was revised in July 2016 in order to include in the accommodation scheme also the possibility to establish places in relocation sites managed by UNHCR, and to make it clearer in the text that the target group of the accommodation scheme includes not only relocation candidates but also other asylum seekers. Since June, the accommodation places available have been significantly increased (by around 5 600). Out of the 20 000 places committed for applicants eligible for relocation under the rental scheme by the UNHCR in December 2015, as of 19 September, 12 045 places were available, including 3 404 places in hotels/entire buildings, 6 559 places in apartments, 385 places in host families, and 507 places in dedicated facilities for unaccompanied minors ⁽⁴⁾.
- (15) It follows from the above that Greece still needs to make progress in establishing sufficient and adequate dedicated permanent open reception capacity for asylum applicants which is of an appropriate standard. According to the information given by Greece in a letter of 25 August, the total planned capacity of the 39 permanent sites in the mainland is estimated to be around 32 700 places. In the letter of 19 September, Greece affirmed that these new sites that meet dignified living conditions according to the EU standards have been identified and will be fully refurbished. It is imperative to effectively implement these plans as a matter of urgency, and given that some temporary facilities will be transformed into permanent ones, a sufficient capacity in terms of temporary facilities to accommodate any shortfall in capacity resulting from unexpected inflows is also maintained. Furthermore, as requested in the second Recommendation, it is necessary that the Greek authorities provide more exact data on the reception capacity and a comprehensive and continuously updated needs assessment in terms of total reception capacity and the nature of that capacity.

⁽¹⁾ <http://www.media.gov.gr/index.php>

<http://trse-smi.maps.arcgis.com/apps/MapSeries/index.html?appid=d5f377f7f6f2418b8ebadaae638df2e1>

These temporary emergency and permanent facilities are established on the Aegean islands in the hotspots as well as on the mainland.

⁽²⁾ <http://data.unhcr.org/mediterranean/country.php?id=83>

⁽³⁾ While priority will be given to applicants eligible for relocation, the activities will also benefit applicants for international protection who are awaiting to be reunified with family members under the Dublin Regulation in another EU Member State and persons seeking asylum in Greece, particularly of vulnerable categories including unaccompanied and separated children, persons with disabilities, elderly, single parents, chronically ill, pregnant women, etc.

⁽⁴⁾ <http://data.unhcr.org/mediterranean/country.php?id=83>

- (16) Substantial improvements have been noted for the establishment of the Regional Asylum Offices. Greece's law provides for the establishment of Regional Asylum Offices in the regions of Attica, Thessaloniki, Thrace, Epirus, Thessaly, Western Greece, Crete, Lesvos, Chios, Samos, Leros and Rhodes ⁽¹⁾. By decision of the Director of the Asylum Service it is also possible to set up Autonomous Asylum Units in order to cover increased needs of the Asylum Service. So far eight Regional Offices have become operational in the regions of Attica, Thrace, Thessaloniki, Lesvos, Samos, and Rhodes. Furthermore, two additional asylum units in Chios and Kos have been established, bringing the total number of asylum units to five. As the law stipulates, a further three Regional Asylum Offices are to become operational in the area of Kos, Epirus (Ioannina), Crete (Heraklio) and Thessaly (Volos). In addition, the Asylum Unit in Western Greece (Patra) is required to be upgraded to a Regional Asylum Office. A dedicated Relocation Unit in Alimos has also been set up and is operational since 26 September 2016.
- (17) In their reports, the Greek authorities have also informed the Commission that they were in the process of recruiting more staff for the Asylum Service to increase its processing capacity. According to the information provided on 14 July 2016, there were 350 members of staff working in the Asylum Service at that moment, which was twice as many as in 2015. One third is fixed-term contract staff, funded from different EU and EEA funding sources. The Greek Parliament has approved a further 300 posts for permanent members of staff to be hired over the forthcoming months. This is in addition to the fixed-term staff hired by the UNHCR and the Member States' experts deployed via EASO to the Greek Asylum Service for a fixed period.
- (18) In order to deal with the asylum applications lodged by the newly pre-registered asylum seekers, the Asylum Service is planning to recruit gradually from mid-September to mid-November 177 new staff to increase lodging and processing capacity accordingly: 56 officers will register applicants eligible for relocation, 25 officers will register applications falling under the scope of the Dublin Regulation, 7 officers will deal with the manifestly unfounded cases in an accelerated procedure, 60 officers will register and process applications for international protection under the regular procedure, and 29 officers will be deployed to various tasks of administrative and statistical nature.
- (19) Given the very significant increase in the number of asylum seekers channelled into the asylum procedure in Greece, it is clear that the current and planned staffing levels for the Asylum Service still fall far short of what is required to process the current and likely future case-load in an adequate manner, in particular as Greece has indicated in July that the examination of the applications lodged could take up to 3 years. The Greek authorities stated in the letter of 14 July 2016 that more rapid expansion of staffing is not feasible due to the lack of senior staff to train, mentor and supervise newly recruited ones. However, it would be important to ensure that the Asylum Service is further reinforced with substantially more staff and material resources for it to be able to process the increased number of asylum applications. To that end, a comprehensive and continuously updated needs assessment should be carried out that takes into account the number of asylum applications that is currently pending and that is likely to be handled by the Greek Asylum Service at any one time and the number of available staff required or likely to be required to process those applications. This will not only allow to estimate the human resources needed for the Asylum Service but also to assess how the Commission, its Agencies and also the Member States could best assist Greece in dealing with these applications in a shorter time limit.
- (20) In accordance with the *M.S.S* judgment, asylum seekers must be able to have an effective access to remedy against a negative decision on their claim. Important progress has been made in this regard. The Appeals Authority and Appeals Committees were established by Law 4375/2016 adopted in April 2016. An appropriate number of Appeals Committees should be established to allow the Appeals Authority to be fully functional by the end of 2016.
- (21) The recently adopted Law 4399/2016 establishes new Appeals Committees. They are responsible for examining all appeals against decisions of the Greek Asylum Service lodged as of 24 June 2016. As a priority, the Appeals Committees are focusing primarily on cases lodged on the Greek islands, so as to contribute to the implementation of the EU-Turkey Statement. The new Appeals Committees issued their first decisions in mid-August. There are currently five of them. Law 4399/2016 also amended the structure of these Committees which are now composed of three members: two judges of the Administrative Court and one Greek citizen with relevant background and experience to be put forward by UNHCR or the National Committee for Human Rights.

⁽¹⁾ Article 1(3) of Law 4375/2016.

- (22) The old 'Backlog' Appeal Committees that were established to hear asylum appeals from Greece's backlog of cases had been initially given an additional mandate to hear, in addition to substantive appeals on first instance decisions, the appeals against the decisions based on grounds of admissibility as part of the EU-Turkey Statement. The creation of additional Appeals Committees in June should alleviate the burden of the 20 'Backlog' Appeal Committees allowing them to accelerate the pace of the proceedings of the backlog appeal cases.
- (23) More progress has been made on the long-standing backlog of appeals under the 'old procedure' regulated by Presidential Decree 114/2010. The current backlog stands at approximately 8 075 cases as of 21 September 2016 (down from a total of approximately 51 000 cases that were considered as part of the backlog at the beginning of 2013 and approximately 13 975 cases in June 2016). The Greek authorities have granted permits for humanitarian purposes to persons whose applications for asylum have been pending for a considerable time and who are eligible to acquire residence permits on humanitarian or other exceptional grounds, according to the Greek Law 4375/2016. The residence permits are issued for a period of 2 years and can be renewed ⁽¹⁾. They provide to beneficiaries the same rights and benefits as to those granted subsidiary protection status in Greece ⁽²⁾, and these persons are then no longer considered as asylum applicants. Some of the backlog appeals are, however, examined as to their substance. Despite the significant progress made since the first Recommendation, Greece should continue its efforts to clear the backlog of pending appeals in this regard, ensuring that applicants with an outstanding appeal have an opportunity to exercise their right to an effective remedy.
- (24) Given the increase in the number of applications made in Greece since the implementation of EU-Turkey Statement, a fully staffed Appeals Authority, capable of handling an expected significant increase in the number of appeals, is all the more essential. A continuous needs assessment should also be carried out on the basis of the number of appeals that is currently pending in the different appeal bodies and that is likely to be handled by them.
- (25) The provision of free legal aid has been included in the new law (Law 4375/2016) for applicants at the appeal stage. However, all the measures to implement this law in practice have not yet been taken. A Ministerial Decision implementing the provision for legal aid under Law 4375/2016 was adopted on 9 September 2016, and according to the Greek authorities after the issuance of the decision all necessary steps should be taken quickly to provide free legal aid to all applicants at the appeal stage in Greece. Funding for the implementation of free legal assistance has been secured through their national programme under the Asylum, Migration and Integration Fund (AMIF). Additionally, a grant agreement was awarded to the UNHCR under AMIF emergency assistance funding for the total amount of EUR 30 million ⁽³⁾. This funding is, amongst other things, being used by the UNHCR to provide free legal assistance to applicants for international protection at the appeals stage until the beginning of 2017 when the Greek authorities are expected to put in place their own free legal aid scheme. On 19 September, Greece informed the Commission that the roster of lawyers to be maintained by the Asylum Service will be established by early 2017. Greece should take the necessary steps to guarantee the right to free legal aid in the asylum procedure without delay.
- (26) The new Law 4375/2016 provides for a new Directorate for Reception and a Directorate for Social Integration that both include specialised departments for the reception and integration of unaccompanied minors within the Ministry of Interior and Administrative Reconstruction, including the provision of a legal representative. Despite this, implementing measures still need to be adopted by the Greek authorities to ensure that appropriate procedural guarantees and reception conditions are provided in practice to unaccompanied minors. While a Ministerial Decision concerning the age assessment of unaccompanied minors seeking asylum has already been adopted by the Greek government ⁽⁴⁾, a further Presidential Decree that should include provisions for an efficient guardianship system still needs to be adopted.
- (27) NGOs have expressed concerns regarding the fact that many children in Greece are unable to access education. Progress in this respect was made by the adoption of Law 4415/2016 in August 2016 which aims, inter alia, at securing psychosocial support and education for the children of asylum seekers, as well as the smooth integration in the Greek educational system of those who will remain in Greece, following a preparatory, transitional period.

⁽¹⁾ Article 22(3), Law 4375/2016.

⁽²⁾ Article 28, Presidential Decree 114/2010.

⁽³⁾ The grant agreement was signed on 15 July 2016.

⁽⁴⁾ Ministerial Decision 1982/16.2.2016 (Official Gazette, B' 335).

It is essential that this legal framework is effectively and fully implemented as a matter of urgency. Moreover, according to certain NGOs, the situation for unaccompanied minors is in general precarious, with some citing that children are still held in detention for prolonged periods in crowded and unsanitary conditions without a representative or access to legal aid, until appropriate accommodation can be found for them ⁽¹⁾. As stated in Recital 11, the lack of appropriate accommodation for minors is an important problem which still needs to be urgently remedied.

- (28) The European Commission has provided substantial funding to Greece to support the country in its efforts to bring its asylum management system up to EU standards. Since the beginning of 2015, more than EUR 352 million in emergency assistance has been awarded through Home Affairs Funds (AMIF and Internal Security Fund (ISF)) to Greece, either directly to the Greek authorities or through Union Agencies and international organisations operating in Greece. Out of this amount, some EUR 90 million was directly awarded to the Greek authorities in July 2016 to strengthen their capacities to improve living conditions and provide primary healthcare services at refugee accommodation centres, as well as to provide reception and healthcare services to the migrants. Substantial funding (approximately EUR 198 million) aiming at covering the migrants' and refugees' basic humanitarian needs is also being provided to humanitarian partner organisations through the recently created Emergency Support Instrument. This funding contributes to the implementation of the emergency response plan developed together by the Commission, the Greek authorities and relevant stakeholders to address the ongoing humanitarian situation on the ground and the implementation of the EU-Turkey Statement.
- (29) This emergency assistance comes on top of the EUR 509 million allocated to Greece for the period 2014-2020 through its national programmes under the AMIF and ISF Funds, thus making Greece the first beneficiary of EU Home Affairs funds amongst EU Member States.
- (30) Greece should ensure that such financial resources are fully used in the most efficient and effective manner and without further delay. For that purpose, the ongoing revision of Greece's national programmes under the Home Affairs funds (AMIF, ISF) to adjust them to the new priorities should be urgently completed. The revision of the AMIF national programme is almost complete, with few outstanding issues still to be addressed before the approval process, which is expected to be launched very soon. As regards the revision of the ISF national programme, which is less advanced, a revised version of the programme should be urgently submitted to the Commission for formal consultation. In relation to the authority responsible for the management of those funds, which has been transferred from the Ministry of Interior and Administrative Reconstruction to the Ministry of Economy, Development and Tourism, Greece should now notify, without further delay, the completion of the formal designation of the new Responsible Authority, in accordance with the requirements set in the legal basis.
- (31) As acknowledged in the Commission's Communication of 4 March 2016 on 'Back to Schengen' ⁽²⁾, ensuring a fully functioning Dublin system is an indispensable part of the wider efforts needed to stabilise the asylum, migration and border policy. These efforts should lead to a return to a normal functioning of the Schengen area. It is therefore important that Greece takes as a matter of urgency the outstanding actions identified in this Recommendation. At the same time, reforming the Dublin rules as proposed by the Commission ⁽³⁾, based on the objective of solidarity and fair burden-sharing between Member States, should be a priority. Negotiations on this proposal are ongoing.
- (32) Regular reporting by Greece on the progress being made in implementing these actions, as well as other relevant elements including any forthcoming information obtained from UNCHR and other relevant organisations, will be essential in order to make a proper 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. Greece should provide an updated report by 31 October 2016 as set out in this Recommendation.
- (33) The Commission acknowledges the important progress made by Greece, assisted by the Commission, the European Asylum Support Office (EASO), Member States and international and non-governmental organisations (NGOs), to improve the functioning of the Greek asylum system since the adoption of the two Recommendations.

⁽¹⁾ Human Rights Watch, 'Why Are You Keeping Me Here?', September 2016 https://www.hrw.org/sites/default/files/report_pdf/greece0916_web.pdf

⁽²⁾ Communication from the Commission to The European Parliament, The European Council and The Council, 'Back to Schengen — A Roadmap', COM(2016) 120 final, 4 March 2016.

⁽³⁾ COM (2016) 270 final.

Greece has made significant efforts to put in place the essential institutional and legal structures for a properly functioning asylum system. The Commission recognises in particular that Greece has taken important steps to channel most of the irregular migrants either to the asylum or to the return procedure by the pre-registration exercise. Greece has also increased the overall reception capacity and the capacity of the Asylum Service, reduced significantly the backlog of appeals and established new Appeals Committees as well as adopted a legal framework on free legal aid and on access of minors to state education.

- (34) However, Greece is still facing a challenging situation in dealing with a large number of new asylum applicants, notably arising from the implementation of the pre-registration exercise and the continuing irregular arrivals of migrants, albeit at lower levels than before March 2016. There are moreover further important steps to be taken to remedy the remaining systemic deficiencies in the Greek asylum system, in particular given the capacity shortfalls. On the basis of the further progress achieved, a future resumption of transfers to Greece under the Dublin Regulation should take account of the impact this challenging situation has on the overall functioning of the asylum system, and should therefore start gradually, on a case by case basis. In this regard, it should be avoided that an unsustainable burden is placed on Greece.
- (35) This Recommendation sets out the measures that need to be taken or sustained by the Greek authorities in view of recommending such a gradual resumption of Dublin transfers by the end of December 2016. With this objective in mind, Greece should urgently take all of the steps set out in this Recommendation. The Commission envisages taking stock of the progress made in this regard and issuing further recommendations in December 2016. Those recommendations could set out what the Commission considers would be the appropriate scope and nature of such a gradual resumption of Dublin transfers, taking into account in particular the specific needs of vulnerable applicants, and regarding the manner in which the process could be managed, in close cooperation with the Greek authorities.
- (36) The responsibility for deciding on such resumption of transfers in individual cases 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:

Reception conditions and facilities

1. Greece should continue its efforts to ensure that the reception facilities are sufficient for accommodating all the applicants for international protection on its territory and that the reception conditions in all these reception facilities meet the standards set out in EU law, notably Directive 2013/33/EU. As a high priority Greece should:
 - (a) implement fully the plans concerning the permanent open reception facilities that are capable of accommodating all applicants for international protection it receives or is likely to receive, and their dependants, for the duration of the asylum process;
 - (b) create the necessary additional accommodation places for unaccompanied minors, in order to ensure that all unaccompanied asylum seeking minors are immediately placed in suitable accommodation and are not kept in sub-standard conditions in detention, and ensure those facilities are sustained;
 - (c) effectively implement the new legislation concerning access of minors to the state education system for the duration of the asylum procedure;
 - (d) ensure that applicants receive the necessary health care, which include at least emergency health care and essential treatment of illnesses and of serious mental disorders.

Greece should also ensure that, in addition to the permanent facilities, an appropriate number of temporary open reception facilities is kept available, or can be made available at short notice, to allow for the accommodation of unexpected inflows of applicants for international protection and their dependants in adequate conditions.

The Greek authorities should carry out a comprehensive needs assessment in terms of total reception capacity required, and the nature of that capacity, and continuously update this assessment in the light of new developments. The Greek authorities should also ensure effective and continuous management and coordination of all reception facilities, including the hotspots, and ensure that the responsible ministries have adequate resources for this purpose.

Access to and resources for the first instance asylum procedure

2. Greece should continue its efforts to ensure that all applicants for international protection have effective access to the asylum procedure in particular by:

- (a) identifying how many members of staff the Asylum Service is likely to require to process the intake of asylum applications within the deadlines specified in the Asylum Procedures Directive 2013/32/EU;
- (b) urgently step up the recruitment of staff to the Asylum service in order to be able to, as soon as possible, deal efficiently and timely with all the applications for international protection;
- (c) establishing additional Regional Asylum Offices in the region Leros and Crete (Heraklio), Thessaly and Epirus (Volos and Ioannina) and upgrading the currently operational Asylum Units in Leros and Western Greece (Patra) to Regional Asylum Offices as the law stipulates.

The needs assessment referred to in point (a) should be continuously updated and contain information on the number of staff recruited.

Appeals Authority

3. Greece should continue its efforts to ensure that effective remedy is available to all applicants for international protection, in particular by ensuring:

- (a) the full functioning of the new Appeals Authority by establishing the appropriate number of Appeals Committees;
- (b) the adequate human resources for the Appeals Authority and the committees, in order to deal with all pending and likely future appeals, including the appeals within the framework of the EU-Turkey Statement;
- (c) the clearance of all pending requests for judicial review of administrative decisions that are currently outstanding as soon as possible and in any event by the end of 2016.

The Greek authorities should identify, on the basis of a full and continuous needs assessment, the number of Appeals Committees under the new Appeals Authority that are needed in order to examine all appeals submitted by applicants for international protection and the number of human resources to continue the smooth-functioning of those Committees.

Legal aid

4. Greece should ensure that the legal framework concerning access to free legal aid is effective in practice and that all asylum applicants are provided with the necessary legal assistance for judicial review of administrative decisions on applications for international protection. In particular, Greece should:

- (a) effectively implement the Ministerial Decision for the provision of free legal aid services;
- (b) swiftly establish a contract for a register of lawyers who can provide these services to applicants at the appeal stage in Greece.

Treatment of unaccompanied minors and vulnerable persons during the asylum procedure

5. Greece should ensure the establishment of appropriate structures for the identification and treatment of vulnerable applicants, including unaccompanied minors. In particular Greece should:

- (a) urgently put in place a suitable guardianship procedure by adopting the necessary Presidential Decree for implementing the relevant provisions under Law 4375/2016;
- (b) establish and recruit the necessary staff for the Directorate for Reception and the Department for the protection of unaccompanied minors in order to urgently provide the necessary guarantees under the asylum acquis for family tracing, and legal representation;

- (c) ensure the procedures for identifying applicants with special procedural and reception needs are implemented in practice so that these applicants are provided with the necessary psychosocial support, particularly where they may have been victims of sexual violence and exploitation or trafficking.

Use of EU funding under national programmes

6. Greece should ensure that the substantial EU funding being provided is fully used, notably by mobilising without further delay the resources available under its AMIF and ISF national programmes and exploring complementary funding from Structural Funds. In this context, Greece should urgently complete the ongoing revision of the national programmes, to better adjust them to the new priorities, and notify without delay, the completion of the formal designation of the new Responsible Authority, in accordance with the requirements set in the legal basis.

Reporting on Actions Taken

7. Greece is requested to provide, by 31 October 2016, a report covering the progress in implementing this Recommendation and the Recommendations of 15 June and of 10 February 2016. The report should in particular include a description of the actions taken to implement the outstanding shortcomings identified in this Recommendation, including how the Greek authorities have, or plan to, put in place the necessary human and material resources referred to in paragraphs 1 to 5 of this recommendation. These reports should also include a description of the continuous needs assessments referred to in paragraphs 1 to 3 of this recommendation. The report should also include the following information:

- (a) the total current and planned permanent and temporary reception capacity for hosting applicants for international protection and the nature of that capacity;
- (b) the total number of asylum applications pending at first instance;
- (c) comprehensive data on all pending appeals, and issued decisions at second instance, including admissibility cases, by both the New Appeals Committees and the Backlog Appeal Committees;
- (d) the total number of current and planned staff for processing asylum applications registered with the Asylum Service and for the Directorate for Reception; and
- (e) the total current and planned number of staff and the number of Committees which the Appeals Authority has progressively made operational.

Done at Brussels, 28 September 2016.

For the Commission
Dimitris AVRAMOPOULOS
Member of the Commission
