



# The implementation of the hotspots in Italy and Greece

*A study*

# The implementation of the hotspots in Italy and Greece

*A study*

## ACKNOWLEDGEMENTS

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

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

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

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

## ABBREVIATIONS

AS	Asylum Service in Greece   Υπηρεσία Ασύλου
CARA	Centre for the Reception of Asylum Seekers   Centro di accoglienza per richiedenti asilo
CAS	Emergency Accommodation Centre   Centro di accoglienza straordinaria
CIE	Identification and Expulsion Centre   Centro di identificazione ed espulsione
CPSA	First Aid and Reception Centre   Centro di primo soccorso e accoglienza
CPA	First Reception Centre   Centro di prima accoglienza
CTRPI	(or Territorial Commission) Territorial Commission for the Recognition of International Protection   Commissione territoriale per il riconoscimento della protezione internazionale
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
EUAA	European Union Asylum Agency
EURTF	EU Regional Task Force
FRA	Fundamental Rights Agency
FRS/RIS	First Reception Service/ Reception and Identification Service   Πρώτης Υποδοχής/ Υπηρεσία Υποδοχής και Ταυτοποίησης
MOI	Ministry of Interior in Italy
Questura	Immigration Office of the Police
RAO	Regional Asylum Office in Greece   Περιφερειακό Γραφείο Ασύλου
SOP	Standard Operating Procedures
SPRAR	System of Protection for Asylum Seekers and Refugees   Sistema di protezione per richiedenti asilo e rifugiati
STC	Safe third country
UAM	Unaccompanied minors

# TABLE OF CONTENTS

<b>Executive Summary</b>	<b>7</b>
<b>Chapter 1: Introduction</b>	<b>8</b>
<b>Chapter 2: The hotspots: key findings from Greece and Italy</b>	<b>10</b>
<b>Chapter 3: The hotspots in Italy</b>	<b>16</b>
3.1 The legal framework for the functioning of hotspots	16
3.2 Hotspots function and procedures	19
From disembarkation to registration	19
At the port	20
Pre-identification	21
Registration and Identification	23
3.3 Access to the asylum procedure	24
3.4 Reception conditions in the hotspots	26
3.5 Relocation	28
Registration of the relocation application	28
Processing the relocation application	29
Pre-departure information	29
3.6 Returns	30
<b>Chapter 4: The hotspots in Greece</b>	<b>34</b>
4.1 The legal framework for the functioning of hotspots	35
4.2 Hotspots function and procedures	39
From disembarkation to registration	39
Registration and Identification	39
4.3 Access to the asylum procedure	41
Admissibility interview	42
Provision of information and legal aid	43
4.4 Reception conditions in the hotspots	44
4.5 Relocation	46
4.6 Returns	47
<b>Chapter 5: Conclusion and recommendations</b>	<b>50</b>

# EXECUTIVE SUMMARY

The “hotspot approach” has been envisaged as a model of operational support by the EU agencies to Member States faced with disproportionate migratory pressure, with the aim to help them swiftly identify, register and fingerprint migrants, support the implementation of relocation and returns.

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

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

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

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

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

# 1. Introduction

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

The study takes stock of the implementation of the hotspots in Italy and Greece during this last year, and particularly since the entry into force of the EU-Turkey Statement in March 2016. It analyses the legal framework and practices developed in each country, the role of the different actors involved, and the challenges that have emerged. The key question throughout the study is whether and how implementation is in line with EU asylum law and legal standards and whether it ensures that the fundamental rights of the migrants and refugees are respected.

The study is based on desk research covering the period April–November 2016 and field visits conducted in Greece and Italy between May and July 2016. The following hotspots were visited by ECRE, CIR and GCR: Trapani, Lampedusa (hotspots)/ Agrigento (regional hub), Castelnuovo di Porto (pre-departure centre), Lesbos and Chios (hotspots). Semi-structured interviews were conducted on the basis of questionnaires with national authorities, EU agencies, UNHCR, international organisations and NGOs, and lawyers present. Additional interviews were also conducted in the countries' capitals. A list of the stakeholders interviewed can be found in the Annex.

With regards to Greece, the procedures and functioning of the hotspot have changed since the EU–Turkey statement of 20 March; the date is considered a cut-off date by all actors on the ground, and is also a cut-off date for the purpose of the research; all information refers to the situation after the 20th of March.

Chapter 2 provides a summary of the study's main findings from the two countries with challenges and recommendations on the functioning of the hotspots. These are examined in relation to the hotspots' stated objectives, as presented in the relevant Commission Communications. Some similarities are identified between the two countries, as for example the need to address the detention of unaccompanied minors, the need for enhanced identification of vulnerabilities and special needs, and the need for better organised information provision to those arriving or accommodated in the hotspots. The functioning of the hotspots reveals a number of challenges relating to the respect for human rights standards and the need for rigorous monitoring. In addition, the interplay between EU agencies and national authorities also raises questions about the accountability and liability under EU and human rights law of all actors involved, including for decisions resulting from "joint processing" of applications for international protection in admissibility procedures, as is the case in Greece.

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

The implementation of hotspots includes an important element of 'joint processing of asylum applications' through a pooling of national and EU agency resources. A number of conclusions can be drawn from this experience which are related to the discussions on the future functioning of the EU Asylum Agency (EUAA) and the European Border and Coast Guard (EBCG), the revision of the Dublin Regulation (DRIV) and the Regulation establishing a common procedure for international protection and the envisaged increased use of fast track inadmissibility and border procedures. The asylum package proposed by the Commission in May and July 2016 strengthens and consolidates the hotspot model as the method of registration and identification of asylum seekers arriving at the EU's external borders. However, the study demonstrates that the hotspot approach as currently implemented in Italy and Greece carries important risks from a human rights perspective and requires additional safeguards and rigorous monitoring in order to ensure its full compliance with obligations under international human rights law and the EU asylum acquis.

## 2. The hotspots: key findings from Greece and Italy

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

The approach was endorsed by the European Council of 25–26 June 2015. The details of the hotspots’ functioning modalities were presented through an unofficial “Explanatory Note” sent by Commissioner Avramopoulos to Justice and Home Affairs Ministers on 15 July 2015, whose main elements were restated in an Annex to the Commission Communication on managing the refugee crisis of 29 September 2015.<sup>2</sup> According to the Explanatory Note and the Annex, the hotspot approach should be the provision of operational support to Member States for the registration, identification and fingerprinting at points of arrival, in order to avoid irregular secondary movements; it would also aim to support the implementation of the relocation scheme under article 78(3), enhance law enforcement analysis on the ground and more effective implementation of returns policy.<sup>3</sup>

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

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

A series of Communications and reports have been providing updated information on the implementation of the hotspots in the two countries throughout this period.<sup>6</sup>

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

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

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

At the same time, striving for **swift procedures** should not undermine respect for essential guarantees to ensure full respect of applicants’ fundamental rights and the non-refoulement principle. One key aspect is reasonable time limits to ensure that refugees receive the necessary information during all stages of the process, have access to a lawyer and legal assistance and can prepare for the appeal as needed.<sup>7</sup>

The findings from Italy show that hastened provision of information when people have just stepped off the boat is not sufficient to properly make them aware of the possibility to apply for asylum. This, in turn, may undermine their effective access to the asylum procedure if not followed up by proper individual and group information and guidance as soon as conditions allow. Numerous cases have been reported where the responses that people gave at the port, notably through the ‘foglio notizie’, have prevented them from accessing the asylum procedure. Even greater challenges arise when implementing the hotspots approach in non-hotspot areas, where most disembarkation takes place in Italy; access to information is even more limited or delayed in these cases.

Sufficient time and the right tools are also needed in order to identify **vulnerabilities and special needs**, including the non-visible and non-declared ones. Currently such vulnerabilities are not sufficiently identified either because time does not allow, or the appropriate tools are either not in place or not used. Identification of vulnerability and special needs at the earliest possible stage can be critical to the quality of the asylum determination and relocation eligibility process. Vulnerability screening should also include the identification of trafficking victims to mitigate trafficking risks. This is carried out by IOM in Italy but is so far not seen as a priority in Greece. In their report ‘With Greece’ ECRE and the AIRE centre have documented the increasing risk of human trafficking in Greece in the transit sites in the mainland as well as the hotspots on the islands.<sup>8</sup>

> One of the main purposes of the hotspots approach in both countries has been to ensure that all newcomers are properly **fingerprinted** and identified in Eurodac. The target through the hotspots approach has been to reach 100% fingerprinting in both countries, particularly in Italy, which in the past two years received substantial pressure and criticism from the Commission for not implementing its obligations.<sup>9</sup> This target seems to have been almost met in both countries through the provision of additional equipment, but worryingly, in the case of Italy, through the use of coercive measures, physical force and extended detention to obtain fingerprints, in violation of international and European law.

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a European Agenda on Migration, Brussels, 13.5.2015 COM(2015) 240 final, p.6, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

2 Migration Management Support Teams working in ‘hotspot’ areas, Annex II to the Communication from the Commission to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, 29 September 2015 available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication\\_on\\_managing\\_the\\_refugee\\_crisis\\_annex\\_2\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_on_managing_the_refugee_crisis_annex_2_en.pdf)

3 Explanatory Note on the ‘hotspots’ approach, available at: [www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf](http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf)

4 EBCG, Article 2, para 10; Article 18 (4) defines the role that EBCG can play in hotspots, namely assistance in screening, identification, registration, debriefing, and where requested by Member States, the fingerprinting and providing information on these procedures; provision of information on the possibility to apply for asylum and referral to national authorities or to EASO; and assistance in return.

5 EASO Hotspot Relocation Operating Plan to IT (2015), EASO Hotspot Operating Plan to EL (2015), Amendemnt 1 (2015) and Amendment 2 (2016), available at: [www.easo.europa.eu/archive-of-operations](http://www.easo.europa.eu/archive-of-operations)

6 These include Communications on the management of the refugee crisis, the implementation of Priority Actions under the European Agenda on Migration, periodic reports on Relocation and Resettlement, periodic Progress Reports on the implementation of the EU-Turkey Statement as well as Recommendations to Greece on the specific urgent measures to be taken by Greece in view of the resumption of Dublin transfers. The list is available here: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm)

7 ECRE Comments on the Amended Commission Proposal to recast the Asylum Procedures Directive (COM(2011) 319 final) September 2011, available at: [www.ecre.org/wp-content/uploads/2016/07/Comments-on-the-amended-Commission-Proposal-to-recast-the-Reception-Conditions-Directive.pdf](http://www.ecre.org/wp-content/uploads/2016/07/Comments-on-the-amended-Commission-Proposal-to-recast-the-Reception-Conditions-Directive.pdf)

8 ECRE & The AIRE Centre, With Greece: Recommendations for refugee protection, June 2016, available at: [www.asylumineurope.org/sites/default/files/resources/with\\_greece.pdf](http://www.asylumineurope.org/sites/default/files/resources/with_greece.pdf)

9 The Commission has explicitly asked Italy for legislative amendments to allow the use of force and long term detention for those that refuse to be fingerprinted. See Communication from the Commission to the European Parliament and the Council, First report on relocation and resettlement, Annex IV: Italy – State of Play Report, 16 March 2016, p. 3, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first\\_report\\_on\\_relocation\\_and\\_resettlement\\_-\\_annex\\_4\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_-_annex_4_en.pdf)

> Hotspots were conceived as a tool directly related to the emergency **relocation** mechanism, in order to identify and channel asylum seekers in clear need of international protection. According to the 'Explanatory Note' sent by Commissioner Avramopoulos to JHA Ministers, the hotspot approach should contribute to the effective implementation of the relocation schemes established by the EU Decisions of 14 and 22 September 2015.<sup>10</sup> With regards to Greece, however, the EU Turkey deal shifted the hotspots' objective and functioning towards a filtering between the regular asylum procedure in Greece, or return to Turkey.<sup>11</sup> Relocation was taken entirely out of the equation and since, approximately, mid-June 2016 it is only available to asylum seekers in the mainland. In Italy, while referrals for relocation are happening via the hotspots, the level of relocation offers is so low, the number eligible applicants so limited and the pace of processing so slow, that the number of relocated persons is very small. In total, 5,651 persons have been relocated by end September 2016, which is halfway through the relocation implementation period, with 4,455 from Greece and 1,196 from Italy.<sup>12</sup> Despite the noted acceleration in relocation numbers at the end of the summer and in September 2016, the hotspots generally play a small role in implementing the emergency relocation Decisions. Different types of technical difficulties have also kept the process slow, such as bottlenecks in security checks, the slow response from Member states in opening relocation places, unjustified rejections, gaps in the capacity to register and prepare relocation applications from the side of Greece and Italy also have to be overcome.<sup>13</sup>

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

While executive powers rest with the Member States, and EASO has no power in decision making on individual applications or Frontex on the screening, registration and identification, both agencies increasingly interfere with national procedures through their operations on the ground. Increased involvement in individual decision-making processes through such operations generates greater accountability and liability for human rights violations. Under the EBCG Regulation, Frontex has an increased role and far-reaching responsibilities in the hotspots that may interfere to a certain degree with competences of national authorities.<sup>14</sup> Similar enhanced competences in the asylum process are envisaged for the proposed EU Agency for Asylum (EUAA).

As per Article 16(3) of the proposal, the new Agency is entrusted with the organisation and coordination of a long list of operational activities that have a direct bearing on the examination of individual asylum applications, ranging from "assisting with the registration and identification of third-country nationals" and providing interpretation services to facilitating "the examination of applications for international protection that are under examination by the competent national authorities."<sup>15</sup>

In particular, when operating in the framework of migration management support teams in the hotspots, the technical and operational assistance that can be provided ranges from screening (including registration, identification and, where requested by Member States, fingerprinting), the provision of information on asylum procedures, the registration of asylum applications, and "where requested by Member States, the examination of such applications" (Article 21 (2)). As ECRE has noted, while the responsibility rests with the national authorities, this is clearly stretching the competences of the Agency's staff and Member States' experts from other Member States and raises questions of accountability. It also raises questions of quality and efficiency, in particular where they lack any practical experience in assessing and examining asylum applications.<sup>16</sup>

14 REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, available at: [frontex.europa.eu/assets/Legal\\_basis/European\\_Border\\_and\\_Coast\\_Guard.pdf](http://frontex.europa.eu/assets/Legal_basis/European_Border_and_Coast_Guard.pdf)

15 Ibid, p.14

16 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, available at: [www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-EU-Asylum-Agency\\_July-2016-final\\_2.pdf](http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-EU-Asylum-Agency_July-2016-final_2.pdf)

Also, current EU asylum law as well as the proposed Regulation on Asylum Procedures and the revised Reception Conditions Directive include provisions that will be essentially implemented in the context of hotspots, without however clarifying the respective legal responsibilities arising from the involvement of the EBCG and the proposed EUAA in the implementation of the hotspot approach.

In the case of Greece, the functioning of the hotspots is governed by Law 4375/2016 adopted in April 2016, which foresees a supporting role for EASO in the inadmissibility interviews without specifying certain responsibilities.<sup>17</sup> Further to that, Law 4399/2016 of 24 June 2016 that amended Law 4375/2016 enables EASO officials to conduct interviews of applicants in merit in the context of the exceptional procedure applied at the border. In Italy, there is no dedicated legal framework on hotspots procedures and practices and conditions are governed by asylum legislation and the Constitution. Non-legislative documents, like the Italian Roadmap and the Standard Operating Procedures (SOP) define certain practices and responsibilities. However, while their involvement is noted in EASO's operating plans with Greece and Italy, this does not amount to a definition of responsibilities with legal value, and corresponding procedural safeguards for applicants.

Some observers argue that the EU should issue an additional legislative proposal covering the specifics of hotspots and the ways in which compliance with European asylum law and the EU Charter are to be guaranteed.<sup>18</sup> Alternatively, and since different elements of the hotspots function are integrated in the asylum instruments, it might make sense, instead of a stand-alone legislative instrument, to suggest clearer definitions in national and EU law, and foresee and embed rigorous independent monitoring mechanisms, including by international organisations and NGOs, so as to oversee the compatibility of the hotspots with EU legal and rule of law standards.

In 2016 FRA has carried out regular visits to the hotspots, with one staff regularly present in Greece between April and September 2016 and visits carried out to Italian hotspots, providing expertise on fundamental rights issues.<sup>19</sup>

17 Art 60(4) of L 4375/2016 provided a supporting role for EASO. Then L 4399/2016 expanded it

18 De Vries, Carrera and Guild (2016), Documenting the Migration Crisis in the Mediterranean Spaces of Transit, Migration Management and Migrant Agency, CEPS, September 2016, [www.ceps.eu/system/files/LSE%20No%2094%20DocumentingMigration.pdf](http://www.ceps.eu/system/files/LSE%20No%2094%20DocumentingMigration.pdf)

19 Interview with FRA, Head of Sector Cooperation with Civil Society & Awareness Raising, 7 November 2016

The role of FRA could be enhanced, through more structured participation in the EURTF in both countries and potentially a more systematic collection of information, mapping of practices and guidance on how to ensure fundamental rights compliance in hotspot implementation.<sup>20</sup>

> Our field research shows that the functioning of the hotspots currently presents a number of **risks to respect for fundamental rights** through practices and standards that are either inadequate or contrary to the EU asylum and immigration acquis. As this is a hybrid EU-Member States tool, responsibility for human rights protection and safeguards relates to both levels.

In particular:

**Reception conditions** are inadequate and often below standard. Yet, even for those not yet registered as asylum seekers, reception conditions should respect human dignity and applicable international human rights law and standards. The 2013 Reception Conditions Directive should "apply during all stages and all types of procedures concerning applications for international protection and in all locations and facilities hosting asylum-seekers".<sup>21</sup> This clearly includes those waiting to enter the regular asylum procedure or the inadmissibility procedures as soon as they have made an application for international protection and those who are in detention in these or other related facilities. Conditions in the hotspots do not entirely fulfil the demands for safety, health and hygiene, including basic amenities and security of the place. Repeated security incidents in the two countries show that the safety of those accommodated in the hotspots cannot be fully guaranteed. Moreover, these transit sites are used for prolonged accommodation, whereas they should only be used for a few days. Further to that, reception in the hotspots does not cover for specialised services, for example, mental health and other specialised needs, such as those required by torture victims. Sadly, it is observed in both countries that the most vulnerable, such as unaccompanied minors, are the ones that stay in the hotspots the longest because there are no alternative facilities to host them in the mainland. This relates to the fact that reception capacity in Italy and Greece is not adequate, a situation which is unlikely to improve quickly in light of the slow processing in the hotspots, continuing arrivals and the increased number of applicants stranded in both countries, resulting in increased responsibilities under the Dublin Regulation.

20 See also Neville D., Sy S. and Rigon A., On the frontline: the hotspot approach to managing migration, Study conducted for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, May 2016, [www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL\\_STU\(2016\)556942\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL_STU(2016)556942_EN.pdf)

21 See 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, Recital 8, available at: [eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0033](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0033)

Detention, disguised as restriction of freedom of movement of persons, is widely applied as standard practice in the hotspots. The recast Reception Conditions Directive defines any confinement of a person to a specific place where he or she is deprived of his or her freedom of movement as “detention”.<sup>22</sup> This consequently leads to the understanding that reception and detention should be different policies, but in the case of the hotspots these two are blurred. In Greece, the restriction of freedom of movement in the hotspot facilities is foreseen by L 4375/2016.<sup>23</sup> In Italy, there is no legislation regulating detention in the hotspots, rendering such detention arbitrary and, where it exceeds 48 hours, against the Constitution. Migrants do not have access to an effective remedy to challenge their deprivation of liberty.<sup>24</sup> Systematic detention in the context of border procedures is contrary to Article 31 (1) of the 1951 Refugee Convention, which prohibits States to penalise refugees on account of their irregular entry provided they present themselves without delay to the authorities. And which is applicable to presumptive refugees because of the declaratory nature of refugeehood. It is also contrary to states’ human rights obligations to use detention only in exceptional circumstances, when necessary and proportionate and after an individualised assessment. Yet in the hotspots, restriction of freedom of movement and deprivation of liberty are in practice automatically applied without an adequate individualised assessment and without key procedural safeguards to prevent arbitrary detention in place.

In addition, undocumented migrants in detention for the purpose of removal should normally have access to a set of procedural safeguards, including an individualised assessment of the necessity and proportionality of detention and the obligation for Member States to use alternatives to detention. These provisions should also apply in the hotspots, but are not observed in practice.

With regards to **children** in particular, the arrangements used in the hotspots in Italy and Greece still amount to detention, in the absence of alternative accommodation. Guardianship is also not always ensured or properly conducted, preventing further access to the asylum procedure. Detention of children however can never be said to be in their best interest. Other facilities, especially designed for their accommodation, should be used and counselling, guardianship and care arrangements should be in place in order to protect them against abduction and trafficking.

Furthermore, discrimination between asylum seekers and migrants on grounds of nationality is observed in hotspots in Greece and Italy. In Greece, Syrians have been prioritised over all other nationalities in registration, identification and access to asylum. In Italy, certain African nationalities are treated as economic migrants and put in separate detention facilities in order to be returned, or collectively expelled. The pre-identification system de facto prevents certain nationalities from reaching the asylum procedure. Collective expulsions have been conducted in Italy in violation of the principle of non-refoulement. Yet, in line with the Geneva Convention’s premise of non-discrimination on the basis of country of origin, states should ensure the same accommodation standards and access to procedures irrespective of nationality.<sup>25</sup> In Greece, in the context of the EU-Turkey deal, the systematic use of the **safe third country** (STC) concept in the admissibility procedure risks undermining the effectiveness of procedural safeguards and access to the asylum procedure. National authorities (and EASO) are under a lot of pressure to conclude the examination of applications as swiftly as possible. The expedited nature of the procedure further adds to the disadvantaged position of applicants resulting from an increased burden of proof to rebut presumptions of safety. However, in light of the current human rights situation in Turkey and the gaps in the national asylum framework, the country cannot be considered safe.<sup>26</sup> Evidence by human rights organisations has shown that those returned face detention in places where lawyers, UNHCR and NGOs have no access, and some have been taken to the Syrian-Turkish border in order to be returned to Syria.

A number of successful appeals against inadmissibility decisions taken by the Greek Asylum Service further challenged the concept of Turkey as ‘safe third country’. As will be explained in Chapter 4, after an increasing number of positive appeals decisions in the first three months following the EU-Turkey statement, Greece was pressed to modify the Committees’ composition which was undoubtedly with the intention to better align their outcome to the safe third country concept. The legality of the EU-Turkey deal itself has been challenged before the General Court of Justice of the European Union (CJEU), and it seems likely that the CJEU will be asked to interpret the notion of “safe third country” or “first country of asylum” under EU law to determine whether it may be applied to the EU’s neighbouring countries.<sup>27</sup>

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

In light of the above, the provision of sufficient information and guidance, and legal assistance to migrants and refugees to accompany them throughout the procedure is all the more important.

The provision of information in a language that refugees understand, and at all stages of the process, as per the Reception Conditions and Asylum Procedures Directives, still remains problematic in the context of the hotspots. In Italy, the pre-identification system with the use of the ‘foglio notizie’ is problematic;<sup>28</sup> migrants are insufficiently informed and often are not aware that this is their opportunity to state their intention to seek asylum. In theory, according to the Italian Standard Operating Procedures (SOP), what is stated during pre-identification in this document can be changed at a later time. No copy of the signed document is given however to the asylum seeker, although NGOs have been strongly advocating for it. Lack of information is prevalent throughout the procedures; there were even cases in which migrants had not been informed that they were granted a rejection order. In Greece, the multiplication of national and international actors, including with regard to the provision of information, seems to have led to a situation of confusion and misinformation. Our field visits have shown that despite the availability of various information tools, including by EASO, asylum seekers are generally ill-informed and the procedures seem to lack transparency and consistency.

Information needs to be provided by qualified and trained staff and should cover all aspects, the procedural steps and their implications. Cultural mediators play a pivotal role, but their presence in both countries is still insufficient. Written information (leaflets) and information provided through social media should be accompanied by oral explanation and guidance, as a group and individually.

Lawyers and NGOs should have access to asylum seekers in detention, but in practice, this is not always guaranteed in the hotspots. The Italian SOP foresees that NGOs are granted access to the facilities following authorisation by the Ministry of Interior (Moi), but no specific reference is made to access for lawyers.<sup>29</sup> Where access is ensured, the capacity of lawyers to respond to the needs still remains insufficient. More importantly, migrants are not provided with information prior to pre-identification which can impact on their legal status. Legal assistance needs remain high and capacity building and resources are needed for local lawyers and bar associations to be able to offer pro bono services.

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

22 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, available at: [eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0033](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0033)

23 See Greek Council for Refugees, Observations on Law 4375/2016, April 2016, available at: [goo.gl/2gRI4j](http://goo.gl/2gRI4j)

24 Amnesty International, Hotspot Italy: how EU’s flagship approach leads to violations of refugees and migrant rights, October 2016, p.28, available at: [www.amnesty.org/en/documents/eur30/5004/2016/en/](http://www.amnesty.org/en/documents/eur30/5004/2016/en/)

25 For a discussion of this beyond Greece and Italy, see AIDA, Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe, March 2016, available at: [goo.gl/xXH818](http://goo.gl/xXH818)

26 The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey May 2016, available at: [www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf](http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf)

27 ECRE & The AIRE Centre, With Greece: Recommendations for refugee protection, June 2016, available at: [www.asylumineurope.org/sites/default/files/resources/with\\_greece.pdf](http://www.asylumineurope.org/sites/default/files/resources/with_greece.pdf)

28 For a copy of the foglio notizie, see: [www.asylumineurope.org/sites/default/files/resources/foglio\\_notizie.pdf](http://www.asylumineurope.org/sites/default/files/resources/foglio_notizie.pdf)

29 On page 7 paragraph B.2 “Access in hotspots” of the SOP it is stated “Subject to authorisation of the Department for Civil Liberties and Immigration of the Ministry of the Interior and on the basis of specific agreements, international and non-governmental organisations will be guaranteed access in compliance with the Italian and European legislation for their respective mandates and for the provision of specific services. Authorised humanitarian organisations will provide support to the Italian authorities in the timely identification of vulnerable persons who have special needs, and will carry out information activities according to their respective mandates.”



## 3. The hotspots in Italy

### Key findings

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

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

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

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

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

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

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

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

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

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

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

Vulnerable cases, including unaccompanied minors and victims of trafficking, **end up staying prolonged periods of time in the hotspots** as specialised shelter capacity remains limited

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

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

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

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

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

### 3.1. The legal framework for the functioning of hotspots

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

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

Existing facilities, including hotels, have been converted to CAS centres.<sup>31</sup> There are 32 CAS only in the area of Trapani. Second line reception is provided by the system for the protection of asylum seekers and refugees (SPRAR) centres, managed by municipalities with different centres spread across Italy.<sup>32</sup> With 142/2015 and the Italian Roadmap, certain first reception centres (CARA/CPA and CPSA) were integrated into 'Regional Hubs', reception structures where the applicants formalise their asylum requests through the form C3.

A total of 171,938 persons were residing in the Italian reception system by October 2016.<sup>33</sup> Out of these, 22,971 persons were staying in SPRAR structures, while 127,721 persons, more than 77% of the total, in temporary structures. The number of persons in hotspot facilities fluctuates according to daily disembarkations. On 31 October, the day of the publication of Mol data, the hotspot facilities accommodated 1,225 people.<sup>34</sup>

According to the Italian Roadmap published by the Moi on 28 September 2015 and based on Article 8 of Council Decision (EU) 2015/1523 of 22 September 2015, six hotspots were planned, in Lampedusa, Trapani, Pozzallo, Taranto and Augusta.<sup>35</sup> The hotspots have a total capacity of 1,600 places and are closed centres used for identification and screening.<sup>36</sup> The hotspot of Lampedusa has 500 places, Trapani and Taranto 400 each, and Pozzallo can accommodate up to 300 people.

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

<sup>31</sup> Interview with IOM Legal Expert, 24 of June 2016.

<sup>32</sup> This is a publicly funded network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection. This system is now about to change with a uniform system for reception across the country and the phasing out of the CAS, see [www.asylumineurope.org/news/19-10-2016/italy-plans-uniform-reception-system-through-sprar-expansion](http://www.asylumineurope.org/news/19-10-2016/italy-plans-uniform-reception-system-through-sprar-expansion)

<sup>33</sup> See AIDA, Italy plans for a uniform reception system through SPRAR expansion, 19 October 2016, [www.asylumineurope.org/news/19-10-2016/italy-plans-uniform-reception-system-through-sprar-expansion](http://www.asylumineurope.org/news/19-10-2016/italy-plans-uniform-reception-system-through-sprar-expansion) and Ministry of Interior data as of 31 October 2016 available at: [www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_31\\_ottobre\\_0.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31_ottobre_0.pdf)

<sup>34</sup> Ministry of Interior data as of 31 October 2016 available at: [www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_31\\_ottobre\\_0.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31_ottobre_0.pdf)

<sup>35</sup> Four of them were operational by spring 2016, namely Lampedusa (01/10/2015), Trapani (22/12/2015), Pozzallo (19/01/2016), Taranto (29/02/2016). The revised Roadmap submitted to the European Commission on 31 March 2016 foresees an additional hotspot, instead of those previously foreseen for Augusta and Porto Empedocle, with the intention to reach the overall capacity of 2,500 places.

<sup>36</sup> EC State of Play of the hotspot capacity, last updated 11 November 2016, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

<sup>30</sup> Introduced by Circular of 8 January 2014 to address increased arrivals by migrants and refugees; also foreseen in Article 11 of Decree 142/2015

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

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

Regional hubs are operational in Villa Sikania, Bari and Crotona. Other centres were also used for relocation candidates in Rome, Milan, Foggia, Mineo, Cagliari, as also CAS centres.<sup>38</sup> Since the number of relocations carried out is low, the turnover in such centres is also low. For example, the CARA of Mineo (Catania, Sicily), with capacity up to 4,000 people, has been progressively used as a regional hub.<sup>39</sup> Given its capacity, it can be used for three different aims (hotspot, regional hub and reception centre for asylum seekers).<sup>40</sup>

The reception centre of Villa Sikania is a former hotel that in April 2014 was set up as CAS and since November 2015 converted into a regional hub.<sup>41</sup> It has a capacity of 278 places. At the time of the visit there were 198 candidates for relocation and 80 asylum seekers not eligible for relocation. Villa Sikania is used to complement the Lampedusa hotspot when that is overcrowded, newcomers are identified and registered in the hotspot and then transferred to Villa Sikania to be transferred to other destination centres.<sup>42</sup>

The Centre of Castelnuovo di Porto has been used as a pre-departure centre for relocation (65% of the places), since it is located close to Fiumicino airport (RM). Its official capacity was 650 places but at the moment of the visit there were 821 persons.

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

**Table 1: Number of arrivals in harbours, 1 January-31 October 2016**

Augusta	21.622
Pozzalo *	16.808
Palermo	15.199
Messina	15.465
Catania	14.229
Reggio Calabria	13.301
Trapani	11.859
Lampedusa*	10.923
Crotone	7.264
Cagliari	6.678
Taranto *	6.250
Salerno	4.405
Vibo Valentia	4.405
Brindisi	4.040
Corigliano Calabro	3.013
Porto Empedocle	2.430
Porto Torres	387

\* *This data does not include migrants transferred to other facilities before fingerprinting*<sup>44</sup>

Source: Mol, *Department Civil Liberties and Immigration*

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

Non-hotspot areas are differently organized from one place to another. For instance, in Augusta the immigration office can carry out identification and registration and provide information, whereas in other harbours only part of the process is completed there. If the authorities are unable to conduct fingerprinting near the harbour, newcomers informed and pre-identified are transferred to a hotspot for fingerprinting. In case there is no place in hotspot facilities, they are transferred to the closest Questura.<sup>45</sup>

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

### EU presence in the hotspots

EU presence in the hotspots is coordinated by the EU Regional Task Force (EURTF). Set up in Catania in June 2015, it is composed of Italian Authorities (Guardia di Finanza, Coast Guards, Italian Police), a representative of the European Commission, EASO, Europol, Eurojust and Frontex.<sup>48</sup> It is a platform where European agencies and national authorities can exchange information and works as a bridge between search and rescue activities, disembarkation and reception in hotspot or non-hotspot areas. Maritime incident reports by Frontex are used by EU agencies in the hotspots to allocate staff prior to disembarkation.<sup>49</sup> EURTF staff coordinate the guest officers in Italy, roughly 500 people per month. Since it is implementing Joint Operation Triton, Frontex is a situational picture provider to all Agencies present in the EURTF.

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

In Lampedusa there were 22 Frontex Guest officers, in Pozzallo 23, in Taranto and Trapani 22 in each.<sup>51</sup> In non-hotspot areas Frontex supports the local authorities with pre-identification and debriefing, but not fingerprinting which according to interviews has not been requested so far by the authorities as they also lack the capacity; it was stated in interviews that Frontex and Mol were thinking of placing containers for registration and screening in these areas.<sup>52</sup>

EASO has two or three Member States Experts and two cultural mediators in Arabic and Tigrinya in each hotspot.<sup>53</sup> Europol and Eurojust were not present in the hotspots at the time of the field visits. According to the Sixth Report on Relocation and Resettlement, 33 asylum experts and 35 cultural mediators were deployed in the country in total by the end of September, which, according to the Commission, is still insufficient to cope with the high number of arrivals.<sup>54</sup>

### 3.2 Hotspots function and procedures

#### From disembarkation to registration

Frontex participates in search and rescue activities in the programme Triton, under the mandate of the Mol, in cooperation with Guardia di Finanza and the Italian Coast Guard. In 2015 out of the 160,000 people arriving in Italy by sea, 40% were rescued with the contribution of Frontex deployed vessels.<sup>55</sup> Many actors can be involved in rescue activities (Frontex, Mare Sicuro, EUNAVFOR MED, NGOs such as MSF) according to the proximity to the boat in distress, but the action is coordinated by the Italian authorities.

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

<sup>37</sup> Interview with prefect of Trapani 10 May 2016

<sup>38</sup> The presence of relocation candidates in CAS emergency reception centres is monitored by the Mol. Interview with the Deputy Prefect of the Mol, 25 July 2016

<sup>39</sup> [www.ilfattoquotidiano.it/2016/06/22/mafia-capitale-indagine-sul-cara-di-mineo-6-indagati-e-perquisizioni/2850519/](http://www.ilfattoquotidiano.it/2016/06/22/mafia-capitale-indagine-sul-cara-di-mineo-6-indagati-e-perquisizioni/2850519/)

<sup>40</sup> Interview with the Deputy Prefect of the Mol, 25 July 2016

<sup>41</sup> The legal status of both centres has remained unchanged, since the hotspot of Lampedusa is still a CPSA envisaged by law 563/1995 and the Regional Hub of Villa Sikania is a temporary centre.

<sup>42</sup> Interview with the Director of the managing body of Villa Sikania, Agrigento, 24 May 2016

<sup>43</sup> Statistics provided by the Mol on sea arrivals divided according to harbours from 1/01/2016 to 31/07/2016

<sup>44</sup> According to the Prefect of Trapani, the rate of fingerprinting is almost 100%. 4,459 people were accommodated in the facilities from the beginning of the year up to 10 May, out of which only 8 refused fingerprinting. Interview with the Prefect of Trapani, 10 May 2016

<sup>45</sup> Interview with Deputy Prefect of Mol, 25 July 2016

<sup>46</sup> Standard Operating Procedures applicable to Italian hotspots, Mol, [www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots\\_sops\\_-\\_english\\_version.pdf](http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf)

<sup>47</sup> Interview with Head of Dublin Unit, 31 May 2016

<sup>48</sup> FRONTEX has deployed five officials: one coordinator, one risk analysis, one sea border sector Triton team, one press officer, one Frontex Situation Centre and other relevant services under EUROSUR.

<sup>49</sup> Hotspots: interagency response to migratory pressure, European Day for Border Guards 2016, available at: [ed4bg.eu/sites/default/files/debates/summaries/Hotspots%20interagency%20response%20to%20migratory%20pressure.pdf](http://ed4bg.eu/sites/default/files/debates/summaries/Hotspots%20interagency%20response%20to%20migratory%20pressure.pdf)

<sup>50</sup> Interview with Frontex Coordinating Officer, 25 May 2016

<sup>51</sup> EC state of Play of Hotspot capacity – last updated 11 November 2016 available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

<sup>52</sup> Interview with Frontex Coordinating Officer, 25 May 2016

<sup>53</sup> EC state of Play of Hotspot capacity – last updated 11 November 2016 available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

<sup>54</sup> Communication from the Commission to the European Parliament, the European Council and the Council, Sixth report on relocation and resettlement, Brussels 28.09.2016, COM(2016) 636 final, p.7, Available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_en.pdf)

<sup>55</sup> Interview with Frontex Coordinating Officer, 25 May 2016

The list is also communicated to the EASO Asylum Support Team in order to identify potential relocation candidates and prepare the information session.<sup>56</sup> EASO officials are present at the port during disembarkation.

Representatives of the Ministry of Health conduct the **first medical screening on board**.<sup>57</sup> According to the SOPs, the medical report is sent to the health authorities before disembarkation. However, between the medical screening on board and further screenings later on, there is an identifiable lack of coordination<sup>58</sup>

#### At the port

A **second medical screening** is conducted at the port by a doctor and provincial public health authorities. The check lasts a few minutes, taking temperatures, identifying infectious diseases and detecting visible vulnerabilities. Prior to the hotspot approach, newcomers would spend about a day at the harbour under uncomfortable conditions, only to continue another journey of several hours to the designated reception centre in Italy. It was mentioned in the interviews that, with regard to the hotspots, the time spent at the harbours is now shorter (approximately 3–4 hours for second medical screening and pre-identification).<sup>59</sup>

Certain **NGOs are present** at the port, such as the Red Cross (conducting the medical screening in Trapani, provision of preliminary information and family tracing) or Save the Children, which is present in all disembarkation areas and the hotspots in Lampedusa, Agrigento, Palermo and Catania and adjacent areas. Save the Children is informed in advance by the prefectures or MSF (in case of search and rescue activities carried out through MSF vessels),<sup>60</sup> provides preliminary information in a child friendly manner and helps with family tracing.

**Preliminary information** is usually provided already at the port, if conditions allow, but there are different cases where this happens during or after transfer to a centre. While in Trapani preliminary information is provided at the port, in Lampedusa the dock is small and all information activities are carried out in the hotspot. They also receive preliminary information on the bus transferring them to the hotspots, or while waiting in line for pre-identification, meaning that the provision of information and pre-identification often occur at the same time.<sup>61</sup>

When disembarkation takes place at night, especially in Lampedusa, following the medical screening at the port, people are transferred to the centre for preliminary information, pre-identification, fingerprinting and registration.<sup>62</sup> In these cases the information provided before identification may be insufficient.<sup>63</sup>

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

The national provision transposing Article 8 of the EU Procedures Directive 32/2013 ensures a right to information only to those who express the intention to seek asylum, stating that “*when a person claims asylum, police authorities must inform the applicant about the asylum procedure and his or her rights and obligations, and of time-limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet.*”<sup>64</sup> However, according to Article 10 of the Schengen Handbook, also referred to in the SOPs, the intention to apply for international protection does not need to be expressed in any particular way and the word ‘asylum’ does not have to be explicitly pronounced.<sup>65</sup> The police officer should not only inform the person who has the intention to apply according to his/her degree of understanding but also ensure that the person has understood the information provided. There is a double positive obligation on the police authorities, on the one hand to understand whether the person wants to apply for international protection regardless of their expressed intention, and on the other hand to make sure that the person is aware of the content of the information provided.

In practice it is often not the police but the international organisations present that eventually provide this information, as for example in Lampedusa. But organisations can provide information as long as they are granted access to migrants before identification. In Crotona, for example, UNCHR can only intervene after identification.<sup>66</sup>

62 Interview with UNCHR legal officer and cultural mediator in Lampedusa 25 May 2016

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

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

65 This provision is quoted in the SOP, “Entry to Hotspot premises”, page 11.

66 Interview with UNCHR Senior Protection Officer in Rome 28 April 2016

In terms of cultural mediators, national authorities deploy cultural mediators/interpreters but only few languages are usually available.<sup>67</sup> Cultural mediators for sub-Saharan African countries are less available, as for example for Somalis, and this is sometimes addressed through double translation.<sup>68</sup>

#### Pre-identification

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

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

Third country nationals are **photographed** and given the so called ‘**foglio-notizie**’ to fill in with name, surname and nationality and reason for leaving the country of origin. It is a multiple choice question with mutually exclusive options such as “in Italy for work”, “to reach family”, “to escape poverty”, “for asylum” and “other”. Once filled in, the “foglio-notizie” is signed by the police officer, the interpreters and the person concerned. It has been noted in the field visits and widely reported by other organisations that migrants are insufficiently informed about the purpose of the ‘foglio notizie’, and do not necessarily know that this is the moment that the intention to seek asylum is declared.<sup>69</sup> They also do not receive a copy of the filled form. Sometimes they receive the form during the pre-identification phase and give it back during the identification phase.

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

68 Some asylum seekers from Somalia (among which a person who declared at the time of disembarkation to be an unaccompanied minor) assisted by CIR in Rome reported that in Lampedusa there was no cultural mediators for them and that they understood only very little through other Somalis who spoke a bit of English. One of them reported that he understood how to apply for international protection only after having slept for many days on the street in Rome. He reported he did not receive information on asylum either in Lampedusa or in the reception centre for minors in Sicily where he was accommodated for a month. Two other Somalis assisted by CIR, who had been identified and registered in Lampedusa, were notified with an expulsion decree and reported they had no information on asylum within the hotspot. They received the expulsion order in Agrigento written in Italian and Arabic and they could not understand the meaning of the document. All three cases reported had stayed in Lampedusa for more than one month. The person who said to be an unaccompanied minor stayed in the hotspot for two months. All of them had stayed in the hotspot in Lampedusa in December 2015 and their stay was not in line with the average length of stay reported by the revised Roadmap (31st of March 2016), which is 8 days.

69 Oxfam, “Hotspots: Rights denied”, Briefing Paper, May 2016, page 23, available at: [www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp-hotspots-migrants-italy-220616-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-hotspots-migrants-italy-220616-en.pdf); Amnesty International, Hotspot Italy: how EU’s flagship approach leads to violations of refugees and migrant rights, October 2016, p.28, available at: [www.amnesty.org/en/documents/eur30/5004/2016/en/](http://www.amnesty.org/en/documents/eur30/5004/2016/en/)

In theory, the ‘foglio-notizie’ even if issued by the Questura, has no legal value in determining the status, as also clarified by the Mol.<sup>70</sup> However, as several organizations have pointed out, the use of the ‘foglio notizie’ form as a filter oversimplifies and distorts access to the procedure. The ‘national asylum roundtable’, an NGO advocacy group, has advocated for the full application of Articles 6 and 8 of the Asylum Procedures Directive to allow for effective and immediate access to information.<sup>71</sup> The pre-identification practice and lack of access to information has also been strongly criticised by the Human Rights Commission of the Italian Senate, in its report on CIE centres in March 2016.<sup>72</sup>

It seems that return decisions have been largely issued based on the information provided in the pre-identification phase. In the first months of implementation of the hotspots, the Questura of Agrigento issued several rejection orders which according to critics was likely based on wrong declarations in the pre-identification phase and selection based on nationality. In particular, according to Mol data, from 1 October to 31 of December 2015 out of 3,147 people accommodated in hotspots, more than one third (1,280) received a rejection order and 309 of them were sent to CIE. This alarming practice of blanket returns has raised criticism, and it seems that many rejection orders were then suspended by the Tribunal of Palermo;<sup>73</sup> for the next five months this fell to 17 receiving an expulsion order and 614 rejected (out of which 140 effectively returned) among 5,559 people who passed through the hotspots.<sup>74</sup>

70 See Oxfam Rights Denied report, p. 23. According to the Frontex Coordinating Officer in Lampedusa however the “foglio-notizie” produced by the Questura can be seen as having a legal value, even if information stated can be changed at a later stage of the process. Interview with Frontex Coordinating Officer in Lampedusa, 26 May 2016

71 The following organizations participate in the national roundtable: Acli, Arci, Asgi, Caritas italiana, Casa dei diritti sociali, Centro Astalli, Consiglio Italiano per i Rifugiati, Comunità di S. Egidio, Federazione delle Chiese Evangeliche in Italia, Medici per i Diritti Umani, Medici Senza Frontiere, Senza Confine [www.cir-onlus.org/it/comunicazione/news-cir/51-ultima-news-2016/2001-tavolo-asilo-hotspot-luoghi-di-illegalita](http://www.cir-onlus.org/it/comunicazione/news-cir/51-ultima-news-2016/2001-tavolo-asilo-hotspot-luoghi-di-illegalita).

72 COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI, RAPPORTO SUI CENTRI DI IDENTIFICAZIONE ED ESPULSIONE IN ITALIA Available at: [www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/rapporto\\_cie.pdf](http://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/rapporto_cie.pdf) and [www.ecre.org/lampedusa-hotspot-shows-severe-deficiencies-states-the-italian-senate/](http://www.ecre.org/lampedusa-hotspot-shows-severe-deficiencies-states-the-italian-senate/)

73 Of relevance here is the European Court of Human Rights (ECHR) judgement in relation to return measures taken by the police without examination of the individual circumstances (Case Khlaifia and Others vs Italy); while this refers to a period prior to the set up of hotspots, the practice is similar. Available at: [www.asylumlawdatabase.eu/en/content/european-court-human-rights-khlaifia-and-others-v-italy-no-1648312-articles-3-5-and-13-echr](http://www.asylumlawdatabase.eu/en/content/european-court-human-rights-khlaifia-and-others-v-italy-no-1648312-articles-3-5-and-13-echr)

74 Analysis Office of the Department of Public Security of the MOI in Lampedusa

In Trapani, on the other hand, few expulsion and rejection notices were issued up to 31 May 2016.<sup>75</sup> This practice led to a circular issued by the MoI to the prefectures, highlighting the right to be informed in order to access asylum procedures.<sup>76</sup>

**TABLE 2: Nationalities declared at disembarkation in hotspots 1 January - 31 October 2016**

Nigeria	20%
Eritrea	12%
Guinea	7%
Ivory Coast	6%
Gambia	6%
Sudan	6%
Senegal	5%
Mali	5%
Somalia	4%
Bangladesh	5%
Other	24%

Source: Department Civil Liberties and Immigration, MOI

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

It was mentioned in the interviews that information is provided through group sessions between pre-identification and identification by UNHCR and IOM (respectively on international protection, irregular stay and return under the “Access” and “Assistance” programs).<sup>78</sup> This effectively means that no information and legal assistance is provided at the stage of pre-identification where people are asked to state the intention to seek asylum. Oxfam’s report also confirms that during this phase the migrants are left on their own.<sup>79</sup> IOM also informs about the possibility to appeal the expulsion or referred rejection orders, by contacting a lawyer once the person is transferred to the mainland. However, information provided might be shaped according to the nationality of the target group and also on the basis of their personal situation. For instance, people belonging to nationalities for which a readmission or bilateral agreement is in place are informed in a different way, considering the risk to be immediately returned. Legal officers may try to detect grounds for international protection through more individualized information session. However, given that the authorities’ intention is to return them to their country of origin or transit, accessing information will prove more difficult for them. The provision of information is also particularly difficult in the case of persons that arrive to the shore on their own, outside search and rescue activities. For them, the usual chain of organisations and actors present at the harbour to assist with disembarkation and information is not there.<sup>80</sup>

The content of the information provided however may vary depending on the group’s nationality. IOM also provides information to potential victims of trafficking (mainly Nigerian women). Finally, UNHCR provides information on relocation under the “Relocation” project.<sup>81</sup> UNHCR monitors the identification process and during the group sessions provides information about the possibility to have an individual interview.<sup>82</sup>

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

78 The proportion is two staff from each organisation (1 legal expert and 1 cultural mediator) for a group of 30/40 people. Interview with IOM Legal Expert in Rome, 24 June 2016  
79 Oxfam, “Hotspots: Rights denied”, Briefing Paper, May 2016, page 23, available at: [www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp-hotspots-migrants-italy-220616-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-hotspots-migrants-italy-220616-en.pdf)  
80 Interview with UNCHR legal officer in Trapani on 26 October 2016  
81 This project started at the end of October 2015 and it will run until September 2017  
82 Interview with UNCHR legal officer in Trapani 10 May 2016  
83 Interview with UNCHR Senior Protection Associate in Rome 28 April 2016

75 Out of 6,392 who passed through the Trapani hotspot from 1 January to 31 May 2016, 26 were expelled by the Prefecture and 138 received a rejection order by the Questura, of which 51 sent to CIE and 12 effectively returned; data provided by the Analysis Office of the Department of Public Security (MOI)  
76 It makes clear reference to the Court of Cassation ruling n.5926 of 25 March 2015 according to which rejection orders have to be considered void when no adequate information provision and interpretation services, necessary to accessing asylum procedures are in place. In fact, when there are indications that third country nationals or stateless persons desire to seek international protection in the territory, Italian authorities have to provide them all relevant information and adequate interpretation services; otherwise any rejection order or expulsion order must be revoked. Circular of the Head of the Department of Civil Liberties and Immigration of the MoI, issued to the Italian Prefectures on 8 January 2016  
77 Interview with Head of the Dublin Unit, 31 May 2016, and SOPs section B.5.5.1, page 11

The hotspot’s managing body also provides information, for example, in Villa Sikania and in Trapani. Newcomers receive a brochure in four languages (Italian, English, French and Arabic) on the asylum procedure and types of status granted. A legal officer is present in the centre during the week, conducting collective information sessions and, upon request, individual interviews.<sup>84</sup>

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

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

### Registration and identification

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

84 Interview with Director of the managing body 10 May 2016  
85 According to the SOPs p.10 “In addition to interviews, debriefing activities include other activities such as the collection of information and evidence found inside the boats (such as GPS, navigation systems and satellite phones) as well as any other relevant article found in the possession of individuals, besides personal belongings, so that they can be examined for the purpose of risk assessment, in close contact with the Italian investigation bodies present.” In this regard, Frontex Guest Officers may inform the Italian authorities on the suspected smuggler but only the Italian competent authority can carry out the investigation. Interview Frontex Coordinating Officer 25 May 2016  
86 Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings, Press Release, 10 December 2015, [europa.eu/rapid/press-release\\_IP-15-6276\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6276_en.htm)  
87 ‘Further efforts, also at legislative level, should be accelerated by the Italian authorities in order to provide a more solid legal framework to perform hotspot activities and in particular *to allow the use of force for fingerprinting and to include provisions on longer term retention* for those migrants that resist fingerprinting’, ANNEX to the Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration Italy - State of Play Report, Brussels, 10.2.2016 COM(2016) 85 final ANNEX 3, p.2, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_03\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_03_en.pdf)

**TABLE 3: Number of third country nationals identified in Trapani and Lampedusa hotspots since the opening of the facilities up to 31 May 2016**

	Lampedusa 01/10/2015 – 31/05/2016	Trapani 22/12/2015 – 31/05/2016
Disembarked	8.706	6.790
Photo-fingerprinted	8.275 (95,05%)	5.466* (80,5%)

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

Source: Analysis Office of Public Security Department, MOI

Registration and fingerprinting are conducted by the police, with the support of Frontex and cultural mediators. In fact, fingerprinting can be carried out by either of the two, but the entry of fingerprints in the AFIS system can only be done by the Italian authorities.<sup>88</sup> There is no monitoring of practices by external actors or organisations during this phase either. Before fingerprinting, the person should be informed about the procedure as per Article 29 of the Eurodac Regulation. The hotspots of Trapani and Lampedusa are equipped with five Eurodac machines each.<sup>89</sup> Data recorded in the AFIS database are checked in Eurodac for criminal records. According to the Prefect of Trapani, potential relocation candidates are often reluctant to be fingerprinted because of the length of the relocation procedure, and prefer to cross the borders to continue the journey on their own.<sup>90</sup>

In principle, if someone **refuses to be fingerprinted**, police and Frontex should and usually do seek the assistance of cultural mediators and inform about the obligation to be fingerprinted and the procedure that will be followed.<sup>91</sup> However, in a recent report, Amnesty International reveals that the use of force to obtain fingerprints is recurrent, including beatings, ill-treatment, deprivation of basic assistance such as food and water. According to the SOP, in case of persisting refusal, the proportionate use of force is allowed and no one can leave the hotspot premises without being fingerprinted.<sup>92</sup> The possibility to use coercive measures and force is based on Circular 400/A/2014/1.308 of 25 September 2014, which however is not legally binding.

88 SOP, page 15  
89 The capacity in Trapani is 170 photo-fingerprints per day. Interview with the Prefect of Trapani, 10 May 2016, Interview with Frontex Coordinating officer 25 May 2016  
90 Interview with the Prefect of Trapani, 10 May 2016  
91 Interview with Frontex Coordinating officer 25 May 2016  
92 SOPs state that the Circular 400/A/2014/1.308 of 25.09.2014 and the related “provisions” on photo-fingerprinting will apply until a new Italian legislation will be adopted (B.7.2.c SOPs).

The General Union of Police Workers (UGLP) have expressed their concerns about being asked to use force without a legal basis.<sup>93</sup>

It was mentioned in interviews that sometimes persons who refuse to be fingerprinted are transferred to the Questura. This practice concerns, in particular, certain nationalities.<sup>94</sup>

Indicatively, in Trapani, 8 persons refused to be fingerprinted among 4,459 persons transferred to the hotspot between January and May 2016. In Lampedusa, 184 Eritreans and some Ethiopians refused to be fingerprinted, as reported by the Extraordinary Commission for the protection of human rights of the Italian Senate.<sup>95</sup> They entered a vicious circle of being kept on the island in order to complete the identification process, which could not be finalised without fingerprinting.<sup>96</sup>

Following pre-identification, migrants are registered under 'CAT 2' for irregular entry. Those eligible for relocation are fingerprinted and registered, and following their transfer to the regional hub or any other centre, they are registered as asylum seekers by filling in the C3 modello form (CAT 3).<sup>97</sup>

According to Mol data, 11,520 **unaccompanied minors** disembarked in Italy in the first six months of 2016, which is 15% of all disembarkations in that period.<sup>98</sup> Identification and registration of minors over 14 follows the same procedure as for adults but minors under 14 are not fingerprinted. Age assessments are conducted in case of doubt, using declarations of the person concerned, documentation or X-ray examination. Sometimes minors bring birth certificates with them, but as these are usually without a photo, they are not accepted by the Italian police. Save the Children advocates for a proposal to amend current legislation (Law on migration and Decree 286 of 25 July 1998) on measures of

protection for unaccompanied minors.<sup>99</sup> The proposal *inter alia* tries to harmonize the age assessment procedure carried out for all minors with the provisions on age assessment under the law for minors victims of trafficking, combining medical aspects with the analysis of documents. According to the proposal, X-ray examination should take place as a last resort in case of doubt and in case of lack of documents. The examination should be carried out following a multidisciplinary approach.<sup>100</sup>

Following increase of false age declarations in Lampedusa, the police started carrying out X-ray examinations for every person who declared to be a minor.<sup>101</sup> In Trapani, X-ray examination is used in case of doubt and performed in the hospital. A recent agreement between the Mol and national health authorities will add two specialists – a child neuro-psychiatrist and a paediatrician – to the hotspot premises, to conduct X-ray examinations there, aligning age assessment with the procedure recommended by the SOP.<sup>102</sup> Criticism was raised in 2015 against the practice where unaccompanied children from Gambia and Senegal who lack documentation were all assigned the fictitious birth date of 1 January 1997 so as to be amenable to expulsion.<sup>103</sup>

### 3.3. Access to the asylum procedure

From January to July 2016 58,709 persons presented an asylum request in the hotspots.<sup>104</sup> In principle, people can express the intention to seek asylum at any point in the hotspots, during pre-identification (by filling the *foglio-notizie*) or the identification process. According to the Italian legislation, migrants already notified with an expulsion or rejection order can still apply for asylum. Once the intention to seek asylum has been manifested, asylum applicants are channelled to reception centres. Asylum seekers fill in the C3 form (asylum declaration form) in the Questura closest to the centre where they will be transferred.

However, access to the asylum procedure can be difficult if persons have not received sufficient information, or if they have stated otherwise during pre-identification. CIR reports of cases of asylum seekers who only discovered the possibility to apply for asylum after several months in the country.

It needs to be noted that through a Circular issued by the Mol, the police are essentially given the task to assign migrants a legal status after identification and fingerprinting.<sup>105</sup> Previous to the hotspot approach, the police was merely supporting the registration without however entering into the examination of the reasons why people left the country and arrive in Italy. The new Circular therefore places a disproportionate level of responsibility upon an authority that is not competent or trained to do so.

According to the SOP, referral mechanisms should be in place for persons expressing the intention to apply for asylum.<sup>106</sup> Clear **referral mechanisms** were however not observed with respect to certain nationalities at the time of the field visits, on the assumption that they have no protection needs. It seems that nationals of Nigeria, Gambia, Senegal, Morocco, Algeria and Tunisia were directed to detention centres on the assumption that they have no protection needs.<sup>107</sup> This filtering is only done on the basis of a summary assessment, either through a succinct questionnaire or oral questions upon arrival, without the necessary presence of cultural mediators. In cases where they were ultimately released, they faced undue obstacles to securing accommodation, as was the case of a group of Nigerian nationals released from the CIE of Bari and Restinco.<sup>108</sup>

While the Italian Roadmap foresees that newcomers are placed in 'closed' centres, Italian legislation does not provide a legal basis for **detention** in the hotspots. Outside the scope of the law on administrative detention in CIE (art. 14 Immigration Law 268/98) no restriction of liberty is allowed for identification purposes. According to Article 13 of the Italian Constitution, restriction of liberty can take place only after a reasoned judicial authorization and in a procedure provided by law. In cases of necessity and urgency – exhaustively provided by law – public authorities can temporarily restrict personal freedom, but the decision has to be communicated to the judicial authority within 48 hours in order to be validated, otherwise it has no legal value and has to be revoked and be considered null and void. Nevertheless, detention in the hotspots is not considered by law as urgent or necessary.

<sup>105</sup> Mol Circular 41807, 29 December 2015

<sup>106</sup> SOP B.3. Operational/ module sequence, page 7

<sup>107</sup> AIDA, Wrong counts and closing doors The reception of refugees and asylum seekers in Europe, March 2016. p.41, available at: [www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_wrong\\_counts\\_and\\_closing\\_doors.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_wrong_counts_and_closing_doors.pdf)

<sup>108</sup> See also ASGI, Il diritto negato: dalle stragi in mare agli hotspots, 22 January 2016, available in Italian at: [bit.ly/1VUKNM6](http://bit.ly/1VUKNM6)

In addition, detention in the hotspots with the purpose of identification and nationality screening usually lasts more than 48 hours, in violation of the aforementioned Constitutional provision.<sup>109</sup> The use of detention for the purpose of enforcing fingerprinting in the hotspots is arbitrary and unlawful; it happens without a detention order, judicial review or possibility to challenge its lawfulness.

The average stay reported in Trapani is generally 2,5 days but according to interviews in May the average was 5–6 days.<sup>110</sup> Usually, transfers of relocation candidates out of Trapani faced more delays due to the limited number of places in regional hubs.

Regional hubs receive both relocation and non-relocation candidates. For example, Castelnuovo di Porto receives relocation candidates from other regional hubs and those directly transferred from a hotspot or non-hotspot area.<sup>111</sup> They may stay for long periods of time – more than one year in case of a positive decision (and then transferred to a SPRAR centre), and more than two years in case of a negative decision and appeal. The social-psychological service of the centre stated that much of their work is dedicated to appellants, due to the high level of stress deriving from the long waiting time.<sup>112</sup> Villa Sikania also hosts asylum seekers not eligible for relocation coming from Lampedusa and other ports of Sicily for a few days until they are transferred to the reception centre where they will complete their asylum application. With the exception of those that have to undergo the age assessment, unaccompanied minors are usually not allowed in regional hubs.

In terms of **identification of vulnerabilities** and special needs, the Italian authorities exchange information of screened and identified persons at different stages of the procedure. This is facilitated by medical staff together with EASO, UNHCR, IOM and Save the Children. It was noted however that specific referral mechanisms for identification of vulnerabilities, needs and services are not applied. According to interviews, the EASO tool for identification of vulnerabilities is in place, but not used in a systematic way in each hotspot.<sup>113</sup> Visible vulnerabilities such as pregnant women or single-headed households, unaccompanied minors or people with disabilities are usually identified already at the port.

<sup>109</sup> See also the SOP, according to which "From the moment of entry, the period of stay in the facility has to be as short as possible, compatibly with the national legal framework."

<sup>110</sup> There are ideas of a cards system with different colours marking the first period up until completion of identification, where exit of the centre is not allowed, and the phase between identification and transfer to a reception centre, where exit will be allowed. Interview with Prefect of Trapani, 10 May 2016

<sup>111</sup> Interview with Director of the managing body Castelnuovo di Porto, 21 July 2016

<sup>112</sup> Interview with psychologist of the managing body Castelnuovo di Porto, 21 July 2016

<sup>113</sup> Interview with UNHCR officer 28 April 2016

<sup>93</sup> In the letter of 10 February 2016 from the UGLP and National Observatory of Forensic Police to the Head of Police, the police says that the current practice may expose them to the risk of being persecuted for perpetrating private violence according to Article 610 c.p. or to 582 c.p. in case of personal injury deriving by the coercion of the police official. The Union underlined that, according to the law, trying to win the passive resistance of a person who has to be fingerprinted, by using the physical force or even traumatically coercing his/her will, is a criminal offence. On 16 March 2016 the Ministry of Interior's Department of Public Security answered through a Circular informing that an amendment to the current legislation on international protection is planned adding specific provisions on identification and forced fingerprinting in hotspots.

<sup>94</sup> Interview with UNHCR Senior Protection Associate 28 April 2016

<sup>95</sup> SENATE OF THE REPUBLIC (ITALY), Commissione straordinaria per la tutela e la promozione dei diritti umani –XVII Legislatura. Rapporto sui Centri di identificazione ed espulsione in Italia, February 2016, page 22.

<sup>96</sup> Ibid, page 22. An Eritrean interviewed by CIR during the field mission in Castelnuovo di Porto reported that in April 2016, when he was in Trapani, some Eritreans were subject to pressure by the police to be fingerprinted.

<sup>97</sup> AIDA Italy report, December 2015 [www.asylumineurope.org/reports/country/italy](http://www.asylumineurope.org/reports/country/italy)

<sup>98</sup> 12,360 minors disembarked in 2015 and 13,026 in 2014, Source: MOI, Department Civil Liberties and Immigration

<sup>99</sup> The bill was put before Parliament in 2013 but blocked at the State-Regions Conference following the unfavourable opinion of the Committee on Budget, and it is still under scrutiny.

<sup>100</sup> The proposal A.C. 1658 was discussed by the Parliament Commission on the 3rd of August 2016

<sup>101</sup> Interview with Save the Children Legal Expert in Lampedusa 25 May 2016

<sup>102</sup> The procedure recommended by the SOP is a holistic approach which envisages age assessment through phases, applying non-invasive methods in the first instance, and medical type methods only as a last resort. Age assessment by medical examinations should be arranged in case of reasonable doubt about the actual age being less than 14 or the possible age being over 18. Interview with director of the managing body of the Trapani hotspot 10 May 2016

<sup>103</sup> AIDA, Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children,, Available at: [www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/AIDA%20Brief%205\\_AgeAssessment.pdf](http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/AIDA%20Brief%205_AgeAssessment.pdf) See also Italy: a worrying trend is developing in the 'hotspots', available at: [www.ecre.org/italy-a-worrying-trend-is-developing-in-the-hotspots/](http://www.ecre.org/italy-a-worrying-trend-is-developing-in-the-hotspots/)

<sup>104</sup> Department Civil Liberties and Immigration, MOI

Non-visible vulnerabilities such as victims of trafficking, torture survivors, victims of extreme violence etc, tend to be identified much later, if at all, in the regional hub where people stay longer than in the hotspots.<sup>114</sup>

In the regional hubs, further identification of vulnerabilities is conducted by medical and socio-psychological staff. It was mentioned in interviews at Castelnuovo di Porto, however, that information sharing and coordination about vulnerabilities is weak with the facilities where people have been previously identified, registered and screened.<sup>115</sup> For those coming from hotspots the medical screening is usually very general, while for those coming from non-hotspot areas it is often lacking.<sup>116</sup> Doctors have suggested that the system could be improved through a centralised database for the migrants' medical files.

With regards to **trafficking victims**, IOM informs the anti-trafficking national network and the prefecture. Once a place in a specialized shelter is found, IOM will assist the person with the next steps. However, the number of available places in such centres is limited.<sup>117</sup> As a result, victims of trafficking stay longer than others in the hotspots. Sometimes they are moved to a CAS until a place is available.<sup>118</sup> Officers specialized in the identification of victims of trafficking are few, and the time in hotspots too short to detect such vulnerabilities and develop a relationship of trust. The Mol can also refer a potential victim of trafficking to the IOM, when the person is in front of the Territorial Commission (CTRPi) during the personal hearing. The phenomenon of Nigerian women that undergo sexual exploitation in Italy and other EU countries is steadily increasing.<sup>119</sup>

### 3.4 Reception conditions in the hotspots

Reception conditions and standards differ substantially between the first and second line centres; they also vary from one CAS emergency reception centre to another. Internal monitoring of the reception conditions in Italy is conducted for the Mol by UNHCR and IOM; UNHCR monitoring focuses on CAS emergency reception centres, and IOM monitors other first line reception centres.

According to the Commission, the existing reception capacity in Italy still needs to be improved especially regarding the difference in quality between first and second line reception, and the availability and quality of specialised reception of unaccompanied minors. Monitoring systems also need to be enhanced across the country.<sup>120</sup>

During the last six months, the Commission has suggested that Italy should set up more hotspots to increase the capacity of 1,600 persons, along with mobile hotspots for disembarkation in non-hotspot areas. In addition, adequate reception facilities should also be set up in ports in non hotspot areas.<sup>121</sup>

Reception conditions in the hotspots of Lampedusa, Taranto and Pozzallo face systematic problems, as also observed by Amnesty's report.<sup>122</sup> The reception conditions in the Lampedusa hotspot have been criticised since the centre's opening.<sup>123</sup> The centre is divided in compounds with a dedicated part for minors and women, the immigration office from the Questura of Agrigento, administrative offices of the managing body, the offices for the international organizations operating within the centre and the health unit. Medical staff were present. Following the inspection carried out by the Senate Extraordinary Commission for the Promotion of Human Rights it was noted that toilets were not heated or cleaned properly, and the space in the dormitories was insufficient. According to the organizations present on the island that we interviewed, toilets did not have doors and in some compounds the lights were out. There were no communal rooms. Prolonged stay also makes accommodation more difficult. While the Lampedusa hotspot is a closed centre, people exit from a hole in the fence and this seems to be tolerated. In May the men's compound was set on fire and 180 places were lost.

Conditions were better in Trapani and in line with standards provided by law at the time of the visit. Spaces were sufficient and clean, daily meals were served in a big canteen; children had a playroom; women and unaccompanied minors were accommodated separately from adult men.

120 Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration Italy – State of Play Report, Brussels, 10.2.2016 COM(2016) 85 final ANNEX 3, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_03\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_03_en.pdf)

121 See the Communications Fourth, Fifth and Sixth reports on Relocation and Resettlement, Brussels, 15.6.2016 COM(2016) 416 final, 13.7.2016 COM(2016) 480 final, 28.9.2016 COM(2016) 636 final, all available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm)

122 Amnesty International, Hotspot Italy: how EU's flagship approach leads to violations of refugees and migrant rights, October 2016, p.28, available at: [www.amnesty.org/en/documents/eur30/5004/2016/en/](http://www.amnesty.org/en/documents/eur30/5004/2016/en/)

123 See for example, La Repubblica, 7 March 2016, Lampedusa, 'Mandateci via da questa prigione', available at: [www.repubblica.it/solidarieta/immigrazione/2016/05/07/news/lampedusa-139305423/?refresh\\_ce](http://www.repubblica.it/solidarieta/immigrazione/2016/05/07/news/lampedusa-139305423/?refresh_ce)

The centre had two medical rooms and medical staff present.<sup>124</sup> There were six compounds, with a capacity of 36-84 places each; dormitories had a common room and bathrooms, dining room, a playroom for children, offices and a separate part for infectious diseases.<sup>125</sup> Yet, the compounds, toilets, doors and windows were in need of substantial maintenance<sup>126</sup>.

The conditions in Pozzallo, however, have been much worse, as documented by different organisations. In December 2015, MSF pulled out of Pozzallo criticising the lack of political will and policy response from the side of the Italian authorities after months of advocacy to improve reception conditions.<sup>127</sup> Much of this echoes previous criticism by MSF on the reception system and living conditions in Pozzallo during 2015, primarily on the availability of services for the most vulnerable, hygiene and overall standards and maintenance. Despite MSF's withdrawal, conditions were similar a few months later.<sup>128</sup> Men, women and children were still not accommodated in separated areas.<sup>129</sup>

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

With regards to **unaccompanied minors** in particular, they are placed in hotspots, even though UAM should not be accommodated in CIE or in reception centres for adults. Instead, unaccompanied minors should be accommodated in first reception facilities as per legislative decree of 27 August 1997 and then enter second line reception (SPRAR), regardless of an international protection request.<sup>130</sup>

124 If the number is under 150 persons doctors will ensure their presence 8 hours per day, while if the number of people is over 150 the medical presence has to be ensured 24 hours 7/7 days. The health unit with nurses present is 24h 7/7 days. Interview with Director of the Managing body in Trapani 10 May 2016

125 Interview with Director of the managing body in Trapani 10 May 2016

126 See also E. Palazzotto, "Il sistema hotspot e la negazione dello stato di diritto in Europa", minority report on the hotspot approach in the frame of the reception system and identification, p. 51, 4 November 2016;

127 MSF, Rapporto di Medici Senza Frontiere Sulle condizioni di accoglienza nel CPSA Pozzallo, available at: [bit.ly/1THaK01](http://bit.ly/1THaK01), Oxfam, "Hotspots: Rights denied", Briefing Paper, May 2016, available at: [www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp-hotspots-migrants-italy-220616-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-hotspots-migrants-italy-220616-en.pdf)

128 AIDA, Wrong counts and closing doors; The reception of refugees and asylum seekers in Europe, March 2016, p.30, [www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_wrong\\_counts\\_and\\_closing\\_doors.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_wrong_counts_and_closing_doors.pdf)

129 See E. Palazzotto, "Il sistema hotspot e la negazione dello stato di diritto in Europa", minority report on the hotspot approach in the frame of the reception system and identification, p. 51, 4 November 2016;

130 The duration of stay in first reception facilities as defined by Article 19 of Decree 142/2015 is limited to 60 days. The proposal AC 1658 wants to reduce the limit to 30 days and introduce a limit of 10 days for identification activities.

The overall capacity of first reception facilities for UAM is 641 places, while the SPRAR network for unaccompanied minors has 1,852 places.<sup>131</sup> The majority of UAM is accommodated in communities under the responsibility of municipalities.

In Lampedusa unaccompanied minors were accommodated in a separated compound, but this was not equipped with showers and toilets were often broken. As a result, unaccompanied minors often had to stay in the compound for adults. In Trapani unaccompanied minors were separated from adults if numbers allowed.

Due to the sharp increase in the number of unaccompanied minors arriving over the last three years it is increasingly difficult to find specialised shelter. In practice, unaccompanied minors are obliged to remain in the hotspots, and ironically, they wait longer than adults before being transferred to a reception centre. In Lampedusa, while adults stayed for a few days, minors might stay for a couple of months. It has been reported that more than 135 unaccompanied minors were circulating on the island at any time without guardianship.<sup>132</sup> Before the implementation of the hotspot approach unaccompanied minors were transferred immediately from ports to municipality centres. It was mentioned that the Trapani municipality now acts with less readiness in finding specialised accommodation, given the possibility to temporarily accommodate them in the hotspot. The prefecture also has trouble finding places.<sup>133</sup> Article 19 of Law 142/2015 was amended on 7 August 2016 (Law 160) introducing a new paragraph, according to which, in the case of increased arrivals of unaccompanied minors and lack of available places, the prefectures can set up temporary structures for up to 50 UAM over 14. Nevertheless, if that takes the form of a, or other, temporary structure it would be just another emergency solution without any integration prospects.

Contrary to hotspot facilities, regional hubs are open centres. Villa Sikania was guarded by the police, asylum seekers and relocation candidates were provided with a badge to enter and exit the premises.<sup>134</sup> Families and women are accommodated in rooms, single men in a separate area. Medical assistance is provided by a doctor and a nurse. According to the managing body of the centre, the funds available are not sufficient to cover the costs of prolonged stay.

131 Revised Italian Roadmap, 31 March 2016

132 Commissione Straordinaria Per La Tutela e La Promozione Dei Diritti Umani Senato Della Repubblica – Xvii Legislatura Rapporto Sui Centri Di Identificazione ed Espulsione In Italia (February 2016)

133 Interview with Prefect of Trapani 10 May 2016

134 Interview with Director of the managing body in Agrigento 24 May 2016

In Castelnuovo di Porto conditions were mixed at the time of the visit. The common areas were in good condition, whereas the dormitory was dilapidated. The centre is equipped with an infirmary, administrative offices, language teaching room, shops, a playroom for children, a mosque and a chapel. Each room has its own bathroom. Medical staff is present, and medical screening is carried out in the centre in partnership with a private hospital.<sup>135</sup>

### 3.5 Relocation

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

According to the Commission, some progress has been made over the summer. A relocation protocol and workflow aims to facilitate procedures; Europol will be involved in supporting exchange of information on security checks; and some steps have been taken to support relocation of vulnerable persons including unaccompanied minors. Italy has announced a pilot relocation exercise for unaccompanied minors which, however, still needs to take shape.<sup>136</sup>

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

According to the relocation Decision, the nationalities eligible are those for which the proportion of positive decisions granting international protection has been 75% or more, based on average Eurostat data updated every three months. In practice, this percentage applies to a very few nationalities present in Italy.

<sup>135</sup> Psychosocial assistants, legal officers, cultural mediators were also present, including Eritrean. Interview with Director of the managing body of Castelnuovo di Porto 21 July 2016

<sup>136</sup> Communication from the Commission to the European Parliament, the European Council and the Council, Sixth report on relocation and resettlement, Brussels 28.09.2016, COM(2016) 636 final, ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\_report\_on\_relocation\_and\_resettlement\_en.pdf

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

#### Registration of the relocation application

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

Those who accept to be relocated are registered in the VESTANET system as CAT1 and transferred within 24-48 hours to the regional hubs. Asylum seekers' requests are verbalized through a specific model "C3" in English and used for the matchmaking process conducted at the Dublin Unit office in Rome.

The Immigration Officer or EASO enters the applicant's data in the C3 form, attaching the agreement to participate to relocation signed by the applicant, the security check, the medical check and any other forms (vulnerability and exclusion form).<sup>138</sup> Identified vulnerabilities are reported in a dedicated form and attached to the C3 form together with the medical examination paper. The form can also include specific needs and requirements to ensure continuity of treatment in the relocation Member State.<sup>139</sup> The form is printed and signed by the applicant, the cultural mediator, the immigration police and the EASO expert. A scanned electronic version of the file is sent to the Dublin Unit.

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

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

<sup>137</sup> Interview with EASO Process Support Officer in Rome 26 May 2016

<sup>138</sup> The form is the same as the one filled in for the asylum application (C3), the only difference concerns the attachments.

<sup>139</sup> Interview with EASO Process Support Office in Rome 26 May 2016

<sup>140</sup> Interview with EASO Process Support Officer in Rome 26 May 2016

#### Processing the relocation application

For the matching process, EASO experts prepare the relocation request and record candidates' preferences, family links and vulnerabilities or special needs. The liaison officer checks the relocation request against the pledge of the Member State. Matchmaking takes place before the official relocation request is sent and no relocation request can be sent to a Member State if the application does not fit with the pledge of the Member State concerned. The relocation request is officially sent by the Dublin Unit. EASO supports the Dublin Unit in processing relocation and Dublin procedures.<sup>141</sup> The great majority of EU Member States' liaison officers carry out their tasks remotely from capitals. At the time of the interview with the head of the Dublin Unit in May 2016 only five liaison officers were permanently deployed in Italy by Member States.

Member States can reject relocation requests on exclusion grounds or for security reasons. In both cases, in line with the relocation Decisions, the Member State should provide reasons to justify the rejection. There is no appeals procedure in case of unreasoned rejection and the only available means is infringement proceedings. Member States have rejected relocation requests with general reference to threat to national security and public order, or the exclusion clause provided by the EU Directive 95/2011. According to interviews, some rejections are reported to have been completely unfounded.<sup>142</sup>

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

<sup>141</sup> Under the mandate of the Mol EASO has two officers, one coordinator and ten officials in the Dublin Unit and there is the intention to extend their presence up to 15 officials.

<sup>142</sup> Interview with UNHCR officer in Rome 28 April 2016

<sup>143</sup> Communication from the Commission to the European Parliament, the European Council and the Council, Sixth report on relocation and resettlement, Brussels 28.09.2016, COM(2016) 636 final, p.10, ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\_report\_on\_relocation\_and\_resettlement\_en.pdf

<sup>144</sup> 2003 - GUIDELINES ON INTERNATIONAL PROTECTION: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees; 2006 - UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees

If family links meet the Dublin criteria, Dublin Regulation provisions apply. Family links not covered by Dublin provisions can be taken into account for the relocation process. Moreover, for a couple comprised of two persons of different nationality, in principle, they are both considered eligible as long as one belongs to an eligible nationality.

According to the relocation Decisions, unaccompanied minors should be included in the relocation schemes and prioritized as a vulnerable group. However, it was stated that Member States' pledges for minors are not sufficient.<sup>145</sup> If a person is considered an adult (according to the age assessment) and then transferred to another EU Member State under relocation, the asylum application is processed from the beginning, including the possibility that another age assessment is conducted by the Member State's authority.<sup>146</sup> Article 8.4 of the Dublin Regulation III allows minors to seek international protection in the Member State where they are.

Main challenges related to relocation of unaccompanied minors include the appointment of legal guardians, the minor's valid consent and best interest assessment. In Italy, several months are needed to appoint a legal guardian, which is incompatible with the relocation procedure. Save the Children has proposed to make use of article 3 of L. 184/198 according to which the manager of the centre where the unaccompanied minor is accommodated can temporarily act as a legal guardian until the formal appointment of a permanent legal guardian is finalized.<sup>147</sup>

#### Pre-departure information

Information about relocation is provided by EASO, UNHCR at disembarkation places, hotspots and Regional Hubs. Once someone accepts to participate in relocation and the transfer decree is notified, IOM provides pre-departure information. Fixed teams in Villa Sikania and Bari and a roving team covers the different centres. Information concerns the living conditions, rights and obligations and national asylum procedures in the relocation Member State.<sup>148</sup> The information session lasts a few hours and is usually provided in groups. However, in some circumstances it could be necessary to provide information individually. Counselling is more intense when the country of relocation is seen as less attractive. In Castelnuovo di Porto a brief presentation is given in several languages, including videos on the destination Member States. Every asylum seeker accommodated here goes through an individual interview with the different divisions.<sup>149</sup>

<sup>145</sup> Interview with head of the Dublin Unit in Rome 31 May 2016

<sup>146</sup> Interview with EASO Process Support Officer in Rome 26 May 2016

<sup>147</sup> Interview with Save the Children Legal Expert in Lampedusa 25 May 2016

<sup>148</sup> The latter is also provided by the MS Liaison officers

<sup>149</sup> Interview with Director of the managing body Castelnuovo di Porto, 21 July 2016

Once asylum seekers agree to relocation in the designated country, travel arrangements are made with the assistance of IOM (usually within a week from the notification of transfer). Further identification of vulnerabilities is conducted at this point to prepare the transfer and reception in the relocation country.

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

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

Long waiting times can however be frustrating. On 8 July, asylum seekers organized a demonstration in front of Castelnuovo di Porto against the long waiting times and differential treatment between some who arrived later but departed soon, while others who had arrived first were still waiting eight months later.<sup>152</sup> The disembarkation date seems not to be taken into account in relation to the opening of quotas. The asylum seekers wrote a letter asking for more information on the selection criteria and asking for EASO to be present in the centre. Lack of trust and desperation due to long waiting times makes it hard to keep candidates in the procedure; the MoI has noted that some asylum seekers leave the centre every week on their own.<sup>153</sup>

The slow pace of relocation combined with high numbers of Eritreans arriving throughout 2016 has led to dispersion of relocation candidates in the territory. In addition, there are significant numbers of Eritreans in informal centres (Baobab) in Rome, who reported to CIR that they had not been sufficiently informed about relocation. Such a situation seems also to confirm that information provided immediately after disembarkation is not absorbed by people still disoriented and under distress and that disembarkations taking place far from hotspot areas – the great majority – probably suffer from information gaps. Finally, many candidates that leave the centres try to cross the borders on their own, a sign that relocation has so far not managed to offer an alternative to secondary movements.

150 Interview with UNHCR Senior Protection Officer in Rome 28 April 2016

151 Interview with UNHCR Legal Officer in Agrigento 24 May 2016

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

153 Interview with Deputy Prefect, MOI, 25 July 2016

### 3.6 Returns

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

In practice, the hastened practice of pre-identification described earlier is the one that draws the distinction between those stating the intention to seek asylum and the rest, who according to the hotspot approach should be returned. Identifying and returning those not in need of protection before they continue their journey further has been one of the main objectives of the hotspots. Moreover, practically speaking, this selection is often based merely on nationality, which may in practice result in collective expulsions without having assessed individual circumstances.<sup>155</sup> Neither practices are legitimate or in line with international law, and have received substantial criticism by different organisations.

A report by a lawyer's office in Eastern Sicily shows that from 2014 up to July 201 – starting prior to the hotspots and during the hotspots implementation – overall rejections were standardised and issued on the basis of nationality without any individual examination of the case<sup>156</sup>. It was observed that in the first months of 2016, migrants who landed in Sicily were directly transferred from the hotspots to the CIE of Ponte Galeria (Rome) with no possibility to express their intention to seek asylum.

154 The rejection order is referred to in Article 10, paragraphs 1 and 2, of Legislative Decree No. 286/98 and means an order to leave the country autonomously within seven days, whereas the return administrative order, referred to in Article 13, paragraph 2, of the same decree, is an expulsion order that needs to be enforced.

155 See also Khlaiifa and Others vs Italy, on collective expulsions without having provided the necessary information and without having assessed individual circumstances, [www.asylumlawdatabase.eu/en/content/ecthr-khlaiifa-and-others-v-italy-no-1648312-1-september-2015](http://www.asylumlawdatabase.eu/en/content/ecthr-khlaiifa-and-others-v-italy-no-1648312-1-september-2015)

156 196 rejection orders issued by the police in Eastern Sicily from 2014 until July 2016 were analysed in the framework of the project "Opposition to rejection Decrees in Eastern Sicily" report brought to the attention of the Parliamentary Commission of inquiry on reception system and identification and expulsion centres. Trombino Legal Office, "Opposition to rejection Decrees in Eastern Sicily" project, funded by Open Society Foundation.

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

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

For Lampedusa, during the last 3 months of 2015 (from 1 October to 31 December 2015), out of the 3,147 migrants who passed through the hotspot, 1,280 received a rejection order and 309 were transferred to CIE. In the next five months, from 1 January 2016 to 31 May 2016, from the 5,559 migrants disembarked in Lampedusa, 17 were expelled and sent to CIE by the Prefecture of Agrigento and 614 received a rejection order by the Questura; 58 were sent to CIE and 140 returned.<sup>159</sup> In Trapani, for a similar period (22 December 2015 to 31 May 2016) of the 6,790 people who passed through the hotspot, 26 were expelled by the prefecture out of which eight sent to CIE; 138 were rejected by the Questura, out of which 51 sent to CIE. Among them 12 were effectively returned.<sup>160</sup>

Migrants returned from Italy were for the most part Tunisian, Moroccan, Nigerian and Egyptian, countries with which Italy has signed bilateral readmission agreements. In the first five months of 2016 (1 January 2016–31 May 2016) 2,127 migrants were returned, 310 from Egypt, 361 from Morocco, 70 from Nigeria, 393 from Tunisia and 553 from Albania.<sup>161</sup>

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

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

158 Interview with UNHCR Senior Protection Officer in Rome 28 April 2016

159 Data provided by the Analysis office of Public Security department of the MoI

160 Data provided by the Analysis office of Public Security department of the MoI

161 Data provided by the Analysis office of Public Security department of the MoI

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

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

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

162 See Migrants and secret agreements: press conference for the asylum roundtable, Rome, 27 September 2016, [www.cir-onlus.org/en/home/2152-migrants-and-secret-agreements-press-conference-for-the-asylum-round-table-rome-27-09](http://www.cir-onlus.org/en/home/2152-migrants-and-secret-agreements-press-conference-for-the-asylum-round-table-rome-27-09) and Letter signed by a group of MEPs to Angelino Alfano, Paolo Gentiloni and Franco Gabrielli 26 October 2016, available at: [www.ellyschlein.it/wp-content/uploads/2016/11/ep-meps-letter-collective-expulsions-to-sudan.pdf](http://www.ellyschlein.it/wp-content/uploads/2016/11/ep-meps-letter-collective-expulsions-to-sudan.pdf)

163 ECRE, Italy's deportation of 48 Sudanese citizens may amount to collective expulsion 16 September 2016, [www.ecre.org/italys-deportation-of-48-sudanese-citizens-may-amount-to-collective-expulsion/](http://www.ecre.org/italys-deportation-of-48-sudanese-citizens-may-amount-to-collective-expulsion/)

164 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL AND THE EUROPEAN INVESTMENT BANK on establishing a new Partnership Framework with third countries under the European Agenda on Migration, Strasbourg, 7.6.2016 COM(2016) 385 final, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication\\_external\\_aspects\\_eam\\_towards\\_new\\_migration\\_ompact\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf) and



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

## RECOMMENDATIONS FOR THE HOTSPOTS IN ITALY

- Italian law, including constitutional provisions, must be strictly applied in the hotspots approach; hotspots should remain open facilities and respect the constitutional limit of 48 hours detention of third country nationals for the purpose of identification
- Non admission to the asylum procedure on the basis of nationality is in violation of the asylum legislation and should never take place.
- Italy should refrain from collective expulsions
- Monitoring should cover all practices, from pre-identification to screening, to identification, access to the asylum procedure. Independent bodies should be present during fingerprinting activities; this could be the newly established Ombudsman for the rights of detainees
- Reception conditions should be regularly monitored by independent actors, and reports should be made public
- Unaccompanied minors should never be detained, and after identification should be immediately transferred to specialised accommodation in line with current legislation. A centralized system for the reception of unaccompanied minors should be set up and adequate capacity should be created in second-line reception (SPRAR)
- Sufficient information on international protection should be given before pre-identification in a language that migrants understand. The use of the foglio notizie and the possibility to apply should be sufficiently explained before pre-identification. Individual information should be provided along with group sessions.
- Identification and registration should take into account the health conditions and psychological stress which people experience following disembarkation
- Sufficient staff should be made available to provide information upon arrival, also through the involvement of well experienced civil society organizations. However, this remains the authorities' primary responsibility, and can be assisted by, but not substituted, by EASO and organisations.
- More interpreters and cultural mediators are needed, especially for sub-Saharan nationalities
- Referral mechanisms need to be in place and used as standard practice to identify protection needs and vulnerabilities
- The identification of vulnerabilities and special needs could be supported by NGOs in the hotspots or disembarkation areas
- Information sharing tools need to be established to facilitate medical referrals and continuity of care, when people are transferred from one place to the other; EASO can assist with exchange of information on vulnerabilities between EASO Asylum Support Teams in the hotspots and in the hubs
- The access of NGOs and lawyers in the hotspots should be ensured in order to provide information and legal counselling before and during identification and access to the asylum procedure
- Relocation of unaccompanied minors needs to be implemented without delay; relocation procedures should be speeded up to keep candidates in the programme

## 4. The hotspots in Greece

### Key findings

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

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

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

The first issue in relation to the entry into effect of the EU-Turkey Statement is the scale of arrivals on the islands. The total number of sea arrivals in Greece during 2015 is estimated to be 856,723 people, with another 170,815 for 2016.<sup>165</sup>

The number of arrivals dropped significantly after the signing of the EU Turkey Statement. In particular, while 123,395 persons arrived in Greece in the first two months of 2016, in March the arrivals decreased to 26,971, in April to 3,650, in May to 1,721, in June to 1,554 and in July to 1,920.<sup>166</sup> Nevertheless, the numbers increased again in late summer and September. According to the Commission's Progress Report on Turkey, 22,636 irregular crossings from Turkey to Greece occurred between April and September.<sup>167</sup> In total 165,202 persons arrived in the country between January and September 2016.

<sup>165</sup> Data up to 22 November, see UNHCR, Refugees/Migrants Emergency Response – Mediterranean, Greece, accessed on 22 November. Data in this portal is updated daily. Available at: [data.unhcr.org/mediterranean/country.php?id=83](http://data.unhcr.org/mediterranean/country.php?id=83)

<sup>166</sup> UNHCR, Refugees/Migrants Emergency Response – Mediterranean, Greece, available at: [data.unhcr.org/mediterranean/country.php?id=83](http://data.unhcr.org/mediterranean/country.php?id=83)

<sup>167</sup> Commission Recommendation of 28.9.2016 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, Brussels, 28.9.2016 C(2016) 6311 final, page 2, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/recommendation\\_addressed\\_to\\_greece\\_on\\_the\\_specific\\_urgent\\_measures\\_to\\_be\\_taken\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/recommendation_addressed_to_greece_on_the_specific_urgent_measures_to_be_taken_en.pdf)

<sup>168</sup> European Commission, SWD(2016), 366 final, Commission Staff Working Document, Turkey 2016 Report, p. 79.

Greece still remains the main country of first entry from the Eastern Mediterranean route. This combined with the 60,528 persons who have become stranded in Greece following the closure of the Balkan route, and the slow implementation of relocation schemes, does little to relieve the pressure and the challenges the country is facing.<sup>168</sup>

The number of deaths during the first six months of 2016 also decreased but still remains significant (146 dead, out of which 47 since the activation of the EU Turkey Statement, and 51 missing up to November 2016).<sup>169</sup> According to Frontex, this decrease should be attributed to increased patrolling since the Statement and the closure of the Balkan route.<sup>170</sup> According to the Lesvos Coast Guard, the decrease is due not only to increased border patrols on the Turkish side, but also the presence of NATO and increased assets provided by Member States and Frontex (almost double compared to 2015) and deployed for search and rescue in Greek waters.<sup>171</sup>

**Table 4: Arrests for irregular entry or stay in Lesvos and Chios (2016)<sup>172</sup>**

	Jan.	Feb.	March	April	May	June	July
Lesvos	42,603	31,416	14,155	1,641	809	490	1,115
Chios	12,807	13,931	8,330	1,145	486	348	255

Source: Greek Police, available at: [tinyurl.com/gt4nfkx](http://tinyurl.com/gt4nfkx)

The border closure of the Balkan route and the implementation of the EU-Turkey statement have also had an impact on arrivals in terms of nationality, gender and age.<sup>173</sup> Still, according to the UNHCR, since January 2016, 87% of the arrivals come from the world's top 10 refugee producing countries.

<sup>168</sup> European Commission, Recommendation of 28.9.2016 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, Brussels, 28.9.2016 C(2016) 6311 final, page 2, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/recommendation\\_addressed\\_to\\_greece\\_on\\_the\\_specific\\_urgent\\_measures\\_to\\_be\\_taken\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/recommendation_addressed_to_greece_on_the_specific_urgent_measures_to_be_taken_en.pdf)

<sup>169</sup> The 47 deaths data found in the SWD(2016), 366 final, Commission Staff Working Document, Turkey 2016 Report, p. 79. The rest from the UNHCR Greece data snapshot - 20 Nov 2016 UNHCR Data Portal – Greece, [data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Country%5B%5D=83](http://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Country%5B%5D=83)

<sup>170</sup> FRONTEX, Western Balkans Risk Analysis Network Quarterly Report, available at: [frontex.europa.eu/publications/](http://frontex.europa.eu/publications/)

<sup>171</sup> Interview with Coast Guard in Lesvos, 23 May 2016

<sup>172</sup> According to the police interviewed in Chios, since the VIAL hotspot started operating (14 February) and until 15 June, 19,559 arrivals have been reported to Chios, of which only 2,893 following the EU-Turkey Agreement. Interview with the police in Chios, 15 June 2016

<sup>173</sup> UNHCR, GREECE FACTSHEET 1 – 31 July 2016, available at: [data.unhcr.org/mediterranean/documents.php?page=12&view=grid](http://data.unhcr.org/mediterranean/documents.php?page=12&view=grid)

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

Nationalities	Jan	Feb	March	April	May	June	July	August	Sept	October
Syria	30309	29412	14399	1268	525	459	510	1112	866	979
Afghanistan	18846	13943	6133	580	270	215	201	324	479	405
Pakistan	2243	1539	1880	637	231	233	345	737	513	104
Iraq	11964	9134	2515	381	162	183	104	327	497	535
Iran	2193	1593	674	73	64	51	73	123	155	214
Other	1860	1445	1370	711	469	413	687	824	570	669
Total	67415	57066	26971	3650	1721	1554	1920	3447	3080	2906

Source Hellenic Police and/ Coast Guard, available at UNHCR Factsheet Greece 1-31 October 2016. [tinyurl.com/z4gva4k](http://tinyurl.com/z4gva4k)

Greece has increased its **reception capacity**, which, according to government data, currently stands at 69,218 places in temporary reception facilities for both irregular migrants and asylum applicants.<sup>174</sup> It needs to be pointed out, however, that there is a lack of clarity in terms of the types of facilities included under the overall term reception capacity.<sup>175</sup> Recently Greece announced the plan to revamp the reception system and establish 39 open reception centres for asylum seekers with a capacity of 32,700 places.<sup>176</sup>

The five hotspots set up in the islands close to the sea border with Turkey (Lesvos, Samos, Chios, Leros and Kos) have a capacity of 7,450 places.<sup>177</sup> They have been consistently exceeding the capacity and by end October 2016 the islands have been hosting more than 15,000.<sup>178</sup> The hotspot in Lesvos (Moria) was established on 16 October 2015, and is the first hotspot established in Greece in the place of a previous first reception centre (FRC). The hotspot in Chios (VIAL) started operating on 14 February 2016.

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

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

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

In Chios the Asylum Service at the moment of the visit had seven staff conducting registrations, three of which were seconded from the police, and three case-workers. The Regional Asylum Office (RAO) in Moria, Lesvos, had six staff for registration, four case-workers and around 12-14 police officers. The Regional Asylum Office (RAO) of Lesvos processes applications from persons applying in the islands of Lesvos, Limnos and Ai-Stratis. In the interviews the AS stated that current capacity is sufficient to cover the needs.<sup>179</sup> Various actors and the Commission have however repeatedly commented on capacity shortages throughout this period, leading to delays in processing the cases, prolonged stays and frustration in the camp population.

The **Reception and Identification Service**, former First Reception Service (FRS/RIS), handles the management of Reception and Identification Centres (RIC) in the hotspots.<sup>180</sup> The FRS/RIS conducts identification and nationality screening, medical screening, a basic provision of information, and referrals. Longer term reception of asylum seekers is the responsibility of the Directorate of Reception and Social Integration at the Ministry of Interior. This in itself confirms that in theory accommodation in the hotspots should be distinguished from accommodation for asylum seekers in the asylum procedure, even if in practice the types of facilities used are similar and the length of stay for the two categories prolonged. In Chios, at the time of the visit, the FRS/RIS was composed of the Head of the FRS/RIS – Site Manager, four staff, two police staff per day for registration and six police staff as guards.

<sup>179</sup> Interview with the Asylum Service in Moria, Lesvos, 24 May 2016

<sup>180</sup> The FRS changed into RIS with Ministerial Decision 16931 of the Minister of Interior and Administrative Reconstruction (Official Gazette B' 1410/19.5.2016) web3.eetaa.gr:8080/nomothesia/fek/fek/f\_1392.pdf

<sup>174</sup> Data of 20 November 2016, Summary statement of refugee flows, Coordinating body for the refugee crisis, [bit.ly/2eTksTx](http://bit.ly/2eTksTx)

<sup>175</sup> Only two out of all reception centers in function have been legally founded pursuant to Ministerial Decisions, the Open Reception Centre of Elaionas and of Leros (PIKPA). All the rest are in a de facto function, without been legally established. ECRE/AIRE, With Greece: Recommendations for refugee protection, July 2016, 22-23. See also ECRE, Comments on the Commission Recommendation relating to the reinstatement of Dublin transfers to Greece, February 2016.

<sup>176</sup> Commission Recommendation of 28.9.2016 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, Brussels, 28.9.2016 C(2016) 6311 final, page 5, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/recommendation\\_addressed\\_to\\_greece\\_on\\_the\\_specific\\_urgent\\_measures\\_to\\_be\\_taken\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/recommendation_addressed_to_greece_on_the_specific_urgent_measures_to_be_taken_en.pdf)

<sup>177</sup> European Commission, 'Third Report on the progress made in the implementation of the EU-Turkey Statement', Brussels 28.09.2016, COM (2016) 634 final, p. 6, available at: [ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-634-EN-F1-1.PDF](http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-634-EN-F1-1.PDF)

<sup>178</sup> [www.ekathimerini.com/213464/article/ekathimerini/news/migrants-in-five-aegean-hot-spots-rise-above-15000-mark](http://www.ekathimerini.com/213464/article/ekathimerini/news/migrants-in-five-aegean-hot-spots-rise-above-15000-mark)

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

#### EU presence in the hotspots

The **EURTF** office in Pireaus is staffed with officers from Frontex, EASO, Europol, Eurojust and FRA and the Hellenic Coast Guard, and collaborates with the Commission's Structural Reform Support Service (SRSS) based in Athens.<sup>181</sup> Little information was provided on the role of the Commission's 'EC support teams and only a few actors in the interviews mentioned having collaboration/exchange with them.

**Frontex** was present in Lesvos during fieldwork with 264 staff from Member States, a Support Officer and an Operational Coordinator. In Chios, Frontex was present with 80 staff. According to the Commission by November Frontex had 125 Officers in Lesvos and 92 in Chios.<sup>182</sup>

**EASO** at the time of the visit had five admissibility experts in Chios, and four interim EASO staff deployed to the Asylum Service to support registrations. By November there were 12 Member State experts, 13 interpreters, 3 EASO staff and 5 interim staff seconded to the Greek Asylum Service. In Lesvos, EASO had two inadmissibility experts, four case workers and 40 interpreters. Vulnerability experts were also among the staff present. By November there were six Member State experts, 11 interpreters, 4 EASO staff and 6 interim staff seconded to the Greek Asylum Service.<sup>183</sup> The Commission has repeatedly commented that the contribution of EASO guest officers remains insufficient to cover the needs; there is a shortage of experts provided by Member States, and those guest officers who were sent often lacked the right profile. The short period of deployment also mitigates against providing sustainable assistance.<sup>184</sup>

<sup>181</sup> Hotspots: interagency response to migratory pressure, European Day for Border Guards 2016, available at: [ed4bg.eu/sites/default/files/debates/summaries/Hotspots%20interagency%20response%20to%20migratory%20pressure.pdf](http://ed4bg.eu/sites/default/files/debates/summaries/Hotspots%20interagency%20response%20to%20migratory%20pressure.pdf)

<sup>182</sup> EC Hotspots State of Play – last update 11 November 2016, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_hotspots\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf)

<sup>183</sup> Ibid

<sup>184</sup> Migration -Implementation, Note from the Presidency, Brussels 3 October 2016, 12730/16 available at: [www.statewatch.org/news/2016/oct/eu-council-migration-implimentation-12730-16.pdf](http://www.statewatch.org/news/2016/oct/eu-council-migration-implimentation-12730-16.pdf)

Europol is present at all four hotspots, even though there was no Europol staff in Kos at the moment of the visit. Europol collects information on smuggling networks, exchanging information with MS.

Greece has submitted a Roadmap on the implementation of the relocation scheme and hotspots to the Council in October 2015.<sup>185</sup> Standard Operating Procedures were also to be adopted but have not been announced at the time of writing. No tailored legislation was in place for the function of the hotspots until April 2016. Common Ministerial Decision 2969/2015<sup>186</sup>, issued in December 2015, provides for the establishment of five "First Reception Centres" in the Eastern Aegean islands of Lesvos, Kos, Chios, Samos and Leros, the regulation of which was provided for by existing legislation regarding the First Reception Service.<sup>187</sup> This legislation was not however tailored for the regulation of the hotspots resulting in several aspects of their function remaining in a legislative vacuum.<sup>188</sup> In light of the EU-Turkey Statement, Law **4375/2016** came into force on 3 April 2016 and essentially reformed the Greek asylum and reception system.<sup>189</sup> The law also introduced a fast track asylum border procedure.

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

In particular, Article 46 of L.4375/2016 brings Greek law overall in line with the grounds for detention under Article 8 of the recast Reception Conditions directive.

<sup>185</sup> The document is not available publicly

<sup>186</sup> Common Joint Ministerial Decision No 2969/2015 (OG 2602/ /2-12-2015)

<sup>187</sup> Law 3907/2011 'On the Establishment of an Asylum Service and a First Reception Service, transposition into Greek Legislation of the provisions of the Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally staying third-country nationals" and other provisions".

<sup>188</sup> A draft law aiming to address the gap was put to public consultation for a few days but never submitted to vote, since. Meanwhile L.4375/2016 was adopted. Ministry of Interior and Administrative Reconstruction, Website for Consultations, "Amendment of the Law 3907/2011 and Law 4251/2014-Adaptation of Greek Legislation" available at: [www.opengov.gr/types/?p=3471](http://www.opengov.gr/types/?p=3471)

<sup>189</sup> Law 4375/2016 on the organization 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/EUC "on common procedures for granting and withdrawing the status of international protection (recast) (L180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions" issued on 3 April 2016. For an overview, see AIDA, 'Greece: asylum reform in the wake of the EU-Turkey deal', 4 April 2016, available at: [goo.gl/NAxMx6](http://goo.gl/NAxMx6).

Concerns arise however with regards to the provisions foreseen for the Reception and Identification Centres in hotspots and the mainland (Article 14).<sup>190</sup> In particular, new arrivals are subject to a restriction on freedom of movement within the premises of the centres during the reception and identification procedure. For asylum seekers, their entire asylum procedure can be conducted within the centre. Field information shows that, practically, this means that those staying in the centres are deprived of their liberty.

The practice of mandatory detention has been applied indiscriminately even to vulnerable cases, such as unaccompanied minors, families with small children, or persons with disabilities.<sup>191</sup> After their release, they are obliged to remain on the island until their application for asylum is examined.

This practice is clearly not in line with the relevant legal standards and the EU acquis,<sup>192</sup> especially since the grounds provided in Article 8(3)(c) of the recast Procedures Reception Conditions Directive (which the law aims to transpose) relating to detention during a border procedure for the purpose of deciding on an applicant's right to enter the territory, has not been transposed into Article 46 of Law 4375/2016.<sup>193</sup>

---

190 According to article 46, asylum seekers who have already been detained for immigration reasons can *remain* in detention under exceptional circumstances, subject to an individualised assessment, necessity and consideration of alternatives to detention, for one of the following grounds: (a) to establish their identity or origin; (b) to examine main elements of the claim where there is a risk of absconding; (c) when the person had the opportunity to seek protection and applies solely to avoid deportation; (d) when the person poses a threat to national security or public order; and (e) to conduct a Dublin transfer where there is a significant risk of absconding. In cases related to the establishment of identity or origin, main elements of the claim, or the filing of an asylum application solely to avoid deportation, detention may only last 45 days and can be renewed by a further 45 days if the Asylum Service does not withdraw its recommendation for detention. In cases relating to public order or a Dublin transfer, detention cannot exceed 3 months. Detention of unaccompanied children pending their referral to a dedicated reception facility has a maximum time-limit of 25 days, which can be prolonged by a further 20 days if the child cannot be transferred to such a facility due to exceptional circumstances, such as a large number of arrivals of unaccompanied children. See AIDA, Greece: asylum reform in the wake of the EU-Turkey deal, 04/04/2016, available at: [www.asylumineurope.org/news/04-04-2016/greece-asylum-reform-wake-eu-turkey-deal](http://www.asylumineurope.org/news/04-04-2016/greece-asylum-reform-wake-eu-turkey-deal)

191 GCR Submission on the execution of ECtHR judgment on the case MSS v. Belgium and Greece - May 2016, available at: [gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016](http://gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016)

192 In the Rahimi judgment the Court found a violation of article 5 §1 (f) ECHR, due to the fact that the detention of the applicant, an unaccompanied minor, appeared to have resulted from automatic application of the legislation in question, the Greek authorities had given no consideration to the best interests of the applicant as a minor or his individual situation as an unaccompanied minor and no alternatives to detention have been examined (See: ECtHR, Rahimi v. Greece, application No. 8687/08, 05-07-2011, par. 108).

193 A recent bill submitted to public consultation in October 2016 aims to address certain aspects of the transposition of the recast Reception Conditions Directive, still does not address the shortcomings of article 14 of L. 4375/2016, available at: [www.opengov.gr/yypes/wp-content/uploads/downloads/2016/10/sn\\_prosarmogi\\_diatajeis\\_odigias.pdf](http://www.opengov.gr/yypes/wp-content/uploads/downloads/2016/10/sn_prosarmogi_diatajeis_odigias.pdf)

In fact, while the border procedure (Article 60) resembles the procedure previously applied at airports (Presidential Decree 113/2013), this is no more limited to admissibility or to the substance of claims processed under an accelerated procedure, as required by Article 43 of the recast Asylum Procedures Directive. Importantly, the merits of an asylum application can now be examined at the border.

The Ministers of Interior and Defence can adopt exceptional measures in case of large numbers of asylum applications at the border or in Reception and Identification Centres. Police and unarmed soldiers can conduct registration of asylum applications; an expedient version of the border procedure is foreseen which lasts no more than 14 days at first and second instance, including a 1-day deadline for asylum seekers to prepare for the interview and a maximum 3-day deadline for lodging an appeal. Such short time limits may undermine the procedural and qualification guarantees provided by national and EU law.<sup>194</sup>

The Asylum Service can be **assisted by EASO** during the admissibility interview. However, GCR is aware of a number of cases where the interview has been conducted exclusively by EASO staff not in the country's official language, but in English. Similarly, the minutes of the interview are also kept in English. Apart from practical difficulties in reviewing the procedure and decisions, this raises issues of competence, relating to Article 2 (6) of the EASO Regulation. The EASO Regulation and the Operating Plans between EASO and Greece do not include any procedural rights in this regard. While procedural safeguards provided in the Greek legislation (L.4375/2016 Ar.52 para 2 to 7) should be applied regardless of who is conducting the interview, including EASO experts, cases have been reported where, in practice, EASO experts have disregarded such safeguards (such as the right to a lawyer's applicant to be present during the interview). In addition, it has been reported that those identified by FRS/RIS as vulnerable may, again, be subject to vulnerability assessment - within the scope of the examination of their claim - by an EASO vulnerability expert, but it is unclear whether that is conducted in line with Greek legislation

Moreover, according to GCR, the majority of first instance decisions issued seem to have an identical, short and unjustified reasoning, rejecting the applications as inadmissible, considering Turkey as a **"safe third country"**.<sup>195</sup>

---

194 GCR Submission on the execution of ECtHR judgment on the case MSS v. Belgium and Greece - May 2016, available at: [gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016](http://gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016)

195 GCR Submission on the execution of ECtHR judgment on the case MSS v. Belgium and Greece - May 2016, available at: [gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016](http://gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016)

It is remarkable, that the "safe third country" concept was never used by the Asylum Service or the Appeals Committees for Turkey until the 20th of March 2016; it is difficult to see how Turkey could be considered a "safe third country" for those having entered after the 20th of March and not for those having entered the day before.<sup>196</sup>

Moreover, Law 4399/2016 amending Law 4375/2016 gives EASO the right not only to assist but also to **conduct the first degree interviews**.<sup>197</sup> Similar competence and sovereignty issues apply here too, as also the concerns about procedural rights for interviews in line with national law.<sup>198</sup>

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

---

196 For concerns over Turkey as a "safe third country", see inter alia: Human Rights Watch, "Is Turkey Safe for Refugees?", 22 March 2016, available at: [www.hrw.org/news/2016/03/22/turkey-safe-refugees](http://www.hrw.org/news/2016/03/22/turkey-safe-refugees); Asylum Campaign Press Release, 31 March 2016 (in Greek), [asylum-campaign.blogspot.gr/2016/03/31032016.html](http://asylum-campaign.blogspot.gr/2016/03/31032016.html); 'The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey', May 2016, available at: [www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf](http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/turkeynote%20final%20edited%20DCR%20ECRE.pdf); Solidarity Now, Greece the Land of Fear and Hope and the Agreement with Turkey, available at: [www.solidaritynow.org/grafeio-tupou\\_en/news\\_en.html?id=936lang=en](http://www.solidaritynow.org/grafeio-tupou_en/news_en.html?id=936lang=en)

197 L. 4399/2016 art. 86 par 13

198 Catharina Ziebritzki, EU Immigration and Asylum Law and Policy 'Chaos in Chios: Legal questions regarding the administrative procedure in the Greek Hotspots', 26 July 2016, available at: [eumigrationlawblog.eu/chaos-in-chios-legal-questions-regarding-the-administrative-procedure-in-the-greek-hotspots/](http://eumigrationlawblog.eu/chaos-in-chios-legal-questions-regarding-the-administrative-procedure-in-the-greek-hotspots/)

199 GCR Submission on the execution of ECtHR judgment on the case MSS v. Belgium and Greece - May 2016, available at: [gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016](http://gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016)

The **Appeals Committees** seized to operate in September 2015.<sup>200</sup> As a transitional measure, L. 4375/2016 transferred the competence for the examination of appeals for post-20 March cases to the Committees of the Boards of Appeal who were examining appeals for asylum applications from the backlog (lodged before June 2013). The latter were composed by one civil servant and two members, one appointed by the UNHCR and one proposed by the National Commission of Human Rights. By the end of June, 70 positive decisions had been published by the Appeals Committees, and only in two cases was the appeal rejected.<sup>201</sup> Following a growing number of decisions overturning the presumption of Turkey as a safe third country, political pressure led to an amendment with L.4399/2016 which provides that Appeals Committees will, instead, be comprised of two judges and one person proposed by UNHCR or the National Commission of Human Rights. The participation of judges in an administrative body raises constitutional concerns, as well as concerns regarding the possibility of a rejected appellant to have an effective remedy.<sup>202</sup> The new Appeal Authority and Appeals Committees have been tasked to examine at second-instance appeals lodged since 20 July against the first instance decisions of the Greek Asylum Service. According to Commission figures based on the Asylum Service, 1,013 appeals were submitted by September 2016 against first instance decisions on admissibility and on merits. 311 appeal decisions were issued on admissibility, out of which six confirmed the inadmissibility and 305 reversed it; at least 35 decisions concerned cases on the islands – most of which (32) on merits, and three on admissibility, which were positive. A higher level of appeal to the Hellenic Council of State has now been launched by a Syrian seeking to challenge the decision establishing the Appeal Committees.<sup>203</sup>

---

200 AIDA, Country Report Greece: Fourth Update, November 2015, p.45.

201 According to the official statistics of the Greek Asylum Service, the number of inadmissible decisions issued by July-August 2016 is 1,834, however this number also includes decisions within the scope of Dublin III regulation and the Relocation Scheme: Asylum Service, Asylum statistics August 2016, available at: [goo.gl/GhG5BA](http://goo.gl/GhG5BA). GCR's request for data on inadmissibility decisions on the safe third country concept was not answered at the time of publication.

202 ECRE, Greece amends its asylum law after multiple Appeals Board decisions overturn the presumption of Turkey as a 'safe third country' 24 June 2016, available at: [www.ecre.org/greece-amends-its-asylum-law-after-multiple-appeals-board-decisions-overturn-the-presumption-of-turkey-as-a-safe-third-country/](http://www.ecre.org/greece-amends-its-asylum-law-after-multiple-appeals-board-decisions-overturn-the-presumption-of-turkey-as-a-safe-third-country/)

203 Communication from the Commission to the European Parliament, the European Council and the Council, Third Report on the Progress made in the implementation of the EU-Turkey Statement, Brussels, 28.9.2016 COM(2016) 634 final, p.6. Available at: [ec.europa.eu/enlargement/news\\_corner/migration/com\\_2016\\_634\\_f1\\_other\\_act\\_863309.pdf](http://ec.europa.eu/enlargement/news_corner/migration/com_2016_634_f1_other_act_863309.pdf)

## 4.2 Hotspots function and procedures

### From disembarkation to registration

The Coast Guard is usually alerted as soon as a boat approaches Greek waters, and this way the boats are detected early; unlike in the past, only a few people reach the shore on their own. This is a positive development and has, at least, led to a decreasing number of deaths at sea.<sup>204</sup> First aid is provided and the persons are embarked on the Coast Guard/Frontex vessel, or escorted to the shore, if the boat is still in good condition. In Chios, the Hellenic Rescue Team and Spanish rescue teams are also active. According to the Lesvos Coast Guard, the number of Syrians has been gradually decreasing and other nationalities increasing (Pakistanis, Moroccans, Algerians, Afghans, Iraqis etc) in spring and summer 2016, even if, overall, this year, the Syrians remained the top nationality arriving to the islands every month.<sup>205</sup> Frontex assists with land and sea patrols, under the Coast Guard's command.

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

### Registration and identification

Registration and identification takes place inside the hotspot. At the time of the fieldwork, new arrivals were being prioritised for registration in Lesvos. Once people arrive in Moria, they are taken to the area designated by the FRS/RIS as 'registration area',<sup>206</sup> UNHCR provides basic information on the procedure, the steps to be taken and the possibility to apply for asylum. People are then asked to go through a number of steps which take place in adjacent containers in the registration area. Registration is run by FRS/RIS and the Police participates with seconded staff and guards. The process is the same in Chios.

The first step in registration is **nationality screening**, conducted jointly by Frontex and the Greek police.<sup>207</sup> Before 20 March, this screening was conducted entirely by Frontex.<sup>208</sup> In the absence of travel and ID documents, which is the case for most, nationality screening is conducted using a set of questions on language, geography, history, society and customs.

An interpreter is also present and provided by Frontex. In the first month following the EU Turkey Statement, as Syrians were prioritised, there was a tendency by some to say they are Syrian, but, this, according to the police, could be quickly detected.<sup>209</sup> A document fraud expert is also present by Frontex. A screening booklet defines the procedure. According to Frontex, a screening form is filled, containing the nationality, age, language spoken, and an indication whether the person intends to apply for asylum (ticking the box 'asylum'/'no asylum').<sup>210</sup> Even though Greek authorities may rest their decision exclusively on Frontex's assessment, documents issued by the latter are considered not to have a legal value and, therefore, individuals are not given access to them. This renders the challenge to Frontex's findings extremely difficult. The presumed nationality can be changed up to five days after registration. The person may bring proof (original documents), in which case he/she is screened again and additional questions are made. Interpreters (for Farsi, Arabic and dialects) are also available.

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

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

207 Interviews with Frontex and police in Moria, Lesvos, 25 May 2016; Interviews with Frontex in VIAL and police in Chios, 16 June 2016

208 According to GCR, numerous cases of individuals misregistered by the police due to problematic screening by Frontex had been reported in the period pre 20 March; this to some extent continued in the next months, even though newcomers now registered and applied for asylum and could challenge any wrongful registrations before the Asylum Service.

209 Interview with Frontex in Moria, Lesvos, 25 May 2016

210 Interview with Frontex in Moria, Lesvos, 25 May 2016

This interview covers personal details, possible family links in other countries and a first sense of vulnerability. Information is stored in an online database operated by the Greek Police (Alkyone, database of the Aliens Office), where the intention to apply for asylum is also noted, as well as a second local database stored by the police on the island, serving as a registry of persons present.<sup>211</sup> Following nationality screening, reception and identification procedures start by the FRS/RIS with registration, referrals and medical screening (as per Article 9, 4375/2016).

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

Law provides that FRS/RIS issues a decision ordering the restriction of liberty until the completion of the procedures, that shall not exceed 25 days. In practice, in the majority of the cases, the procedures within the scope of FRS/RIS are completed within a very short period of time (usually within a day). Following that, a decision of detention in view of deportation is issued by the competent General Regional Police Director for each island. Once 25 days have been passed, the General Regional Police Director issues a **decision suspending the execution of the deportation** decision and imposing the **restrictive condition of non-departure from the island** for those that apply for asylum (almost everyone).<sup>212</sup> The intention to apply for asylum is indicated by a "Number of Interest for Asylum", noted on the Police order of restriction of movement. According to migrants and NGOs, sometimes both decisions are communicated together, although the first may have an earlier date of issuance and include a right to appeal, of which the deadline is already passed at the time the decision is communicated. The latter is only waived if the AS allows the person to go to Athens.

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

211 Interview with Frontex in Moria, Lesvos, 25 May and in Chios 15 June 2016

212 According to NGOs in Lesvos, the Police did not communicate deportation/detention decisions for a while and there were people not in possession of such documents.

The practice is similar in Chios and has started after 25 April 2016.<sup>213</sup> Asylum seekers waiting for the examination of their asylum application on admissibility remain in the centre where they resided prior to the registration of their asylum application.

If someone is a **minor**, a macroscopic medical examination is conducted.<sup>214</sup> It was stated in interviews that while previously the assumption of minority was almost standard practice, following the 20th of March there has been the tendency by the FRS/RIS in Lesvos to assume, in case of doubt, that the refugees are adults in order to prevent that they will have to be detained in Moria.<sup>215</sup> In Chios, when age is contested by the FRS/RIS, minors are referred to the medical unit of NGO Praksis for age assessment. According to Praksis staff, age assessment is only conducted upon referral of the FRS/RIS or when the medical unit's staff themselves doubt the alleged age. Medics and social workers involved sign the result.<sup>216</sup> Similarly in Lesvos, where persons claiming to be minors are not considered as such by the Police or the FRS/RIS, they are referred to Medecins du Monde (MdM), who are present in Moria, for age-assessment. MdM have often been hesitant to reach a safe conclusion on age and therefore the FRS/RIS referred the persons of concern to the hospital for dental examination. Appeals against the FRS/RIS conclusion on age-assessment are usually rejected.

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

In Chios, **unaccompanied minors (UAM)** are referred to the Public Prosecutor, who serves as a temporary guardian, according to the law, and a placement in a special shelter is searched for. UAM do not receive the decision imposing restriction of movement to the island as adults. In Lesvos, at the time of the visit, there were 97 UAM in Moria, all boys, of which the majority had applied for asylum (mostly Pakistani, Afghan, Ethiopian, Syrian etc.). According to the FRS/RIS in Lesvos, around 1,800 UAM had passed through the centre from the beginning and up to the time of our visit.

There is **lack of clarity** with regards to the way registration, identification and referral was conducted in Lesvos from the moment the hotspot started and up to 20 March.

213 The FRS/RIS had not started operating in Chios before 19 April 2016, even if the centre had already been hosting people for some months. Interview with FRS/RIS in Chios, 16 June 2016

214 Ministerial Decision 1982/2016 on age assessment of asylum applicants, published on 15 February 2016, available at: [www.e-nomothesia.gr/kat-al-lodapoi/prosphuges-politiko-asulo/koine-upourgike-apos-phase-1982-2016.html](http://www.e-nomothesia.gr/kat-al-lodapoi/prosphuges-politiko-asulo/koine-upourgike-apos-phase-1982-2016.html)

215 Interview with FRS/RIS Camp Manager in Moria, Lesvos, 25 May 2016

216 Interview with Praksis in Souda, Chios, 15 June 2016

According to interviews, some sort of basic registration was conducted, but not systematically, with the result that it is hard to trace arrival dates retrospectively. People were given a piece of paper with a registration number and date of arrival.<sup>217</sup> This system was not fool-proof and there was mention of fake registration cards. Besides, some refugees that arrived in the weeks prior to 20 March were given colour bracelets with dates of entry. It is unclear how long this system lasted. Those in possession of the bracelet could prove their date of entry, but for the rest it was unclear.<sup>218</sup> The FRS/RIS started registrations a couple of weeks after the 20 March; meanwhile, new arrivals lead to some 4,200 persons blocked altogether on Lesbos, only half of which (around 2,500) had been screened and registered by the FRS/RIS at the moment of the visit in May.<sup>219</sup> In practice, residents in the Moria camp were waiting in detention in possession of different types of documents, which created confusion, uncertainty and tensions, lasting for months. In Lesbos these registrations were completed by June, while in Chios new arrivals were registered more swiftly.

Once the 25 days expired, detention was no more strictly applied; this was the case for most at the time of the visit. Moreover, as registration and identification could gradually be speeded up and completed within a couple of days, or less, the 25 days neither applied to newcomers.<sup>220</sup>

The next step is **medical screening**, conducted by Medecins du Monde (Mdm) in Lesbos and the NGO Praksis in Chios.<sup>221</sup> Mdm mentioned seeing about 80-100 persons daily. The medical screening marks the end of the FRS/RIS registration cycle in the hotspot. Those interested to apply for asylum (literally everyone) then (re)state their intention to apply, usually already indicated earlier in the process. As a result they are given a suspension of expulsion order.

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

217 See also GCR Field visit to Lesbos report 2015

218 Apparently the bracelet is impossible to take off someone's hand without breaking, therefore it is fairly certain that the person wearing it is the one that received it on that day.

219 Interview with FRS/RIS Camp Manager in Moria, Lesbos, 25 May 2016

220 Interview with FRS/RIS Camp Manager in Moria, Lesbos, 25 May 2016

221 Medical staff capacities in Chios were still limited at the time of fieldwork, especially regarding psychosocial staff. A psychiatrist and child-psychiatrist are only available at the local hospital. Also, only two ambulances were available for the island, and the police or NGOs assisted with the transfer. Similarly in Moria, Lesbos, the police also assisted with the transfers to hospital. For shortcomings in medical care on the islands, see MSF, Greece in 2016: Vulnerable People Get Left Behind, October 2016, available at: [www.msf.org/sites/msf.org/files/report\\_vulnerable\\_people\\_201016\\_eng.pdf](http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf)

### 4.3 Access to the asylum procedure

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

According to AS data, 7,305 asylum applications were registered between January and end September 2016 in the hotspots (3,391 in Lesbos, 1,327 in Samos, 1,841 in Chios, 329 in Kos, 417 in Leros).<sup>222</sup> The number of persons having stated the intention to seek asylum may be still higher but the applications not yet registered. According to the Chios police, 2,263 persons expressed the intention to apply for asylum from February until the time of the visit in June. Similarly, in Moria, Lesbos, everyone there at the time of the visit in May (around 3,200) had already expressed the intention to apply for asylum.<sup>223</sup> In other hotspots the situation is more critical; in Kos, for example, as the AS did not start operating until mid-June 2016, newcomers detained could not even access the asylum procedure.

Despite substantial staff growth overall, AS capacity to register and process asylum applications in the hotspots still faces challenges.<sup>224</sup> By the end of October, close to 15,000 persons were waiting on the islands, a number that exceeds the reception capacity designed to receive 7,450 people.<sup>225</sup>

In the first months following the EU-Turkey Statement, procedures **exclusively prioritised Syrians**, while other nationalities, including both adults and UAMs, were put on hold despite having stated their intention to seek asylum. Since August 2016, the Asylum Service registers applications of other nationalities too.<sup>226</sup>

222 For Chios data since February, for Leros since April, for Kos since June; this is when the AS started registering applications. Asylum Service, Statistical Data, available at: [asylo.gov.gr/wp-content/uploads/2016/11/Greek-Asylum-Service-statistical-data-September-2016\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2016/11/Greek-Asylum-Service-statistical-data-September-2016_gr.pdf)

223 Interview with the police in Chios, 16 June 2016 and Interview with the Asylum Service in Lesbos, 24 May 2016

224 GCR Submission on the execution of ECtHR judgment on the case MSS v. Belgium and Greece - May 2016, available at: [gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016](http://gcr.gr/index.php/en/publications-media/2015-07-06-10-08-36/item/568-ekthesi-esp-sto-plaisio-ekteleisis-tis-apofasis-tou-edda-stin-ypothesi-mss-kata-velgiou-kai-elladas-maios-2016)

225 European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL, Second Report on the progress made in the implementation of the EU-Turkey Statement, 15.06.2016, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd\\_commission\\_report\\_on\\_progress\\_made\\_in\\_the\\_implementation\\_of\\_the\\_eu-turkey\\_agreement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf)

226 According to GCR, individuals from Maghreb countries were registered by mid-July. Pakistanis even earlier, by end of June, and examined by both the AS and EASO. By the end of July, decision for Pakistanis, who have been examined by AS staff, had already been issued. However, EASO was not issuing recommendations for the cases examined by them, since there were no official templates of decisions for Pakistan, as there is for Syria.

However, it seems that certain nationalities are still prioritised – Syrians, followed by Pakistanis and North Africans – while Iraqi and Afghan requests are not being dealt with.<sup>227</sup> Family reunification for Iraqis and Afghans is thus being hindered. In Chios, following the EU-Turkey Agreement, people willing to apply for asylum were gradually transferred to VIAL in order to have their intention to apply registered by the Police. No appeal had been submitted on admissibility up to the summer because no decision assessing the case as inadmissible had yet been communicated to any applicant.

**Table 6: Statistical Data of 1st Instance Procedures up to 30 September 2016**

Country of Origin	Pending cases (31.08.2016)	Applications (Sept)	Decisions (Sept)	Percentage of Recognition (2016)	Interrupted Applications-Withdrawals-Inadmissibility Decisions*	Pending Cases (30.09.2016)
Syria	8,624	2,576	128	98.4%	1,249	9,823
Pakistan	1,393	561	8	3.4%	52	1,634
Iraq	942	467	21	65.2%	117	1,271
Afghanistan	966	380	33	47.7%	59	1,254
Albania	372	129	68	0.4%	20	413
Bangladesh	429	219	53	3.4%	18	577
Iran	392	69	33	54.6%	31	386
Palestine	346	72	9	97.1%	31	377
Georgia	155	56	25	0.0%	8	178
Algeria	148	174	130	0.4%	17	175
Other	1,271	422	198	21.1%	90	1,405
Total	15038	5,125	978	25.3%	1,692	17,493

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

Source: Asylum Service, Statistical Data (1.1.2016- 30.09.2016).

#### Admissibility interview

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

227 European Council, Note from the Presidency: Migration Implementation, Brussels, 3 October 2016 (OR. en) 12730/16, point 10, page 3, available at: [www.statewatch.org/news/2016/oct/eu-council-migration-implementation-12730-16.pdf](http://www.statewatch.org/news/2016/oct/eu-council-migration-implementation-12730-16.pdf)

Cases considered admissible for reasons of vulnerability or for family reunification purposes under Dublin III or because Turkey is considered a non-safe third country for them, are excluded from the admissibility procedure;<sup>228</sup> they are 'pre-registered', provided with an asylum seeker's card, with an interview date at the Athens Regional Asylum Office (RAO) and are allowed to leave the island.

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

228 Vulnerable groups in Greek law include unaccompanied children, disabled or severely ill persons, elderly, pregnant women or new mothers, single parents with minor children, victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, persons suffering from post-traumatic stress disorder (PTSD) such as shipwreck survivors or relatives of victims, and victims of trafficking: Article 14(8) L 4375/2016 of 3 April 2016.

It was stated in the interviews that in the effort to speed up the process, the AS may also proceed with asylum pre-registration even if the registration and identification has not been completed by FRS/RIS and the police, as long as the person has already stated the intention to apply for asylum. They could then pass through FRS/RIS at a later stage.<sup>229</sup>

Inadmissibility interviews are conducted by AS caseworkers and EASO, and interpreters from EASO and NGOs (MetaAction at the time of the visit). So far only Syrians have had their applications examined for admissibility under the prism of the safe third country/ first country of asylum concepts. According to interviews, AS could conduct 85–90 registrations of asylum claims and 50 interviews per day.<sup>230</sup> Decisions were normally taken within 1–2 days. The languages spoken were Arabic, Farsi, Dari, Urdu, Pashto, Kurmanji, English and French. The interview was transcribed in English but the transcript was not translated into Greek, the country's official language. EASO staff then submitted an opinion on the case to the AS, and the decision was taken by the AS and published roughly within 15 days. It was mentioned that the final decision is in Greek, even though some decisions were also served in English, possibly using the EASO opinion. EASO mentioned that each expert was conducting around two interviews per day. EASO did not carry out age-assessments, as this is covered by the FRS/RIS. Opinions could differ between what EASO and the AS consider admissible in relation to the definition of vulnerability as per Greek law.<sup>231</sup> No SOPs or templates were mentioned for this procedure.

Non-visible vulnerabilities, such as shipwreck survivors, or victims of torture, are more difficult to identify. It was mentioned in the interviews that there is **no clear referral pathway** between vulnerability assessment conducted by EASO and the one conducted by the FRS/RIS and that someone identified as vulnerable by FRS/RIS may be assessed again by EASO.

A person is considered inadmissible for a number of reasons, including the existence of a 'first country' of asylum' or 'safe third country'. According to interviews, the documents used to make this assessment are COI material prepared by the AS and EASO, internet searches and the letters sent by the European Commission and UNHCR to the Greek authorities describing the

status of temporary protection for Syrians in Turkey.<sup>232</sup> The proportion of inadmissible cases to the interviews conducted was roughly about one third in Spring, according to interviews. If negative, asylum seekers have the possibility to appeal within five days, which almost all of them do. EASO experts help with the appeals submission, based on a template. For this, asylum seekers can be supported and represented by a lawyer. Lawyers have access to Moria and are able to identify and follow up on the cases. All appeals have automatic suspensive effect against return orders.

According to the AS in Chios, UAM under 14 years old cannot be registered by the AS unless their guardian signs on their behalf. However, as **no guardians are appointed permanently** by the Public Prosecutor, the AS cannot register the claim of the child and thus, asylum procedures cannot be initiated. There is also an issue regarding young children travelling with an "uncle" or other relative, who the Public Prosecutor does not acknowledge as suitable to be appointed as a guardian, leading asylum procedures to an impasse, as these persons are not provided with the power to do so on the child's behalf. Meanwhile in Lesvos, no registration of UAMs was conducted by the AS for a long time because most of AS staff had been deployed to the inadmissibility procedure. At the time of the visit, only family reunification cases under Dublin had started being registered.<sup>233</sup>

#### Provision of information and legal assistance

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

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

232 Letter from Mathias Ruete, DG HOME Director General to Greek authorities available at: [statewatch.org/news/2016/may/eu-com-greece-turkey-asylum-letter-5-5-16.pdf](http://statewatch.org/news/2016/may/eu-com-greece-turkey-asylum-letter-5-5-16.pdf), UNHCR letter and exchange with the Permanent Representation of Turkey to the EU, all letters available here; [asylo.gov.gr/en/wp-content/uploads/2016/10/scan-file-mme.pdf](http://asylo.gov.gr/en/wp-content/uploads/2016/10/scan-file-mme.pdf)  
233 Interview with MetaAction in Lesvos, 25 May 2016

Different types of **information leaflets** by the AS are distributed in the hotspots in Lesvos and Chios, from general leaflets about asylum in Greece to more specific leaflets about the procedure on the islands and in the reception facilities in the mainland, Dublin and unaccompanied minors.<sup>234</sup> AS Information leaflets are distributed in different languages, along with NGO and other organisations' leaflets.<sup>235</sup>

Three big distribution campaigns have taken place in Chios. Group information sessions have also been organised at times by the AS and EASO, at the building of the main Bus Station, where asylum seekers gather and once in the DIPETHE centre, together with the municipality. According to the AS, a group of refugee representatives took the initiative to address questions to the AS at VIAL. In the centre in Souda, German volunteers have also provided information on asylum.<sup>236</sup>

There is currently no state funded **legal aid** scheme in place, but a Ministerial Decision of September 2016 introduces free legal assistance in asylum appeals procedures.<sup>237</sup> In addition, a EUR 30 million grant agreement was awarded to UNHCR under EU emergency assistance for the provision, among other things, of free legal assistance at the appeals stage for a period up to four months until the state-funded free legal aid scheme starts.<sup>238</sup>

Legal information and legal assistance in Lesvos is provided by individual lawyers or lawyers supported by organisations (GCR, ProAsyl, MetaAction). MSF has shortly funded lawyers from the Lesvos Bar Association for a restricted number of cases at 2nd instance. A volunteers' charity, Zainabiyya, identified the cases. NGO Praksis provided a lawyer for legal advice to UAM residing in its shelter (under 14 years old). In terms of access to the hotspots, despite occasional challenges, the lawyers we interviewed were generally given access to Moria to meet clients and conduct interviews.<sup>239</sup>

234 These leaflets were published earlier in the year and some parts need updating, especially concerning the situation post EU-Turkey statement and residence permit granted to refugee and subsidiary protection status holders following the adoption of Law 4375/2016. The leaflets are available in different languages at: [asylo.gov.gr/en/](http://asylo.gov.gr/en/)

235 See the leaflet "Rumours", published by newsthatmoves.org, available at the Kara Tepe information booth: [newsthatmoves.org/en/rumours/](http://newsthatmoves.org/en/rumours/)

236 Interview with EASO Chios 15 June 2016

237 Ministerial Decision . 12205/2016 on provision of legal assistance to applicants for international protection, Official Gazette 2864/B/9-9-2016 available at: [www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/upourgike-apophase-oik-12205-2016.html](http://www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/upourgike-apophase-oik-12205-2016.html)

238 The legal aid programme launched by UNHCR is implemented by MetaAction in Lesvos, Chios, Kos, Leros and Samos and by GCR in Rhodes. European Commission, Commission Recommendation of 15.6.2016 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, available at: [ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/commission\\_recommendation\\_on\\_resuming\\_dublin\\_transfers\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/commission_recommendation_on_resuming_dublin_transfers_en.pdf)

239 Interview with GCR and Proasyl lawyers 23 and 24 May 2015, interview with Praksis lawyer 24 May 2016, interview with MetaAction lawyer 25 May 2016

Their phone numbers were also available to UNHCR staff and others in the camp. Cooperation between lawyers was quite good. The local Bar Association had managed to secure a separate room in Moria for meetings with lawyers. They prepared and shared with the authorities a list of lawyers interested to undertake cases. In Chios, apart from the above-mentioned free legal aid program at appeals stage provided by MetaAction, legal assistance is not organised and the right to be assisted by a lawyer for any other reason is rather limited.

Overall legal assistance needs have increased. Substantial interest has been shown by non-Greek practitioners, bar associations and NGOs to contribute. The Council of Bars and Law Societies of Europe (CCBE) started an initiative to establish a project for legal aid in Lesvos, which would bring rotating lawyers from other Member States to support with documentation, legal advice, monitoring and reporting. Different lawyers' groups have travelled to Greece over the last year to see how they could be engaged in litigation. The Danish Refugee Council (DRC) has initiated a partnership with the Greek Council for Refugees in Lesvos and chairs the legal aid working group on the island. Mercy Corps and Oxfam have been involved in legal aid coordination efforts as well. Overall, external support could be beneficial if it strengthens local capacities to deliver sustainable pro bono services, through trainings and certification of local lawyers in asylum law and resources to strengthen Greek organisations working with lawyers.

#### 4.4. Reception conditions in the hotspots

The number of persons accommodated in the hotspots and neighbouring centres has been constantly on the rise throughout 2016, and after the summer has reached a point where new arrivals can no more be accommodated. This is a result of the implementation of the EU Turkey Statement and slow processing of registration and asylum applications of those already waiting in the islands, combined with the temporary halt and changes introduced to the Appeals Committees over the summer. According to government data, around 5,912 persons are estimated to be currently in Lesvos, in Moria and Kara Tepe, and another 486 in other state or UNHCR-run places, whereas the total capacity is 3,500 people. Similarly in Chios, 1,147 and 3,102 people are hosted in the facilities whose capacity is 1,100.<sup>240</sup>

The conditions in the Greek hotspots have been criticised repeatedly throughout 2016 and described in detail in numerous articles. Nevertheless, conditions do not seem to have improved by autumn 2016. At the time of the field visit, the site of Moria in Lesvos hosted, to its capacity, around 800 additional persons,,

240 Coordinating Body for the refugee crisis management, Spokesperson, summary statement of refugee flows, 21 November 2016, [media.gov.gr/index.php/component/content/article/258-προσφυγικό-ζήτημα/4531-summary-statement-of-refugee-flows-21-11-2016?Itemid=595](http://media.gov.gr/index.php/component/content/article/258-προσφυγικό-ζήτημα/4531-summary-statement-of-refugee-flows-21-11-2016?Itemid=595)

many using their own tents to sleep in the courtyard.<sup>241</sup> While the containers were air-conditioned and included private WCs and showers, persons residing in tents only had access to common-use WCs and showers. Refugee communities were separated by compounds. There was a family compound with three sets of dormitories (houses), containers and tents. During our visit, meals were brought in three times a day by a catering company contracted by the Army. A number of canteens and food trucks were parked outside the entrance. Taxis were also parked outside and waiting to take refugees to town. Residents often exited the centre through holes in the fence, a practice that was tolerated.

As already documented in various published reports and confirmed through our field visits, reception conditions in **Moria** are substandard. The most significant problem is prolonged detention for minors, and the fact that people stay in a facility that is designed for a short period of time and lacks the elements necessary for proper reception; this is made all the more difficult by overcrowding. NGOs have reported dirt, bad food quality and refugees queuing for hours under the sun for food distribution. Differential treatment of nationalities that can access the asylum procedure also causes a lot of frustration. Police in Moria control the entrance and are present during the day; night patrols are organised on the island, but the police are not present in the camp. Tensions have been widely reported, with riots and security incidents triggered by different reasons over the last months; inter-ethnic tensions, sexual harassment, disputes over the food, frustration about the prolonged waiting etc. According to interviews, riots can turn violent and there have been cases of clashes, physical injuries and fires in the camp, one of the most devastating taking place in September 2016. In one of the most extreme incidents, a minor was raped by other minors in October 2016.<sup>242</sup> EASO and Frontex have repeatedly raised security concerns about the safety of the persons in the camp, including residents and staff working. The government has proposed to address these challenges by increasing policing, separating refugees and migrants involved in criminal activities from families, and transferring the most vulnerable to the mainland.<sup>243</sup> Still, the main reasons triggering the tensions, remain, namely the continuous need to strengthen the capacities of the AS and EASO guest officers to process applications quicker, give access to all nationalities and decongest the centres.

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

The **Kara Tepe** site is an open facility run by the Municipality that hosts the most vulnerable persons waiting to leave for the mainland. According to the Municipality, UNHCR identifies the vulnerable persons to be transferred out of Moria to Kara Tepe. People reside there until procedures are completed. At the time of fieldwork, around 20 persons would leave the camp every day for the appointment with the AS in Athens while a similar number would be transferred over from Moria to the Kara Tepe.<sup>244</sup> Before the EU-Turkey Statement, only Syrian families were hosted in Kara Tepe, but since March, nationalities have been mixed.

Kara Tepe has the capacity to accommodate around 1,400–1,500 people. Conditions in Kara Tepe were overall good at the time of the visit. According to the Site Manager, the food was delivered door-to-door and there were no queues; people were accommodated in containers and some tents, while common areas were organised, including a special storage area for non-food items, mother and baby areas, child friendly spaces, clothes donations storage area, special areas where people can be served tea, sports area, cinema etc. There seemed to be a rather comprehensive set of services available and care was taken for access to the disabled.<sup>245</sup> Sixteen organisations were present in Kara Tepe at the time of the visit.<sup>246</sup>

Nevertheless, the Kara Tepe is also a temporary facility, and prolonged stay raises challenges for individuals and families spending months there. Moreover, the overwhelming majority (96%) are vulnerable cases, such as female headed single parent families, mentally disabled and very young children.

<sup>244</sup> Interview with UNHCR in Kara Tepe, 24 May 2016

<sup>245</sup> Interview with Municipality Site Manager in Kara Tepe, 23 May 2016

<sup>246</sup> At the time of the visit, in Moria Save the Children provided activities for children, child friendly spaces and mother-baby areas; Praksis assisted UAMs, provided non-food items and facilitated transfers between Kara Tepe and Moria; Eurorelief provides cultural mediators and needs identification, Mercy Corps run classes and activities for children and adults and provides information, Remar provided food and overall support services at the sites. In Kara Tepe, amongst the 16 NGOs IRC provided WASH and psychosocial support, HSA (Human Support Agency) provided clothes, Samaritan's Purse provided non food items, MdM and Human Appeal provided medical care, MsF mobile clinic, Clowns without Borders run recreational activities for children, Save the Children run a child friendly space and classes, HRC supported family tracing and non food items, Oxfam and HSA were in food distribution; Actionaid provided interpretation services to the police and supports women

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

In **VIAL** in Chios, reception conditions have been overall similar if not worse than Moria. Overcrowded centres, lacking basic amenities such as beds, appalling hygiene conditions, lack of medical care and basic infant nutrition and poor food quality have been reported in the first months of its operation, leading to hunger strikes.<sup>247</sup> Some of these needs were gradually addressed, like medical care. VIAL has a capacity of 1,150 persons. The centre opened its doors in mid-February, a few days before the (then) First Reception Centre started operating in March. There is a branch in the site reserved to families, vulnerable persons and UAM; some UAM also reside in the Kivotos shelter outside. Following riots in VIAL in March, the majority of Syrians were moved to the centres Souda and DIPETHE. VIAL is now functioning as an open centre. Inter-ethnic tensions and riots have been on the rise, reflecting the frustration of certain nationalities waiting for months without being given access to the asylum procedure.

With regards to **unaccompanied minors** in particular, at the time of the visit in Moria they were held in a separate barbed-wired area inside the camp, whose door remained locked. Previously, the number of UAM was over 150, but gradually some were transferred to alternative accommodation. The unaccompanied minors remaining in Moria were 97 teenagers between 14-17. They were held there awaiting for a place outside, in the island or in the mainland. Many had been detained for periods exceeding by far the 25 days limit set in law 4375/2016. UAM have to be referred to a dedicated shelter by EKKA, the National Centre for Social Solidarity.<sup>248</sup> According to MetaAction and Save the Children, the UAM of Moria face substantial mental health and anxiety issues and are in need of psychosocial counselling, information and support. The impact of prolonged detention is visible in the tensions and clashes that often erupt. The FRS/RIS mentioned in the interviews that they organised excursions and other outdoor activities and sightseeing visits in the island, together with the local association 'Synyparxi'.<sup>249</sup>

<sup>247</sup> Testimonies and photos of the conditions collected in VIAL here: [insideavial.wordpress.com/](https://insideavial.wordpress.com/) See also reports BY Human Rights Watch, Greece: Refugee "Hotspots" Unsafe, Unsanitary [www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary](https://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary)

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

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

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

In Chios, around 75 UAM had been registered by the FRS/RIS, of which a number had already been placed in shelters out of Chios and around 65 remained on the island pending placement. According to the Site Manager, it was difficult to register all UAM as certain among them were afraid to appear before the authorities.<sup>250</sup>

## 4.5 Relocation

**Table 7: Relocation in numbers up to 23 October 2016**

Relocation applications	15,384
Applications referred to MS	10,156
Pledges by MS	10,755
Approvals	7,423
Rejections	516
Transfers performed	4,852
Transfers already scheduled	5,511

*Source: Asylum Service, Statistical Data- Relocation Procedures, available at: [tinyurl.com/jhy7ctz](https://tinyurl.com/jhy7ctz)*

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

Despite a slow start and relative mistrust from the side of the asylum seekers, relocation out of Greece has made some small but steady progress over the last three months. Still, the numbers remain low compared to the commitments made and the targets set in the relocation Decisions of 2015/1523 and 2015/1601. A year into implementation, 4,852 persons have been relocated out of Greece out of the target to relocate 66,400 by September 2017 (see table 7 above).

<sup>250</sup> Interview with the head of the Reception and Identification Centre in VIAL/ Site Manager, 16 June 2016



The AS has issued internal guidelines for implementation; procedural issues are provided merely by analogy to the Dublin III Regulation and internal guidelines, without specific and binding legislation.

Relocation applications are filed in Athens, Thessaloniki and Alexandroupoli. Interviews are conducted simultaneously by AS and EASO Officers. EASO interpreters assist with interviews and information sessions with relocation candidates. The matching has so far been done by the Dublin Unit, while a dedicated Relocation Unit has now been set up.<sup>251</sup> Member States liaison officers are based in their embassies and are usually present at coordination meetings between the AS and UNHCR; they may participate in the “matching” process.<sup>252</sup> After the initial acceptance of the candidate some Member States may conduct additional interviews and security checks. Since this practice is not officially foreseen, it can be arbitrary. The procedure takes on average 3 to 4 weeks, from the moment the relocation application is filed to the issuing of the positive relocation decision.

With regards to rejection, the only ground communicated is Article 5 paragraph 7 of Council Decision 2015/1523, reasonable grounds for being a risk to national security or public order or falling under the exclusion provisions of articles 12 and 17 of the Qualification Directive. The Commission has repeatedly raised the issue of unjustified rejections by Member States.<sup>253</sup>

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

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

There is no effective remedy against the relocation decision. To address this gap the AS gives candidates the opportunity to appeal against the inadmissibility in case they do not agree with the Member State offering them a place. After being accepted by a Member State the candidates are referred to IOM, that conducts the health checks before departure, the issuance of the tickets and pre-departure information regarding the destination MS. This pre-departure information is also provided by Member States Liaison Officers. Some Member States have also sent informative leaflets to the AS. The Commission has observed that transfers are generally delayed, partly due to initial mistrust in the system, and partly due to the fact that Member States do not open enough places quickly. The situation seems however to have improved as of August/September, according to Commission reports.<sup>254</sup>

#### 4.6 Returns

The first returns following the EU Turkey Statement took place from the Greek islands to Turkey on 4 April 2016.<sup>255</sup> It has been noted that individuals were readmitted back to Turkey without being able to exercise their right to seek asylum, due to the administrative chaos prevailing at the hotspot facilities at the time.<sup>256</sup> Up to the end of June, 468 individuals have been readmitted to Turkey under the EU Turkey Statement, 1,055 under the bilateral Readmission Protocol between Turkey and Greece, and 43 Turkish nationals in line with the EU Turkey Readmission Agreement.<sup>257</sup>

According to the Commission, the total number of persons returned under the EU Turkey Statement up to end September was 578, which included negative asylum decisions (including negative decisions at second instance), cases that had withdrawn their application or had not applied for asylum at all.<sup>258</sup>

When a person asks to return to Turkey, a request for readmission is sent to the Turkish authorities who then respond with a readmission decision based on the bilateral (Greece-Turkey) readmission agreement, normally within a week to ten days. Returnees are grouped together for the next departure. The police issues a decision for deportation on the grounds of readmission. According to the Police in Lesbos and the Ministry, all migrants have been provided with a police decision, imposing the restriction of movement to the island, and residence at the premises of the camps of Moria and Kara Tepe, while suspending the execution of deportation/detention decision previously issued until the readmission process is completed or the asylum claim is examined. However, during the first weeks following the EU-Turkey Statement, it is reported by NGOs that people were held in de facto detention in Moria without having received any information or decision on their detention. In fact, decisions imposing a restriction of movement started being communicated to the residents of Moria and Kara Tepe only after some weeks.

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

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

The waiting period for return is unclear; the refugees awaiting to return reside in the same place in Moria and Kara Tepe as before, together with everyone else. According to interviews, no detention is used for the purpose of return, except for one group related to the first return operation (Pakistani) which was detained in a separate place in Moria. According to interviews, there seemed to be no need for information or assistance for the return (AVR) as persons had themselves asked to return to Turkey, and Turkey was not their country of origin. There have been cases of refugees who preferred to go back to Turkey than stay in Moria.<sup>259</sup>

258 Communication from the Commission to the European Parliament, the European Council and the Council, Third Report on the Progress made in the implementation of the EU-Turkey Statement, Brussels, 28.9.2016 COM(2016) 634 final, p.5, ec.europa.eu/enlargement/news\_corner/migration/com\_2016\_634\_f1\_other\_act\_863309.pdf  
259 Interview with MetaAction Lawyer in Lesbos, 25 May 2016

Before departure refugees have to hand over all documents they have received from the Greek authorities.

Finally, generally no newly arrived persons have been returned to Turkey without having prior access to the asylum procedure apart from those involved in the incident reported in April. However a second incident in October 2016 was reported about ten Syrians who were returned to Turkey without due consideration of their asylum claims. In particular, according to UNHCR accounts, 91 people arrived on the island of Milos and were transferred to the hotspot in Leros, where they expressed their will to apply for asylum in Greece; ten of them were transferred to Kos and subsequently readmitted to Turkey by plane, without consideration of their claim. UNHCR has expressed its concerns about the return of this group and has sought their whereabouts.<sup>260</sup>

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

251 Communication from the Commission to the European Parliament, the European Council and the Council, Sixth report on relocation and resettlement, Brussels 28.09.2016, COM(2016) 636 final, p.6, available at: ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\_report\_on\_relocation\_and\_resettlement\_en.pdf

252 According to GCR, relocation interviews are conducted either by Greek Officers or by EASO Officers alone. Also interviews are being conducted by liaison officers inside embassies, especially the French one. No legal counselor is present and no interview transcript is available. When we asked the Asylum Service Officer for these interviews, she clarified that the two Council Decisions do not mention any specific methods of identification of a possible danger to national security or public order, so MS are free to choose means that suits them better. For more information on the different arrangements made by Member States, see AIDA, Admissibility, responsibility and safety in European asylum procedures, September 2016, 28-29.

253 AIDA, Admissibility, responsibility and safety in European asylum procedures, September 2016. Available at: www.ecre.org/wp-content/uploads/2016/09/ECRE-AIDA-Admissibility-responsibility-and-safety-in-European-asylum-procedures.pdf

254 Communication from the Commission to the European Parliament, the European Council and the Council, Sixth report on relocation and resettlement, Brussels 28.09.2016, COM(2016) 636 final, p.6, available at: ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth\_report\_on\_relocation\_and\_resettlement\_en.pdf

255 The 202 first returns were already scheduled and were thus not related to the effect of the deal (although counted as such): www.theguardian.com/commentisfree/2016/apr/04/greece-deportations-eu-turkey-refugees

256 www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union; Greek Council for Refugees, Implementation of the EU-Turkey Agreement in breach of fundamental rights, 27.4.2016: www.gcr.gr/index.php/el/news/press-releases-announcements/item/557-deltio-typou-efarmogi-symfonias-ee-tourkias-kata-paravasi-themeliodon-dikaionaton (in Greek)

257 Hellenic Police, Press Release, 'Readmission of 9 third country nationals to Turkey' (in Greek), available at: www.astynomia.gr/index.php?option=ozo\_content&lang=%27.%27&perform=view&id=63588&Itemid=1710&lang=

## RECOMMENDATIONS FOR THE HOTSPOTS IN GREECE

- Substantial investment should be made in human and financial resources, following a needs assessment by the Greek authorities, to enhance the capacity of the Asylum Service to register and examine asylum applications, as well as the capacity of the Appeals Authority to examine appeals.
- The involvement of EASO in individual asylum examinations should be clarified in terms of legal responsibilities vis a vis the national authorities and the application of Greek legislation. The EASO experts and staff involved in such processes should have the practical experience and relevant expertise to ensure quality and efficiency.
- Similarly, the role of Frontex should also be clarified in terms of legal responsibilities, including in the scope of its broader mandate as EBCG.
- Effective and swift access to the asylum procedure should be granted to all individuals arriving in the hotspots, irrespective of nationality.
- It must be ensured that any detention of persons arriving in the hotspots is for a lawful purpose, necessary and proportionate and is decided on the basis of an individual assessment in compliance with Greece's obligations under international and EU law. Any restriction of the right to freedom of movement must be compliant with the EU Charter and Article 2 of Protocol 4 ECHR.
- The provision of legal information and assistance in the hotspots should be strengthened by supporting the capacities of lawyers, local bar associations and civil society initiatives
- Clear referral mechanisms should be used and coordination should be ensured in the identification of vulnerabilities between FRS/RIS, EASO and other actors involved in referrals such as UNHCR and international organisations.
- Unaccompanied minors should not be detained in the hotspots but moved to adequate accommodation facilities as soon as identification has taken place; guardianship systems need to be strengthened
- The duration of stay in the hotspot facility needs to be as short as possible and procedures need to be swifter, without undermining procedural safeguards. Open reception centres providing longer stay and specialised shelters for vulnerable cases need to be foreseen on the islands and the mainland
- Adequate information needs to be provided to camp residents about each step in the process; the provision of information needs to be better coordinated between the different actors involved. The number of interpreters and cultural mediators in the hotspots must be significantly increased in order to ensure proper communication of such information
- Regular and independent monitoring of registration and identification practices and reception conditions should be conducted by international organisations, NGOs and the Ombudsman, and monitoring reports should be made public

## 5. Conclusion and Recommendations

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

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

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

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

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

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

The **role and competences of EU Agencies**, and particularly EASO, is a point of concern in Greece. The increasing role of EASO in individual decision-making processes (inadmissibility and in merit examination of claims) raises questions in terms of accountability and liability for the Agency and compliance with the national legislative framework. In Italy, also, EASO can be involved in carrying out additional exclusion interviews to detect exclusion grounds during the registration of applications for relocation. However, such an assessment should take place once the asylum application is examined on its own merits and by the competent authority for international protection in the Member State of relocation.

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

**Detention** is used in both countries as a key measure to ensure the hotspots function. In Italy prolonged detention is used as a coercive measure to ensure fingerprinting. Detention of third country nationals beyond the 48 hours limit is against the Constitution, and its use for the hotspots is unregulated and arbitrary. There is also no access to effective remedy. In Greece, the practice of mandatory detention, applied indiscriminately even to vulnerable cases, such as families and small children, is against legal standards and the EU acquis.

What is more, **no monitoring** of practices takes place in the hotspots that could spot shortcomings and irregularities and ensure human rights compliance. Monitoring by independent bodies is needed in Italy, starting with pre-identification, as well as during registration and identification, particularly regarding the fingerprinting practices that reportedly have been often relying on coercive measures, including the use of force. Monitoring of practices and conditions is needed in Greece throughout the procedure.

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

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

**Reception capacity** remains insufficient in both countries and reception conditions are inadequate and often below standard in the hotspots. Prolonged stay in facilities that were foreseen for a period of a few days is problematic and inappropriate, and one of the factors behind the deteriorating situation and the constant tensions in Greece. The mixed use of facilities in Italy including both relocation candidates and asylum seekers not eligible for relocation also nurtures tensions.

In terms of **relocation**, common challenges in both countries include the slow pace of the process, technical delays and the sometimes arbitrary rejection of relocation applications by Member States. In Italy, mistrust in the programme and the slow pace have led to secondary movements, as people prefer to continue the journey to another Member State through irregular means, rather than wait.

Finally, there is the issue of **readmission without access to asylum**. In Italy, it seems that many return decisions have been issued based on the information provided in the pre-identification phase and the assumption that certain nationalities are not in need of protection.

In addition to existing readmission agreements, Italy has started concluding bilateral cooperation agreements such as those with Gambia and Sudan that enable swift returns of individuals in an unlawful and non-transparent manner. In Greece, while most returns out of the hotspots have been voluntary and compliant with access to asylum, a couple of incidents have raised concerns about persons in need of protection being sent back without the possibility to seek asylum.

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

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

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

If the hotspots approach is to be consolidated as a permanent referral mechanism and the points of entry, a number of elements need to be in place to ensure that this is compatible with the EU acquis and legal standards.

There is also need for substantial investment in human and financial resources, following a needs assessment by the national authorities, to enhance the capacity of the authorities not only to register and identify migrants, but also proceed to examine asylum applications and relocation. The support of EU agencies in this regard is essential, but the terms of reference and legal responsibilities need to be clearly defined.

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

## RECOMMENDATIONS

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

## ANNEX: Interviews in Italy and Greece

### Field visits and interviews in Italy

UNHCR in Rome 28 April 2016  
EASO in Rome 26 May 2016  
Head of the Dublin Unit in Rome 31 May 2016  
IOM in Rome 24 June 2016  
IOM in Rome 28 June 2016  
Head of the Cabinet Department for Civil Liberties and Immigration - Ministry of Interior in Rome, 05 July 2016  
Deputy Prefect Cabinet Department for Civil Liberties and Immigration - Ministry of Interior in Rome, 25 July 2016  
Director of the CIE Ponte Galeria in Rome, 29 September 2016

Fieldwork in Trapani has been conducted by CIR between 09 and 13 of May 2016.

Prefect in Trapani 10 May 2016  
Responsible of the Area IV Immigration and Asylum of the Prefecture in Trapani 10 May 2016  
Managing body hotspot in Trapani 10 May 2016  
EASO in Trapani 10 May 2016  
UNHCR in Trapani 10 May 2016  
MSF in Trapani 10 May 2016  
UNHCR in Trapani 26 October 2016

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

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

### Field visits and interviews in Greece

Fieldwork in Lesvos was conducted by ECRE and GCR between 23-25 May 2016. The two organisations visited Moria twice and Kara Tepe once and had interviews with the following organisations and actors:

Coast Guard 23/05  
Municipality 23/05  
Asylum Service (AS), fast track readmission procedure (inadmissibility) 24/05  
First Reception Service (FRS), Camp Manager 25/05  
Police (Lesvos Police Director and Moria police staff) 25/05  
FRONTEX staff in Moria (25/05)  
UNHCR staff in Moria (25/05)  
UNHCR staff in Kara Tepe (24/05)  
EASO coordinators in Moria (24/05)  
Army in Moria (25/05)  
Save the Children (24/05)  
MSF 25/05)  
Praxis lawyer 24/05)  
MetaAction lawyer (25/05)  
GCR and Proasyl lawyers (23-24-25/05)

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



## ***Dutch Council for Refugees***

**Dutch Council for Refugees**

PO Box 2894

1000 CW Amsterdam

T (020) 346 72 00

F (020) 617 81 55

[info@vluchtelingenwerk.nl](mailto:info@vluchtelingenwerk.nl)

[www.vluchtelingenwerk.nl](http://www.vluchtelingenwerk.nl)

Algemeen Nut  
Beogende Instelling  
**ANBI**

