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The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

The EU-Turkey Agreement of 18 March 2016 was adopted as a response to the unprecedented numbers of refugees and migrants arriving in western Europe via the Eastern Mediterranean and Western Balkans route. It raises several serious human rights issues relating to the detention of asylum seekers in the “hotspots” on the Greek Aegean islands, the return of asylum seekers to Turkey as a “first country of asylum” or “safe third country”, the Greek asylum system’s inadequate capacity to administer the asylum process in the hotspots and delays in the provision of EU support to Greece, the likely low level of resettlement of refugees from Turkey, and delays in the disbursement of EU financial assistance to Turkey’s efforts to support Syrian refugees.

Certain closely related circumstances, in particular closure of its border by “the former Yugoslav Republic of Macedonia”, States’ failures to fulfil commitments to relocate refugees from Greece, and premature discussion of resuming Dublin transfers to Greece, are also problematic.

In order to ensure that human rights and procedural guarantees of international, EU and national law are respected, the Parliamentary Assembly should make recommendations intended to address these issues to Greece as an implementing partner of the Agreement, and to the European Union, its member States and other States participating in EU resettlement and relocation schemes.

1. Reference to committee: Reference 4189 of 18 April 2016 (debate under urgent procedure).



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A. Draft resolution²

1. The Parliamentary Assembly takes note of the European Union-Turkey Agreement of 18 March 2016, adopted against the background of the unprecedented numbers of refugees and migrants arriving in western Europe via the Eastern Mediterranean and Western Balkans route in 2015, which had generated political tensions in many States and an institutional crisis in the European Union. It recalls the fact that Turkey currently hosts over 2.7 million Syrian refugees, on whom it estimates to have spent over €7 billion.
2. The Assembly considers that the EU-Turkey Agreement raises several serious human rights issues relating to both its substance and its implementation now and in the future, in particular the following:
 - 2.1. the Greek asylum system lacks the capacity to ensure timely registration of asylum applications, issue of first instance decisions or determination of appeals; the new Greek Law 4375/2016 may help to address earlier shortcomings but will not ensure adequate capacity;
 - 2.2. detention of asylum seekers in the “hotspots” on the Aegean islands may be incompatible with the requirements of the European Convention on Human Rights (ETS No. 5), due notably to procedural failures undermining the legal grounds for detention and inadequate detention conditions;
 - 2.3. children and vulnerable persons are not systematically referred from detention to appropriate alternative facilities;
 - 2.4. returns of Syrian refugees to Turkey as a “first country of asylum” may be contrary to European Union and/or international law, as Turkey may not ensure protection that is “sufficient”, according to the position of the Office of the United Nations High Commissioner for Refugees (UNHCR), and there have been reports of onward *refoulement* of Syrians;
 - 2.5. returns of asylum seekers, whether Syrians or not, to Turkey as a “safe third country” are contrary to European Union and/or international law, as Turkey does not provide them with protection in accordance with the 1951 Convention relating to the Status of Refugees, non-Syrians do not have effective access to the asylum procedure and there have been reports of onward *refoulement* of both Syrians and non-Syrians;
 - 2.6. remedies against decisions to return asylum seekers to Turkey do not always have automatic suspensive effect, as required by the European Convention on Human Rights;
 - 2.7. resettlement of Syrian refugees from Turkey is made conditional on the number of returns from Greece and will subsequently depend on a “Voluntary Humanitarian Readmission Scheme”, which is likely in practice to generate unacceptably low levels of resettlement;
 - 2.8. there have been unreasonable delays in the European Union’s disbursement of financial assistance promised to Turkey to help support Syrian refugees in Turkey, which should not depend on developments in the Aegean Sea.
3. The Assembly also has concerns relating to certain parallel initiatives in areas closely related to the EU-Turkey Agreement, in particular the following:
 - 3.1. the closure by “the former Yugoslav Republic of Macedonia” of its southern border, coupled with the EU-Turkey Agreement, has added to the pressure on Greece, a country already struggling with the effects of budgetary and financial austerity;
 - 3.2. most European Union member States have effectively failed to honour their pledges to relocate refugees from Greece, despite the growing pressure that country is under;
 - 3.3. it is premature to consider resuming transfers to Greece under the Dublin Regulation given the continuing inadequacies of its asylum system, the additional pressure of its current situation and the fact that the Committee of Ministers of the Council of Europe has not yet closed supervision of execution by Greece of the judgment of the European Court of Human Rights in the case of *M.S.S. v. Belgium and Greece*.

2. Draft resolution adopted by the committee on 19 April 2016.

4. The Assembly therefore recommends that Greece, as an implementing party of the EU-Turkey Agreement, and the European Union, insofar as it provides relevant operational assistance to the Greek authorities:

- 4.1. refrain from automatic detention of asylum seekers and ensure strict adherence to the requirements of national law, the European Convention on Human Rights and European Union law concerning both the grounds for and conditions of detention, with adequate provision for alternatives where detention is not justified or otherwise inappropriate, including following the expiry of time limits;
- 4.2. systematically ensure that children and vulnerable persons are promptly excluded from detention and referred to appropriate alternative facilities;
- 4.3. ensure that the rights and provisions under the European Union Reception Conditions Directive are fully respected for all refugees and migrants arriving in Greece;
- 4.4. refer the question of interpretation of the concept of “sufficient protection” in Article 35 of the European Union Asylum Procedures Directive to the Court of Justice of the European Union and, until such interpretation has been given, refrain from involuntary returns of Syrian refugees to Turkey under this provision;
- 4.5. refrain from involuntary returns of asylum seekers to Turkey in reliance on Article 38 of the Asylum Procedures Directive;
- 4.6. ensure that sufficient resources, from within the Greek administration and seconded from other European Union member States, are rapidly made available so as to allow effective access to a proper asylum procedure and rapid first instance decisions and appeal determination, in accordance with European Union law, especially for applicants in detention;
- 4.7. revise the legislation to ensure that all appeals against decisions to return to Turkey have an automatic suspensive effect;
- 4.8. ensure that all migrants and asylum seekers whose applications are not accepted are treated with dignity and in full compliance with the European Union Return Directive.

5. The Assembly also recommends to the European Union, its member States, and States participating in European Union resettlement schemes, as appropriate:

- 5.1. resettlement pledges made under the 20 July 2015 European Union agreement on resettlement should be rapidly and fully honoured, regardless of developments in the implementation of the EU-Turkey Agreement; beyond that, substantial numbers of Syrian refugees should be resettled from Turkey;
- 5.2. family reunion of refugees should be allowed without any delay or complicated procedures, in order to prevent family members from being forced to take an irregular route to reunification;
- 5.3. the financial assistance promised to Turkey in November 2015 to help support Syrian refugees should be disbursed without further delay;
- 5.4. commitments to relocate refugees from Greece should be rapidly fulfilled;
- 5.5. there should be no further consideration of resuming transfers to Greece under the Dublin Regulation until the Committee of Ministers has closed its supervision of execution by Greece of the *M.S.S.* judgment.

6. Finally, the Assembly recommends that Turkey:

- 6.1. withdraw its geographical limitation to the 1951 Refugee Convention and recognise the status and fully respect the rights of refugees under that convention;
- 6.2. refrain from any onward refoulement of asylum seekers returned from Greece, ensuring access to the asylum system and to an effective remedy with suspensive effect against removal as required by the European Convention on Human Rights;
- 6.3. ensure that all migrants and asylum seekers returned from Greece are treated in full accordance with international standards, including on detention.

B. Explanatory memorandum by Ms Tineke Strik, rapporteur

1. Introduction

1. The unprecedented numbers of refugees and migrants arriving in western Europe via the Eastern Mediterranean and Western Balkans route in 2015 generated political tensions in many States and an institutional crisis in the European Union. European States failed to arrive at a solution based on solidarity and responsibility sharing. Instead, States along the Western Balkans route from “the former Yugoslav Republic of Macedonia” to Austria introduced progressively more restrictive border policies, outside the EU context and without consulting Greece. As for Turkey, it now hosts over 2.7 million Syrian refugees, on whom it reports having spent over €7 billion.

2. Against this background, the EU-Turkey summit of 18 March 2016 adopted an agreement aimed at “deepening Turkey-EU relations as well as addressing the migration crisis”. This agreement raises several serious human rights issues relating to both its substance and its implementation now and in the future, as do certain parallel initiatives in closely related areas.

2. The essential features of the EU-Turkey Agreement

3. “In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey ... decided to end the irregular migration from Turkey to the EU”, to which end they agreed on the following “action points” (reordered by relevance below):

- i. All new irregular migrants, whether persons not applying for asylum or asylum seekers whose applications have been declared inadmissible, crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey, in full accordance with EU and international law.
- ii. For every Syrian returned to Turkey from the Greek islands, another Syrian will be resettled directly to the European Union from Turkey, taking into account the United Nations Vulnerability Criteria, whilst giving priority to those who have not previously entered or tried to enter the European Union irregularly.
- iii. Once irregular crossings between Turkey and the European Union are ending or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated.
- iv. The European Union will, in close co-operation with Turkey, further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey. Once these resources are almost exhausted, the European Union will mobilise up to €3 billion more to the end of 2018.
- v. The European Union and Turkey will work to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border, to allow for the local population and refugees to live in safer areas.
- vi. Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the European Union.
- vii. Fulfilment of the visa liberalisation roadmap will be brought forward to the end of June 2016.
- viii. The accession process will be re-energised in various ways.
- ix. Reference was made to ongoing work on the upgrading of the Customs Union.

3. Specific legal and practical concerns

3.1. New arrivals are systematically detained in inadequate conditions on an uncertain legal basis

4. The European Commission has stated that arrivals on the Greek islands are now accommodated “either in open or in closed reception facilities”, whilst recalling that EU law allows the detention of asylum seekers, “especially if there is a risk of absconding” but must “only ever be a means of last resort and must be proportionate”.³

3. “Implementing the EU-Turkey Agreement – Questions and Answers”, European Commission Fact Sheet, 4 April 2016 (hereafter “Implementing the EU-Turkey Agreement”).

5. Article 14 of the new Greek Law 4375/2016, adopted on 2 April 2016 with immediate entry into force in order to permit implementation of the EU-Turkey Agreement, provides for potentially continuous detention during initial processing and then pending removal.⁴ The European Commission has stated that the “hotspots” have been “transformed ... into closed reception facilities to avoid irregular migrants absconding when they are subject to return decisions”.⁵ Detention in the hotspots seems to be universal and automatic: at least initially, there seemed to be no individual assessment of the necessity of detention, or consideration of less coercive alternatives.⁶

6. Article 5.1.f of the European Convention on Human Rights (ETS No. 5, “the Convention”) permits detention of a person either “to prevent his effecting an unauthorised entry into the country” or “against whom action is being taken with a view to deportation or extradition”, “in accordance with a procedure prescribed by law”. The European Court of Human Rights (“the Court”) has stated that “States’ legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum seekers of the protection afforded by [the 1951 Refugee Convention and the Convention].”⁷ The Committee of Ministers’ 2009 Guidelines on human rights protection in the context of accelerated asylum procedures state that “detention of asylum seekers should be the exception”.

7. As regards the first ground for detention permitted under the Convention, the Court has accepted that fast-track processing of an asylum application made upon arrival may amount to a legitimate measure to prevent unauthorised entry, such that detention of an asylum seeker during that period may be legitimate.⁸ Article 43 of the EU Asylum Procedures Directive (2013/32/EU, “APD”) allows EU member States to decide on certain applications for asylum at the border, during which time the applicant may be detained. A decision on the application must be taken within a reasonable time; if it is not taken within four weeks, the asylum seeker has to be granted entry to the territory and given access to a “normal” asylum procedure. Any further detention during the asylum procedure has to be strictly necessary and in compliance with the specific conditions of Articles 8 to 11 of the EU Reception Conditions Directive (2013/33/EU).

8. As regards the second ground, the Court has held that detention with a view to deportation or extradition is justified only for as long as deportation or extradition proceedings are in progress; if they are not pursued with due diligence, detention becomes unlawful.⁹

9. Whether during initial processing of an asylum application or pending removal, detention must be carried out in good faith, be closely connected to the permitted purpose, be in an appropriate place and conditions, and not exceed a length of time reasonable for the purpose pursued.

10. Under Law 4375/2016, detention pending registration can last up to three days and be extended to a total of 25 days. A further decision should then be taken on whether to detain further or release an asylum applicant. In the case of hotspots, this would most probably be on grounds relating to “prevention of unauthorised entry”. Law 4375/2016 stipulates a maximum of three days between application and notification of the first decision, and six days between lodging an appeal and notification of the determination.¹⁰ The registration, decision-making and appeal bodies are still far from being operational (see below), however, and many asylum seekers who arrived on 20 March have still not even had their applications registered.¹¹ People subject to removal, including back to Turkey, may be detained for up to 18 months. In these circumstances, it is questionable whether detention is “closely connected to the permitted purpose” and/ or whether its length “exceeds that reasonably required for the purpose pursued”.

11. The three largest hotspots (Lesvos, Chios and Samos) rapidly exceeded their intended capacity and became overcrowded. Conditions of detention deteriorated, with poor quality food, insufficient shelter, poor sanitation and inadequate access to appropriate medical care.¹² The national authorities seem not to have

4. See, for example, “Greece: asylum reform in the wake of the EU-Turkey deal”, Asylum Information Database, 4 April 2016.

5. “Implementing the EU-Turkey Agreement”; also “Red Cross questions Turkey refugees deal”, EurActiv.com, 6 April 2016.

6. “Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal”, Amnesty International, 7 April 2016.

7. *M.S.S. v. Belgium and Greece*, Application No. 30696/09, judgment of 21 January 2011 (Grand Chamber).

8. *Saadi v. United Kingdom*, Application No. 13229/03, judgment of 29 January 2008 (Grand Chamber).

9. *A. and Others v. United Kingdom*, Application No. 3455/05, judgment of 19 February 2009 (Grand Chamber).

10. For present purposes, it is assumed that the border procedure under Article 60 of Law 4375/2016, which appears to transpose Article 43 APD into national law, is applied in the hotspots, although it is unclear whether it permits application of the procedure at borders in general, or only in transit zones of ports or airports.

11. “Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal”, Amnesty International, 7 April 2016.

filled the gaps in provision of basic services caused by the withdrawal of the Office of the United Nations High Commissioner for Refugees (UNHCR) and numerous non-governmental organisations (NGOs) in protest at transformation of the hotspots into detention centres.¹³ Detainees suffer from anxiety and frustration which has led to mass protests and outbreaks of violence.¹⁴ These are not appropriate conditions of detention. It may be recalled that arbitrary detention and conditions of detention, as well as inadequate reception facilities and subsistence support for asylum seekers, in Greece had in the past been found by the Court to violate Article 3 of the Convention.¹⁵

12. Law 4375/2016 allows for the detention of unaccompanied children “in very exceptional cases” for up to 25 days (which can be extended by a further 20 days “due to exceptional circumstances”, making a total of over six weeks) pending their referral to an appropriate accommodation facility. There have been reports of pregnant women, women travelling alone with children, families with babies and small children, as well as other vulnerable people including persons with disabilities, trauma and serious illnesses being held in the hotspots. This would be contrary to the requirements of EU law and international standards on the immigration detention of children and vulnerable persons.¹⁶ Other reports, however, suggest that the Greek authorities have begun transferring at least some vulnerable persons into alternative accommodation.¹⁷

3.2. Returns to Turkey may not meet the requirements of EU and international law

13. The EU-Turkey Agreement relies on two, alternative provisions of EU asylum law – Articles 35 and 38 of the EU Asylum Procedures Directive – to return asylum applicants to Turkey. Article 35 allows return to a “first country of asylum” where a person either has already been recognised as a refugee and can still benefit from protection, or enjoys “sufficient protection”, including from *refoulement*, and to which they will be readmitted. Article 38 allows people to be returned to a “safe third country” where they will not be at risk of persecution, serious ill-treatment or *refoulement*, and where they will be able to request refugee status and, if recognised, “receive protection in accordance with the Geneva Convention”; in addition, the applicant should have a “personal connection” to the third country that makes return reasonable. In both cases, the applicant must be given the opportunity to challenge the application of the concept in his or her particular circumstances. Should it be found that there is a “first country of asylum” or “safe third country” to which an applicant may be returned, their asylum application may be rejected as inadmissible without further substantive examination. The European Commission has confirmed that “[o]nly asylum seekers that will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement will be returned to Turkey”.¹⁸

14. As regards returns to Turkey as a “first country of asylum” under Article 35 of the APD, it should be noted that Turkey only extends refugee status under the 1951 Convention to persons fleeing from persecution in Council of Europe member States. In practice, therefore, none of those potentially subject to return under the EU-Turkey Agreement will have already been recognised as a refugee by Turkey. Applications from non-Europeans can thus only be considered inadmissible if it is found that they enjoy “sufficient protection” in Turkey. It is possible that this approach will be applied to Syrian asylum seekers, who may benefit from “temporary protection” status in Turkey under a special regulation.¹⁹ The question is whether this “temporary protection” is “sufficient”. The UNHCR recommends that for protection to be “sufficient”, there should be no risk of persecution or onward *refoulement*, compliance with international standards on living standards, work rights, health care and education, access to a right of legal stay, assistance to persons with specific needs

12. See, for example, “Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal”, Amnesty International, 7 April 2016; “Greece: Asylum Seekers Locked Up – Wretched Conditions for People in Need”, Human Rights Watch, 14 April 2016.

13. “UNHCR redefines role in Greece as EU-Turkey deal comes into effect”, UNHCR, 22 March 2016; “Greece: MSF Ends Activities at Primary Lesvos Transit Camp”, MSF, 22 March 2016; “[Norwegian Refugee Council] is suspending activities at Chios ‘Hotspot’, though will maintain a protection presence to ensure rights of refugees are upheld”, NRC, 23 March 2016; “Oxfam suspends aid operations in Moria camp in protest to the suspension of migrants’ rights by the EU and Turkey”, Oxfam, 24 March 2016.

14. See, for example, “UNHCR urges immediate safeguards to be in place before any returns under EU-Turkey deal”, UNHCR, 1 April 2016; “The situation at the Northern Aegean islands is critical”, Greek Council for Refugees, 4 April 2016; “Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal”, Amnesty International, 7 April 2016.

15. *M.S.S. v. Belgium and Greece*, op. cit.

16. Article 11 of the Reception Conditions Directive and Articles 16 and 17 of the Return Directive.

17. “Greek Police in Lesvos Start Examining Asylum Applications”, *Greek Reporter*, 12 April 2016.

18. “Implementing the EU-Turkey Agreement”

19. It should be noted that following the EU-Turkey Agreement, Turkey recently abolished the provision under which “temporary protection” would cease for Syrians who voluntarily departed the country.

and timely access to a durable solution. Since “sufficient protection” is not defined in the APD, however, the UNHCR encourages the Greek courts to make a reference to the European Court of Justice for its interpretation.²⁰

15. I refer to my colleague Annette Groth’s report on “a stronger European response to the Syrian refugee crisis” (Doc. 14014) for further information on the difficult conditions facing Syrian refugees in Turkey. That report describes how “non-camp” Syrian refugees in Turkey have problems in accessing accommodation, education and labour markets and occasional difficulties with access to health care, and that many live in poverty and debt. I also note more recent reports of “large-scale forced returns of refugees from Turkey to war-ravaged Syria”.²¹ There are serious doubts as to whether the requirements of either EU or international law are satisfied.

16. As regards Turkey as a “safe third country” under Article 38 of the APD, Turkey’s Law on Foreigners and International Protection foresees “conditional refugee” status for those satisfying the definition of the 1951 Refugee Convention and “subsidiary protection” for those at risk of generalised violence, torture or the death penalty. It is uncertain whether non-Syrians have effective access to an asylum procedure in Turkey, since the new asylum system itself is still not fully operational, certainly to the extent necessary to administer Turkey’s overwhelming case load.²² Indeed, this has been recognised by European Commissioner Avramopoulos, who on 4 April stated that he had discussed with the Turkish authorities “how to ensure access to asylum procedures for all non-Syrians who are returned and wish to apply for protection.” There have been reports of “forcible return of around 30 Afghan asylum seekers ... without granting them access to an asylum procedure.”²³ Both “conditional refugees” and beneficiaries of “subsidiary protection” have only temporary status in Turkey and no prospect of long-term legal integration; the presumption is that they will be resettled elsewhere, although very few actually are. In the lengthy meantime, their rights under the Law on Foreigners and International Protection cannot be considered to amount to “protection in accordance with the Geneva Convention”. As regards Syrians, the fact that, as non-Europeans, they are unable to “request refugee status” in Turkey under the 1951 Refugee Convention means that they too should not be returned in reliance on Article 38 of the APD.

17. These concerns suggest that Turkey cannot under current circumstances be considered a safe third country to which asylum seekers could be returned from Greece.

3.3. The Greek asylum system lacks the capacity to process applications

18. The Greek national asylum system has for many years been seriously deficient. The Court found in 2011 that the Greek asylum system was unable to ensure protection against *refoulement* on account of failures to apply the relevant legislation in practice and of major structural deficiencies.²⁴ In March 2016, an NGO submission to the Committee of Ministers of the Council of Europe noted that “persisting obstacles to accessing the asylum procedure before the Asylum Service leave asylum seekers at serious risk of deportation without an individual assessment of [the risk of *refoulement*]”, and that “the insufficient staffing of the Asylum Service ... can generate long delays in the asylum procedure”.²⁵ The Committee of Ministers has yet to close its supervision of execution of this judgment by Greece, indicating that insufficient progress has been made in resolving the problems found by the Court. The extremely short time limits under the border procedure of Law 4375/2016 (see above) will make it even more difficult for the Greek asylum system to ensure that asylum seekers’ rights are effectively respected, and make procedural failures even more likely.

20. See “Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept”, UNHCR, 23 March 2016 (hereafter “Legal considerations”). It can be noted that EU law permits States to apply the requirements for safe third countries, which are broadly similar to those recommended by the UNHCR, also to first countries of asylum. Greek law used to apply them but under Law 4375/2016, no longer does.

21. “Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal”, Amnesty International, 1 April 2016; also “ECRE strongly opposes legitimising push-backs by declaring Turkey a ‘safe third country’”, 29 January 2016.

22. See, for example, “Introduction to the Asylum Context in Turkey”, Refugee Rights Turkey; “Country Report: Turkey”, Asylum Information Database, December 2015.

23. “Turkey’s ‘safe country’ sham revealed as dozens of Afghans forcibly returned hours after EU refugee deal”, Amnesty International, 23 March 2016.

24. *M.S.S. v. Belgium and Greece*, op. cit.

25. “Fifth Joint Submission of the ICJ and ECRE to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* and related cases”, March 2016.

19. Perhaps most significantly, the Greek asylum system will require very extensive additional resources. The European Commission has estimated that 200 Greek asylum service case workers, along with 400 asylum experts (all of which have apparently been pledged) and 400 interpreters from other member States (of which only 46 had been pledged by 6 April) will be needed.²⁶ The Director of the Greek Asylum Service has suggested that far more may be necessary.²⁷ Given the number of potential asylum applicants and a backlog of at least 10 700 applications in mainland Greece,²⁸ it seems unlikely that the national asylum system has the capacity to transfer 200 trained staff to the hotspots. It is also unclear how many of the other member States' pledges have actually been fulfilled; previous experience shows that fulfilment of such pledges is often a very lengthy and ultimately incomplete process. By 4 April, there had still been no asylum requests processed at the Greek hotspots for those who arrived after 20 March.²⁹

20. On 12 April, it was reported that 46 asylum officials from Greece and other countries had arrived on Lesbos, where they were expected to process a total of 50 applications a day (given that there are over 3 500 applicants on Lesbos, this implies that they will have to wait up to three months for a decision; it should be noted that Law 4375/2016 requires a decision within two days).³⁰ On Chios, however, there is still no functioning asylum system: it has been reported that there is only one case worker, who by 8 April had processed just 9 out of 1 206 cases; only three more officers were scheduled to arrive, and not until the end of May.³¹

21. Article 22 of the APD requires that asylum seekers be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, which may be an NGO. Article 23 stipulates that legal advisers must have access to closed areas such as detention facilities for the purpose of consulting that applicant. It is unclear whether these provisions are being effectively respected in practice (for further detail, see below with respect to appeals).

22. Serious practical problems are already emerging. The UNHCR reported that of the 202 people returned to Turkey on 4 April, Greek police had "forgotten" to process the asylum applications of 13 of them, mainly Afghans.³² Whilst this may have been due to transient circumstances, it does not augur well for the future. (It was reported that following their arrival in Turkey, the 13 Afghans were placed in detention, pending rapid deportation, and that the UNHCR had been denied access to them.³³) It appears that so far, only people who have not claimed asylum have been returned to Turkey.³⁴ On 5 April, Greece admitted that it had been overwhelmed by the fact that virtually all new arrivals have claimed asylum and temporarily suspended further returns to Turkey.³⁵ The UNHCR has asserted that "the first Syrians ... are unlikely to be returned any time soon".³⁶ There have also been reports of inadequate provision of information and documentation to asylum seekers, lack of interpretation and, already, a rapidly growing backlog of applications.³⁷

3.4. There is inadequate access to an effective remedy against removal to Turkey

23. The Convention gives asylum seekers the right to an effective remedy with automatic suspensive effect against a removal decision. The mandate of the previous Greek appeals board, however, expired in October 2015. Law 4375/2016 establishes new appeal committees but these are not yet operational; past experience of attempts to reform the Greek asylum system suggests that this may take quite some time. In the meantime, it is difficult to envisage how the tight appeals deadlines in Law 4375/2016 can be respected.

24. It is unclear whether an appeal has automatic suspensive effect in the hotspots, as Law 4375/2016 seems to suggest that under the border procedure, an appellant has the right to remain on the territory only when execution of a return order has been suspended by a judicial decision. For appeals against inadmissibility decisions based on the "safe third country" concept, it is not clear whether this is in compliance

26. "Implementing the EU-Turkey Agreement".

27. "Refugee deal threatened by lack of staff and concern at Turkish human rights", *The Guardian*, 1 April 2016.

28. Law 4375/2016 will regularise some 7 800 of the present backlog of around 18 500 cases. See "Greece: asylum reform in the wake of the EU-Turkey deal", Asylum Information Database, 4 April 2016.

29. "EU sends back 200 migrants, despite legal concerns", *EU Observer*, 4 April 2016.

30. "Greek Police in Lesbos Start Examining Asylum Applications", *Greek Reporter*, 12 April 2016.

31. "Greece: Asylum Seekers Locked Up", Human Rights Watch, 14 April 2016.

32. "Greece may have deported asylum seekers by mistake, says UN", *The Guardian*, 5 April 2016.

33. "Refugees in Greece warn of suicides over EU-Turkey deal", *The Guardian*, 7 April 2016.

34. See, for example, statement by Commissioner Avramopoulos following his visit to Ankara, 4 April 2016.

35. "Greece pauses deportations as claims mount", *Ekathimerini*, 5 April 2016.

36. See "EU sends back 200 migrants, despite legal concerns", *EU Observer*, 4 April 2016.

37. See "Greece: Refugees detained in dire conditions amid rush to implement EU-Turkey deal", Amnesty International, 7 April 2016.

with Article 46 of the APD, which requires automatic suspensive effect in such cases. Article 46 of the APD does not require automatic suspensive effect for appeals against inadmissibility decisions based on the “first country of asylum” concept, but it is not clear whether this is in conformity with the Convention, which requires that a remedy have automatic suspensive effect whenever it is argued that removal would lead to a real risk of exposure to the death penalty, persecution or serious ill-treatment, as could be the case in appeals against removal of asylum seekers to Turkey.³⁸

25. Article 20 of the APD requires that the Greek authorities ensure that free legal assistance and representation are granted to appellants on request. Law 4375/2016 provides that free legal aid will be granted for appeals. It is not clear, however, whether there are sufficient legal advisers/representatives in the hotspots to ensure that appellants can actually enjoy the right to legal assistance implicit in these provisions,³⁹ or even whether legal advisers are allowed access: Human Rights Watch has reported that “nobody is allowed to go into the camp or talk to the refugees”.⁴⁰

26. As with the initial decision-making process, considerable additional resources will be needed to administer the appeals process. The European Commission has estimated that 30 Greek judicial officers, as well as 30 judges with expertise in asylum law from other member States and 30 interpreters will be needed. Again, there must be doubts as to how quickly, and indeed whether these resources can actually be made available, and legitimate concern as to how the Greek authorities and the European Union will deal with the legal and practical consequences of insufficient resources in the meantime. The European Union should also ensure that sufficient finance is available so that appellants in hotspots can in fact exercise their right to free legal aid.

3.5. Resettlement of Syrian refugees should not be linked to the number of returns or arrivals

27. The EU-Turkey Agreement makes resettlement of Syrian refugees from Turkey dependent initially on the number of Syrian refugees who are returned from the Greek islands and then, once arrivals have more or less halted, on a “Voluntary Humanitarian Admission Scheme”. The UNHCR has called for the most vulnerable 10% of Syrian refugees to be resettled from neighbouring countries, a total of 480 000; yet the Geneva Conference of 30 March 2016 led to only “modest” increases in the number of places promised.⁴¹ It should also be recalled that of the 22 504 places promised by EU member States in 20 July 2015, only 5 677 refugees had actually been resettled by 8 April 2016.⁴² Furthermore, the EU member States have yet to agree to the European Commission’s proposal to make available for resettlement from Turkey 54 000 of the 160 000 places originally intended for relocation from Greece and Italy, but not yet allocated.⁴³ The extent to which member States will be prepared to any further humanitarian admission is unknown. Against this background, the approach of the EU-Turkey Agreement is indefensible. The European Union has an unconditional moral duty to open humanitarian pathways, including resettlement, for substantial numbers of Syrian refugees from both Turkey and other countries such as Lebanon and Jordan.

28. Furthermore, the intention of giving priority to migrants who have not previously entered or tried to enter the European Union irregularly, if applied indiscriminately, may lead to vulnerable persons not being given the priority they need. Finally, the UNHCR’s plea that “EU resettlement from Turkey should not be at the expense of the resettlement of other refugee populations around the world who also have great needs” should not be forgotten.⁴⁴

3.6. Europe must provide financial support to Syrian refugees in Turkey

29. Last November, the European Union promised €3 billion in financial assistance for activities to support Syrian refugees in Turkey, and a further €3 billion is promised for when that runs out. It took the EU member States quite some time to agree on where the initial sum would come from, and it seems that little if any has yet reached Turkey. As with resettlement, the European Union has a clear moral duty to support the 2.7

38. See, for example, *M.S.S. v. Belgium and Greece*, op. cit.; Committee of Ministers’ Guidelines on human rights protection in the context of accelerated asylum procedures.

39. See, for example, “EU must face up to risks of dirty deal with Turkey”, ECRE, 1 April 2016.

40. “EU sends back 200 migrants, despite legal concerns”, *EU Observer*, 4 April 2016.

41. “Geneva conference on Syrian refugees ends with new pledges of places, recognition of challenges ahead”, UNHCR, 30 March 2016.

42. “Annex 3 to the Second report on relocation and resettlement”, COM(2016)222 final, 12 April 2016.

43. “Proposal for a Council Decision amending Council Decision (EU) 2015/1601...”, European Commission, COM(2016)171 final.

44. “UNHCR on EU-Turkey deal: Asylum safeguards must prevail in implementation”, 18 March 2016.

million Syrian refugees in Turkey (as well as those in Lebanon and Jordan), regardless of what happens in the Aegean. Provision of this support should not be made conditional on a reduction in the number of arrivals on the Greek islands, or on fulfilment by Turkey of other provisions of the Agreement.

4. Related concerns

4.1. The EU-Turkey Agreement, coupled with closure by “the former Yugoslav Republic of Macedonia” of its border, has increased the pressure on Greece

30. In the weeks preceding the EU-Turkey Agreement, “the former Yugoslav Republic of Macedonia”, in co-ordination with and supported by countries to its north along the Western Balkans route, closed its border with Greece to all refugees and migrants. There are now some 11 000 migrants camped at the border;⁴⁵ on 10 April, the police of “the former Yugoslav Republic of Macedonia” made protracted use of tear gas, water cannons and rubber bullets to repel protesting refugees and migrants, resulting in at least 300 people being injured.⁴⁶ The decision to close the border, contrary to the spirit of solidarity and responsibility sharing, has blocked some 46 000 refugees and migrants in Greece, which lacks the necessary reception capacity. By obliging the Greek authorities also to provide for and process the asylum applications of new arrivals on the Aegean islands, the EU-Turkey Agreement has only added to the pressure on a country already struggling with the effects of budgetary and financial austerity.

4.2. The rate of relocations of refugees from Greece is shamefully slow

31. As with resettlement, EU member States have failed to fulfil their commitments to accept the relocation of refugees from Greece, despite the ever increasing pressure the country is under. By 11 April, of the commitments to relocate 63,302 refugees from Greece foreseen in the EU Council Decisions of September 2015, only 2,943 places had been formally pledged and only 615 – less than 1% – actually relocated.⁴⁷

4.3. It is premature to suggest that Dublin transfers to Greece could be resumed

32. On 4 March, the European Commission announced that ahead of the June 2016 European Council, it would present an assessment of the possibility of resuming Dublin transfers to Greece.⁴⁸ Only a few weeks earlier, the Commission had reported that “further efforts still need to be made by Greece to ensure that its asylum system is functioning in full alignment with the requirements of [EU] law”, “reception capacity for asylum seekers in Greece ... is not yet sufficient”, and “many asylum seekers are currently not provided with the necessary free legal aid to enable them to pursue an appeal”, amongst other shortcomings.⁴⁹ One should also recall that the Committee of Ministers of the Council of Europe does not expect to resume its supervision of execution of the *M.S.S.* judgment by Greece until December. In the circumstances, it is premature to talk about resuming Dublin transfers to Greece; in fact, it is close to irresponsible, given the enormous difficulties Greece will have dealing with the thousands of refugees and migrants detained at the hotspots and the tens of thousands blocked on the mainland.

4.4. The EU-Turkey Agreement should not set a precedent for other situations

33. Perhaps in response to the closure of the Eastern Mediterranean and Western Balkans routes, there has been a significant increase in the number of refugees and migrants taking the Central Mediterranean route to Italy: the Italian coast guard rescued some 4 000 on 11 and 12 April, part of a reported 80% increase in the first quarter of this year, as compared with 2015. The Italian Minister of the Interior, referring to the EU-Turkey Agreement, has called for the European Union to reach agreement with African States to provide economic aid in return for taking back their citizens “and preventing new flows”.⁵⁰ Whilst this proposal may

45. “UNHCR statement on violence on the Greece-FYROM border on 10 April”, UNHCR, 11 April 2016.

46. “Macedonia police deploy tear gas on refugees at Idomeni”, *Deutsche Welle*, 10 April 2016.

47. “Annex 1 to the Second report on relocation and resettlement”, COM(2016) 222 final, 12 April 2016.

48. “Back to Schengen – A Roadmap”, COM(2016) 120 final.

49. “Commission Recommendation ... on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013”, C(2016) 871 final, 10 February 2016; also “ECRE Comments on the European Commission Recommendation ... C(2016) 871”, February 2016 and “5th Joint Submission of the ICJ and ECRE to the Committee of Ministers ... in the case of *M.S.S. v. Belgium and Greece*”, March 2016.

50. “Italy pleads for Greek-style push to return its migrants”, *Financial Times*, 4 April 2016.

relate only to readmission agreements covering nationals of the receiving countries, the EU-Turkey Agreement – highly problematic in itself, as described above – cannot be replicated for other countries even less capable of protecting refugees and migrants.

5. Conclusions and recommendations

34. The EU-Turkey Agreement, however, at best strains and at worst exceeds the limits of what is permissible under European and international law. Even on paper, it raises many serious questions of compatibility with basic norms on refugees' and migrants' rights. It has so far given every indication of being even more problematic in practice.

35. The Assembly should take position on these issues, as described in this report, and make practical recommendations to States and the European Union on how they should be handled so as to ensure compliance with European Union, European and international legal standards on refugees' and migrants' rights.