

Ms Ylva Johansson  
Commissioner for Home Affairs  
European Commission  
Rue de la Loi 200, B-1049, Brussels, Belgium

Athens, 27 April 2021  
Reference No: β/6/27.4.2021

## **Re: Implementation of the EU *acquis* at the Greek-Turkish land and sea borders**

Dear Commissioner,

We, representatives of the undersigned organisations, are writing to you to convey our observations and concerns regarding the implementation by the Greek authorities of the EU *acquis* and the Charter of Fundamental Rights at the Greek-Turkish land and sea borders.

We appreciate the commitments consistently made by the European Commission to closely follow the situation by taking note of publicly available reports of violent push backs and denial of access to the asylum procedure, and raising concerns with the Greek authorities, without prejudice to its enforcement powers as guardian of the Treaties.<sup>1</sup>

We remain, however, concerned by persisting allegations of push backs,<sup>2</sup> which have come under increasing scrutiny *inter alia* in the context of dedicated working groups set up by the European Parliament and the European Border and Coast Guard (Frontex).<sup>3</sup>

In our capacity as civil society organisations providing legal support and other forms of assistance to refugees at the Greek borders, we closely monitor and document push backs at land and sea as a phenomenon ever-present and yet in highly escalating form March 2020. Our findings are made publicly available and are regularly shared with relevant actors, including through a submission to the United Nations Special Rapporteur on the human rights of migrants on 1 February 2021.

### **Procedures to assess the principle of *non-refoulement* in border controls**

#### ❖ Sea operations

Under Article 4(3) of Regulation 656/2014,<sup>4</sup> the units participating in a sea operation coordinated by the European Border and Coast Guard (Frontex) shall “use all means

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<sup>1</sup> European Commission, Reply to parliamentary question E-004566/2020, 17 November 2020; Reply to parliamentary question E-004816/2020, 6 November 2020; Reply to parliamentary question E-002991/2020, 7 August 2020; Reply to parliamentary question E-004588/2019, 23 March 2020.

<sup>2</sup> For an overview of allegations in 2020, see Refugee Support Aegean (RSA) & PRO ASYL, ‘Push backs and violations of human rights at sea: a timeline’, 29 December 2020, available at: <https://bit.ly/3uMpq78>.

<sup>3</sup> European Parliament, ‘LIBE Working Group on Frontex Scrutiny’, 15 March 2021, available at: <https://bit.ly/3spQx6l>; Frontex, ‘Conclusions of the Management Board’s meeting on 5 March 2021 on the report of its Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea’, 5 March 2021, available at: <https://bit.ly/32kqAuo>.

<sup>4</sup> [2014] OJ L189/93.

to identify the intercepted or rescued persons, assess their personal circumstances, inform them of their destination in a way that those persons understand or may reasonably be presumed to understand and give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of *non-refoulement*".

According to the Ministry of Maritime Affairs & Insular Policy, the Hellenic Coast Guard rescued a total of 27,334 persons in the course of 2020,<sup>5</sup> of whom 13,692 in Greek territorial waters.<sup>6</sup> Conversely, the total number of sea arrivals in Greece – not necessarily related to rescue at sea – was 9,687 during the same period.<sup>7</sup> These statistics demonstrate that the majority of persons rescued by the Hellenic Coast Guard in 2020 have not been brought on Greek soil, in likely contravention of EU law provisions, per which where "persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined".<sup>8</sup> It is worth stressing that the majority of sea rescues performed in 2020 and in previous years took place in Greek territorial waters.<sup>9</sup>

In addition, the Greek Minister of Maritime Affairs & Insular Policy stated that, between January and August 2020, the Hellenic Coast Guard had prevented over 10,000 persons from entering Greece via sea. 3,000 persons were prevented in August alone.<sup>10</sup>

In none of the cases noted above have the authorities demonstrated what steps they took to identify the individual persons intercepted, to inform them of their destination and to provide them with the opportunity to raise potential risks of *refoulement* prior to being directed to Turkey. In addition to arguable violations of the prohibition on collective expulsions under Article 19(1) of the Charter stemming from the conduct of the Coast Guard, non-compliance with the aforementioned procedural duties amounts to an infringement of Article 4(3) of the Regulation and the principle of *non-refoulement* set out in Articles 4 and 19(2) of the Charter.

#### ❖ Land border operations

The procedural obligations set out above stem from the *non-refoulement* principle and would apply *mutatis mutandis* to land border operations, including "Flexible Operational Activities LAND" and "Rapid Border Intervention EVROS 2020".<sup>11</sup>

According to the Minister of Migration and Asylum, arrivals via Evros dropped by 62% in 2020,<sup>12</sup> while in mid-January 2021 the reduction of flows reached 99% compared to

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<sup>5</sup> Hellenic Coast Guard, Reply to parliamentary question by KINAL, 15 January 2021, available at: <https://bit.ly/2MQdYHe>.

<sup>6</sup> Hellenic Coast Guard, *Ανάλυση Περιστατικών ΕΚΣΕΔ 2020*, 4, available at: <https://bit.ly/3tUd78E>.

<sup>7</sup> UNHCR, *Operational portal Mediterranean situation: Greece*, available at: <https://bit.ly/3aThe2L>.

<sup>8</sup> Recital 26 Asylum Procedures Directive.

<sup>9</sup> In 2020, 901 of 1,358 rescues took place in territorial waters: Hellenic Coast Guard, *Ανάλυση Περιστατικών ΕΚΣΕΔ 2020*, 4, 2,086 out of a total of 2,656 rescues (78.5%) in 2019, 1,599 out of a total of 1,800 (88.8%) in 2018, and 1,386 out of a total of 1,592 (87%) in 2017: Hellenic Coast Guard, *Συμβάντα Διάσωσης Κέντρου Επιχειρήσεων*, available at: <https://bit.ly/3x3kH30>.

<sup>10</sup> Giannis Plakiotakis, 'Οι μεταναστευτικές ροές από την 1η Μαρτίου έως σήμερα έχουν μειωθεί κατά 84% σε σχέση με το 2019', 2 September 2020, available at: <https://bit.ly/3cXFT2t>.

<sup>11</sup> Article 80(1) Frontex Regulation.

<sup>12</sup> E-Evros, 'Μηταράκης: Μείωση 62% των μεταναστευτικών ροών το 2020 στον Έβρο', 19 January 2021, available at: <https://bit.ly/3mQicw9>.

January 2020.<sup>13</sup> However, the authorities have not demonstrated any steps taken to identify the persons intercepted, to inform them of their destination and to provide them with the opportunity to raise risks of *refoulement* prior to being directed to Turkey.

These observations apply to cases of asylum seekers arrested inside reception facilities such as Diavata and transported in an organised manner by police authorities to the Evros land border, whence they are pushed back.<sup>14</sup>

### **Information and interpretation services at border crossing points and detention facilities**

Pursuant to Article 6(1) of the Asylum Procedures Directive,<sup>15</sup> as transposed in Article 65 of the International Protection Act (IPA),<sup>16</sup> when an asylum application is made, the Greek authorities shall proceed to its registration within 3 working days – or 6 working days if it is made to an authority other than the authority competent for registering applications. To facilitate the exercise of the fundamental right to asylum, enshrined in Article 18 of the Charter of Fundamental Rights, the EU legislature has imposed specific procedural obligations and institutional standards on Member States with a view to enabling access to the asylum procedure at borders.

Specifically, Greece has a duty under Article 8(1) and Recitals 26 and 28 of the Asylum Procedures Directive to provide information to individuals held in detention facilities or present at the border or in its territorial waters of their right to seek international protection when there are indications that they may wish to do so, including by ensuring interpretation services where necessary.<sup>17</sup> In the particular context of sea operations coordinated by Frontex, compliance with the *non-refoulement* principle expressly requires provision for shore-based interpreters, as well as medical and legal experts, pursuant to Article 4(3) of Regulation 656/2014. These procedural obligations stem from the *non-refoulement* principle and would apply *mutatis mutandis* to land border operations, including “Flexible Operational Activities LAND” and “Rapid Border Intervention EVROS 2020”.<sup>18</sup>

However, while the relevant provisions of the Directive have been transposed into domestic law through Article 66(1) IPA, they are systematically not implemented in practice.

In the Eastern Aegean Sea in particular, Greece has designated 14 official maritime border crossing points.<sup>19</sup> Persons arriving via the Aegean Sea are not provided with information on how to access the asylum procedure upon interception and detention in facilities operated by the Hellenic Coast Guard, regardless of the place of arrival. Facilities include official quarantine sites such as Megala Therma on Lesbos,<sup>20</sup> where new arrivals are deprived of their liberty for prolonged periods without prior registration

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<sup>13</sup> Παραπολιτικά, ‘Μηταράκης στα Παραπολιτικά 90,1: Η Τουρκία πρέπει να εκπληρώσει τις υποχρεώσεις της - Να διακόπτει τις ροές και να δέχεται τις επιστροφές’, 14 January 2021, available at: <https://bit.ly/3gj6LMc>.

<sup>14</sup> For details, see Human Rights 360, *The European and national asylum police at the land borders of Evros*, February 2021, available at: <https://bit.ly/2QzUZ5d>.

<sup>15</sup> Directive 2013/32/EU [2013] OJ L180/60.

<sup>16</sup> Law 4636/2019, Gov. Gazette A’ 169/1.11.2019.

<sup>17</sup> Article 8(1) Asylum Procedures Directive; Article 66(1) IPA.

<sup>18</sup> On obligations incumbent on Frontex, see Article 80(2) Regulation (EU) 2019/1896 [2019] OJ L295/1.

<sup>19</sup> Hellenic Coast Guard, Reply to parliamentary question by KINAL, 15 January 2021, available at: <https://bit.ly/2MQdYHe>.

<sup>20</sup> Greek Council for Refugees et al., ‘Illegal pushbacks, Lives at risk, NGOs under prosecution: Investigations on pushbacks at the EU level, targeting of those highlighting them in Greece’, 16 March 2021, available at: <https://bit.ly/2OU5AHR>.

or information on how to access the asylum procedure.<sup>21</sup> To the knowledge of the undersigned organisations, the Greek authorities have not deployed interpreters in any of the official border crossing points or detention facilities to support their officers on the Aegean islands. Accordingly, in the five years following the entry into force of the Directive, Greece has taken no steps to “make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure”.

In a similar vein, persons arriving at the land border of Evros are not provided with information on how to access the asylum procedure upon interception and detention in border police stations. To the knowledge of the undersigned organisations, no interpreter has been deployed to support any of the official Border Police Departments in the Evros region.

Based on the above observations, we would kindly request information on the following elements:

1. What is the Commission's assessment of compliance by Greece with the procedural obligations attached to respect for the principle of *non-refoulement* pursuant to Articles 4 and 19(2) of the Charter, set *inter alia* by Article 4(3) of Regulation 656/2014?
2. What is the Commission's assessment of the implementation of Articles 6 and 8 and Recitals 26 to 28 of the Asylum Procedures Directive by Greece in the specific context of the Aegean Sea and the Evros land border?

We thank you for your consideration and remain at your disposal for any further information or clarification required.

Yours sincerely,

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(RSA)**

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**Hellenic League for  
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cc.

Ms Monique Pariat, Director-General for Migration and Home Affairs, European Commission



<sup>21</sup> RSA, Complaint to the Ombudsman, 9 April 2021.