Mr. Jean-Claude Juncker, President European Commission
Mr. Ioannis Mouzalas, Minister of Migration Policy, Greece

Cc
Ms. Maria Stavropoulou, Director of Asylum Service, Ministry of Migration Policy, Greece
Mr. Frans Timmermans, Vice-President, European Commission
Mr. Dimitris Avramopoulos, Commissioner for Migration and Home Affairs, European Commission
Mr. Maarten Verwey, EU Coordinator Implementation EU-Turkey Statement, European Commission
Mr. Jose Carreira, Executive Director, European Asylum Support Office
Mr. Fabrice Leggeri, Executive Director, European Border and Coast Guard Agency

Brussels, 15 December 2016

Re: Joint Action Plan on EU-Turkey Statement and resumption of Dublin transfers to Greece

Dear Mr. Juncker, dear Mr. Mouzalas,

The European Commission Recommendation of 8 December 2016 to resume transfers of certain groups of asylum seekers to Greece under Regulation (EU) No 604/2013 as of 15 March 2017 under certain conditions and the Joint Action Plan adopted by the EU Coordinator for the implementation of the EU-Turkey Statement together with the Greek authorities raise fundamental questions relating to the functioning of and the future of the Common European Asylum System (CEAS). In the view of the undersigning organisations, which have all conducted recent research and/or provide legal assistance and other services to asylum seekers and migrants in the hotspots and mainland Greece, both the Recommendation and the Joint Action Plan reveal a worrying tendency to disregard both the realities on the ground in Greece, as well as the systematic human rights violations the implementation of the EU-Turkey Statement leads to on a daily basis.

In its fourth report on the implementation of the EU-Turkey Statement, published on 8 December 2016, the European Commission has suggested a series of measures aiming at increasing the number of returns from Greece under this highly controversial and contested arrangement. The undersigning organisations are particularly alarmed by the suggestions made in the Joint Action Plan elaborated by the EU Coordinator together with the Greek authorities on the implementation of certain aspects of the EU-Turkey Statement. We believe that many of the proposed measures will result in depriving asylum seekers and migrants arriving on the islands from essential procedural safeguards to protect them from *refoulement*, from enjoying the right to family life and the right to asylum under Article 18 of the EU Charter of Fundamental Rights, and eventually undermine the rule of law.

The envisaged resumption of transfers of asylum seekers under the Dublin III Regulation to Greece is in our view premature in light of the persistent deficiencies in the Greek asylum system, that are

unlikely to be resolved by the envisaged date of 15 March 2017. Moreover, it disregards of the pending procedure before the Council of European Committee of Ministers on the execution of the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights and is at odds with ongoing efforts to increase relocation from Greece.

We regret to see that, despite overwhelming evidence that the EU-Turkey statement results in frequent human rights violations, the Commission and the Greek authorities opt for solutions that are likely to exacerbate rather than prevent such violations.

We are raising detailed observations in annex as regards the legality and impact of the proposed measures on the fundamental rights of persons arriving on the Greek islands and subject to Dublin returns.

We hope our observations and suggestions will be taken into account and request a meeting for further discussion.

Yours sincerely,

Catherine Woollard
Secretary-General, ECRE

Vasileios Kerasiotis
Legal Unit Coordinator, Greek Council for Refugees

Spyros Rizakos
Director, AITIMA

Epameinondas Farmakis
Managing Director, Solidarity Now

ANNEX – Observations and concerns on the Joint Action Plan on the implementation of certain aspects of the EU-Turkey Statement and the Recommendation on the resumption of returns to Greece under the Dublin III Regulation

1. Abolition of exemption of family cases and vulnerable persons from admissibility assessment

A first measure envisaged under the Joint Action Plan is a requirement for the Greek Asylum Service to examine the application of the inadmissibility grounds under Articles 55 and 56 of Law (L) 4375/2016 to Dublin family reunification cases, with a view to their possible return to Turkey. Moreover, the Greek authorities are to make the exceptional border procedure as laid down in Article 60(4)(f) of the aforementioned law applicable to Dublin family reunification cases and to examine whether asylum requests from vulnerable groups could equally subjected to the same procedure. Such a move would require an amendment of Article 60(4)(f) L 4375/2016.

Such an approach would ignore the key principle laid down the Dublin III Regulation, according to which the application of the Dublin Regulation criteria must precede the examination of the asylum application, even though this does not prevent any country from sending an applicant to a safe third country. The presence of family members in other Member States is the first of the responsibility allocation criteria, which must be applied in hierarchical order. As is explicitly stated in Recital 14 of the Dublin III Regulation, the right to be united with family members is enshrined in Article 7 of the EU Charter. Requiring asylum seekers with family members in another EU Member State to exercise their right to family life from or in Turkey, renders the exercise of this right impossible in practice. Implementing such a rule would in practice mean that asylum seekers and refugees, entitled to be reunited with their family members in the EU under the Dublin Regulation, would be forced to seek family reunification from Turkish territory. Such a right could not be triggered in the case of family members with pending applications in EU Member States or having obtained an international protection status other than refugee status in number of EU Member States. Those entitled to family reunification with family members in EU Member States from Turkey in most cases face long and cumbersome procedures due to an increasingly restrictive approach to family reunification across the EU.

Denying asylum seekers the right to be reunited with their family members from EU territory as they are entitled to under the Dublin Regulation, in order to make them exercise such right from or in Turkey would lead to an absurd cascade of transfers, which is neither in the interest of Member States, nor in that of asylum seekers and refugees. The Court of Justice of the European Union has also clarified with respect to Dublin transfers of unaccompanied children in Case C-648/11 *M.A. v. Secretary of State for the Home Department* that unnecessary transfers must be avoided as a rule, as they are not in the best interests of children.

Rather than enforcing returns to Turkey, the Commission should see to the correct implementation of the family provisions in the Dublin Regulation from Greece as a matter of EU law. The Greek Asylum Service has actively pursued the application of the Regulation with a view to transferring applicants to other EU Member States, with 2,733 outgoing requests in the first ten months of 2016. Yet only 289 transfers have been carried out during the same period.[1] It is highly concerning that the European Commission imposes solutions that are legally questionable, practically cumbersome and morally unjustifiable, in order to "secure the benefits of the EU-Turkey statement for the EU."

We urge the Commission to take up its role as guardian of the Treaties and take all necessary steps to ensure that EU Member States comply with their obligations under the Dublin III Regulation and prioritise the correct application of the family provisions in the Dublin III Regulation.

---

[1] Asylum Service, *Statistical data 1 January – 31 October 2016*, available at: https://goo.gl/LcPWbr.

2. Acceleration of and interference with the Greek asylum procedure

Secondly, the measures outlined with the aim of speeding up the interviews and procedures for the examination of asylum applications risk further undermining the quality of the asylum process on the Greek islands, thereby increasing risks of *refoulement*. A nationality-based approach has already governed the examination of asylum applications on the islands, with priority given to admissibility assessments of Syrians and in-merit examination (without an admissibility assessment) of Pakistani, Bangladeshi, Algerian, Moroccan and Tunisian nationals.[2] Such an approach has resulted in a *de facto* differential application of L 4375/2016, as well as led to nationalities that have not been prioritised, such as Afghans, Iraqis and Iranians, having to wait for months before their application was even registered, with a number of them still waiting for their claim to be assessed. Rather than being effectively addressed, we fear that such discriminatory treatment of applicants on the islands will be extended through the "segmentation by case categories" with the support of EASO, which is based on a similar nationality-based caseload management. Moreover, in the view of the undersigning organisations, the persisting gaps in the Turkish asylum system, including the geographical limitation to the 1951 Refugee Convention, as well as the lack of reception capacity, in particular for non-Syrian asylum seekers, and long term integration prospects, do not allow for the conclusion that Turkey meets the criteria laid down in the recast Asylum Procedures Directive.[3]

The devastating impact of legal uncertainty stemming from such nationality-based approach and the policy of containing asylum seekers pending the procedure on the islands and in the hotspots is well-documented. Recent reports from NGOs and the Fundamental Rights Agency (FRA) have without exception denounced the inhuman reception and detention conditions in the hotspots, the lack of procedural safeguards and identification and referral mechanisms for vulnerable groups, the growing tensions between certain nationalities, the unlawful detention of unaccompanied children in substandard conditions and instances of sexual violence within overcrowded facilities.[4] Moreover, on account of such developments, Member States such as Belgium have suspended the deployment of their experts to the hotspots as they consider that their safety is not guaranteed.[5]

We regret that, confronted with an abundance of evidence that the exceptional procedure at the border under Article 60(4) L 4375/2016 is not achieving its objectives of speedy returns and results in frequent and massive fundamental rights violations, the Commission and the Greek authorities opt for solutions that are likely to exacerbate rather than resolve such deficiencies. In this regard, we are extremely concerned over the suggestion of the use of increased detention pending the examination of asylum applications, and the involvement of Frontex to actively enforce the freedom of movement restrictions imposed on migrants present on the islands.

Moreover, the measures envisaged to increase the number of decisions taken by Appeals Committees seem liable to affect their independence and risk seriously undermining the quality of decisions taken at second instance, if not accompanied by increased resources commensurate to their tasks. The fact that the constitutionality of the composition of the Appeals Committees is currently under review by the Council of State should not be neglected in proposals relating to their functioning. At the same time, the Joint Action Plan offers little basis for its recommendation to pursue far-reaching reforms in the

---

2 Council of the European Union, *Migration*, 12730/16, 3 October 2016, para 10.

3 See Dutch Council for Refugees and ECRE, *The DCR/ECRE Desk research on the application of a safe third country and a first country of asylum concept to Turkey*, May 2016, available at: https://goo.gl/f9lHac.

4 See e.g. Dutch Council for Refugees, ECRE, Italian Council for Refugees, Greek Council for Refugees and ProAsyl, *The implementation of the hotspots in Italy and Greece*, December 2016; FRA, *Opinion on the fundamental rights in 'hotspots' set up in Greece and Italy*, December 2016.

5 See e.g. Euractiv, 'Concerns grow over the security of EU personnel at Greek hotspots', 18 November 2016.

Greek appeal system by removing possibilities of onward appeal following a decision of the Appeals Committees.

As the number of persons arriving on a daily basis in the Greek islands continues to outnumber by far the number of persons returned, the policy of containment on the islands is unsustainable. Rather a policy of decongesting the islands by conducting procedures on the mainland in conditions that guarantee access to a fair and efficient procedure must be pursued. In line with the Commission's own findings as regards the lack of proper identification and referral mechanisms on the islands, in particular those belonging to vulnerable groups should be immediately transferred to the mainland with a view to their relocation to another EU Member State or, where the necessary facilities and safeguards are in place, accessing the asylum procedure in Greece.

Finally, the involvement of EU agencies, in particular Frontex and EASO in the implementation of the procedures in the framework of the EU-Turkey Statement raise important questions of around their accountability for human rights violations committed in the course of such procedures. The recent Frontex-coordinated return of a group of 10 Syrian refugees to Turkey, without having had access to the asylum procedure in Greece despite their expressed intention to do so, is an example of how the responsibility of the European Union can be triggered, through the Agency, in the commission of, or aid and assistance to, wrongful acts under international and EU law. On the other hand, the involvement of EASO in eligibility interviews and opinion-drafting relating to certain nationalities is unclear and exceeds the applicable legal framework, insofar as the assessment of the merits of these applications does not fall within the exceptional border procedure of Article 60(4) L 4375/2016. Further clarification of the respective roles of EU Agencies within the boundaries set by Greek legislation is urgently needed.

We urge the Commission, EU Agencies and Greece to take the necessary measures to alleviate the pressure on the islands by transferring applicants to locations in the mainland with a view to the examination of their asylum applications or their relocation to other EU Member States. EU agencies and the Greek asylum authorities should refrain from differential treatment of nationalities in the asylum procedure as it causes tensions among communities as well as from any caseload management methods liable to undermine a quality individual assessment. Any changes to the appeal system in Greece must serve the purpose of ensuring full compliance with Greece's obligations to ensure access to an effective remedy under international and EU law as well as constitutional requirements. The legal status of the EU agencies and their respective roles in the Greek asylum procedure as well as the implementation of returns must be clarified.

3. The reinstatement of Dublin transfers to Greece

With 44,375 asylum applications registered by the end of November and more applications expected to be lodged following the pre-registration programme conducted over the summer, the Greek asylum authorities face enormous challenges. Although the Commission identifies a long list of serious shortcomings and in the Greek asylum system and corresponding measures to remedy them, the resumption of Dublin transfers to Greece is recommended as of 15 March 2017 onwards, subject to the provision of individual guarantees and the provisional exclusion of vulnerable asylum applicants, including unaccompanied minors.

We believe that such a Recommendation is problematic in various respects. Firstly, it assumes that Greece will be able to complete the implementation of the long list of measures identified by the Commission. However, many of those relate to the treatment of applicants other than those excluded from the scope of the Recommendation, with respect to their accommodation as well as the examination of their asylum applications at first and second instance. These concern in particular measures to address structural deficiencies with regard to access to dignified reception conditions as required under the recast Reception Conditions Directive and to ensure a timely and fair examination

of their asylum applications within the time limits and access to an effective remedy laid down in the recast Asylum Procedures Directive.

Whereas it is acknowledged that progress has been made in improving and reception capacity and conditions, much more needs to be done before full compliance with the EU asylum *acquis* will be ensured. None of the stakeholders active in Greece is able to predict whether these targets will be met by 15 March of 2017, which seems to be acknowledged by the explicit requirement of individual guarantees to the model of the conditions imposed by the European Court of Human Rights (ECtHR) in the *Tarakhel v. Switzerland* judgment. Rather than speculating on the situation on 15 March 2017, any Recommendation to resume Dublin transfers to Greece should be based on a factual assessment of the conditions on the ground at the moment of such resumption.

Findings of various Greek service-providing organisations reveal the continuing deficiencies in the asylum procedure and reception conditions for asylum seekers on the mainland.

- Many pre-registered asylum-seekers have to wait for several months before being able to lodge their asylum application.[6]

- Moreover, the number of 71,539 reception places referred to in Recital 9 of the Commission Recommendation mostly concern temporary accommodation facilities, as acknowledged by the Commission, and include places in pre-removal detention centres, hotspots and makeshift shelters. In practice, only very few facilities and the places provided by UNHCR live up to the EU standards required to be considered as open reception facilities.[7] In most camps and all the hotspots, the living conditions are dire and raise safety risks, the services very limited and of low quality and no Standard Operating Procedures or management accountability system is in place.[8]

- Finally, it is emphasised that no state-run programmes currently exist to support the integration into Greek society of those granted international protection.

Secondly, the Recommendation to resume transfers to Greece comes at a time when the Council of Europe Committee of Ministers, responsible for monitoring the implementation of the *M.S.S. v. Belgium and Greece* ruling since 2011, has accepted to postpone the evaluation procedure on the basis of the argument that Greece is currently under enormous migratory pressure and that the situation is exceptional and unstable. In this regard, we consider the recommendation to resume transfers to Greece from 15 March 2017 onwards, not only premature but also disregarding of the pending procedure before the Council of Europe Committee of Ministers on the execution of judgments.[9] Moreover, the European Court of Human Rights has recently imposed interim measures on Hungary to prevent the return of applicants to Greece under the Dublin Regulation.[10]

---

6 For a recent account, see Greek Forum of Refugees, '2011 vs 2016: Different situation, nothing better for refugees in Greece', 9 December 2016, available at: https://goo.gl/E671UM; AITIMA, *Pilot Project on Monitoring the Asylum Procedure, Mid-Term Report December 2016,* available at: https://goo.gl/xUgpAg.

7 On the calculation of Greece's reception capacity, see also ECRE, *Comments on the Commission Recommendation relating to the reinstatement of Dublin transfers to Greece*, February 2016, available at: https://goo.gl/18HyVe.

8 Doctors of the World Greece, 'Επανέναρξη των επιστροφών Δουβλίνου', 14 December 2016, available at: https://goo.gl/mrGZp1. See also Joint Declaration of 25 NGOs: 'How many refugees must die before safety is guaranteed in Greece, Athens', 28 November 2016, available at https://goo.gl/B7UX6J; AITIMA, *Pilot Project on Monitoring the Asylum Procedure, Mid-Term Report December 2016,* available at: https://goo.gl/xUgpAg.

9 See PACE, 'Rapporteur Tineke Strik warns against resuming Dublin transfers to Greece', 9 December 2016, available at: https://goo.gl/sA7Wut.

10 ECtHR, *M.S. v. Hungary*, Application No 64194/16; *H.J. v. Hungary*, Application No 70984/16. See further Hungarian Helsinki Committee, *Update on Dublin transfers*, 14 December 2016, available at: https://goo.gl/R3Thn5.

Thirdly, resuming Dublin transfers, even gradually, to Greece at a time when the Greek authorities are facing an unprecedented pressure on their asylum system following the closure of the Balkan route is at odds with efforts to step up solidarity measures such as relocation. We share and support the Commission's calls on Member States to step up the number of relocation pledges and the pace of relocation and honour their commitments. As onward movement from Greece to other EU Member States has almost come to a halt, the resumption of Dublin returns to Greece can no longer be presented as a condition *sine qua non* for the success of relocation. This is illustrated by the, albeit still modest, increase in the number of relocated persons from Greece. It is also echoed by the slow pace of relocation from Italy, which continues to receive far higher numbers of Dublin requests compared to relocation requests from EU Member States.

Rather than relocating some asylum seekers while returning others back to Greece, the full implementation of the Relocation Decisions should be the absolute priority for Member States and EU institutions. A reinstatement of Dublin transfers to Greece at this point in time should be resisted in light of the persistent shortcomings in the Greek asylum system and the pending procedure before the Council of Ministers of the Council of Europe on the execution of the M.S.S. v Belgium and Greece-judgement of the ECtHR.