

# Řecko a ochrana vnější hranice Schengenu

## Greece and the protection of the external borders of the Schengen area



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### Migration Policy Task Force

Odborná skupina think-tanku Evropské hodnoty, jež se zabývá migrační a azylovou politikou na české a evropské úrovni. Jejím cílem je vypracovat návrhy řešení a legislativních opatření, která zajistí kontrolu nad tím, kolik osob, jakého původu a kvalifikace v ČR a EU pobývá.

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## České shrnutí obsáhlejší studie v anglickém jazyce

Objem migračních toků směřujících do Řecka z tureckého pobřeží v Egejském moři se v roce 2015 dramaticky zvýšil. Za období od 1. ledna do 13. prosince 2015 byl zaznamenán nárůst o 1950 %, do Řecka dorazilo celkem 797 520 osob. Denně přijelo v prosinci 2015 průměrně až 3400 osob (v prosinci 2014 to bylo 35 osob).

Tato humanitární krize znamená nebyvalou zátěž pro řeckou ekonomiku, ovlivňuje negativně turismus a představuje vážné potíže pro lokální komunity na řeckých ostrovech. Řecko navíc spravuje schengenskou hranici a většina příchozích míří přes severní hranici do Makedonie a tzv. balkánskou cestou do Německa a Švédska.

Jak se řecká vláda vypořádala s touto migrační krizí? Může právě Řecko dostat pod kontrolu masivní proud migrantů přicházejících z tureckého pobřeží, nebo je řecký přístup k migrační krizi vážným nebezpečím pro další členské státy EU?

### 1. Současná situace v Řecku

Řecko je při svém postupu vázáno mezinárodním právem. Ženevská konvence stanovuje právo uprchlíka na mezinárodní ochranu a zásadu nenavracení (*non-refoulement*). Konvence o záchraně životů na moři zavazují Řecko k pomoci tonoucím bez ohledu na jejich národnost a postavení. Rovněž je vázáno právem EU, tzv. Společným evropským azylovým systémem, kam patří Dublinské nařízení, směrnice upravující nakládání s žadateli o azyl i systém EURODAC pro snímání otisků prstů.

- Řecko nemůže zastavit lodě, které vyplují z tureckého pobřeží. Uprchlíci a migranti jsou instruováni převaděči, aby zničili plavidlo, jakmile je v dohledu hlídka. Pak musejí být zachráněni. Řecká pobřežní stráž v roce 2015 realizovala 4 800 záchranných operací, zachránila 89 000 migrantů, včetně 16 500 dětí.
- Více než 60 % všech příchozích míří na ostrov Lesbos, kde je zatím jediný fungující hotspot (z plánovaných pěti). Agentura Frontex operuje na řeckých ostrovech s více než 400 zaměstnanci, ale potřebuje mnohem více. Nedávno Frontex požádal o dalších 600 lidí, členské státy slíbily poslat do Řecka 400.
- Většina osob po příjezdu odmítá podat žádost o azyl a chtějí cestovat do střední a severní Evropy. Mnozí se nehledě na pravidla dublinského systému vydají do jiného státu, kde následně žádají o azyl. Od 14. září 2014 přitom Řecko uděluje Syřanům azyl ve zrychleném řízení, pokud mají platný cestovní doklad.

- Makedonie nedávno přestala pouštět přes hranice migranty, kteří nejsou ze Sýrie, Iráku nebo Afghánistánu, protože nemají nárok na mezinárodní ochranu. Několik tisíc migrantů se shromáždilo na hranicích, nebo se vrátili do Atén. Mnozí pochází z Maghrebu. Španělsko má readmisní dohody s Alžírskem a Marokem, proto cestují levně letecky do Istanbulu a přicházejí do EU přes Řecko.

V Řecku se na téma migrační krize vyostřuje politická debata. Krajně pravicová strana Zlatý úsvit vede hysterickou rasistickou kampaň a mnozí Řekové volají po zákazu vstupu pro migranty a návratu všech do Turecka. Roste také euroskepticismus. EU je obviňována, že není solidární a chce z Řecka udělat obranný val proti migrační vlně.

## 2. Chyby Řecka a porušení schengenského acquis

Řecko bylo několikrát odsouzeno za porušování lidských práv migrantů a uprchlíků a nedostatečné plnění závazků vycházejících z uprchlického a evropského práva.

- V lednu roku 2011 Evropský soud pro lidská práva (ECHR) rozhodl, že Řecko porušilo lidská práva uprchlíka, když jej zadržovalo v nelidských podmínkách. Současně ECHR shledal Belgii vinnou z porušení lidských práv, když uprchlíka deportovala zpátky do Řecka. Členské státy následně přestaly od ledna 2011 navracet žadatele o azyl do Řecka (s výjimkou těch, jež jsou navraceni z italských přístavů na základě dohody mezi Itálií a Řeckem).
- V roce 2014 ECHR rozhodl ve dvou oddělených případech, že životní podmínky v několika detenčních centrech v Řecku jsou nedostačující a uprchlíci jsou vystavováni ponižujícímu zacházení, čímž Řecko porušuje čl. 3 Evropské úmluvy o lidských právech.
- Evropská komise navíc vedla s Řeckem v roce 2015 řízení o porušení povinností, které se týkalo špatných přijímacích podmínek pro žadatele, nezvládnutí registrace migrantů a nedodržení povinnosti sejmout otisky prstů u všech žadatelů do 72 hodin od vstupu do země. Nadto bylo Řecko obviněno z nedostatečné spolupráce s evropskými agenturami a odmítání pomoci.

### 3. Řecký postoj k migrační krizi

Řecko nemá dostatečné kapacity v přijímacích zařízeních a řecká vláda, ale ani městská zastupitelstva nemají vůli adekvátně se o migranty postarat. Místní komunity vystupují proti plánům zřídit přijímací zařízení, na která navíc chybí finance. Z plánovaných pěti hotspotů a 7 000 míst funguje dosud jen jeden na ostrově Lesbos.

Řecko není pro migranty cílovou zemí. Nepřejí si zůstat, ani požádat o azyl (to odmítají). Většina z nich odchází přes pozemní hranici do Makedonie a dále do Německa a Švédska. A řecká vláda migrantům v odchodu do dalších zemí EU nebrání, ani je od odchodu neodrazuje.

Řecko bylo kritizováno, že nespolupracuje s Frontexem. Nedávné plány zástupců Evropské unie totiž vzbudily na straně Řecka obavu, že agentura Frontex nebude pomáhat na moři, kde je to podle řecké strany nejvíce potřeba, ale bude nakonec chránit pozemní hranici s Makedonií, kudy migranti Řecko opouští. Ta je už nyní zablokovaná kvůli plotu, který postavila Makedonie.

Řecko odmítá také společné hlídkování na námořních hranicích s Tureckem. Turecko totiž ohrožuje řeckou suverenitu nad ostrovy metodami, jež jsou v rozporu s Chartou OSN (hrozba války, ozbrojené stíhací letouny nad řeckými obydlenými ostrovy ad.). Řekové proto trvají na tom, aby problém byl řešen už v Turecku - na pobřeží i na pevnině, kde operují převaděčské sítě. Turecko však přes příslib 3 miliard EUR a bezvízového styku od Evropské komise dosud nijak podstatně nesnížilo počet migrantů, kteří vyrážejí na člunech směrem k řeckým ostrovům.

Řekové považují za selhání nejen dohodu s Tureckem, ale rovněž program relokací, s nímž přišla Evropská komise. K 5. lednu 2016 bylo z Řecka a Itálie přemístěno jen 272 žadatelů oproti příslibeným 170 400. To snižuje ochotu Řecka k plnění vlastních závazků, jako je identifikace žadatelů nebo budování hotspotů.

Vyloučení Řecka z Schengenu, kterým se nyní vyhrožuje, by nepomohlo omezit počet migrantů, kteří tudy přicházejí do Evropy. Řecko nemá hranici s dalšími schengenskými státy, proto by po jeho vyloučení nebylo pro migranty těžší ani jednodušší přecházet do dalších členských států. Jediným důsledkem by bylo omezení volného pohybu pro řecké občany a negativní důsledky pro turismus.

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## 4. Závěry

Všichni ekonomičtí migranti, kteří nesplňují kritéria pro udělení mezinárodní ochrany, musí být okamžitě navraceni. To si žádá readmisní dohody mezi EU a Tureckem, ale také mezi Řeckem a Tureckem. Aktuálně Turecko odmítá přijímat migranty, kteří přijeli do EU z jeho pobřeží. EU musí začít odrazovat nelegální migranty také v informačních kampaních v zemích původu, jako je Pákistán nebo Afghánistán.

Řecké autority by bez dalšího otálení měly podniknout kroky, které zajistí, že na jejich území budou v provozu všechny plánované hotspoty. Migranti a uprchlíci musí dostat přechodné ubytování a musí být řádně identifikováni a zaregistrováni, čímž se zabrání jejich nekontrolovanému pohybu do dalších členských států EU.

V krátkém časovém horizontu je jediným efektivním řešením migrační krize kontrola toku z tureckého pobřeží. Evropská komise by měla žádat zvýšenou přítomnost turecké policie na pobřeží i na pevnině, kde je třeba bojovat s pašeráckými sítěmi a zabránit nalodění migrantů na nebezpečné čluny.

Bude-li nadále do Evropy mířit milion nebo více uprchlíků ročně, bude nutné přijmout princip první bezpečné země a poskytovat pomoc převážně mimo Evropskou unii, v regionech původu. EU by tedy měla financovat péči o uprchlíky přímo v Turecku a podporovat budování dalších azylových center, kde by bylo možné v některých případech legálně požádat o mezinárodní ochranu a přesídlení nejen do Evropy, ale také do dalších vyspělých států. Kanada již souhlasila s přesídlením 25 000 uprchlíků.

Nakonec, také Dublinské nařízení bude nutné změnit. Mnozí už upozorňovali, že současný systém selhal, neodráží realitu migračních proudů v Evropě, a proto bude muset být přehodnocen. Masivní migrační toky z Blízkého Východu a Afriky budou totiž velmi pravděpodobně pokračovat v roce 2016 ve stejné, ne-li větší intenzitě. A občané očekávají od institucí Evropské unie inovativní a účinná řešení. Neúspěch může znamenat zklamání jako pro Evropu, tak pro jednotlivé členské státy.

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# Greece and the protection of the external borders of the Schengen area

Alternate Minister for Migration Policy of Greece Mr Mouzalas said in an interview beginning of January 2016 that it is unfair to say that Greece does not protect its borders as its land borders are kept effectively and at the sea borders there is nothing more to be done than to rescue the people that are sailing to the Greek island coasts and are in danger. He underlined that the problem should be addressed at the Turkish coast and as far as Turkey is not capable to disrupt criminal networks that are sending thousands of refugees at sea to the Greek islands, Athens cannot stop or “push back” the boats as that could cause the drowning of people that are on board of unsafe and unseaworthy vessels<sup>[1]</sup>.

Undoubtedly, the more than 800,000 arrivals from the Turkish coast in 2015 pose a humanitarian crisis that overburden the suffering Greek economy, affects negatively the tourism of the local economies and at the same time delimits the endurance of the local communities at the Eastern Aegean Greek islands. However, there is another side of the coin that the Greek Minister seems not to highlight enough and that is the inadequate border protection provided by the Greek authorities at the exit points of its north land borders with Macedonia (FYROM).

What is finally the truth about the handlings of the Greek government towards the refugee crisis? What are the reasons behind the Greek attitude and its implementing policy towards the Common European Asylum System? Could Greece play a role as a major catalyst towards the massive flow of refugees coming from the Turkish coasts that could protect the interests and humanitarian values of Europe, or does the Greek refugee policy presents a dangerous gap for the other Member States and should it be pushed out of the Schengen zone?

The problem is not exclusively of Greek interest, nor is it the sole responsibility of Greece to give a solution to this. But realistically, Greece is the first country to manage the situation on behalf of the EU and for itself.

In order to start addressing answers, it is important to highlight the most important elements of the existing legislative framework governing the current refugee crisis.

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## 1. The most important elements of the current legislative framework

### I. Definitions of: “refugee”, “asylum seeker”, and “migrant”. The international protection as a conventional legal obligation.

Firstly it is important to underline that regardless of political appetite to do so, the member states of the European Union are bound by law to respect the rights of refugees.<sup>[2]</sup>

Internationally, the 1951 Refugee Convention and its Protocols are the most basic, and widely recognized, sources of legal obligations concerning asylum. All EU member states are parties to the Convention, and under EU treaty law, the Common European Asylum System (CEAS) must be consistent with its provisions.<sup>[3]</sup> The cornerstone of the Convention is its prohibition on *refoulement*: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>[4]</sup>

The 1951 Refugee Convention prohibits refugees and asylum-seekers from being expelled or returned in any manner whatsoever “to the frontiers of territories where their life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion” (Article 33(1)).<sup>[5]</sup> This refers not only to the country from which a person has fled, but it also includes any other territory where he or she would face such a threat. Rescued persons who do not meet the criteria of the 1951 Refugee Convention definition of a “refugee”, but who fear torture or other serious human rights abuses or who are fleeing armed conflict may also be protected from return to a particular place (“refoulement”) by other international or regional human rights or refugee law instruments.<sup>[6]</sup>

International protection is a law which is as constitutional as it is conventional. The reception of asylum seekers is not therefore a choice of opportunity, and assimilating them to ordinary “migrants” is a fundamental error. Reception is a legal obligation that has been decided by a judge. The Member States of the European Union are individually and collectively obliged to honour the request of protection that is being asked of them. On the one hand this is because the Geneva Convention of 1951 prohibits them from acting otherwise, notably by sending them back to borders where they are in danger, and on the other hand because the European Convention of Human Rights sets out the same rule, that has been sanctioned by its Court, and finally because the European Union guarantees the right to asylum in article 18 of the Charter of Fundamental Rights.<sup>[7]</sup>

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## II. Rescue at Sea

Important conventions establish the obligation of a ship's captain to render assistance to people in distress at sea and of States to coordinate and cooperate to deliver those rescued at sea to a place of safety within a reasonable time.

Those international conventions include:

- 1974 International Convention for the Safety of Life at Sea (SOLAS Convention)
- 1979 International Convention on Maritime Search and Rescue (SAR Convention)
- UN Convention on Law of the Sea – UNCLOS

The International law obliges State Parties to "... ensure that assistance [is] provided to any person in distress at sea ... regardless of the nationality or status of such a person or the circumstances in which that person is found"[\[8\]](#) and to "... provide for their initial medical or other needs, and deliver them to a place of safety"[\[9\]](#).

## III. The Common European Asylum System

Five different pieces of legislation form the Common European Asylum System (the Dublin Regulation, Asylum Procedures Directive, the Qualification Directive, Reception Conditions Directive and the EURODAC rules on fingerprinting). All are very recent, with the first being proposed only in 2008 and the last ones to enter into force only as of 21 July 2015.

The Common European Asylum System (CEAS) is a fundamental part of the EU's Area of Freedom, Security and Justice. It has gone through two phases of legislation. The first culminated in 2005, the second concluded in 2013 and its cornerstone is the Dublin system of responsibility for the determination of asylum applications (Dublin Convention 1990, Dublin II Regulation 2003 and Dublin III Regulation 2013). The Dublin Regulation inspired the Schengen implementation convention and establishes the EU state responsible for examining an asylum application and the rules governing the relations between EU Member States, while the Dublin III establishes the criteria and mechanisms for determining the EU state responsible for examining an application for international protection in one EU state. The principles of the Dublin system are threefold:

- an asylum seeker has only one opportunity to make an asylum application in the territory of the EU and, if the decision is negative, that rejection is recognised by all Member States;
- the rules set out in the Dublin system determine which Member State is responsible for assessing the asylum application and receiving the asylum seeker during the procedure;

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the preference of the asylum seeker is not a relevant criterion;

- the asylum seeker may be deported to the Member State to which he or she is allocated [\[10\]](#).

#### IV. The Revised Eurodac Regulation (2013)

The Eurodac Regulation provides the requirements for the fingerprinting of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate serious crime. Fingerprinting is compulsory for both refugees and for migrants, without them having any legal right to refuse it. 100 % fingerprinting rate for arriving persons should be achieved without delay (within 72 hours) after the entry of third country nationals to the EU territory and recently the European Commission has recommended concerned Member States to adopt a “solid legal framework” allowing for “the use of force for fingerprinting and to include provisions on longer term retention for those migrants that resist fingerprinting”[\[11\]](#).

#### V. The European Agenda on Migration

The [European Agenda on Migration](#) develops the political guidelines of the European Commission President Jean-Claude Juncker into tailored initiatives aimed at managing migration better in all its aspects. The Agenda, adopted on 13 May 2015 and its subsequent additions put forward concrete actions to respond to the immediate crisis and save lives at sea, and proposed structural responses for the medium and long term.[\[12\]](#)

The package includes the following concrete measures to respond to the current refugee crisis and to prepare for future challenges:

- An emergency relocation proposal for 120,000 persons in clear need of protection from Greece, Hungary and Italy;
- A permanent crisis relocation mechanism for all Member States;
- A common European list of Safe Countries of Origin;
- Making return policy more effective through a common Return Handbook and an EU Action Plan on Return;
- A Communication on Public Procurement rules for Refugee Support Measures;
- A Communication on addressing the external dimension of the refugee crisis;
- An Emergency Trust Fund for Africa.

The Commissions Communication followed on 14 September 2015, by the Council of the Decision to relocate 40,000 persons in clear need of international protection from Italy and Greece, of which 16,000 from Greece alone. On 22 September 2015, the Council adopted the Decision to relocate 120,000 more persons from Italy and Greece. According to this Decision, 50,400 persons out of these 120,000 will be relocated from Greece. The combination of the two Council Decisions leads us to a total of 66,400 persons to be relocated from Greece to other Member States over a period of 2 years.

## 2. Current situation in Greece

Migratory flows from the Turkish coasts to the East Aegean islands have increased dramatically, with an outstanding increase of 1,950 % (total arrivals [Jan – 13 Dec 2015]: 797,520 compared to 41,349 in the same period of 2014). The average daily arrivals approaching the outstanding number of 3,400 persons per day during December 2015 and 5,040 per day during November 2015, while the same period in 2014 didn't exceed 35 people per day.<sup>[13]</sup> At the same time, the number of per day incidents increased from 665 (8 month period of 2014) to 3,120 during the first 8 months of 2015 with an average increase of 370 %. Top nationalities were from Syria (460,364), Afghanistan (189,559) and Iraq (63,421) that are subject to international protection. Also there is a significant number of migrants from Pakistan (23,318), Iran (19,612), Morocco (5,513), Palestine (5,240), Somalia (4,259), Bangladesh (4,137), and Algeria (1,088).<sup>[14]</sup>

During 2015 the Greek Coast Guard had undertaken 4,800 rescue operations, in which 89,000 refugees and migrants were rescued, including 16,500 children and infants. At the same period more than 223 persons drowned and 148 are considered missing. From the figures it is obvious that the forces of the Greek Coast Guard have done adequate job working under extremely difficult conditions and most of the times many more hours than normal employees can afford. Recently UNICEF Greece presented an award to the Greece's coast guard for its search-and-rescue efforts in the Aegean, especially its work for the protection of refugee and migrant children.<sup>[15]</sup>

More than 60 % of the total incoming number is arriving to Lesbos Island where the only one operational hotspot is placed (out of planned five). Frontex, the EU border management agency, has more than 400 experts deployed in the Greek islands, including in the hotspot of Moria in Lesbos. The experts include screeners, interpreters and debriefers "who conduct interviews and gather information about people-smugglers", said Frontex spokesperson Ewa Moncure. But the agency needs more personnel. It recently launched a call for over 775 experts, including 600 for Greece, Member States gave about 400, but this number does not meet the goal.<sup>[16]</sup>

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All the refugees and migrants are instructed by the traffickers to destroy their boats when a patrol boat is in sight. So the incident is transforming automatically into a rescue incident and in accordance with the international Conventions for Search and Rescue the migrants should be rescued and get aboard on a safe place. Greece is unable to hold the migration pressure if the flow continues from the sea. Under current circumstances the massive flow of refugees and migrants from the Turkish coasts can easily find a way of arriving in Greece and nobody can stop them, unless these boats are not able to depart from the Turkish coast.

The vast majority of the refugees after arriving from the Turkish coasts, are refusing to proceed in an asylum application in an effort to take advantage of their right to travel to Europe (those that are proved to be in need of international protection) and to make efforts to reach more wealthy countries of centre and north of Europe. Many asylum-seekers move on, irrespective of the Dublin provisions, often applying for asylum elsewhere, as the pattern of seeking asylum across the EU demonstrates. Since September of 2014, the Greek Asylum Service has been implementing a fast-track processing of applications lodged by Syrian nationals provided that they submit a first (not subsequent) asylum claim and that they are holders of valid identification documents. Under this procedure, asylum claims are registered and decisions are issued on the same day.

A new recent element is that a significantly increased number of people who now come from the Turkish coast to the Greek islands are from the Maghreb. These are people mainly from Morocco, Iran, and Algeria – people who are not granted refugee status, as they are not fleeing from war and humanitarian crises and that poses another serious problem for Greece. As there is no readmission agreement between the EU – Morocco and Algeria, people from these countries are trying to avoid passage to Europe through Spain since an active and effective readmission agreement exists between Spain and Morocco – Algeria so they are taking advantage of the visa liberalization of Turkey with these countries and are flying easily to Istanbul with low cost companies trying to find a passage to Greece.

Recently Macedonia is not allowing to migrants other than Syrians, Iraqis and Afghans that are subject to international protection to cross the borders. The result is that thousands of migrants gathered near Greece's border with Macedonia, seeking passage. Some days before Christmas more than 2,000 migrants from Morocco, Bangladesh, Iran, and Pakistan returned to Athens.

Current situation has activated a strong political debate in Greece and there are many voices asking for more to be done in constructing the necessary structures and mechanisms so as not to make Greece a warehouse of souls. Furthermore the radical thesis of the extreme right wing party "Golden Dawn" waging a hysterical racist campaign, is affecting many Greeks that are shouting for not letting those people to enter the country and to return all of them back to Turkey. Many of them are referring to a "best practice" which stopped in 1997 from the very beginning a flow of migrants from Albania to Italy, to the example of the sinking of the Kater i Rades, a boat loaded with Albanian refugees that was sunk in 1997 by the Italian military

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boat Sibilla, killing more than 100 Albanian migrants.

Additionally there is much “Euroscepticism” as many Greeks believe that the EU is not really supportive under the solidarity principle and the only thing that matters to the rest of the EU Member States is not to have the “refugees in their backyards”. They believe that to a large degree, the EU sees Greece, by virtue of its geographical location, as a bulwark against dangerously large numbers of migrants flooding to the continent as well as that the key of the individual EU Member States’ policy decisions is not who and how many will be arriving in Greece but who and how many will come from Greece to the EU.

### **3. Shortcomings – violation of certain provisions of the EU border management acquis**

Frontex has been blamed for human rights abuses as during the 2010, the Rapid Border Intervention Team (RABIT) operation in Greece was the subject of particular criticism by human rights groups, who claimed that the agency knowingly exposed refugees to inhuman or degrading treatment by transferring them to Greek detention facilities.[\[17\]](#)

As regards the implementation of the CEAS (Common European Asylum System) the European Commission has adopted on the 23 of September 2015 an infringement decision against Greece (but also against several other Member States) for violation of certain provisions of the updated Reception Conditions Directive and the updated Asylum Procedures Directive. It concerns serious deficiencies in the Greek asylum system notably with regard to the material reception conditions for applicants for international protection, particularly those with special needs and vulnerable persons. It also concerns the effective and full implementation of Eurodac Regulation for fingerprinting of refugees within 72 hours.[\[18\]](#)

It is very important to underline that since January 2011, EU Member States have not been currently returning asylum seekers to Greece under the Dublin Regulation (with the exception of returning migrants and asylum seekers from the Italian Adriatic ports to Greece, under a readmission agreement between the two countries). In January 2011 the European Court of Human Rights (ECHR) decided in an individual case that Greece was violating the human rights of a refugee by detaining him under inhuman conditions and leaving him homeless. The court also judged that Belgium violated his human rights by deporting him back to Greece and following that decision deportations to Greece were temporarily halted in most EU countries, because hundreds of other “Greek” cases were expected to be judged in the same way.[\[19\]](#)

Failure of the competent authorities to register asylum applications both in Athens and at points of entry was a major issue that has been being highlighted for over 10 years. An unusual backlog of pending asylum cases was a major obstacle hampering the efforts of the

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Greek authorities to confront with their legislative obligations. Greece has embarked upon a project which is supported by EASO with the collaboration of UNHCR and continues its efforts to reduce the backlog asylum cases.

Being incapable of fulfilling its international obligations to treat asylum seekers in conformity with Refugee Law and International and European Human Rights Law requirements, Greece has been found guilty and condemned in particular occasions.

Furthermore in two separate cases in September 2014 the European Court of Human Rights (ECHR) held that the living conditions in several detention centres across Greece amounted to degrading treatment, thus triggering a breach of Article 3 of the European Convention of Human Rights. Currently, in Athens, the situation is worsening as the government is finding it hard to house those migrants not allowed to pass, following the closure of the border by Macedonia to migrants other than Syrians, Iraqis, and Afghans.

There are no sufficient reception facilities in Greece and there is an unwillingness of the government to treat the refugees adequately. Even the municipalities and the local governments in every city, they never take their responsibilities and the local societies are against all plans of the government to create facilities in several places. Moreover the current extreme economic crisis in Greece constitutes a strong burden for financing of the necessary structures and mechanisms.

Notwithstanding, according to the Commission report, Greece is supposed to be setting up 4,500 temporary accommodation places in Lesbos, Leros and Chios in January 2016. But it needs to “rapidly” complete the construction of 7,000 places for all five hotspots and “improve its welcome to vulnerable groups, in particular unaccompanied minors”.

Greece has only one hotspot operational in [Lesbos](#) Island, out of planned five that the Greek authorities are trying to set up. Until they are fully up and running, migrants cannot be properly received, identified and registered, some experts say.

At the same time, the European Commission recently launched legal action against Italy, Greece, and Croatia for failing to register all migrants in an EU-wide database.

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## 4. How the Greek government addresses the current crisis – reasons behind the Greek attitude

The point is that **Greece is not the refugees' destination**. It is just one of the ways to enter Europe, yet the most used one in 2015. Both, the fact that a high percentage of refugees coming to Greece do not even think about staying there, and the huge current rate of unemployment in Greece are not letting much space for serious thoughts about incorporating a significant number of refugees in the country.

The Greek government is implementing its own “relocation program” by not “discouraging” or hampering the “exodus” of refugees from the land borders with Macedonia to the EU. As a matter of fact refugees do not even wish to stay in Greece or to apply for asylum with the Greek authorities (actually they refuse to do so) and at the same time they have been instructed from the criminal networks in Turkey (with the cooperation of local criminal partners) how to reach the land borders to Macedonia so as to reach Germany and Sweden that are their top destination preferences.

It is obvious that the Greek government is satisfied with the exodus of refugees to the other countries of the EU keeping at the same time on its side the public opinion as far as the biggest percentage of the 850,000 migrants arriving in 2015 finally flow to Europe through the land borders with Macedonia. That is a convenient policy as far as it is protecting the humanitarian profile of the government and at the same time not violating any of its conventional or EU law obligations.

Recently Greek government was blamed for refusing to accept offers from the EU for help, and for not cooperating properly with EU Agencies (e.g. Frontex). That is partially true, but we should take into consideration that Greece has been cooperating with Frontex extensively and as the alternate Foreign Minister for European Affairs of Greece Nikos Xydakis mentioned recently, Greece was the country which has sent the highest number of invitations to the Agency and that the only Rapid Interventions Teams Operation that took place was in Evros at the Greek-Turkish land borders in 2010, mentioning at the same time that Poseidon Sea Operation is taking place the last 8 years in Greece. He underlined that Greece had frequently requested help and has received very little of what had been requested.<sup>[20]</sup> The truth is that recent plans of EU officials raised serious concerns that in the end Frontex will not help at the sea borders where the real needs are, but on the contrary will undertake the control and border protection at the exit points in country's north land borders with Macedonia. At this particular time, Greece is facing an unbelievable pressure with thousands of refugees entering, on the one hand, without having a possibility on the other hand, to exit the country taking into account the fence that is built by Macedonia and the measures that the EU wants to take against the massive flow of migrants that are travelling through Macedonia to the EU.

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Furthermore, a lot of discussion is taking place officially and unofficially about common patrolling at the sea borders with Turkey. It is a fact that Turkey is contesting Greek sovereignty over islands and disputing the delimitation of territorial sea, promoting contentions in practice through methods that contravene the fundamental principles of the UN Charter (threat of war, violations carried out with armed fighter aircraft over inhabited islands etc.). Beyond that, it is perceived in Athens that Turkey disputing Greece's responsibilities within the region of Greek responsibility for search and rescue matters and the common patrolling with Frontex will reinforce Turkey's pursuits and will be a major success for Ankara's policy. That's why Athens remains very sceptical about this particular matter and insists that the problem should be addressed at the Turkish coast and as far as Turkey is not capable or willing to disrupt criminal networks that are sending hundreds of thousands of refugees at sea to the Greek islands, Athens cannot understand why the EU actions are not focusing on the mainland and at the coast of Turkey.

Today the flow of refugees and migrants is continuing irreducibly in the Greek islands, with 3,000–4,000 per day according to official figures, despite the bad weather and 6-7 Beaufort [\[21\]](#) blowing in the Aegean, which shows that Turkey has not changed its attitude and, despite the pledges received at the recent Summit of the EU (more than 3 billion euros and other concessions, such as easing visa rules for the Turks coming to the EU), does not respect its obligations. The European Union has seen little evidence that Turkey has managed to reduce departures of migrants for Greek islands in the two weeks since it signed an agreement to do so.

On the other hand, after eight months of summits, debates, and joint declarations on what to do with the hundreds of thousands of refugees streaming into Europe the results of the relocation program of the European Commission that was agreed seem like a failure so far. According to statistics provided on 5 January 2016 by the European Commission, 82 migrants were moved from Greece and 190 from Italy and left for Luxemburg, Sweden, Germany, France, Spain, Portugal, and Finland. [\[22\]](#) 272 people instead of 170,400 that EU countries were supposed to accommodate as agreed by the EU Council on 22 September 2015

Notwithstanding EU is proven incapable of addressing solutions to the exploding and massive flow of refugees and migrants to Europe. Their top priority policies for the relocation program as well as their recent agreements with the Turkish government undoubtedly failed so far. At the same time Juncker and Timmermans as well as the Dutch Prime Minister Rutte have announced on 7 January 2016 that their first priority in terms of the refugee policy is to improve efforts to curtail the flow of asylum-seekers arriving into the EU, which reached [record numbers in 2015](#). Key to that effort, according to both European Commission DG Home General Director Ruete and Commission President Jean-Claude Juncker, is ensuring the creation of a new, [beefed-up EU border guard](#) — an ambitious plan supported by EU leaders at a summit in December 2015. [\[23\]](#) Supposing as of tomorrow the new border guard was ready to be in force, what could be their actions to stop the flow? Could they stop the

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boats and push them back to the Turkish coast? By no means. Their major obligation in accordance with the EU and international legislative framework would be to rescue without delay the migrants coming from the Turkish coast and disembark them to a safe place in the Greek islands. That is something that the Greek coast guard with the support of the Frontex forces has been doing in a sufficient way so far.

## 5. Conclusions

Migration is a highly complex phenomenon and complex cases need realistic, firm and innovative solutions otherwise are condemned to fail. After the first tragedy of Lampedusa that occurred on 3 October 2013 tons of policy papers were produced by the EU Institutions and thousands of proposals were submitted by the EU institutions but refugees are still coming in thousands from Libya and Turkey by risking their lives and by using the trafficker criminal networks that are earning millions of euros every day. The Task Force for the Mediterranean created by the European Commission in early 2014 produced some nice policy documents but this in the end remained a paper exercise. The recent relocation program of the European Commission has managed to relocate 272 persons instead of the 160,000 which was the target. Turkey does not seem to be concerned by EU's problems and their authorities are turning their heads in the opposite direction whenever the criminal networks are transferring refugees despite the fact that they were promised 3 billion euros and liberalisation of visa rules for the Turks visiting the EU as a reward. It's not enough just to count the numbers of those arriving and the nearly 4,000 reported missing or drowned this year. It is time to act.

Technically, and as far as the flow is heading to the Greek coasts it is not possible to stop it or push it back to the Turkish territory as this would violate the current international and European legislative framework. As mentioned already regardless of political appetite to do so Greece and every Member State is obliged to fulfil its obligation under international maritime law to render assistance to persons in distress and is bound by law to respect the rights of asylum seekers. Greece, with thousands of miles of coastline, is the only country that cannot feasibly block people from entering without breaking international laws about rescuing those in distress at sea. In all of the cases, those people are embarked in unseaworthy vessels that are overcrowded and their life is in danger. In many cases they are destroying by themselves their dinghy boats when they see the patrol boats of Greece or Frontex in a close distance so as to be sure that they will be "rescued" by the coast guard. The forces of the Greek coast guard and of Frontex are playing more the role of "receptionists" than of protectors of the sea borders as they have no power of stopping or taking interception measures and finally to prevent the sea borders from unauthorized crossings.

In short term, the only solution to deal effectively with this phenomenon is to control the flow from the Turkish side. Furthermore the construction of adequate structures, facilities and mechanisms are necessary in order to manage this phenomenon. It is not a matter of border protection, but a matter of effective management. Some Member States are building fences but fences and walls will not stop the flow of migrants but rather divert it and at the same time it will strengthen the role of the facilitators' criminal networks. This crisis can only be mitigated but not avoided altogether. Accepting this reality is the key to managing it.

## I. Greek to-do list

Due to its geographical position Greece is the entry country of migrants and refugees to Europe since the last two decades and 2015 represented the time of the highest migration pressure ever. Recent analysis and assessments have shown that the intensity of the flow will continue through 2016 and Greece has its great opportunity to prove to the European citizens that it could play a major catalytic role by protecting the interests and humanitarian values of Europe. Nevertheless there is much to be done in order to retrieve its credibility:

- 1) There is a need for effective communication management and a clear message to be sent by Europe, that the economic migrants will be returned immediately and upon identification.
- 2) Furthermore, the results of proceedings for identification, registration and fingerprinting could clearly identify those in need of international protection and those that are not refugees but economic migrants. So it will be more than necessary to implement effective and quick return mechanisms for those that are not subject to international protection so as to send a clear message to the economic migrants that are currently trying to take advantage of the refugee flow.
- 3) At the time there are no effective return mechanisms in place. The excising Readmission Agreement of EU with Turkey is not yet in force, the existing bilateral Readmission Protocol between Greece and Turkey is not active as Turkey refuses to implement it and is not accepting back people that flow from its coast, and Pakistan is refusing to implement the Readmission Agreement with the EU. Undoubtedly the EU should focus more on effective implementation of existing bilateral agreements as well as the implementation of existing readmission agreements. For sure there is a considerable space for enhancement of cooperation with Turkey both in return policies and in combating of criminal networks.
- 4) The Greek Authorities shall proceed without any further delay to:
  - a) ensure that the necessary investment is undertaken to address the reception needs. Greece should maximise its efforts in establishing adequate reception capacity which covers the needs of the current influx and to ensure proper facilities for those in the relocation process; it has to create more temporary accommodation places in Lesbos,

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Leros and Chios islands but also in the mainland;

- b) make operational all the 5 planned hotspots (in Lesbos, Chios, Leros, Samos and Kos) so as to safeguard that the arriving migrants are registered, and to avoid that they move on to other Member States in an uncontrolled way. For the time being only the hotspot of Lesbos and the Regional Task Force based in Piraeus are operational;
- c) maximise its efforts to ensure, in particular, that adequate personnel are appointed to the Asylum Service and the First Reception Service in order to guarantee an effective border management (screening, identification, fingerprinting) and an effective asylum procedure;
- d) ensure that the procedures and systems for the absorption of EU funds are improved.

At the time Greece faces threats from some EU states to suspend it from the Schengen zone of open border travel because of its failure to prevent large numbers of refugees from entering Europe. Suspending Greece from the Schengen zone would not do much to limit the number of migrants crossing into the rest of Europe. Greece has no borders with other Schengen-zone states, so for refugees travelling by land it would be no easier or more difficult to make the journey than before. The only consequence would be to deprive Greek citizens of the right to travel freely within Schengen and, perhaps more importantly, to force overseas visitors to obtain a visa to enter Greece – a blow to Greece's tourism-reliant economy.[\[24\]](#).

## II. EU contribution to the situation in Greece

The European Commission should conduct initiatives to the competent Turkish authorities to intensify the presence and the activity of the Turkish gendarmerie (Gendarma) as well as Turkish National Police so as to take control over the population movements into the mainland of Turkey and to prevent at the same time their embarkation in unsafe boats that the criminal networks are using.

The establishment of hotspots in third countries and in our case on the Turkish coast (possibly in Izmir) which represent points of population gathering as well as points of criminal networks' activity should be further taken into consideration. It is of major importance that the press has already reported such ideas with Italy going further by recommending the setting up of asylum centres in North African countries such as Niger, Tunisia or Sudan.[\[25\]](#)

More needs to be done to prevent the boats used by the traffickers to be able to depart from the Turkish coasts. Hotspots should be created in Turkey so as to act as filters of the flows, and the refugees that want to go to Europe will be subject to all the necessary procedures in advance and they will not need to use the traffickers to transfer them. EU could easily finance, at the same time, Turkey to host a sufficient number of Syrian refugees in their territory so as to moderate the pressure. It sounds complicated but in such a complex and extreme situation the therapy could

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not be simple and cheap. We all saw the consequences and the real cost of letting this extreme flow out of control.

In parallel, the EU should focus its attention on the countries of origin of economic migrants, such as Pakistan and Afghanistan where beyond communication activities to discourage the (illegal) migration, it is indisputable that EU possesses the necessary "tools" within the positive conditionality principle (more for more), through the EU's external action.

Additionally it should be examined whether legislative reform is needed to extend Asylum Migration and Integration Fund (AMIF)[\[26\]](#) funding, to support voluntary returns.

Furthermore the EU needs to make a success of refugee resettlement from the Middle East to countries not just in Europe but beyond. Safe and legal routes to hope for refugees in Europe need to be matched by safe and legal routes elsewhere. In this, Canada has shown the way in agreeing to resettle 25,000 refugees.

Last but not least we should not ignore that the European Parliament has already acknowledged the failure of the organising principles of the Dublin system of allocation of responsibility for asylum seekers and there is a feeling that the Parliament will soon invite the Commission to put forward a proposal for legislative changes for root and branch reform of the Dublin system; many voices have been arisen lately that the existing Dublin system does not reflect the present realities or do justice to the disproportionate burden that falls on the Greek immigration authorities and there is a clear need for a comprehensive reconsideration of the existing European legal regime.

It is important to take into account that all the relevant assessments and analyses are showing that the mass movement of population from Asian countries to Europe will continue in the same intensity if not further increased during 2016. European citizens are expecting from the EU institutions innovative and vehement solutions. A non-successful response will disappoint and will hurt the prestige and credibility of both the united Europe as a whole as well as of each of the Member States.

As a way of conclusion it remains to be said that even if effective border management including functional hotspots inside and outside the EU and fast return of irregular economic migrants is implemented and maintained, when the number of legitimate asylum seekers heading to the EU reach numbers close to one million a year, it will be necessary to implement the principle of first safe country and provide the help to the refugees outside the European Union.

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