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Ministry of Migration Policy
Office of the Minister for Migration Policy

SUBJECT: Country Report: Greece, 2016 Update, AIDA

Dear Ms. Woollard,

We would like to share with you our comments on the "Country Report: Greece, 2016 Update" compiled by the Greek Council for Refugees (GCR) for the Asylum Information Database. This latest report is certainly a very comprehensive and well-written report.

First, we would like to thank GCR for sharing the draft report with the Asylum Service and for asking for our comments and observations. We appreciate the fact that several of our comments correcting or clarifying aspects of the data provided and other information were partly or fully incorporated.

Having read the final version of the report, we could not help but notice that several other important comments were not given appropriate consideration. As a result, in our view, the final report is not balanced in some respects. To substantiate our observations, we would like to draw your attention to the following points commented on by the Asylum Service in the draft report of the GCR as compared to the published version of the report:

Page 26, last paragraph:

In the last paragraph on page 26 referring to the Asylum Service's "presence" on the five islands with hotspots, it is stated: *"However, during 2016, the Asylum Service remained understaffed and with extremely limited capacity to register and process new asylum claims, thus failing to guarantee unimpeded access to the asylum procedure. This has played a crucial role in the congestion and prolonged stay of newcomers on the islands, where no proper infrastructure exists"*. We commented that *"[s]ince January 2017 the Asylum Service staff working at the hotspots stands at 100 persons. During 2016, 65 employees of the Asylum Service were working at the hotspots. Their work was assisted by EASO Member State experts deployed in Greece and in particular at the hotspots in a number ranging from 30-67 during the year."* This was partly considered, having been inserted as a footnote on the same page. Yet the impression given to the reader remains more negative than the actual situation as regards the staffing and processing capacity in the hotspot asylum offices and its operational capacity and the results achieved, notwithstanding the obvious shortcomings.

It should be noted that by 11 April 2017, 17,158 asylum applications had been lodged in all islands, of which 1,616 were rejected as inadmissible, 2,441 rejected as unfounded, while there were also 1,528 withdrawals of applications. In 344 cases international protection was granted, while 9,672 cases were referred to the regular procedure and exempted from readmission (vulnerable and family reunification cases, as well as claims deemed admissible due to individual circumstances).

Page 30:

On page 30 of the report regarding lodging of applications in the mainland it is stated: *"An "asylum seeker's card" is provided to persons who have fully registered their application. This card is valid for 6 months, with the following exceptions: [...] d. Cards of nationals of Pakistan, submitting their application before the AU dedicated to application coming for Pakistani nationals, which is valid for a period of 2 months."*

Given that the report refers to 2016, one would expect that the information provided would refer to 2016 throughout the report. Despite the fact that the Asylum Service provided GCR with two comments (no. 21 and 26) with information on the newly established Asylum Unit for the examination of international protection applications of nationals from Pakistan (the exact opening date of which being the 16th January 2017), none of the two comments was considered.

This is to be contrasted with the fact that, as regards the situation on the islands, for instance, no reference is made to the significant improvements, in terms of staffing, in the early months of 2017. It would appear, in other words, that the authors of the report have chosen to give priority on purpose to negative aspects rather than positive ones, and have used the reference period accordingly.

Page 31:

In page 31, paragraph 3.3 of the report titled *"Access to asylum: Arrivals before the launch of the EU-Turkey Statement (20 March 2016)"*, the situation is described as regards access to the asylum procedure since the start of operations of the Asylum Service in 2013. In this paragraph, two of our comments (comments no. 27 and 28 on the draft report) were ignored, leaving outdated and thus inaccurate data. In any event, references of the kind could have had a place in previous yearly AIDA reports and not the current one covering the situation during 2016. The reported references create an impression about the asylum procedure that underestimates the results achieved in the past year. It should be recalled, when difficulties with access to the asylum procedure in Greece are described, that during 2016 over 51,000 lodged asylum applications and thousands more 'made' were registered. Any discussion on difficulties with access to the asylum procedure should take this fact into account.

Page 32:

On page 32, paragraph 3.2, regarding the pre-registration scheme in the mainland, two out of four of the comments made by the Asylum Service (comments no. 30 and 31 on the draft report shared for comments) were not taken into account. The pre-registration scheme allowed to more than 27,000

persons access to the asylum procedure in a matter of a few weeks. Moreover, full registration of all pre-registered persons was concluded by the end of February 2017, two months earlier than initially planned. This fact is not highlighted in the report. The fact that the pre-registration scheme was designed and successfully implemented by the Asylum Service and its partners (UNHCR, EASO, NGOs) at a time during which the Asylum Service was faced with many other challenges (such as implementing the relocation programme for the first time ever in Europe while also trying to process thousands of applications on the islands) should be acknowledged. It should be recalled that a major information campaign was mounted, to ensure, *inter alia*, that potential asylum seekers understood the consequences of not turning up to their appointments for full registration. Furthermore, to refer to a few re-scheduled appointments after 28 February (which were caused by *force majeure*) can only be understood as an effort to undervalue the overall results.

Page 35:

On page 35 in the table, under point 3, the backlog of pending cases at first instance as of 31 December 2016 is stated as standing at 28,030 applications. Legal provisions for the time limits for the issuing of the decisions on international protection are stated in the text that follows the table. The relevant comment (no 43) of the Asylum Service that 87% of the backlog cases are pending for less than six months (effectively not constituting a backlog), was not included in the report, despite the fact that its inclusion would have put into perspective the impression given by the mere statement of the number of the applications pending. It should be further noted that half of the pending applications are relocation cases, where the issuance of the decision depends on the speed with which other Member States respond to Greece's request for pledges and responses. This is also not taken into account.

In respect of the delays in the registration of asylum applications for persons in detention, we would like to mention that by March 2017 the average time between the registration of an application "made" and its lodging for those detained in Amygdaleza and Corinth was down to a few weeks.

As regards the last paragraph on page 35, mention should be made of the fact that the Asylum Service makes it a point to answer all queries by asylum seekers, NGOs, lawyers and relatives on the progress of asylum applications, even in cases not obliged to do so by law, in full cognizance of the fact that many people agonize about their future.

Page 38 (quality of interviews and decisions):

No mention is made of our quality initiatives and efforts to maintain quality standards in very challenging circumstances. We were also not asked to provide such information.

As regards the examples of three decisions, where in the view of the authors quality standards were not met, we find it astounding that no effort is made to explain to readers that a general conclusion on the quality of decisions cannot and should not be drawn on the basis of these few samples.

Also, no mention is made of the fact that eligibility rates at first instance in Greece match to a large extent average EU eligibility rates, in sharp contrast with the situation prior to June 2013.

Page 42:

No mention is made of the fact that a preliminary ruling of the Council of State found no unconstitutionality in respect of the composition of the Appeals Committees.

Page 47:

On page 47, paragraph 1.5 on the question whether free legal assistance is being offered to asylum seekers on appeal against a negative decision, we commented (comment no. 46 on the draft report) that the answer on the table should be corrected from "no" to "yes", noting that in July 2016 a memorandum was signed between the (then) Ministry of Interior and Administrative Reconstruction

(currently Ministry of Migration Policy) and UNHCR concerning the provision of free legal assistance to asylum seekers on appeal against a negative decision, until the Asylum Service would be ready to provide legal aid itself (scheduled for 2017), and that indeed free legal assistance to asylum seekers on appeal as well as in all stages of the procedure for vulnerable applicants is offered, based on *arrangements initiated by the State*. The authors partly considered our comment by not marking any of the three relevant blocks of the table ("yes", "with difficulty", and "no") but without inserting our comment in the text that follows. The same applies to all other references to free legal assistance through the report.

Page 51:

As of March 2017, transfers under Dublin are arranged at no cost for the asylum seekers, due to a trilateral agreement between the Asylum Service, UNHCR and the NGO Ecumenical Refugee Programme.

Page 52 last line:

We find the choice of language ("*the Asylum Service claims*") unfortunate.

Page 61:

Regarding the text of the last paragraph on page 61 of the report, our comments no 75 and 76 clarifying facts regarding the participation of EASO experts in all asylum procedures were ignored. The text in the report states: "*It is unclear (i) whether EASO must conduct the assessment by taking into account the relevant provisions and safeguards of national law, (ii) why the assessment of the RIS is not sufficient, and (iii) in cases of contradiction between RIS and EASO on the existence of vulnerability, which finding should prevail. It should be also noted that the vulnerability assessment by an EASO officer and the drafting of an opinion to this end is not clearly provided by any provision of Greek law.*" Our comment no 75 stated that: "*EASO vulnerability experts indeed conduct their vulnerability assessment in accordance with the provision of national law. This assessment, which is conducted when a new vulnerability factor is revealed during the interview (i.e. subsequent to the RIS vulnerability assessment) is complementary to the one conducted by RIS. Therefore, there can be no conflict between the two assessments.*" In addition, our comment no 76 added that: "*It is clearly provided that the EASO experts **assist** the Asylum Service in all relevant procedures*".

Page 63:

In the third paragraph mention is made of the fact that during an admissibility interview applicants are not asked about the reasons they left their country. This is of course normal, since the purpose of an admissibility interview is to precisely examine whether to proceed with a merits examination.

Page 79:

The text of the third paragraph on page 79 states: "*To the knowledge of GCR, first-instance decisions rejecting the application as inadmissible are based on a pre-defined template prepared by the Asylum Service to be used by the Regional Asylum Office or Asylum Unit on the islands. Thus, these first-instance negative decisions are identical, except for the applicants' personal details and a few lines mentioning the allegations of the applicant, thereby raising concerns as to whether the procedure complies with the obligation to apply the concept under an individualized assessment of each case.*" Our comment stating "*[i]t is standard practice of the Asylum Service to produce templates for its case workers as a tool to facilitate their work. In no way do templates supersede the obligation of the Asylum Service and its case workers to ensure the individualized examination of each asylum claim*" was ignored. It should also be mentioned that it is standardized practice in many asylum jurisdictions to use templates, not only to contribute to the efficiency of asylum procedures, but also to ensure some consistency among decisions of decision makers. Furthermore, according to the relevant data, first-instance decisions have not dismissed "overwhelmingly" applications as inadmissible (see data provided above).

Finally, six comments (no 84, 85, 86, 88, 89 and 90) stating facts on the relocation programme were disregarded, giving the impression that delays in the relocation process and other weaknesses are due to the Asylum Service, rather than other Member States or the design of the relocation programme. More specifically:

Page 86:

In page 86, paragraph 1.3 titled “[d]uration of the relocation process” on page 86, it is stated: *“However, this is a best case scenario. In reality, this is not usually the case...The total number of places available for relocation was 15,164 on 1 February 2017, while the total number of people eligible for the programme was 24,233. This means that, in fact, people stay in the relocation procedure much longer, usually 8 to 10 months, according to GCR’s knowledge”*. The Asylum Service agrees with this finding, but has noted the following (see comments no. 84 and 85): *“...The best case scenario would be for the relocation procedure provided for in the EC Decisions to be completed no later than 2 months from the time of the indication given by the MSR...Insufficient relocation places means that, in fact, eligible asylum applicants cannot be referred by the GAS to the relocation mechanism as relocation candidates. The time delays between the relocation request and the response by the MS - the acceptance and the actual transfer result in people staying in the relocation procedure much longer.”* The Asylum Service cannot be held responsible for the malfunctioning of the relocation scheme.

Page 87:

On page 87, second paragraph, it is stated: *“When a person is rejected by a Member State, the Relocation Unit does not try to allocate him or her to another Member State, but informs him or her that Greece is responsible for the examination of his or her asylum application from that point on”*. Our comment (comment no 88) that *“[t]he grounds for rejection of a relocation request sent by the Greek authorities are expressly provided for in art 5.7 of EC Decisions whereas a possibility to contest the MS rejections and re-refer the same case to another MS is not foreseen”* was ignored. In our view, in other words, weaknesses of the relocation programme as legislated by the Council should not be attributed to the Asylum Service.

On the same page, third paragraph, it is stated: *“Accordingly, the Relocation Unit states that there is no obligation on the authorities to inform the person officially – in writing – in case of rejection”*. Our comment (comment no. 89) that *“MS of relocation retain the right to reject, on the aforementioned grounds, relocation requests sent by Greece as the benefiting MS from the emergency assistance provided through the provisional relocation mechanism. The rejection does not affect the applicant’s right to seek and qualify for international protection”* was ignored. We recall that there is no entitlement to relocation in another EU Member State.

In the last paragraph of page 87 it is stated that: *“According to the Asylum Service, given that the applicant cannot choose the Member State of relocation, he or she should have a right to appeal against a relocation decision, in accordance with the Dublin Regulation, solely for the purpose of safeguarding his or her fundamental rights”*. Our comment (see comment no. 90) stating that *“[according to...] recital 35 (and not according to the Asylum Service) of the preamble of EC Decision 2105/1601 “[t]he legal and procedural safeguards set out in Regulation (EU) No 604/2013 remain applicable in respect of applicants covered by this Decision...In addition, applicants should be informed of the relocation procedure set out in this Decision and be notified with the relocation decision which constitutes a transfer decision within the meaning of Article 26 of Regulation (EU) No 604/2013. Considering that an applicant does not have the right under Union law to choose the Member State responsible for his or her application, the applicant should have the right to an effective remedy against the relocation decision in line with Regulation (EU) No 604/2013, only in view of ensuring respect for his or her fundamental rights”* was also ignored.

Page 109:

An example of choosing not to highlight progress is to be found in the first paragraph. Law 4375 adopted in April 2016, gave for the first time ever the automatic right to asylum seekers and beneficiaries of international protection to work. While this is stated as a fact, it is not hailed as a major step forward, despite the fact that it had been a core weakness as well as a key advocacy issue for decades. The same applies to page 142, fourth paragraph.

Lastly, we would also like to mention that revised statistical data (provided on 15th March 2017) were not included. This is particularly noteworthy as regards the number of registrations made in Kos and Corinth (see the table, page 27 of the report). The correct numbers are 324¹ registrations in Corinthos and 686² in Kos (the same correct numbers were provided both in our letters provided to GCR on 9 Feb 2017 and in the version of GCR's draft report for AIDA commented by the Asylum Service).

The Asylum Service is not in any way asking that GCR and ECRE present the situation better than it is. We certainly acknowledge that there are many improvements still required as regards the asylum procedure in Greece and the operation of the Asylum Service. However, we would appreciate that progress made in addressing negative aspects and the constant and systematic effort to make improvements are acknowledged in a proportionate manner. We would like to take this opportunity to thank both ECRE and GCR for your continued cooperation.

Yours sincerely,



¹ instead of 234 stated wrongly in the report

² instead of 324 stated wrongly in the report