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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2016) 8525 final
Subject:	COMMISSION RECOMMENDATION of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013

Delegations will find attached document C(2016) 8525 final.

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COMMISSION RECOMMENDATION

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**addressed to the Member States on the resumption of transfers to Greece under
Regulation (EU) No. 604/2013**

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Regulation (EU) No. 604/2013

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The transfer of applicants for international protection to Greece under Regulation (EU) No. 604/2013 (hereafter 'the Dublin Regulation') has been suspended by Member States since 2011, following two judgments of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU)¹, which identified systemic deficiencies in the Greek asylum system, resulting in a violation of the fundamental rights of applicants for international protection transferred from other Member States to Greece under Regulation (EC) No. 343/2003.²
- (2) The Committee of Ministers of the Council of Europe has been monitoring the situation in Greece since the *M.S.S v Belgium and Greece* judgment was delivered by the ECHR in 2011 on the basis of progress reports that Greece is required to submit as evidence of the execution of the judgment and on the basis of evidence from NGOs and international organisations, such as the United Nations High Commissioner for Refugees (UNHCR), that operate in Greece. At the request of Greece submitted in June 2016, the Ministerial Committee has accepted to postpone the evaluation procedure on the basis of the argument that Greece is currently under enormous migratory pressure, that the situation is exceptional, unstable and not the same as it was when the *M.S.S* judgment was delivered five years ago.
- (3) As a result of the *M.S.S* judgment, Greece committed to reform its asylum system on the basis of a national Action Plan on Asylum Reform and Migration Management presented in August 2010 and revised in January 2013 (hereafter 'the Greek Action Plan'). On 1 October 2015, Greece presented a Roadmap on the implementation of the relocation scheme and the hotspots approach to the Council, which also outlines certain actions to be prioritised to ensure implementation of agreed pending actions in the areas of asylum and reception.
- (4) At the same time, the current refugee and migration crisis continues to place pressure on the Greek asylum and migration systems as the main country of first entry from the

¹ *M.S.S v Belgium and Greece* (no. 30696/09) and *NS v Secretary of State for the Home Department* C-411/10 & C-493/10.

² OJ L 50, 25.02.2003, p.1 (which has been replaced by Regulation (EU) No. 604/2013, OJ L 180, 29.6.2013, p.31).

Eastern Mediterranean route. Between January and 4 December 2016, 171 909 migrants arrived irregularly in Greece³. Even if the EU-Turkey Statement⁴ has led to a significant decrease in the number of daily arrivals to Greece from Turkey⁵, it has also placed new responsibilities on the Greek authorities. The average daily number of arrivals to Greece has moreover increased in the period since the beginning of August 2016 compared to the period 1 May until 31 July 2016⁶. Furthermore, the situation in Greece has also changed significantly, following the de facto closure of the Western Balkans route, which prevents third-country nationals from onward travel. As a result, more than 62 000 third-country nationals having arrived irregularly are currently present in Greece.⁷ At the same time, the emergency relocation scheme based on two Council Decisions⁸ (hereafter 'Relocation Decisions'), is showing a positive trend particularly in Greece where relocation transfers have moved upwards and stand presently at around 1 000 per month. However, more efforts are needed from all Member States to alleviate the pressure on Greece. For this purpose, the Commission is calling on all Member States to pledge and relocate on a monthly basis to achieve at least 2 000 relocation transfers per month as of December 2016 and progressively increase monthly relocations.⁹⁽⁵⁾

- (5) On 10 February and 15 June 2016, the Commission addressed respectively two Recommendations to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under the Dublin Regulation.¹⁰ Those Recommendations concluded that the situation in Greece still needed considerable improvement before a further assessment could be made by the Commission on the possible resumption of transfers to Greece under the Dublin Regulation. On 28 September 2016, the Commission addressed a third Recommendation to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under the Dublin Regulation¹¹ (hereafter 'the third Recommendation'). The third Recommendation concluded that Greece is still facing a challenging situation in dealing with a large number of new asylum applicants, notably arising from the implementation of the so called 'pre-registration' exercise and the continuing irregular arrivals of migrants. There were moreover further important steps

³ Frontex data of 4 December 2016.

⁴ EU-Turkey Statement, 18.3.2016.

⁵ See the Commission reports on the progress made in the implementation of the EU-Turkey Statement, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm

⁶ The average daily arrivals to Greece 1.5.- 31.7.2016 was 52, and the average daily arrivals to Greece 1.8-29.11.2016 was 94.

⁷ <http://www.media.gov.gr/index.php>, accessed on 6 December 2016.

⁸ Council Decision (EU) 2015/1523, of 14 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJEU L 239, 15.9.2015, p. 146, and Council Decision (EU) 2015/1601, of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece OJEU L 248, 24.9.2015, p. 80.

⁹ Communication from the Commission to the European Parliament, the European Council and the Council, Eighth Report on Relocation and Resettlement, 7.12.2016, COM(2016) 791 final.

¹⁰ Commission Recommendation of 10.2.2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013 – C(2016) 871 final, Commission Recommendation of 15.6.2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013, C (2016) 3805 final.

¹¹ Commission Recommendation of 28.9.2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013 – C (2016) 6311 final.

to be taken to remedy the remaining systemic deficiencies in the Greek asylum system, in particular given the capacity shortfalls. On the basis of the further progress achieved, any future resumption of transfers to Greece under the Dublin Regulation should, in accordance with the third Recommendation, take account of the impact this challenging situation has on the overall functioning of the asylum system, and should therefore start gradually, on a case by case basis.

- (6) By letter of 22 November 2016, Greece provided the Commission with further information regarding the latest situation of asylum applicants in Greece and of the progress it has made to reform its asylum system. Greece also expressed concerns about the prospect of a possible resumption of Dublin transfers, given the number of migrants in Greece, noting an enormous burden on it disproportionate to its size and which result in a situation where the asylum and reception capacities have reached their limit. Greece equally pointed to the level of relocations from Greece to other Member States which remain well below the level foreseen in the Relocation Decisions. However, Greece underlined that it is not aiming at any permanent exclusion from the Dublin system and requested genuine solidarity and support until the situation has been fully regularised in Greece.
- (7) According to Greek data of 22 November 2016, approximately 39 000 asylum applications have been lodged with the Greek Asylum Service since 1 January 2016. The pending cases to be examined at first instance were on 30 September more than 17 000. It is estimated by the Greek authorities that up to a total of 50 000 asylum applications will have been lodged by the end of 2016¹². Due to the regularisation of the situation in Greece and the improved access to the asylum procedure, among other factors, the asylum application case load that the Greek Asylum Service is facing is significantly greater than in previous years.
- (8) In its previous Recommendations, the Commission has noted the improvements that Greece has made to its legislative framework to ensure that the new legal provisions of the recast Asylum Procedures Directive 2013/32/EU and some of the recast Reception Conditions Directive 2013/33/EU have been transposed into the national legislation¹³. A new law (Law 4375/2016) was adopted by the Greek Parliament on 3 April 2016¹⁴. On 22 June 2016, the Parliament approved an amendment to Law 4375/2016 which, inter alia, modified the composition of the Appeals Committees and the right of asylum seekers to an oral hearing before them¹⁵. On 31 August 2016, the Greek

¹² By the end of 2016, most of the 'pre-registered' applications should be fully registered/lodged, The aim of the 'pre-registration exercise, which was completed in August 2016, was to pre-register all those irregular third-country nationals having arrived in Greece before 20 March 2016 who wanted to apply for international protection but who had not yet been channelled into the asylum procedure by the Greek authorities. Around 28 000 persons were pre-registered over the summer.

¹³ OJ L 180, 29.6.2013, p.60 and OJ L 180, 29.6.2013, p. 96.

¹⁴ "Law 4375/2016 on the Structure and Operation of the Asylum Service, The Appeals' Authority and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions", available at: <http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/o-prosf-pap.pdf>.

Implementing acts in the form of Ministerial or Co-Ministerial Decisions need to be adopted in order for the Greek authorities to be able to implement the Law in its entirety.

¹⁵ Law 4399/2016: http://www.asylumineurope.org/sites/default/files/resources/n_4399.2016.pdf.

Parliament also adopted a law regarding school-aged refugee children residing in Greece.¹⁶

- (9) As regards reception capacity, in the past year, Greece has significantly increased its overall reception capacity for both irregular migrants and applicants for international protection. According to the daily information released by the Greek authorities on 6 December 2016, there are 71 539 places available mostly in temporary reception facilities, including accommodation being provided by UNCHR (see Recital 11), for both irregular migrants and applicants for international protection in Greece.¹⁷ However, there are serious challenges as regards capacity in the Aegean islands which have become overcrowded: maximum reception capacity remains around 8 200 while the total number of registered migrants on the islands was 16 295 as of 5 December 2016¹⁸.
- (10) Greece has also increased the accommodation for vulnerable applicants, in particular for unaccompanied minors. On 17 November 2016, 1 191 places were available in shelters for unaccompanied minors irrespective of whether they are asylum seekers or not. An additional 130 places suitable for unaccompanied minors is foreseen to be established by the end of 2016. However, the capacity for vulnerable applicants is still far from sufficient as facilities are currently full and there is a waiting list for 1 199 unaccompanied minors who need to be placed in appropriate facilities.¹⁹ The progress is, therefore, too slow in this area, and it is clear that Greece needs to step up its efforts to ensure that an appropriate number of reception facilities for unaccompanied minors are in place to deal with the demand for such accommodation.
- (11) In January 2016, a Delegation Agreement for a total of EUR 80 million was signed between the Commission and the UNHCR in order to establish 20 000 places in open accommodation (rental apartment schemes, hotel vouchers and family host programmes) primarily for the benefit of applicants for international protection eligible for relocation. The Delegation Agreement was revised in July 2016 in order to include in the accommodation scheme also the possibility to establish places in relocation sites managed by UNHCR, and to make it clearer in the text that the target group of the accommodation scheme includes not only relocation candidates but also other asylum seekers, particularly Dublin family reunification candidates and vulnerable categories, including unaccompanied and separated children, persons with disabilities, elderly, single parents, chronically ill, pregnant women, and others. Since September, the accommodation places available have been significantly increased (by around 8 100). UNCHR had committed in December 2015 to create 20 000 places for applicants eligible for relocation under the rental scheme, and as of 6 December, 20 145 places were available, including 6 344 places in hotels/entire buildings, 11 711 places in apartments, 484 places in host families, and 960 in relocation sites and 646 places in dedicated facilities for unaccompanied minors.²⁰ As the current Delegation

¹⁶ Law 4415/2016: https://www.alfavita.gr/sites/default/files/attachments/fek_ellinoglosi.pdf.

¹⁷ http://www.media.gov.gr/images/prosfygiko/REFUGEE_FLOWS-01-12-2016.pdf

These temporary emergency and permanent facilities are established on the Aegean islands in the hotspots as well as on the mainland.

¹⁸ The Greek Minister Mouzalas has stated that there are in reality less migrants on the Islands (around 10-12 000)

¹⁹ <http://reliefweb.int/report/greece/situation-update-unaccompanied-children-uac-greece-2-november-2016>

²⁰ <http://data.unhcr.org/mediterranean/country.php?id=83>

Agreement ends on 31 December 2016, the Commission started discussions with UNHCR for the extension of the scheme in 2017, on the basis of an updated assessment of Greece's reception needs.

- (12) In terms of quality, many of the reception facilities in Greece still fall short of the requirements stipulated in the Reception Conditions Directive 2013/33/EU for applicants for international protection, in particular on the islands and in some of the mainland temporary facilities. The 'Hotspot' facilities on the islands are not only overcrowded but have substandard material conditions in terms of sanitation and hygiene, access to essential services such as health care, in particular for vulnerable groups. Security is insufficient, and tensions persist between different nationalities. In the mainland, while the UNHCR accommodation scheme provides adequate conditions, much of the remaining reception capacity consists of encampments (currently 53 sites are being used) and emergency facilities with widely varying and often inadequate standards, both in terms of material conditions and security. Winterisation of some of these facilities has commenced but progress is slow. Even with improvements, it will be difficult to turn some camps into suitable permanent reception facilities, and there may be a need to close them down, while consolidating others.
- (13) Moreover, overall coordination of the organisation of reception in Greece appears to be deficient, due to the lack of a clear legal framework and monitoring system, with an ad hoc management of some camps by the Ministry for Migration and others by the Reception and Identification Service. No decision has been taken yet regarding which facilities should be made permanent. The Reception Service is still in the process of building up capacity.
- (14) It follows from the above that Greece still needs to make progress in establishing sufficient and adequate dedicated permanent open reception capacity for asylum applicants, all of which should be of an appropriate standard in accordance with the EU acquis. This should include a centralized management of all reception facilities together with a system for constantly monitoring the material standards for those facilities and the services provided there. Some temporary facilities should be transformed into permanent ones, but a sufficient capacity in terms of temporary facilities to accommodate any shortfall in capacity resulting from unexpected inflows should nevertheless also be maintained. Furthermore, as already requested in the third Recommendation, it is of utmost importance that the Greek authorities provide more exact data on the reception capacity and a comprehensive and continuously updated needs assessment in terms of total reception capacity and the nature of that capacity.
- (15) Substantial improvements have been noted regarding the establishment of the Regional Asylum Offices in the previous Recommendations. Greece's law provides for the establishment of Regional Asylum Offices in the regions of Attica, Thessaloniki, Thrace, Epirus, Thessaly, Western Greece, Crete, Lesbos, Chios, Samos, Leros and Rhodes.²¹ By decision of the Director of the Asylum Service it is also possible to set up Autonomous Asylum Units in order to cover increased needs of the Asylum Service. According to the information given by Greece in the letter of 22 November 2016, up till now seven Regional Offices have become operational, in the regions of Attica, Thrace, Thessaloniki, Lesbos, Samos, Rhodes and Patras. In addition, nine

²¹ Article 1(3) of Law 4375/2016.

Autonomous Asylum Units are operational in Piraeus, Evros, Xanthi, Leros, Kos, Corinth and a Relocation Unit in Alimos. As the law stipulates, a further three Regional Asylum Offices are to become operational in the area of Kos, Epirus (Ioannina), Crete (Heraklio) and Thessaly (Volos).

- (16) The Greek Asylum Service is in the process of increasing its capacity. Currently, there are 478 persons working in the Asylum Service²². This number covers posts of the Central Service as well as established Regional Offices and Asylum Units. The National budget covers 250 posts, whereas the rest is funded by different EU and EEA sources. By the end of the year it is planned that the staff will be increased to 659. This is in addition to the fixed-term staff hired by the UNHCR as well as the EASO staff members and the Member States' experts deployed via EASO to the Greek Asylum Service for a fixed period. The Greek authorities' intention is to replace all contractual staff with permanent staff by the end of 2017 and not to further increase the capacity; the Greek Asylum Service has indicated to the Commission services that a more rapid expansion of staffing is not feasible due to the lack of senior staff to train, mentor and supervise newly recruited ones. As the Asylum Service will have tripled in size during the course of 2016, it has indicated that it urgently needs to consolidate, especially to build middle management and staff expertise.
- (17) Given the scale of the increase in the number of asylum applications in Greece, it is not yet clear whether the current and planned staffing levels for the Asylum Service are sufficient for what is required to process the current and likely future case-load in a timely and adequate manner. One of the main priorities of the Asylum Service should be to reduce the time elapsing between the making and the lodging of an application which is currently often too long, with an impact on the rights enjoyed by the persons concerned and causing frustration among those affected. It should be reduced in accordance with Article 6(2) of the Asylum Procedures Directive which requires that a person who made an asylum application has an effective opportunity to lodge the application "as soon as possible". It is also essential that, once lodged, an application is processed within the time limits set out in the Directive, and so normally within 6 months. The processing of a lodged asylum application currently takes at its best several months, apart from relocation cases that are processed more rapidly, and there is considerable uncertainty about the speed in which the current backlog of applications will be cleared. The Commission, however, takes due note of the concerns Greece expressed in the letter of 22 November 2016 according to which an even more rapid increase of the staff of the Asylum Service would threaten to affect the coherence and the quality of the decisions.
- (18) There is an urgent need to assess whether the increase so far in human resources of the Asylum Service is sufficient, and also to assess how the Commission, relevant EU Agencies and also the Member States could best assist Greece in dealing with these applications in a shorter time limit. A comprehensive and continuously updated needs assessment should be carried out that takes into account the number of asylum applications that are currently pending and that are likely to be handled by the Greek Asylum Service at any one time and the number of available staff required or likely to be required to process those applications. This staff could be comprised of additional resources to be provided by Greece itself and via deployment of Member States

²² Staffing information given by the Greek Asylum Service in a meeting with the Commission services on 10.11.2016.

experts in the form of an EASO support team. While maintaining quality, it should be explored how to rationalise working methods and make them more efficient to speed up the interviews and procedures, with the support of EASO where appropriate.

- (19) Asylum seekers must be able to have effective access to a remedy against a negative decision on their claim. Important progress has been made in this regard. The Appeals Authority and Appeals Committees were established by Law 4375/2016 adopted in April 2016. Law 4399/2016 adopted in June 2016 establishes new Appeals Committees. They are responsible for examining all appeals against decisions of the Greek Asylum Service lodged since 20 July 2016. As a priority, the Appeals Committees are focusing primarily on cases lodged on the Greek islands, so as to contribute to the implementation of the EU-Turkey Statement. There are currently six of them. One Appeals Committee has also been established since 21 July as alternate to the permanent ones²³. In order to cope with the increasing caseload and manage the backlog cases, Greece intends to establish a further seven committees expected to be operational by the end of December 2016 and bring the total to 20 by the end of February 2017.
- (20) Law 4399/2016 also amended the structure of these Committees which are now composed of three members: two judges of the Administrative Court and one Greek citizen with relevant background and experience to be put forward by UNHCR or the National Committee for Human Rights.
- (21) According to the information given by the Greek authorities in the letter of 22 November 2016 since 21 July 2016, 2 347 appeals have been brought before the Appeals Committees but only 573 decisions have been issued.
- (22) The old "Backlog" Appeal Committees that were established to hear asylum appeals from Greece's backlog of cases had been initially given an additional mandate to hear, in addition to substantive appeals on first instance decisions, the appeals against the decisions based on grounds of admissibility as part of the EU-Turkey Statement. According to the information given by the Greek authorities on 22 November, more than 2 000 appeals lodged between April and 20 July 2016 have been brought before the Backlog Committees. The establishment of the New Appeals Committees on 24 June 2016²⁴ has alleviated the burden of the 20 "Backlog" Appeal Committees allowing them to accelerate the pace of the proceedings of the backlog appeal cases.
- (23) More progress has been made on the long-standing backlog of appeals under the 'old procedure' regulated by Presidential Decree 114/2010. The current backlog stands at approximately 6 589 cases as of 22 November 2016 (down from a total of approximately 51 000 cases that were considered as part of the backlog at the beginning of 2013 and approximately 8 075 cases in September 2016). The Greek authorities have granted permits for humanitarian purposes to persons whose applications for asylum have been pending for a considerable time and who are eligible to acquire residence permits on humanitarian or other exceptional grounds, according to the Greek Law 4375/2016. The residence permits are issued for a period of two years and can be renewed.²⁵ They provide to beneficiaries the same rights and

²³ However, because of the increase of workload due to the implementation of the EU-Turkey Statement, this alternate Committee is given 100 cases per month to examine.

²⁴ Co-ministerial Decision (OJ B 1862), 24.6.2016.

²⁵ Article 22(3), Law 4375/2016.

benefits as to those granted subsidiary protection status in Greece,²⁶ and these persons are then no longer considered as asylum applicants. Some of the backlog appeals are, however, examined as to their substance. Despite the significant progress made since the previous Recommendations, Greece should continue its efforts to clear the backlog of pending appeals in this regard, ensuring that applicants with an outstanding appeal have an opportunity to exercise their right to an effective remedy.

- (24) Given the increase in the number of applications made in Greece since the implementation of the EU-Turkey Statement, a fully staffed Appeals Authority, capable of handling an expected significant increase in the number of appeals, is all the more essential. While maintaining quality and without prejudice to the independence of the committee members, the efficiency of the committees should be increased. This could include in particular the Appeals Committees meeting more frequently, the use of legal assistance in drafting decisions and specialization of the committees as well as full time engagement of the members. Also more support staff should be engaged²⁷. A continuous needs assessment should also be carried out on the basis of the number of appeals that are currently pending in the different appeal bodies and that are likely to be handled by them with a view to assessing whether the number of committees is sufficient and working methods appropriate.
- (25) The provision of free legal aid has been included in the new law (Law 4375/2016) for applicants at the appeal stage. However, all the measures to implement this law in practice have not yet been taken. A Ministerial Decision implementing the provision for legal aid under Law 4375/2016 was adopted on 9 September 2016. Funding for the implementation of free legal assistance has been secured through the national programme under the Asylum, Migration and Integration Fund (AMIF). Additionally, a grant agreement was awarded to the UNHCR under AMIF emergency assistance funding for the total amount of EUR 30 million²⁸. This funding is, amongst other things, being used by the UNHCR to provide free legal assistance to applicants for international protection at the appeals stage until the beginning of 2017, by when the Greek authorities are expected to put in place their own free legal aid scheme. Two projects are being implemented in partnership with non-governmental organisations (Metaction and the Greek Council for Refugees): one on the islands, with full coverage of all appeals and the other one on the mainland, only with partial coverage, for appeals lodged in Athens and Thessaloniki, and not for asylum seekers in detention. On 19 September, Greece informed the Commission that the roster of lawyers to be maintained by the Asylum Service will be established by early 2017. Greece should take the necessary steps to guarantee without delay the right to free legal aid for all asylum applicants lodging appeals.
- (26) Serious concerns remain regarding the protection of vulnerable applicants, including unaccompanied minors, in particular given the lack of a properly functioning guardianship system, inadequacies in terms of suitable accommodation and general concerns regarding their security. The new Law 4375/2016 provides for a new Directorate for Reception and a Directorate for Social Integration that both include specialised departments for the reception and integration of unaccompanied minors within the Ministry of Interior and Administrative Reconstruction, including the

²⁶ Article 28, Presidential Decree 114/2010.

²⁷ Information given to the Commission services in a meeting with the Appeals Authority in November 2016.

²⁸ The grant agreement was signed on 15.7.2016.

provision of a legal representative. Despite this, implementing measures still need to be adopted by the Greek authorities to ensure that appropriate procedural guarantees and reception conditions are provided in practice to unaccompanied minors. A further legislative framework that should include provisions for an efficient guardianship system still needs to be adopted. The Greek authorities have confirmed that the Ministry of Labour and Social Solidarity (MoL), which is in charge of unaccompanied minors, is preparing a new law on guardianship that should be ready before the end of 2016. Within this law a special service, possibly a department, would be established for the guardianship system. While a Ministerial Decision concerning the age assessment of unaccompanied minors seeking asylum has already been adopted by the Greek government,²⁹ there continue to be reported concerns about the implementation of the assessment in practice due to lack of identification and the lack of a legal remedy concerning the age assessment carried out by the police.

- (27) There has been significant progress as regards access to education. Law 4415/2016 in August 2016 aims, inter alia, at securing psychosocial support and education for the children of asylum seekers, as well as the smooth integration into the Greek educational system of those who will remain in Greece, following a preparatory, transitional period. Despite local resistance Greek authorities are taking significant measures to implement this legal framework fully and effectively.
- (28) According to various stakeholders, the situation for unaccompanied minors is still in general precarious, with many concerns about their security in the reception facilities on the mainland and on the islands, and with some indicating that children are still held in detention, or in 'protected' areas within open reception facilities, for prolonged periods in crowded and unsanitary conditions without a representative or access to legal aid, until appropriate accommodation can be found for them.³⁰ As stated in Recital 10, the lack of appropriate accommodation for minors is an important problem which still needs to be urgently remedied.
- (29) The European Commission has provided substantial funding to Greece to support the country in its efforts to bring its asylum management system up to EU standards. Since the beginning of 2015, more than EUR 352 million in emergency assistance has been awarded through Home Affairs Funds (AMIF and Internal Security Fund (ISF)) to Greece, either directly to the Greek authorities or through Union Agencies and international organisations operating in Greece. Out of this amount, some EUR 90 million was directly awarded to the Greek authorities in July 2016 to strengthen their capacities to improve living conditions and provide primary healthcare services at refugee accommodation centres, as well as to provide reception and healthcare services to the migrants. Substantial funding (approximately EUR 198 million) aiming at covering the migrants' and refugees' basic humanitarian needs is also being provided to humanitarian partner organisations through the recently created Emergency Support Instrument. This funding contributes to the implementation of the emergency response plan developed together by the Commission, the Greek authorities and/or relevant stakeholders to address the ongoing humanitarian situation on the ground and/or to support the implementation of the EU-Turkey Statement.

²⁹ Ministerial Decision 1982/16.2.2016 (Official Gazette, B' 335).

³⁰ Human Rights Watch, "Why Are You Keeping Me Here?", September 2016 https://www.hrw.org/sites/default/files/report_pdf/greece0916_web.pdf.

- (30) This emergency assistance comes on top of the EUR 509 million allocated to Greece for the period 2014-2020 through its national programmes under the AMIF and ISF Funds, thus making Greece the first beneficiary of EU Home Affairs funds amongst EU Member States.
- (31) Greece should ensure that such financial resources are fully used in the most efficient and effective manner and without further delay. To this purpose, Greece's national programmes under the Home Affairs funds (AMIF, ISF) are being revised to adjust them to the new priorities. The revision of the AMIF national programme has been completed, while the revision of the ISF national programme is at its final stages and should soon be completed. Furthermore, although the formal designation of the new Responsible Authority has been completed, in accordance with the requirements set in the legal basis, procedures and operational measures still need to be streamlined to ensure that Greek authorities start fully mobilising the funding available under the national programmes in order to cater for urgent needs especially in the field of reception and other services for the migrants present in the country.
- (32) As acknowledged in the Commission's Communication of 4 March 2016 on 'Back to Schengen',³¹ ensuring a fully functioning Dublin system is an indispensable part of the wider efforts needed to stabilise the asylum, migration and border policy. These efforts to normalise the functioning of the Dublin system should in turn lead to a return to a normal functioning of the Schengen area. The incentive for asylum seekers arriving irregularly to Greece to move on to other Member States, which the suspension of Dublin transfers to Greece since 2011 has engendered, is one of the factors leading to the secondary movements which have been undermining the proper functioning of the Schengen system. It is therefore important that Greece takes as a matter of urgency the outstanding actions identified in this Recommendation. At the same time, reforming the Dublin rules as proposed by the Commission,³² based on the objective of solidarity and fair burden-sharing between Member States, should be a priority. Negotiations on this proposal are ongoing.
- (33) The Commission acknowledges the important progress made by Greece, assisted by the Commission, EASO, Member States and international and non-governmental organisations, to improve the functioning of the Greek asylum system since the *M.S.S* judgement in 2011. However, Greece is still facing a challenging situation in dealing with a large number of new asylum applicants, notably arising from the implementation of the pre-registration exercise, the continuing irregular arrivals of migrants, albeit at lower levels than before March 2016, and from its responsibilities under the implementation of the EU-Turkey Statement. There are moreover further important steps to be taken to remedy the remaining shortcomings in the Greek asylum system, in particular as regards the quality of reception facilities, the treatment of vulnerable applicants and the speed with which asylum applications are registered, lodged and examined in the two instances. In order to take account of the impact of this challenging situation on the overall functioning of the asylum system and in order to avoid placing an unsustainable burden on Greece, it is not yet possible to recommend a full resumption of Dublin transfers to Greece, although it remains the ultimate goal.

³¹ Communication from the Commission to The European Parliament, The European Council and The Council, 'Back to Schengen - A Roadmap', COM(2016) 120 final, 4.3.2016.

³² COM (2016)270 final.

- (34) However, significant progress has been attained by Greece in putting in place the essential institutional and legal structures for a properly functioning asylum system and, there is a good prospect for a fully functioning asylum system being in place in the near future, once all the remaining shortcomings have been remedied, in particular as regards reception conditions and the treatment of vulnerable persons, including unaccompanied minors. It is, therefore, appropriate to recommend that transfers should resume gradually and on the basis of individual assurances, taking account of the capacities for reception and treatment of applications in conformity with relevant EU legislation, and taking account of the currently inadequate treatment of certain categories of persons, in particular vulnerable applicants, including unaccompanied minors. The resumption should, moreover, not be applied retroactively but concern asylum applicants for whom Greece is responsible starting from a specific date in order to avoid that an unsustainable burden is placed on Greece. It should be recommended that this date is set at 15 March 2017.
- (35) On the basis of the above, this Recommendation sets out the measures that need to be taken or sustained by the Greek authorities in view of resuming Dublin transfers concerning asylum applicants who have entered Greece irregularly at external borders from 15 March 2017 onwards, or for whom Greece is responsible under the criteria other than Article 13 in Chapter III of Regulation EU (No) 604/2013 from that date. With this objective in mind, Greece should urgently take all of the steps set out in this Recommendation. In compliance with the principle of solidarity and fair sharing of responsibility, the other Member States should also contribute to attaining this objective, in particular by deploying experts to assist the Greek authorities by responding to EASO's various calls as well as by fully complying with their relocation obligations resulting from the Relocation Decisions.
- (36) This Recommendation also sets out the modalities for the resumption of transfers which should include close co-operation between the Greek authorities and the authorities of the transferring Member State in individual cases of transfer, based on the duty of sincere cooperation between Member States, including for ensuring that the person will be suitably accommodated in accordance with the standards set out in Directive 2013/33/EU and that his or her request will be processed in accordance with Directive 2013/32/EU. This will require that Greece provides specific assurances in respect of each individual to be transferred concerning the manner in which he or she will be treated. Furthermore, a support and reporting mechanism consisting of an EASO team of Member States' experts should be set up in order to assist in ensuring that such standards are applied in practice with regard to the transferred persons.
- (37) Regular reporting by Greece on the progress being made in implementing these actions is essential in order to ensure full implementation of this Recommendation. Greece should accordingly provide a first report by 15 February 2017 as set out in this Recommendation which should in particular include a description of how the Greek authorities are putting in place the procedure for providing assurances in individual cases of transfer in respect of the relevant EU legislation. Thereafter, Greece should report every two months on the implementation of this Recommendation.
- (38) Based on these reports and any other relevant information at its disposal or other developments, the Commission will regularly report on the progress made in the implementation of this Recommendation and update where necessary the recommendations set out therein.

- (39) The responsibility for deciding on the resumption of transfers in individual cases lies exclusively with Member States' authorities under the control of the courts, which may make preliminary references to the European Court of Justice on the interpretation of the Dublin Regulation.

RECOMMENDS:

I. Measures to strengthen the Greek Asylum system

Reception conditions and facilities

- (1) Greece should continue its efforts to ensure that the reception facilities are sufficient for accommodating all the applicants for international protection on its territory and that the reception conditions in all these reception facilities meet the standards set out in EU legislation. As a high priority Greece should:
- (a) ensure that it has in place a sufficient number of open reception facilities that are capable of accommodating all applicants for international protection it receives or is likely to receive, and their dependants, for the duration of the asylum process;
 - (b) ensure that all these facilities meet at least the minimum standards fixed in Reception Conditions Directive 2013/33/EU, including for vulnerable applicants and including during the winter period;
 - (c) decide without delay on which mainland facilities should be upgraded and which should be closed;
 - (d) decide without delay on how the reception capacity on the islands should be increased;
 - (e) create the necessary additional accommodation places for unaccompanied minors, in order to ensure that all unaccompanied asylum seeking minors are immediately placed in suitable accommodation and are not kept in sub-standard conditions or in detention, and ensure that those facilities are sustained;
 - (f) ensure that applicants receive the necessary health care, which include at least emergency health care and essential treatment of illnesses and of serious mental disorders;
 - (g) ensure effective and continuous centralized management and coordination of all reception facilities, together with a system for constantly monitoring the material standards for those facilities and the services provided there, including

the hotspots, and ensure that the responsible authorities have adequate resources for this purpose.

Greece should also ensure that, in addition to the permanent facilities, an appropriate number of temporary open reception facilities is kept available, or can be made available at short notice, to allow for the accommodation of unexpected inflows of applicants for international protection and their dependants in adequate conditions.

The Greek authorities should carry out a comprehensive needs assessment in terms of total reception capacity required, and the nature of that capacity, and continuously update this assessment in the light of new developments.

Access to and resources for the first instance asylum procedure

- (2) Greece should continue its efforts to ensure that all applicants for international protection have effective access to the asylum procedure in particular by:
 - (a) assessing whether the number of staff in the Asylum Service is adequate to process the intake of asylum applications within the deadlines specified in the Asylum Procedures Directive 2013/32/EU;
 - (b) based on this assessment, ensuring the recruitment of any additional staff needed to the Asylum service in order to be able to, as soon as possible, deal efficiently and in a timely manner with all applications for international protection, and/or identifying additional staff, including both case workers and interpreters, that could be deployed by the Member States via EASO support teams;
 - (c) establishing additional Regional Asylum Offices or Units in accordance with the overall needs throughout the territory of Greece;
 - (d) speeding up the interviews and procedures while maintaining the requisite standards, with the support of EASO where appropriate, including by introducing interview and support tools;
 - (e) reducing the period of time between the expression of interest to apply for asylum and the actual lodging of the asylum application, in accordance with Article 6 (2) of Asylum Procedures Directive 2013/32/EU.

The needs assessment referred to in point (a) should be continuously updated and contain information on the number of staff recruited;

Appeals Authority

- (3) Greece should continue its efforts to ensure that an effective remedy is available to all applicants for international protection, in particular by ensuring:
 - (a) the full functioning of the new Appeals Authority by establishing the planned 20 of Appeals Committees by the end of February 2017, and by supplementing this number as needed, on the basis of the needs assessment mentioned below;

- (b) the adequate human resources for the Appeals Authority and the Committees, including support staff, in order to deal with all pending and likely future appeals, including the appeals within the framework of the EU-Turkey Statement;
- (c) the clearance of all pending requests for judicial review of administrative decisions that are currently outstanding as soon as possible;
- (d) the increase in the number of decisions per committee, including, where appropriate, through scheduling more frequent meetings, the use of legal assistance in drafting decisions, specialisation of the committees and through the full time engagement of committee members, without prejudice to their independence;
- (e) sufficient training for the Appeal Committee members, including with the support of EASO where appropriate.

The Greek authorities should identify, on the basis of a full and continuous needs assessment, the number of Appeals Committees under the new Appeals Authority that are needed in order to examine all appeals submitted by applicants for international protection, the number of human resources to continue the smooth-functioning of those Committees and any other measures, such as changes to the working methods, that might be required. This should in particular include an assessment of whether the 20 Appeals committees to be established by the end of February 2017 are sufficient.

Legal aid

- (4) Greece should ensure that the legal framework concerning access to free legal aid is effective in practice and that all asylum applicants are provided with the necessary legal assistance for judicial review of administrative decisions on applications for international protection. In particular, Greece should:
 - (a) effectively implement the Ministerial Decision for the provision of free legal aid services as soon as possible;
 - (b) swiftly establish a contract for a permanent register of lawyers who can provide these services to all applicants at the appeal stage in Greece. In the meantime, Greece should ensure that the two projects being implemented on the mainland and the islands provide effective free legal assistance for all asylum appellants.

Treatment of unaccompanied minors and vulnerable persons during the asylum procedure

- (5) Greece should ensure the establishment of appropriate structures, and take the appropriate measures, for the identification and treatment of vulnerable applicants, including unaccompanied minors. In particular Greece should:

- (a) urgently put in place a suitable guardianship procedure by adopting the necessary legislative framework for implementing the relevant provisions under Law 4375/2016;
- (b) establish and recruit the necessary staff for the Directorate for Reception and the Department for the protection of unaccompanied minors in order to urgently provide the necessary guarantees under asylum law for family tracing, and legal representation;
- (c) ensure that the procedures for identifying applicants with special procedural and reception needs, including unaccompanied minors, are implemented in practice so that these applicants are provided with the necessary psychosocial support, particularly where they may have been victims of sexual violence and exploitation or trafficking, and that the best interests of the child are always duly taken into account.

Use of EU funding under national programmes

- (6) Greece should ensure that the substantial EU funding being provided is fully used, notably by mobilising without further delay the resources available under its AMIF and ISF national programmes and exploring complementary funding from Structural Funds. In this context, Greece should take the necessary measures to fully mobilise the funding available under the national programmes in order to cater for urgent needs especially in the field of reception and other services for the migrants present in Greece, notably by improving coordination among the relevant stakeholders, strengthening operational capacity and improving delivery mechanism.

Technical assistance by other Member States

- (7) Member States are requested to provide additional support to Greece by nominating experts to respond to EASO's various calls, by ensuring longer deployments and by identifying more senior and specialised profiles.

II. Modalities of resumption of transfers

- (8) It is recommended that the transfer of asylum applicants to Greece under Regulation (EU) No 604/2013 should be resumed under the conditions and following the modalities set out in points 9 and 10.

Scope

- (9) The resumption of transfers should apply to asylum applicants who have entered Greece irregularly at external borders from 15 March 2017 onwards or to other persons for whom Greece is responsible under criteria other than Article 13 in Chapter III of Regulation (EU) No 604/2013 from that date gradually, following the capacities of reception and treatment of applicants in Greece conformity with Directives 2013/32/EU and 2013/33/EU. Vulnerable asylum applicants, including unaccompanied minors, should not be transferred to Greece for the time being.

Co-operation and individual assurances

- (10) Before transferring an applicant to Greece, Member State authorities are invited to cooperate closely with the Greek authorities in order to ensure that the conditions indicated in point 9 are met and in particular that the applicant will be received in a reception facility meeting the standards set out in EU law, in particular in the Reception Conditions Directive 2013/33/EU, that his or her application will be examined within the deadlines specified in the Asylum Procedures Directive 2013/32/EU, and that he or she will be treated in line with EU legislation in every other relevant respect. The Greek authorities are invited to fully co-operate in providing such assurances to the other Member States.

III. Support and Reporting

EASO support and reporting

- (11) EASO should establish a team of Member States' experts to be deployed in Greece with the task of supporting the cooperation between Member States and reporting on whether the persons transferred back to Greece under the Dublin Regulation are treated in accordance with the assurances to be provided by Greece referred to in point 10.

Reporting by Greece

- (12) Greece is requested to provide, by 15 February 2017, a report covering the progress made in implementing this Recommendation. The report should in particular include a description of the actions taken to implement the outstanding shortcomings

identified in this Recommendation, including how the Greek authorities have, or plan to, put in place the necessary human and material resources referred to in points 1 to 5 of this Recommendation and a description of the continuous needs assessments referred to in points 1 to 3 of this Recommendation. It should further describe in detail how the Greek authorities intend to implement the procedure for providing assurances in individual cases referred to in point 10.

- (13) The report should also include the following information:
- (a) the total current and planned permanent and temporary reception capacity for hosting applicants for international protection and the nature of that capacity;
 - (b) the total number of asylum applications pending at first instance;
 - (c) comprehensive data on all pending appeals, and issued decisions at second instance, including admissibility cases, by both the New Appeals Committees and the Backlog Appeal Committees;
 - (d) the total number of current and planned staff for processing asylum applications registered with the Asylum Service and for the Directorate for Reception; and the total current and planned number of staff and the number of Committees which the Appeals Authority has progressively made operational.
- (14) After 15 February 2017, Greece is requested to report every two months on the implementation of this Recommendation.

Done at Brussels, 8.12.2016

For the Commission
Dimitris AVRAMOPOULOS
Member of the Commission

