

New Pact on Migration and Asylum

JULY 2024

**Impermissible regression of standards
for asylum seekers**

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Introduction

The adoption of the reform of the Common European Asylum System (CEAS) in May 2024 marked the end of eight years of legislative negotiations and an overhaul and deterioration of the European Union (EU) rulebook that dismantles core safeguards on refugee protection. The reform also entrenches derogation regimes and breaches of the rule of law as enshrined in the EU Treaties and *acquis*. Meanwhile, the European Commission has released a Common Implementation Plan aiming to assist Member States in the design of their respective national implementation plans by the end of 2024. These plans should outline legislative, administrative and operational changes with a view to bringing their asylum systems in line with the new framework by its start of application in June 2026.¹

Refugee Support Aegean (RSA) maintains its position that the CEAS reform, through the adoption mainly of the Reception Conditions Directive (EU) 2024/1346 (**RCD**),² the Qualification Regulation (EU) 2024/1347 (**QR**),³ the Asylum Procedures Regulation (EU) 2024/1348 (**APR**),⁴ the Return Border Procedure Regulation (EU) 2024/1349 (**RBPR**),⁵ the Asylum and Migration Management Regulation (EU) 2024/1351 (**AMMR**),⁶ the Screening Regulation (EU) 2024/1356 (**SR**),⁷ and the Crisis Regulation (EU) 2024/1359 (**CR**),⁸ represents an impermissible regression of hard-fought asylum standards developed through legislation, litigation and binding case law over the past two decades. This will inevitably undermine the protection of refugee rights as required by international and EU standards. It also appears to defeat the objective of a Common European Asylum System by granting broad discretion for national rules in core areas.⁹

¹ European Commission, *Common Implementation Plan for the Pact on Migration and Asylum*, COM(2024) 251, 12 June 2024.

² Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection [2024] OJ L 22.5.2024.

³ Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted [2024] OJ L 22.5.2024.

⁴ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union [2024] OJ L 22.5.2024.

⁵ Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure [2024] OJ L 22.5.2024.

⁶ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management [2024] OJ L 22.5.2024.

⁷ Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders [2024] OJ L 22.5.2024.

⁸ Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum [2024] OJ L 22.5.2024.

⁹ RSA, 'The finish line of the end of the Common European Asylum System?', 18 December 2023, available [here](#); 'CEAS: "Breaches of core legal principles are going to become the new normal"', 20 September 2023, available [here](#); 'New Pact on Migration and Asylum: old 'recipes' with dangerous ingredients codify derogations from legality and undermine the rule of law and the rights of refugees', 30 October 2020, available [here](#).

Formally, the primary objectives of the CEAS are proclaimed in the Preambles to its legislative instruments, read in conjunction. The main stated aims of the CEAS may be summed up as follows:

1. **Harmonisation of national asylum systems** through common rules and standards. The *acquis* largely connects this objective to the **prevention of secondary movements** of refugees and migrants across different European countries.¹⁰ A corollary objective of the CEAS is to **prevent absconding** from the asylum process and to ensure asylum seekers remain available to the authorities.¹¹
2. **Streamlined and simpler procedures** promoting **clarity and legal certainty**.¹² Both this and the harmonisation objective should be juxtaposed to the stated aim of **Member State flexibility in the organisation of procedures and reception**, including in responses to pressure.¹³
3. **Complementing border checks and accurate identification**,¹⁴ and ensuring **swift and effective access to procedures** and to associated rights as soon as possible,¹⁵ as well as **rapid decision-making**.¹⁶
4. Prompt and proper **information to asylum seekers on their rights**.¹⁷
5. Respect for **human dignity**¹⁸ and promotion **autonomy, self-sufficiency and integration**,¹⁹ including by fostering **harmonious relationships** between local communities and reception centres.²⁰
6. Prompt **identification of and specially designed support to vulnerable groups**.²¹
7. **Fair sharing of responsibility** between Member States,²² reinforced **mutual trust**, sincere cooperation and coordination.²³

¹⁰ Recitals 3, 5, 11, 13, 50 and 71 RCD; Recitals 6, 7, 8, 10, 49, 65 and 66 QR; Recitals 1, 3, 5, 6, 7, 40, 59, 79 and 81 APR; Recitals 26 and 53 AMMR; Recital 2 RBPR; Recitals 2 and 27 Eurodac Regulation.

¹¹ Recital 6 SR; Recitals 14, 15, 19, 24, 25 and 58 RCD; Recitals 58 and 59 AMMR.

¹² Recitals 1, 5, 7, 26 and 57 APR; Recitals 43 and 70 AMMR; Recital 2 RBPR.

¹³ Recital 17 RCD; Recital 67 QR; Recitals 65, 88 and 89 APR; Recital 34 AMMR; Recitals 3 and 25 CR.

¹⁴ Recitals 2 and 59 SR; Recital 19 Eurodac Regulation.

¹⁵ Recital 6 SR; Recital 7 RCD; Recitals 13, 14 and 27 APR; Recital 37 AMMR; Recital 52 CR.

¹⁶ Recitals 26, 43, 56, 58, 64, 68, 92, 94 and 95 APR; Recitals 23, 37, 62 and 64 AMMR; Recital 36 CR.

¹⁷ Recital 12 RCD; Recitals 16 and 31 APR; Recital 39 AMMR.

¹⁸ Recital 58 RCD; Recital 42 QR.

¹⁹ Recitals 8, 50 and 52 RCD; Recitals 71 and 74 QR.

²⁰ Recital 65 RCD.

²¹ Recital 7 SR; Recital 37 RCD; Recitals 61 and 62 APR.

²² Recital 22 AMMR; Recitals 6 and 7 CR.

²³ Recitals 2, 16 and 67 AMMR; Recitals 2 and 5 CR.

8. **Preparedness, capacity and contingency planning** in asylum systems,²⁴ including sufficient support to and resources for asylum authorities.²⁵ A related objective is **timely and predictable response to pressure**.²⁶
9. **Prevention of abuse** of asylum systems²⁷ and **protection of public order and national security**.²⁸

These stated aims do not appear to differ from EU proclamations and regulations thus far. So what changes and to what extent as to 'justify' such a 'restructuring' of asylum legislation? Why does the EU adopted rules which evidently breach Treaty obligations and the *acquis* of the Union and its Member States, and which will certainly not withstand legal challenge before domestic, EU and international courts?

The objectives promoted by secondary EU law often appear to be conflicting if not directly contradictory. In the case of the CEAS, many rules laid down in the operative parts of legislation depart from or even contradict the stated aims of the proclaimed reform, as well as Treaty obligations and EU *acquis* guaranteeing the rule of law and legal certainty. Such rules seem to be consistently oriented towards deterrence of arrivals of refugees in Europe in search of protection.

Specifically, several provisions of the new CEAS directly contravene primary EU law, including Article 78(1) of the Treaty on the Functioning of the EU (TFEU), as they are irreconcilable with the 1951 Refugee Convention, the Charter of Fundamental Rights, the European Convention on Human Rights (ECHR) and other international conventions that form the bedrock of the CEAS. Respect for these binding standards entails no other solution than disapplication of any contrary provisions in the Regulations.

Furthermore, provisions in the new CEAS inject unnecessary ambiguity and confusion into an already elaborate, complex body of EU law in a manner that renders interpretation, implementation and adjudication an extremely different task in practice. Such poor legislative quality undermines the primary objective of legal certainty and harmonisation. If anything, it is liable to drive arbitrary rule application, breach of human rights, and inefficiency in asylum systems. The text of the various EU law instruments must therefore be construed and implemented in line with legal certainty, effectiveness and compatibility with refugee law and human rights.

Striking examples of contestable law-making which contravene proclaimed CEAS objectives may be found in:

- The highly problematic, broad establishment of προβληματική ευρεία θεσμοθέτηση **Regimes of Derogation** from the body of main CEAS safeguards: there are ten (!) different 'exceptional' circumstances triggering the application of specific provisions which place a large number of refugees outside the ordinary operation of an asylum system, often in direct contravention of EU and international law. The reform creates a patchwork

²⁴ Recitals 64, 66 and 67 RCD; Recitals 5, 13 and 59 CR.

²⁵ Recitals 7 and 15 SR; Recitals 26, 32 and 58 APR; Recitals 8, 9 and 12 AMMR.

²⁶ Recitals 15 and 26 AMMR; Recital 26 CR.

²⁷ Recitals 61 and 62 RCD; Recitals 78 and 93 APR.

²⁸ Recital 25 APR; Recital 50 AMMR; Recitals 7, 8, 28 and 36 Eurodac Regulation.

legislative framework and entrenches a constant regime of exception, ultimately defeating the proclaimed aim of harmonization of asylum systems.

- The expansion of **Grounds of Inadmissibility** of an asylum claim, not least through: (i) the multidimensional expansion of the definition of the “safe third country” concept and the watering down of safeguards for its application; (ii) a new inadmissibility ground liable to unfairly deny access to an asylum procedure on the merits even to refugees who immediately seek international protection, against the current backdrop of misuse of return procedures against new arrivals.
- The introduction of a mandatory **Accelerated Procedure** on ten grounds, including a new, highly concerning ground relating to nationals of countries with an annual Eurostat recognition rate of 20% or lower.
- The degree of complexity of rules on suspensive effect of **Appeals** and broad derogations therefrom even for asylum applications that have not been examined, in dereliction of the principle of *non-refoulement*.
- The expansion of the categories of people falling in the scope of the **Border Procedure**, in conjunction with unclear, complex rules on the processing of asylum applications on the merits, with reduced safeguards and with wide discretion afforded to Member States as to the location and timeframes for its implementation.
- The adoption of the already legally contested “fiction of non-entry” of persons irregularly entering the territory of a Member State, regardless of their physical presence on the territory. This fiction exacerbates risks of violations of core human rights at borders, namely the principle of *non-refoulement*, the right to asylum, the right to an effective remedy and the right to liberty.

Consultation with civil society is indispensable ahead of the preparation and submission of implementation plans on the new CEAS, in this case the Greek implementation plan, to the European Commission before the end of the year.

This paper offers RSA's analysis of selected concepts and changes to the asylum system brought about by the CEAS reform, with a view to highlighting the main issues and breaches attached to their impending implementation by EU Member States. The analysis takes a thematic approach combining provisions across the various legislative EU law instruments, given that specific areas of asylum systems may often be regulated in more than one text.

The Working Group on the implementation of the Pact on Migration and Asylum, chaired by the Secretary General for Migration Policy of the Ministry of Migration and Asylum, should hold structured and targeted consultations with civil society organisations and relevant stakeholders within 2024, ahead of the preparation and submission of the Greek national implementation plan, so as to avoid – even at this stage – gross violations of the EU *acquis* binding on Greece.

The Greece country team set up within the Directorate-General for Migration and Home Affairs (DG HOME) of the European Commission should invite contributions from civil society within 2024 on the adaptation of the Common Implementation Plan to the Greek context and on necessary measures for lawful implementation of the new CEAS.

Broad regimes of derogation. Conflated non-ordinary situations of asylum systems

The CEAS proclaims that Member States' asylum systems should be well prepared and have sufficient capacity to respond to evolving situations and high numbers of arrivals.²⁹ The European Council on Refugees and Exiles (ECRE) correctly points out that the notion of preparedness of an asylum system should encompass all elements of the CEAS and leave no room for longstanding or recurring implementation gaps.³⁰ These are a regrettable reality for Greek asylum system that has been under supervision at both EU³¹ and Council of Europe³² level for well over a decade.

In a notable departure from its emphasis on preparedness of asylum systems and on clear and simple rules, the CEAS envisages at least ten different situations outside the ordinary state of affairs of asylum systems which may trigger the application of specific rules or derogations from core safeguards enshrined in EU law:

Reaching of adequate capacity (APR): a situation where the number of asylum seekers subject to the asylum and return border procedures of a Member State is equal to or above its national share of the total number of 30,000 cases to be processed in border procedures throughout the EU. That share is calculated by multiplying 30,000 by the sum of irregular crossings, search and rescue disembarkations and refusals of entry in that country over the previous three years and dividing the result by the sum of irregular crossings, search and rescue disembarkations and refusals of entry in the entire EU during the same period.³³

Reaching of maximum number of applications processed in a border procedure (APR): a situation where the total number of cases processed in the border procedure within a given year exceeds its maximum number, corresponding to four times its adequate capacity.³⁴

²⁹ Namely, Articles 2(24)-(25) and 11(3) and Recital 8 AMMR; Article 32 and Recital 67 RCD; Articles 1(4)(a), 2(1)(a)(i), 6(a), 7(b) and 16(1)(a) and Recitals 4, 13, 36, 53 and 59 CR.

³⁰ ECRE, *Comments on the Crisis Regulation*, May 2024, 7-8, available [here](#).

³¹ INFR(2009)4104. According to the European Commission database, letters of formal notice have been sent to Greece on 29 September 2009, 24 June 2010 and 23 September 2015 *inter alia* on reception conditions: European Commission, 'More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work', IP/15/5699, 23 September 2015, available [here](#).

³² On the execution of ECtHR, *M.S.S. v. Belgium and Greece* App No 30696/09, 21 January 2011, see Council of Europe Committee of Ministers, *M.S.S. group (Application No. 30696/09) and Rahimi (Application No. 8687/08) v. Greece*, CM/Del/Dec(2023)1475/H46-15, 21 September 2023.

³³ Articles 2(11), 46, 47(1) and (4) and 48(1) APR.

³⁴ Articles 47(1) and 50 APR. Transitional provisions have been laid down, per which the maximum number is two times the adequate capacity in the first year of application and three times in the second year of application of the APR.

Significant migratory situation (AMMR): a situation where “the cumulative effect of current and previous annual arrivals of third-country nationals or stateless persons leads a well-prepared asylum, reception and migration system to reach the limits of its capacity”.³⁵

Migratory pressure (AMMR): arrivals “of such a scale that they create disproportionate obligations on a Member State, taking into account the overall situation in the Union, even on a well-prepared asylum, reception and migration system and require immediate action”. This includes a “large number of arrivals” taking into account “the specificities of the geographical location of the Member State”.³⁶

Disproportionate pressure (RCD, APR): “a sudden and massive influx of third-country nationals and stateless persons to the extent that that influx places an extreme burden even on a well-prepared reception system”.³⁷ The same term is used in the APR, albeit as synonymous to a “disproportionate number” of asylum applications made at the same time. The EUAA Regulation makes several references to the term as well.³⁸

Disproportionate number of asylum applications made at the same time (APR, RCD) is not defined,³⁹ yet one provision of the Regulation juxtaposes it to “other exceptional situations”,⁴⁰ while another uses the concept as synonymous to “disproportionate pressure”.⁴¹ The term “disproportionate number” is also used in the RCD.⁴²

Crisis (CR) is to be understood as an “exceptional situation” which “arises due to circumstances beyond the control of the Union and its Member States”.⁴³ The concept of “crisis” is used in the CR to define discrete situations, namely:

- ❖ **Mass arrivals crisis:** an “exceptional situation of mass arrivals... of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State’s well-prepared asylum, reception, including child protection services, or return system non-functional... such that there could be serious consequences for the functioning of the Common European Asylum System”.⁴⁴
- ❖ **‘Aggravated’ mass arrivals crisis:** a situation where “the mass arrivals of third-country nationals or stateless persons are of such extraordinary scale and intensity that it could

³⁵ Article 2(25) AMMR.

³⁶ Articles 2(24) and 11(3) AMMR.

³⁷ Recital 67 RCD.

³⁸ See e.g. Article 14(1) and (6) Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum [2021] OJ L468/1.

³⁹ Articles 13(6), 23(3) and (10), 27(5), 28(5), 35(2)(a) and 35(5)(a) and Recitals 26 and 32 APR.

⁴⁰ Article 23(10) APR.

⁴¹ Recital 26 APR.

⁴² Articles 20(10)(b), 27(1) and 32(1) and Recitals 36 and 66 RCD.

⁴³ Recital 4 CR.

⁴⁴ Article 1(4)(a) and Recital 12 CR.

create a serious risk of serious deficiencies in the treatment of applicants, thereby creating a serious risk that the Common European Asylum System is rendered non-functional".⁴⁵

- ❖ **Instrumentalisation:** a situation "where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security".⁴⁶ The CR specifies that a situation of instrumentalisation may in particular lead to "an unexpected increase in the caseload of applications for international protection".⁴⁷

Force majeure (CR) is also to be understood as an "exceptional situation".⁴⁸ It is specifically defined as an "abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care".⁴⁹ The CR specifies "pandemics and natural disasters" as examples of *force majeure*.⁵⁰

The above situations in which national asylum systems may find themselves should be interpreted as discrete, clearly ascertainable circumstances in order to ensure a reading of EU law compatible with *effet utile* and legal certainty. Yet, the wording employed in the various definitions across the new CEAS instruments renders confusion and conflation inevitable.⁵¹ There seems to be no principled or stable distinction between most concepts on the basis of objective criteria of scale or foreseeability of human movement or on the effect thereof on asylum systems.

That said, certain conclusions may be drawn for a coherent reading and use of the different concepts in practice. First, "significant migratory situation" and "migratory pressure" under the AMMR and the reaching of "adequate capacity" and the "maximum number of applications in a border procedure" under the APR appear to be the only concepts that are *not* presented as an "exceptional situation" in the CEAS. This would be consistent with the CR, per which the "exceptional situations" of crisis and *force majeure* it regulates differ from the situations governed by the AMMR and APR and hence warrant separate measures.⁵²

Second, "disproportionate number" or "disproportionate pressure" under the APR and RCD appear to be used interchangeably and are described as (i) a form of "exceptional situation" and (ii) a "sudden and massive influx". It is worth recalling that the EU legislature has specifically used the term "disproportionate" in the new instruments instead of the term "large" used in the previous *acquis* and already catering for situations of "a very significant increase in the number of applications".⁵³ Here too, the CR clarifies that its own "exceptional situations" of crisis and *force*

⁴⁵ Article 13(1) CR.

⁴⁶ Article 1(4)(b) and Recitals 14-16 CR.

⁴⁷ Articles 1(4) and 3(4)(c) and Recital 18 CR.

⁴⁸ Recital 4 CR.

⁴⁹ Articles 1(5) and 3(6)(c) and Recital 20 CR.

⁵⁰ Recital 20 CR.

⁵¹ See also European Policy Centre, *The Crisis and Force Majeure Regulation: Towards Future-Proof Crisis Management Responses?*, June 2024, 8, available [here](#).

⁵² Recital 4 CR.

⁵³ CJEU, C-808/18 *Commission v Hungary*, 17 December 2020, para 222.

majeure differ from those governed by the APR, hence the need for separate measures.⁵⁴ The distinction may therefore lie in the effects of mass arrivals on the national system, namely resulting in “extreme burden” thereon under the APR and RCD as opposed to rendering it “non-functional” under the CR. It remains unclear whether the latter term should be understood as synonymous to the term “collapse of asylum systems” used in the AMMR without further definition.⁵⁵

In any event, we have previously highlighted that the new CEAS and in particular the CR carves impermissible derogations from crucial protective provisions in areas such as [Registration](#). These will directly lead to legal uncertainty and to unjustified delays and denial of refugees’ access to rights and procedures. For their part, the same Regulation’s derogations from rules on the examination of asylum applications predominantly aim at a generalised application of the [Border Procedure](#), thereby exposing even more people to fundamental rights violations and to confinement in inadequate living conditions and in procedures that do not offer a fair and effective assessment of their claims.⁵⁶

⁵⁴ Recital 4 CR.

⁵⁵ Recital 66 AMMR.

⁵⁶ RSA, *Comments on the Commission proposal for a Regulation on “instrumentalisation” in asylum and migration*, January 2022, available [here](#); *Comments on the Commission proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum*, October 2020, available [here](#).

What is new? Analysis of selected changes

In its Common Implementation Plan, the European Commission proclaims the implementation of the various amendments brought about by the New Pact on Migration and Asylum under ten different “building blocks”. These are mirrored in Greece's national implementation plan.

The following section looks at the main elements of the CEAS reform that are expected to shape the Greek asylum process and carry significant risks for people seeking protection, divided into thematic areas. Selection is inevitable given the length and complexity of the adopted legislative instruments.

1. Registration

The CEAS envisions access to the asylum process in three stages: “making”, “registering” and “lodging” an application for international protection.⁵⁷ Screening is a separate, albeit closely related precursor thereto. We remind that, per official admission of the Greek authorities, “all – almost – foreigners entering our country make an asylum application during the reception and identification procedure”.⁵⁸

The new *acquis* lays down prescriptive rules and requirements for each of these discrete steps, to be discussed in order.

Screening

Deadlines & requirements: Screening under the SR largely builds on the Greek reception and identification procedure. Its scope is somewhat narrower, however, given that verification of the person's declared details is limited to identity and does not extend to nationality.⁵⁹ Conversely, nationality or statelessness is declared by the individual and may be confirmed by the authorities at the screening stage without being verified.⁶⁰ On correct reading of the SR, EU law therefore does not permit screening authorities to determine the person's nationality. This precludes practices such as that followed by Greece, consisting in – often arbitrary – determinations of nationality of new arrivals by Reception and Identification Service (RIS) or Frontex officials without due process or safeguards.⁶¹ Nationality or statelessness should be established in a dedicated

⁵⁷ Recital 27 APR.

⁵⁸ Directorate of Hellenic Police, Reply to parliamentary question, 7017/4/25899-y', 16 March 2022, available [here](#).

⁵⁹ Article 8(5) SR, cf. Article 41(b) Greek Asylum Code, L 4939/2022. Note that the EU legislature makes express reference to identity and nationality as separate elements e.g. in Article 10(4)(a) RCD or Article 42(1)(c) and (3)(d) APR.

⁶⁰ Articles 9(2)(a) and 17(1)(b) and (3) SR.

⁶¹ RSA et al., *The Workings of the Screening Regulation*, January 2021, 11, available [here](#).

process with the person should any doubts arise as to their declared nationality and must not be inferred from the screening form filled in by the screening authorities.⁶²

Furthermore, bearing in mind that no self-standing remedy is foreseen in the screening process, the SR requires screening authorities to record in the screening form the information they collect in such a way as to enable review in the asylum or return procedure, and to permit the person to indicate whether any information has been incorrectly recorded.⁶³ Accordingly, any departure from the applicant's declared details in the screening form should be duly motivated so as to be reviewable.

Screening on the territory must be completed within three days, as opposed to seven days in the [Border Procedure](#).⁶⁴ This is a mandatory deadline⁶⁵ and a substantially shorter time limit from the maximum 25-day deadline currently foreseen in Greek law for the completion of the reception and identification procedure.⁶⁶ The SR specifies that return proceedings under the Return Directive 2008/115/EC (**RD**) may run in parallel to screening on the territory.⁶⁷ The same does not apply to screening in the [Border Procedure](#).

Any doubts on or contestation of the details provided by individuals undergoing screening should be duly motivated in the screening form. Authorities performing screening must record the person's declared nationality as they have no power to assess it under the SR.

Making an asylum application

Deadlines & requirements: An asylum application is "made"⁶⁸ when a person "expresses in person... a wish to receive international protection from a Member State",⁶⁹ before an authority competent for "receiving" such an application. The authorities designated by Member States as competent for receiving asylum applications should include the determining authorities and at least the police, immigration authorities, border guards, reception and detention authorities.⁷⁰ The list of those authorities must be notified to the European Commission.⁷¹

The APR details that a wish for international protection may be expressed "in any form" and that the defining element for the "making" of a claim is the expression of a fear of persecution or serious harm.⁷² The terms "in any form" should thus lead to a broad interpretation of the notion of

⁶² 6th Appeals Committee, IP/339854/2024, 6 June 2024; IP/309178/2024, 24 May 2024; 11th Appeals Committee, IP/194848/2024, 27 March 2024, Greek Asylum Case Law Report 1/2024, available [here](#).

⁶³ Article 17(3) and Recital 32 SR.

⁶⁴ Article 8(3)-(4) SR.

⁶⁵ Article 18(5) SR.

⁶⁶ Article 40(a) Greek Asylum Code.

⁶⁷ Article 4(2) and Recital 15 SR.

⁶⁸ Greek law uses the term "υποβολή": Articles 1(b), (c), (q) and (x) and 3(3)(d) Greek Asylum Code.

⁶⁹ Article 26(1) APR.

⁷⁰ Article 4(1)(a) and (2) APR.

⁷¹ Article 4(5) APR.

⁷² Recital 27 APR.

“making” a protection claim that should ensure consistency with the fundamental right to seek asylum under Article 18 of the Charter of Fundamental Rights and the corollary case law of the CJEU on the prohibition on subjecting access to the asylum procedure to any administrative formality.⁷³ This is of particular importance for Greece where arrangements for access to the procedure on the mainland require a prior online appointment with the competent authority.⁷⁴ Since such formalities cannot permissibly restrict the possibility to “make” an asylum claim, domestic courts have held that an online appointment obtained via the dedicated platform constitutes “making” of an asylum application.⁷⁵ This interpretation is echoed by the European Commission.⁷⁶ The oral expression of an intention to seek international protection also constitutes making of an asylum application.

Legal effects: States' legal obligations under the asylum *acquis* kick in upon the moment when an asylum claim is “made”, given that EU law maintains the established position that a person shall be considered an “applicant for international protection” from the moment they “make” a claim for protection.⁷⁷

- ❖ All rights and benefits bestowed upon asylum seekers under the APR and RCD are to be provided as soon as the asylum claim is “made”,⁷⁸ regardless of whether or not screening under SR applies and is still on ongoing.⁷⁹ This includes the right to remain on the territory subject to the limitations set by the APR,⁸⁰ the full set of material reception conditions offered by the RCD e.g. housing, food and a daily expenses allowance,⁸¹ and the right to freedom of movement subject to the limitations set by the RCD.⁸²
- ❖ Member States are already required to immediately take biometric and personal data of asylum seekers who make an application at the external border-crossing points or transit zones and transmit them within 72 hours to Eurodac.⁸³ The information to be collected by states within the 72-hour deadline includes fingerprints, a photograph, name, nationality,

⁷³ CJEU, C-823/21 *Commission v Hungary*, 22 June 2023, para 43; C-72/22 PPU *Valstybės sienos apsaugos tarnyba*, 30 June 2022, para 57; C-808/18 *Commission v Hungary*, 17 December 2020, para 97; C-36/20 PPU *Ministerio Fiscal*, 25 June 2020, para 93.

⁷⁴ RSA, *Registration of asylum applications in the new mainland RIC in Greece*, February 2023, available [here](#).

⁷⁵ Administrative Court of Athens, AP741/2023, 17 March 2023; AP721/2023, 17 March 2023; Administrative Court of Kavala, AP421/2023, 12 April 2023; AP382/2023, 3 April 2023; AP379/2023, 31 March 2023; AP292/2023, 7 February 2023; AP164/2023, 7 February 2023; Administrative Court of Corinth, Π1853/2023, 4 May 2023; Administrative Court of Komotini, AP209/2023, 11 April 2023, Greek Case Law Report 1/2023, available [here](#).

⁷⁶ European Commission, Report of meeting between DG HOME / Secretary General for Reception, Ares(2023)1307494, 16 November 2022.

⁷⁷ Article 3(13) APR; Article 3(8) QR; Article 2(2) RCD; Article 2(4) AMMR; Article 3(b) RBPR; Article 2(1)(a) Eurodac Regulation.

⁷⁸ Article 2(1) and Recital 27 APR; Articles 3(1) and 19(1) and Recital 7 RCD; Article 10(5) CR and Recital 42 CR.

⁷⁹ Article 4(1)(b) and Recitals 11 and 15 SR.

⁸⁰ Article 10 APR.

⁸¹ Articles 2(7)-(8) and 19(1)-(2) RCD.

⁸² Articles 6(1) and 8-10 RCD. Recital 11 SR expressly refers to RCD standards in the context of detention during the screening process.

⁸³ Article 15(1)(b) and Recital 66 Eurodac Regulation; Recital 35 SR. Such information is to be stored as “Category 1” data pointing to applicants for international protection.

date and place of birth, sex, date and place of the asylum application, copies of identity or travel documents, and date on which biometric data were taken.⁸⁴ That obligation is unequivocal and remains unaffected even in situations of disproportionate numbers, crisis or *force majeure*.⁸⁵

- ❖ Where the authorities “receiving” an application are not competent for registering it, they are required to inform both the authority responsible for registration within three working days and inform the applicant on how they should reach it so as to ensure effective access to the procedure.⁸⁶ They must also inform reception authorities that an asylum claim has been made.⁸⁷

Registering an asylum application

Deadlines & requirements: Member States must promptly register⁸⁸ an asylum application no later than five days from the moment it is made.⁸⁹ In the event the claim is made to an authority that has no competence to register it, that authority has three working days to inform the registration authority. The five-day registration deadline runs from the moment the registration authority is informed.⁹⁰

The registration deadline may be extended to 15 days where there are disproportionate numbers of people applying for asylum at the same time.⁹¹ Member States triggering the CR in times of crisis or *force majeure* may also request that the registration deadline be extended to four weeks via a Council Implementing Decision.⁹² They remain, however, bound by all obligations towards asylum seekers based on the acquisition of said status from the “making” of the application.

Legal effects: Specific procedural obligations are incumbent upon Member States at the latest upon registration:

- ❖ States should grant a document to the applicant indicating that an asylum claim has been made and registered,⁹³ allowing for their identification.⁹⁴ Member States may derogate from this obligation in cases of detained or imprisoned persons.⁹⁵
- ❖ No later than upon registration should states discharge the duty to inform the applicant “at a very early stage” of their rights and obligations in relation to the asylum process,

⁸⁴ Articles 15(1)(b) and 17(1) Eurodac Regulation.

⁸⁵ Article 27(1) APR; Article 10(7) and Recital 10 CR.

⁸⁶ Articles 4(5) and 27(3) and Recital 27 APR.

⁸⁷ Article 26(2) APR.

⁸⁸ Greek law uses the term “μερική καταγραφή”: Articles 69(2) and (7)(b) and 74(5) Greek Asylum Code, or “απλή καταγραφή”: Article 69(2), (4), (5) and (7)(b) Greek Asylum Code.

⁸⁹ Article 27(1) and Recital 28 APR.

⁹⁰ Article 27(3) APR.

⁹¹ Article 27(5) APR.

⁹² Article 10(1) CR. This derogation is only permissible for a three-month period: Article 10(3) CR.

⁹³ Article 29(1) APR.

⁹⁴ Article 29(6) APR.

⁹⁵ Article 29(5) APR.

reception and the rules on determination of the Member State responsible for their claim.⁹⁶ Importantly, the includes information on the right to request legal assistance and representation or free legal counselling ahead of the lodging of the asylum application and for the duration of the procedure at first instance.⁹⁷ Confirmation of the applicant's receipt of the information is to be included in their case file.⁹⁸

[Free Legal Counselling](#) is described as an "integral part" of the APR and should be granted "as soon as possible after an application for international protection has been registered", where the applicant so requests.⁹⁹ Free legal counselling covers at a minimum: assistance with lodging the application; guidance on the workings of the asylum procedure, on the different types of procedures applied, on admissibility rules and on any legal issues arising in the course of the procedure.¹⁰⁰ It is therefore clear that a legal counsellor should be appointed to the asylum seeker before they lodge their asylum application. Asylum seekers should also have the opportunity to communicate with UNHCR or with organisations offering legal advice or counselling before lodging their claim.¹⁰¹

- ❖ The two-month deadline for sending a "take charge" request under the AMMR runs from the moment of registration. Family unity and dependent persons' cases are to be prioritised in that process, while requests for unaccompanied children may be submitted after the deadline.¹⁰² In exceptional cases of mass arrivals crisis or *force majeure* under the CR, a Council Implementing Decision may permit the Member State in question to extend these deadlines to four months from registration.¹⁰³

Shorter time limits are set by the AMMR for cases initiated based on a Eurodac 'hit' – one month for "take charge" requests and two weeks for "take back" notifications (see [Rules on Responsibility](#)).¹⁰⁴ The latter may be extended by a Council Implementing Decision to one month in times of mass arrivals crisis or *force majeure* under the CR.¹⁰⁵

We recall, however, that shorter deadlines for submission of "take charge" requests for the purpose of family reunification jeopardise the right to family life and the principle of maintaining family unity, against the backdrop of documented barriers to timely processing of Dublin cases even under the current three-month deadline for sending a "take charge" request.

⁹⁶ Article 8(2) and Recital 16 APR; Article 5(1) RCD; Article 19(1) AMMR.

⁹⁷ Article 8(2)(d) APR; Article 19(1)(l) AMMR.

⁹⁸ Article 8(2) APR.

⁹⁹ Recital 16 APR.

¹⁰⁰ Article 16(2) APR.

¹⁰¹ Article 8(4) APR.

¹⁰² Article 39(1) AMMR.

¹⁰³ Article 12(1)(a) CR.

¹⁰⁴ Articles 39(1) and 41(1) AMMR.

¹⁰⁵ Article 12(1)(c) CR.

- ❖ Contrary to the general rules set out in the APR, as described below, the twelve-week time limit for completing the asylum **Border Procedure** at first and second instance runs from the moment the application is registered.¹⁰⁶

Lodging an asylum application

Deadlines & requirements: The asylum claim must be lodged¹⁰⁷ by the applicant within 21 days from registration.¹⁰⁸ This deadline may be extended to two months where there are disproportionate numbers of people applying for asylum at the same time.¹⁰⁹ Special rules apply in the asylum border procedure, per which the application must be lodged within five days from registration.¹¹⁰

The application is to be lodged with the determining authority or another authority designated by Member States for that purpose.¹¹¹ Asylum authorities must communicate a place, date and time where the applicant is required to appear in person,¹¹² unless Member States opt for national law provisions permitting the lodging of an application through the submission of a form.¹¹³ States may also condition the lodging of the application upon verification of the applicant's actual presence in the country.¹¹⁴

When they lodge their application, asylum seekers are expected to submit "as soon as possible" all the elements at their disposal which substantiate their claim, including statements and documentation on their reasons for seeking protection, identity, nationality, age and background, previous countries of residence and any previous asylum applications.¹¹⁵

Legal effects: Lodging is the act which formalises the asylum claim,¹¹⁶ and brings about further procedural consequences:

- ❖ As soon as possible after lodging, states must issue the applicant a document indicating their status,¹¹⁷ and allowing their identification.¹¹⁸ Member States may derogate from this obligation in cases of detained or imprisoned persons.¹¹⁹

¹⁰⁶ Article 48(2) APR.

¹⁰⁷ Greek law uses the term "κατάθεση": Articles 57(1), 69(3), (6), (7)(a)-(b), (8), (9), (10), (11), (14), (15), 74(3), 76(7), 88(3), 89(1)(f), 95(2) and 97(4) Greek Asylum Code, as well as the terms "πλήρης καταγραφή": Articles 1(a), 69(1), (2), (5), (7)(a)-(b) and 75(7) Greek Asylum Code, and "οριστική καταγραφή": Articles 42(d), 69(2) and (7)(b) and 74(5) Greek Asylum Code.

¹⁰⁸ Article 28(1) APR.

¹⁰⁹ Article 28(5) APR.

¹¹⁰ Article 48(1) APR.

¹¹¹ Article 28(1) APR.

¹¹² Article 28(3) APR.

¹¹³ Article 28(4) APR.

¹¹⁴ Article 28(3) APR.

¹¹⁵ Article 28(6) APR; Article 4(2) QR.

¹¹⁶ Recital 29 APR.

¹¹⁷ Article 29(4) APR.

¹¹⁸ Article 29(6) APR.

¹¹⁹ Article 29(5) APR.

- ❖ Lodging marks the start of examination of the application upon which the deadlines set out in the APR start to run.¹²⁰

Whereas it foresees making, registering and lodging as separate steps, EU law foresees the possibility for Member States to those into a single stage, provided that asylum seekers enjoy the aforementioned rights to information, counselling and contact with UNHCR and other organisations. In that case, the statements and documentation substantiating the claim may be provided at the stage of the personal interview.¹²¹ Such an arrangement is currently in place for most initial claims in Greece whereby the RIS conducts so-called “uniform registration” (ενιαία καταγραφή) encompassing screening, making, registration and lodging of asylum applications. Applications are then processed by a separate authority, the Asylum Service.

Merging making, registering and lodging into a single procedural step may present advantages from the viewpoint of administrative convenience insofar as it would eliminate the need for repeated stages of recording of the applicant's details and of for issuing provisional documentation. It does, however, run the risk of undermining crucial safeguards for individuals' enjoyment of their rights and for the proper conduct of the asylum process.

- ❖ Asylum seekers have no access to the rights offered to them by the *acquis* unless they hold documentation attesting their status. Practice already illustrates that applicants may remain undocumented for protracted periods of time after making a claim, where authorities competent for lodging lack processing capacity due to staff shortages or where applications are received by authorities that have no power to register or lodge them e.g. reception facilities, police or coast guard authorities.¹²² These risks are compounded by the CR provisions which permit delaying registration of the application for up to four weeks from its making.
- ❖ The inability to prove that an asylum application has been made carries increasing risks for individuals under the new *acquis*, not least in light of the possibility offered by the APR to states to declare asylum applications inadmissible where they have been made seven working days after the notification of a return decision, as discussed in [Inadmissibility Grounds](#).
- ❖ Conversely, Member States are always required to immediately take biometric and personal data of persons making an asylum application at external border-crossing points and transit zones, and to transmit that data to Eurodac within 72 hours.¹²³ In these cases, the issuance of a document attesting the making of the application is both beneficial and practically feasible.

¹²⁰ Article 35(1), (4) and (5) and Recital 29 APR.

¹²¹ Article 28(7) APR, citing Article 8 APR and Article 4(2) QR.

¹²² RSA & Stiftung PRO ASYL, *The state of the Greek asylum system, twelve years since M.S.S.*, July 2023, paras 6 et seq., available [here](#); RSA & HIAS, *The role of the European Commission in the implementation of the EU asylum acquis on the Greek islands*, January 2023, para 48, available [here](#).

¹²³ Articles 15(1)(b) and 17(1) Eurodac Regulation.

- ❖ The quality, accuracy and value of lodging would be severely undermined insofar as asylum seekers would be deprived of their right to information, free legal counselling and contact with UNHCR or other organisations before lodging their claim.¹²⁴ The repercussions of this affect both the individuals concerned and the asylum authorities, since crucial information for the examination of the application, for the channelling of the case into the correct procedure and for the provision of special procedural guarantees is liable to be omitted or insufficiently assessed. This in turn compromises the authorities' preparedness with regard to allocation, schedule and conduct of personal interviews, especially under the truncated timeframes of the [Border Procedure](#).¹²⁵

Prompt registration of any asylum application made must be carried out regardless of whether or not screening has been carried out. No obstacles may permissibly be imposed by the Greek authorities upon the making of an asylum claim.

Documentation attesting the making of an asylum application must be issued to applicants at the earliest possible opportunity in order to provide them legal certainty and to allow them to prove their status and benefit from the rights attached thereto. This should coincide with the moment of collection of biometric and personal data under Article 15(1)(b) of the Eurodac Regulation immediately upon the making of the claim, where registration pursuant to Article 27 APR cannot take place already.

Uniform use of the terms "making", "registering" and "lodging" of the asylum application across the Greek Asylum Code must be ensured in line with the letter of the APR. At a minimum, each stage should be described by a single term.

The opportunity to access a legal representative and/or receive free legal counselling must be effectively ensured before the lodging of the asylum application.

2. Asylum procedure

Rules on interviews

Interviewing authority: As a rule, personal interviews must be conducted by the determining authority and in fact by the official responsible for deciding on the asylum application. That is given that the assessment of the asylum claim and of the applicant's credibility must take into account not only their statements but, "in the context of an overall and individual assessment, all other relevant factors of the case".¹²⁶ Only in case of a disproportionate number of asylum applications does the APR allow Member States to entrust a different public authority with the task of performing the interview.¹²⁷ The same rationale should underpin the possibility to have interviews conducted by EUAA experts or authorities of another Member State,¹²⁸ or even by an Asylum

¹²⁴ *Mutatis mutandis* CJEU, C-58/23 *Abboudnam*, 27 September 2023, para 31.

¹²⁵ RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 15-19, available [here](#).

¹²⁶ CJEU, C-756/21 *International Protection Appeals Tribunal*, 29 June 2023, para 92.

¹²⁷ Article 13(6) APR.

¹²⁸ Article 5 APR.

Service caseworker other than the decision-maker. Asylum authorities may therefore not resort to a general practice of interviews by an official other than the one deciding on the case for reasons of pure administrative convenience.

Mode of interview: The CEAS highlights that “in-person interviews should be given preference” in order “to ensure an optimal environment” and to establish “conditions which ensure appropriate privacy and confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner”.¹²⁹ In light of this safeguard, interviews by video conference remain “the exception”, permitted only by way of derogation and “where duly justified by the circumstances”.¹³⁰ Such circumstances may involve public health considerations, health or family reasons precluding the possibility of travel, detention, or the need to ensure specialised interpretation skills.¹³¹ EU law therefore prohibits systematic use of remote interviews for administrative convenience as currently done by the Greek authorities. The Greek Asylum Service considers that “remote interviews constitute the rule for the Service and not the exception”,¹³² though it holds no data on the number of in-person and remote interviews it conducts.¹³³

In the exceptional cases where recourse to video conferencing is deemed justified, asylum authorities must “ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation” so as to apply “all procedural safeguards as when in-person interviews are held, ensuring privacy, confidentiality and the presence of a legal representative, and giving due consideration to data protection”.¹³⁴ The APR adds that the suitability of remote interviews should be individually assessed prior to the conduct of the interview and pay due regard to the applicant’s health condition and/or potential visual or hearing impairments.¹³⁵ Compliance with these obligations therefore entails the establishment of appropriate infrastructure and technological equipment, on the one hand, and systematic, adequate provision of information to applicants on the workings of in-person and remote interviews and on the processing of their personal data with a view to ensuring they comprehend the implications of remote interviews and to obtaining their informed consent prior to the day of the interview.

Content: Whereas it provides for a distinction between “admissibility” and “substantive” interviews, the APR provides that the interview may ‘merge’ questions on the admissibility and the merits of the claim, provided that the applicant “has been informed of such a possibility in advance and has been able to consult with his or her legal adviser”.¹³⁶ This requirement entails a duty to ensure adequate and timely organisation of the interview process so as to allow the asylum seeker

¹²⁹ Article 13(3) and Recital 15 APR.

¹³⁰ Article 13(10) and Recital 15 APR.

¹³¹ Recital 15 APR. The same rule should apply to appeal hearings, as permitted by Recital 90 APR.

¹³² Article 82(13) Greek Asylum Code. See also Asylum Service, Διαδικασία ασύλου για τους ευάλωτους επιζώντες του τραγικού ναυαγίου στην Πύλο: κλήση των επιζώντων σε συνεντεύξεις ασύλου εντός της κλειστής δομής της Μαλακάσας, πριν ακόμη λάβουν στοιχειώδη νομική συνδρομή και ενώ βρίσκονται υπό βεβαρημένη ψυχολογική κατάσταση - Απουσία διαδικαστικών εγγυήσεων, 21 June 2023.

¹³³ Ministry of Migration and Asylum, Reply to parliamentary question, 167016/2024, 10 June 2024, available [here](#).

¹³⁴ Article 13(10) and (13) and Recital 15 APR.

¹³⁵ Recital 15 APR.

¹³⁶ Article 12(1) APR.

sufficient time to prepare accordingly.¹³⁷ This is in sharp contrast to current practice of the EUAA and the Asylum Service in Greece where the scope of the interview is not disclosed to the applicant beforehand.

The new CEAS maintains the obligation on caseworkers to give applicants the opportunity to substantiate their claim as completely as possible and to provide explanations for missing elements or inconsistencies or contradictions in their statements.¹³⁸ The duty to pose follow-up questions to clarify missing elements or inconsistencies stems directly from the “essential” value of the interview in the asylum procedure,¹³⁹ and has been further spelt out in CJEU and domestic jurisprudence.¹⁴⁰ The Greek Council of State has held that doubts as to the completeness of the personal interview arise where the information collected is insufficient and leaves gaps vis-à-vis the assessment of the applicant’s statements and substantial elements invoked to substantiate the claim, and where appropriate questions could remedy such gaps or demonstrate the applicant’s inability to persuasively support the claim.¹⁴¹ It is all the more important given that an asylum claim may be deemed to be implicitly withdrawn where the applicant has, “without justified cause, refused to respond to questions during the interview to the extent that the outcome of the interview was not sufficient to take a decision on the merits of the application”.¹⁴²

The Asylum Service must discontinue the practice of delegating the issuance of first instance decisions to caseworkers other than the persons conducting personal interviews. This would namely require a restructuring of the competence of offices such as the Autonomous Asylum Unit of Nikaia, currently responsible for taking decisions on any asylum application throughout the territory.

The Asylum Service may only resort to remote interviews in exceptional cases and not for reasons of administrative convenience. Remote interviews may not be conducted unless adequate infrastructure and technological equipment is in place in all locations used to that end. Upon summons to a personal interview, the Asylum Service should inform asylum seekers of the reasons for considering a remote interview appropriate where it has done so in their individual case, of the applicable procedural safeguards and of the manner in which their personal data will be processed. Such communication must take place on reasonable notice so as to ensure that applicants may give informed consent prior to the date of the interview.

Upon summons to a personal interview, the Asylum Service must inform the applicant and their legal representative of the content of the interview (admissibility, substantive, merged) on reasonable notice to allow for appropriate preparation for the interview process. Where the caseworker conducting the interview is not the Asylum Service official responsible for deciding on the application, the Asylum Service must notify the applicant of the details and affiliation of the interviewer and state reasons beforehand.

¹³⁷ Recital 14 APR.

¹³⁸ Article 12(2) APR.

¹³⁹ Recitals 14-15 APR.

¹⁴⁰ CJEU, C-517/17 *Addis*, 16 July 2020, para 70.

¹⁴¹ Greek Council of State, 1371/2023, 9 August 2023, para 12.

¹⁴² Article 41(1)(d) APR.

Inadmissibility grounds

The implementation of the concept of inadmissibility of an asylum application is deferred to the domestic law of the Member States, should they transpose the inadmissibility grounds set out in the APR.¹⁴³ The Regulation lays down deadlines for assessing the admissibility of applications, however these are not binding for authorities.¹⁴⁴

Safe third country has become a centrepiece of the CEAS reform. Its definition has undergone a multidimensional expansion and a lowering of standards with a view to enabling states to broadly apply the concept as a ground for dismissing asylum claims without an assessment of the merits, within an indicative deadline of two months from lodging.¹⁴⁵ Yet, the APR expressly calls upon the European Commission to reassess the concept of safe third country and to consider proposing amendments thereto by June 2025,¹⁴⁶ before the Regulation applies in domestic legal orders. Several governments, including that of Greece, have already expressed interest in further amending the safe third country concept with a view to rendering it even more readily available to states.¹⁴⁷

RSA has provided detailed analysis of the international law standards constraining the use of the safe third country concept and of their arbitrary, incorrect application in the Greek context.¹⁴⁸ These standards should necessarily inform any interpretation and implementation of the concept under the APR. We namely recall the following principles:

- ❖ Compliance with the – reduced – safety criteria set out in Article 59(1) APR must be assessed on the basis of up-to-date, reliable evidence from authoritative sources,¹⁴⁹ with particular weight attached to the views of UNHCR in light of its supervisory responsibility under the 1951 Refugee Convention.¹⁵⁰
- ❖ Such compliance may not be inferred from diplomatic assurances that do not meet quality and reliability standards, assessed based on criteria including specific nature, length and strength of bilateral relations, verification through monitoring mechanisms and effectiveness of protection against torture in the third country.¹⁵¹ Under a correct reading of the ECHR and corollary Charter provisions, the mere existence of an agreement between the EU and a third country committing to treating migrants “in accordance with

¹⁴³ Article 38(1) APR.

¹⁴⁴ Article 35(1) APR.

¹⁴⁵ Article 35(1)(a) APR.

¹⁴⁶ Article 77 APR.

¹⁴⁷ Greek Government et al., ‘Joint Letter from the undersigned Ministers on new solutions to address irregular migration to Europe’, 15 May 2024, available [here](#).

¹⁴⁸ RSA & PRO ASYL, *The Concept of “Safe Third Country”: Legal Standards & Implementation in the Greek Asylum System*, February 2024, available [here](#).

¹⁴⁹ Article 59(3) APR. This is highlighted in judicial review by domestic courts: Administrative Court of Athens, 499/2024; 1260/2023.

¹⁵⁰ CJEU, C-621/21 *Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)*, 16 January 2024, para 38; C-280/21 *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, 12 January 2023, para 27.

¹⁵¹ ECtHR, *Othman (Abu Qatada) v. United Kingdom* App No 8139/09, 17 January 2012, para 189.

the relevant international standards" does not entail any presumption that the country in question in fact fulfils the safety criteria, contrary to opposite provisions in the APR.¹⁵²

- ❖ As regards the specific criterion of access to "effective protection" in the third country, the APR sets out a list of minimum entitlements available to refugees, including "access to means of subsistence" covering "access to food, clothing, housing or shelter and the right to engage in gainful employment, for example through access to the labour market, under conditions not less favourable than those for non-nationals of the third country generally in the same circumstances".¹⁵³ Access to such benefits should be granted by the state in question in both law and practice in order to meet the requirements of effective protection.
- ❖ The criterion of connection with the third country may be established on the basis of factors such as the presence of family members or prior settlement or stay.¹⁵⁴ The former indicator should be interpreted in line with the definition of "family members" in the CEAS,¹⁵⁵ thereby excluding siblings, cousins and distant relatives.¹⁵⁶ For its part, "stay" should not be construed as irregular stay or transit in a third country, as currently done in Greek practice.
- ❖ An asylum application cannot be dismissed as inadmissible on safe third country grounds where it is clear during the asylum process that the applicant will not be readmitted to the country in question.¹⁵⁷

Asylum application following a return decision: The APR introduces the possibility for states to dismiss an asylum application as inadmissible without an examination on the merits where the asylum claim is made seven working days after the notification of a return decision and where no new elements have arisen in the meantime.¹⁵⁸ Such a dismissal must be ordered within an indicative deadline of ten working days.¹⁵⁹ This ground breaks with the established rationale and purpose of inadmissibility in the *acquis*, namely the need to avoid examining applications that either could be assessed by another country or that have already been assessed. Such a situation would more appropriately be and is in fact already addressed through the ground for applying an **Accelerated Procedure** where it may be established based on objective criteria that an applicant has made an asylum claim merely to delay or frustrate the enforcement of a return decision.¹⁶⁰

More importantly, any implementation of this inadmissibility ground in Greece carries particularly serious risks of breach of the right to asylum and of the principle of *non-refoulement* given that:

¹⁵² Article 59(7) and Recital 49 APR.

¹⁵³ Articles 57(2) and 59(1)(e) and Recitals 46 and 51 APR.

¹⁵⁴ Recital 48 APR.

¹⁵⁵ Article 3(9) QR; Article 2(8) AMMR; Article 2(3) RCD.

¹⁵⁶ Article 91(1)(f) Greek Asylum Code.

¹⁵⁷ Article 38(1)(b) and Recital 53 APR. See also CJEU, C-134/23 *Elliniko Symvoulío gia tous Prosfyges* [Opinion], 13 June 2024.

¹⁵⁸ Article 38(1)(e) APR.

¹⁵⁹ Article 35(1)(b) APR.

¹⁶⁰ Article 42(1)(d) APR. This may also constitute a ground for detention: Article 10(4)(e) RCD.

- ❖ Screening on the territory under the SR may be performed in parallel with return proceedings conducted under the RD, contrary to crucial safeguards for the protection of asylum seekers;¹⁶¹
- ❖ The Hellenic Police continues to systematically issue return or deportation orders to thousands of new arrivals who make asylum applications, regardless of whether screening has been performed or unlawfully omitted;¹⁶²
- ❖ In the absence of documentation, asylum seekers are unable to demonstrate the exact moment they make an asylum application and are often left undocumented for protracted periods of time on account of capacity shortages in asylum authorities.

Against the current backdrop of misuse of return procedures against new arrivals, the EU *acquis* is liable to result in unfair denial of an asylum process on the merits even to refugees who have promptly requested international protection, for reasons attributable to administrations alone. Risks of *refoulement* are compounded by the absence of automatic suspensive effect of Appeals against inadmissibility decisions taken based on this ground.¹⁶³

The presumption of fulfilment of the safety criteria for the designation of a safe third country based on the sole existence of an agreement between the EU and the third country contravenes the principle of *non-refoulement* and must be disapplied.

The minimum rights and entitlements attached to the concept of "effective protection" must be offered by the state in question in both law and practice.

Factors establishing a connection between an applicant and a third country may not be inferred from irregular stay or transit or from the presence of siblings or distant relatives.

The inadmissibility ground set out in Article 38(1)(e) APR contravenes *non-refoulement* and must not be incorporated into domestic law. Such situations are already covered by the possibility to apply the accelerated procedure.

Implicit withdrawal

Grounds: The APR brings about significant changes to the rules on implicit withdrawal of asylum applications. On the one hand, it lays down exhaustive, albeit broad, grounds of implicit withdrawal. A claim is to be declared implicitly withdrawn where the asylum seeker:¹⁶⁴

- Refrains from lodging the application or lodges the application in a Member State other than the Member State responsible under the AMMR;
- Refuses to provide their personal details, identity or travel documents, and biometric data;
- Refuses to provide their address, unless housing is provided by the Member State;

¹⁶¹ Article 4(2) and Recital 15 SR.

¹⁶² RSA, *Immigration detention in Greece in 2023: Refugees arbitrarily deprived of their liberty despite unfeasible deportations*, May 2024, available [here](#).

¹⁶³ Article 68(3)(b) APR.

¹⁶⁴ Article 41(1) APR.

- Has not attended the personal interview or refuses to “respond to questions during the interview to the extent that the outcome of the interview was not sufficient to take a decision on the merits of the application”, without justified cause;
- Has repeatedly not complied with reporting duties or does not remain available to the authorities, i.e. does not respond to requests regarding the procedure,¹⁶⁵ unless they demonstrate circumstances beyond their control.

Legal effects: On the other hand, the APR obliges Member States to declare an application as implicitly withdrawn where one of the above circumstances are met. States are no longer required to suspend the examination of the application in order to allow the applicant to justify or rectify actions or omissions prior to taking a decision thereon.¹⁶⁶ They may introduce such a possibility in their domestic law subject to no specified deadline,¹⁶⁷ contrary to the minimum nine-month time limit allowed under the previous *acquis* for a request to resume the procedure.¹⁶⁸ The Regulation also uses the term “rejecting an application as implicitly withdrawn”,¹⁶⁹ thereby suggesting that this should be viewed as a negative decision on the claim. Hence, an accompanying return decision is to be issued in such a case.¹⁷⁰

Implicit withdrawal is subject to unduly stringent procedural consequences for applicants. Appeals against decisions “declaring” or “rejecting” a claim as implicitly withdrawn are not automatically suspensive,¹⁷¹ even though the claim is not presumed to be unfounded.¹⁷² They must be lodged within a short deadline between five and ten days, to be determined by national law.¹⁷³ Elements presented in an implicitly withdrawn claim are, however, considered “new” elements in the event of a subsequent application.¹⁷⁴

The CEAS therefore creates severe risks of exposing asylum seekers to *refoulement* and irreparable harm¹⁷⁵ by removing them from the territory without any prior assessment of their claim on the merits or even admissibility. That is given that the APR requires a declaration of implicit withdrawal to be accompanied by a return decision.¹⁷⁶ This risk of *refoulement* alone brings the APR in direct contravention of primary EU law¹⁷⁷ and may only be prevented through disapplication of the relevant provisions of the Regulation. Preventing *refoulement* warrants automatic suspensive effect for appeals against implicit withdrawal declarations in line with CJEU case law.¹⁷⁸

¹⁶⁵ Recital 25 RCD. Note that remaining available throughout the procedure is mandatory under Article 9(2)(e) APR.

¹⁶⁶ European Commission, *Common Implementation Plan*, COM(2024) 251, 12 June 2024, 19: “the decision being immediate”.

¹⁶⁷ Article 41(4) APR.

¹⁶⁸ Article 28(2) APD.

¹⁶⁹ Articles 3(8) and (19), 36(2) and (3), 37, 55(5), 67(1)(c) and (7)(a), 68(3)(c) and Recital 87 APR.

¹⁷⁰ Article 37 APR.

¹⁷¹ Article 68(3)(c) APR.

¹⁷² Note Recital 92 APR.

¹⁷³ Article 67(7)(a) APR.

¹⁷⁴ Article 55(5) APR.

¹⁷⁵ Note Administrative Court of Athens, 113/2020, 11 March 2020.

¹⁷⁶ Article 37 APR. See also Council of State, 1398/2022 [Plenary], 27 June 2022.

¹⁷⁷ Vincent Chetail & Mariana Ferolla Vallandro do Valle, ‘The Asylum Procedure Regulation and the Erosion of Refugee’s Rights’, EU Migration Law Blog, 23 May 2024, available [here](#).

¹⁷⁸ CJEU, C-181/16 *Gnandi*, 19 June 2018.

Greek law provisions in Articles 83(3) and 86(2) of the Greek Asylum Code, allowing for asylum applications to be considered as implicitly withdrawn for indicative reasons including failure to renew an International Protection Applicant Card or failure to appear in person before the Appeals Authority for the examination of the asylum appeal, should be repealed. Even under the new CEAS, asylum claims may be deemed implicitly withdrawn only on the exhaustive grounds set out in Article 41(1) APR.

In any event, Greek law should maintain the existing rule of Article 86(4) of the Greek Asylum Code on suspension of the examination of the asylum application prior to considering the claim as implicitly withdrawn and on the possibility for the applicant to request a continuation of the examination within nine months.

Accelerated procedure

Grounds: The accelerated procedure is mandatory under the APR where any of the ten exhaustive grounds for its application is established.¹⁷⁹ A new, controversial ground concerns nationals of a country subject to an annual Eurostat recognition rate of 20% or lower, unless the determining authority either establishes a significant change in said country or finds that the applicant belongs to a class of people for whom the recognition rate is not representative. The provision also refers to “taking into account, inter alia, the significant differences between first instance and final decisions”.¹⁸⁰ Article 42(1)(j) APR is an extremely opaque provision liable to inconsistent, arbitrary readings in practice. The wording presents a significant number of questions and risks, given that:

- ❖ Eurostat data on decisions do not accurately reflect international protection needs insofar as they conflate rejections on the merits with inadmissibility decisions taken e.g. on safe third country grounds or subsequent applications without new elements.¹⁸¹ Eurostat recognition rates therefore present the acceptance rate for different nationalities below its actual level when calculated based on decisions on the merits. The same is true for monthly reports of the Ministry of Migration and Asylum even though statistics on the overall number of decisions at first and second instance are correctly disaggregated by type of decision.
- ❖ Substantial disparities persist between European countries on the recognition of protection needs in similar caseloads. EUAA, for instance, reports “high variation” across Member States as regards decision-making on refugees fleeing Afghanistan and Iraq, as well as increasing disparities on Syria.¹⁸²
- ❖ No guidance is offered by the provision on the way in which states are to interpret categories of people for whom the recognition rate is not representative. This would

¹⁷⁹ Article 42(1) APR. It remains optional in the case of unaccompanied children and only under five grounds: Article 42(3) APR.

¹⁸⁰ Article 42(1)(j) APR.

¹⁸¹ RSA, *Στατιστικά στοιχεία για μία πληρέστερη εικόνα του ασύλου*, June 2020, 6-7, available [here](#). Note also EUAA, *Pilot Convergence Analysis 2023*, April 2024, 20, available [here](#).

¹⁸² EUAA, *Pilot Convergence Analysis 2023*, April 2024, 14.

require an in-depth assessment of the situation of different risk profiles in the country in question that well exceeds the quantitative exercise suggested by the provision. No guidance is offered on the meaning or effect of "significant differences between first instance and final decisions" either. It is unclear how EUAA 'Convergence Reports' would aid states in determining those categories, as suggested by the European Commission.¹⁸³

- ❖ In view of the above, the application of the ground necessarily involves a methodology and institutional framework that heavily overlaps with that of the concept of "safe country of origin", a different ground for acceleration. This has been the main ground where Greece has so far dedicated its accelerated procedure, subject to very few exceptions. Out of a total of 5,164 first instance decisions declaring applications as manifestly unfounded last year, only 33 (0.6%) concerned nationals of countries that are not designated as safe countries of origin.¹⁸⁴

Rules on appeals

Deadlines: The APR lays down minimum and maximum deadlines for appeals against negative asylum decisions and ensuing return decisions. These may range from five to ten days in cases of inadmissibility, rejection in the accelerated procedure and implicit withdrawal, and from two weeks to one month in all other cases.¹⁸⁵ The CJEU has ruled that such time limits should comply with the right to an effective remedy under Article 47 of the Charter and namely allow applicants sufficient time to effectively exercise their right to free legal assistance.¹⁸⁶ The ten-day deadline currently foreseen in the border procedure¹⁸⁷ already poses severe limitations on asylum seekers and on the country's legal aid scheme.

Suspensive effect: Automatic suspensive effect of appeals against negative asylum decisions and accompanying return decisions depends on the ground on which an application is denied. In no way, however, do the texts restrict this derogation to the limited cases of likely unfounded claims, contrary to Preamble assurances to the opposite.¹⁸⁸

The APR strips appellants of an automatic right to remain on the territory in the following cases:¹⁸⁹

- Rejection on the merits in the accelerated or border procedure, except for unaccompanied children in the latter;
- Inadmissibility on grounds of first country of asylum, safe relocation by an international court, application more than seven working days after a return decision, or subsequent application without new elements, except for unaccompanied children in the border procedure;
- Implicit withdrawal;
- Rejection of subsequent application on the merits;

¹⁸³ European Commission, *Common Implementation Plan*, COM(2024) 251, 12 June 2024, 14.

¹⁸⁴ Ministry of Migration and Asylum, Reply to parliamentary question, 167016/2024, 10 June 2024.

¹⁸⁵ Article 67(7) APR.

¹⁸⁶ CJEU, C-58/23 *Abboudnam*, 27 September 2023, paras 27 and 30-31.

¹⁸⁷ Article 97(1)(c) Greek Asylum Code.

¹⁸⁸ Recital 92 APR.

¹⁸⁹ Article 68(3) APR.

- Withdrawal of international protection on exclusion or security grounds.

The derogations from automatic suspensive effect of appeals under the new CEAS are irreconcilable with its commitment to the principle of *non-refoulement*,¹⁹⁰ bearing in mind that negative asylum decisions must be taken simultaneously with a return decision and therefore that asylum seekers become deportable while their appeal is being examined.¹⁹¹ States can only comply with the *non-refoulement* principle as expressly required in the APR by granting automatic suspensive effect to appeals against a negative asylum decision and return decision.¹⁹²

Furthermore, rules on automatic suspensive effect of appeals are both unnecessarily complex and divorced from principle and from the overall objectives of the *acquis*. On the one hand, derogations from the right to remain are not limited to presumably unfounded cases, despite Preamble statements to the opposite.¹⁹³ On the other hand, rules on appeals against inadmissibility decisions lack consistency: an automatic right to remain is not granted to persons whose claim is dismissed due to a protection status offered by a non-EU country ("first country of asylum") but is guaranteed to those who have a protection status in another EU Member State. Worryingly, the APR denies automatic suspensive effect to appeals against implicitly withdrawn applications, i.e. claims that have not at all been assessed on admissibility or merits. It also allows Member States to deny automatic suspensive effect in subsequent applications where they deem that the appeal has been lodged merely to delay or frustrate return.¹⁹⁴

The rules laid down in the CEAS therefore present both critical human rights risks and unnecessary complexity. The Independent Appeals Committees in Greece have mitigated these effects by refraining from ruling on a suspensive effect request pursuant to Article 110(2) of the Greek Asylum Code prior to deciding on the appeal itself. This practice renders appeals *de facto* suspensive, mainly for administrative convenience.

Consideration of documents: The APR provides that appeal bodies shall cover translation of "relevant documents" that have not already been translated at first instance, while others may be translated by the appellant at their cost.¹⁹⁵ It also enables them to refuse to consider any documents that require translation and have not been submitted in due time as set by the appeal body.¹⁹⁶ Such a rule undermines the principle of full and *ex nunc* examination in asylum appeals and therefore does not comply with the right to an effective remedy under Article 47 of the Charter. It also undermines the duty of appeal bodies to consider all evidence available to them,¹⁹⁷ since "any document submitted by the applicant in support of his or her application for international protection must be regarded as an element of that application to be taken into

¹⁹⁰ Article 68(3) APR and Recital 92 APR.

¹⁹¹ Article 37 APR.

¹⁹² Among others, CJEU, C-181/16 *Gnandi*, 19 June 2018; ECtHR, *M.K. v. Poland* App No 40503/17, 23 July 2020.

¹⁹³ Recital 92 APR.

¹⁹⁴ Article 68(8) APR.

¹⁹⁵ Article 67(5) APR.

¹⁹⁶ Article 67(6) APR.

¹⁹⁷ Article 4(3) QR; Article 34(2) APR.

account".¹⁹⁸ This standard is indispensable to ensuring that appeal bodies consider crucial evidence for the assessment of the case before them and take reasoned decisions thereon.¹⁹⁹

Appeal deadlines should be maintained at one month for the regular procedure and set at the ten-day time limit for inadmissibility, accelerated procedure and implicit withdrawal.

All asylum seekers should be allowed to remain pending the examination of their appeal against a negative asylum decision and return decision, in line with the principle of *non-refoulement*. This requires authorities to disapply Article 68(3) APR and revert to the principle of automatic suspensive effect under Article 68(1) APR. At a minimum, the Appeals Authority should ensure this in practice by continuing to rule on requests for suspensive effect at the same time as a decision is taken on the appeal.

Appeals Committees should continue to perform a full and *ex nunc* examination of asylum applications based on all evidence available to them. This includes all documents submitted by the appellant.

3. Border procedure

The CEAS establishes a "pre-entry phase consisting of screening and border procedures for asylum and return" with "seamless and efficient links between all stages".²⁰⁰ The border procedure *latu sensu* therefore encompasses three processes at the external border, namely screening, asylum processing and return. The stated aim of the border procedure is to "quickly assess in principle at the external borders whether applications are unfounded or inadmissible and to swiftly return those with no right to stay".²⁰¹

The Ministry of Migration and Asylum holds statistics on decision-making in the border procedure and has made them available in the context of parliamentary scrutiny. These figures should be proactively and consistently released to allow for an understanding of the workings of the process in real time. Data collection on the border procedure at EU level is among the elements to be piloted under the amended Migration Statistics Regulation.²⁰²

Scope of the border procedure

Territorial, personal and material limitations are imposed by different provisions in the CEAS on the scope of procedures for screening, asylum and return at the border.²⁰³ These should be construed

¹⁹⁸ CJEU, C-921/19 *Staatssecretaris van Justitie en Veiligheid*, 10 June 2021, para 44.

¹⁹⁹ Note, for instance, Administrative Court of Thessaloniki, 88/2023; 46/2022; Administrative Court of Appeal of Piraeus, A25/2021.

²⁰⁰ Recital 57 APR; Recital 6 RBPR.

²⁰¹ Recitals 58 and 64 APR.

²⁰² European Commission, *Staff working document on the progress made regarding the pilot studies referred to in Article 9a of Regulation (EC) No 862/2007 on Community statistics on migration and international protection*, SWD(2022) 198, 15 July 2022.

²⁰³ The three procedures share the same scope: Recital 16 SR; Article 43(1) and Recital 57 APR; Article 1(1) RBPR.

as narrowly circumscribing the scope of the border procedure due to the series of restrictions it entails on core CEAS standards and safeguards.

Territorial scope: The border procedure is applicable to cases falling under the following four situations or locations:²⁰⁴

- ❖ Asylum application at external border-crossing points or transit zones;
- ❖ Apprehension in connection with an unauthorised crossing of external borders, meaning "at the very time of the irregular crossing of the external border or near that external border after it has been crossed";²⁰⁵
- ❖ Disembarkation following a search and rescue operation.
- ❖ Relocation from a Member State where the border procedure has been applied.

Specifically as regards apprehension in connection with an unauthorised crossing, guidance provided by the European Commission in the Return Handbook refers to "border cases" as covering persons arrested after climbing a border fence or upon leaving a train or bus that directly brought them into a Member State, as well as persons apprehended upon or shortly after arriving on a boat.²⁰⁶ Therefore, cases of people arriving in the Evros region or on islands without being apprehended upon entering the border line or the country's territorial waters or upon disembarking do not meet the required direct temporal and spatial link and should thereby be construed as falling outside the scope of the border procedure.²⁰⁷

Material scope: Member States have discretion to apply the border procedure in order to assess any **Inadmissibility Ground** of an asylum claim, including the safe third country concept.²⁰⁸ As regards permissible examination of the merits of an application, the *acquis* foresees an extremely complex scale of degrees of obligation and discretion for Member States depending on the **Situation** of their asylum systems as follows:²⁰⁹

Processing of merits of asylum applications in the border procedure						
Ground	Ordinary state of affairs	Adequate capacity reached	Maximum number reached	Mass arrivals crisis	Instrumentalisation	Force majeure
Claim unrelated to asylum	Optional	Optional	Optional	Optional	Optional	Optional
Clearly inconsistent, false statements	Optional	Optional	Optional	Optional	Optional	Optional
Intentional misleading of authorities	Mandatory	Mandatory	Optional	Mandatory	Mandatory	Mandatory
Claim to delay or frustrate removal	Optional	Optional	Optional	Optional	Optional	Optional

²⁰⁴ Article 43(1) APR; Article 5(1)-(2) and Recital 9 SR; Article 1(1) RBPR.

²⁰⁵ Recital 57 APR. There needs to be a "direct temporal and spatial link with that crossing of the border" CJEU, C-47/15 *Affum*, 7 June 2016, para 72. The Court has also referred to such cases as "the immediate vicinity of the external border": CJEU, C-444/17 *Arib*, 19 March 2019, para 53.

²⁰⁶ Para 2.1 Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a 'Return Handbook' [2017] OJ L339/83.

²⁰⁷ The scope of the border procedure is systematically misapplied, however: RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 13-15. RD safeguards are also consistently flouted: RSA, *Immigration detention in Greece in 2023: Refugees arbitrarily deprived of their liberty despite unfeasible deportations*, May 2024, 3.

²⁰⁸ Article 44(1)(a) APR.

²⁰⁹ Articles 44(1)(b), 45(1) and 47(2)-(3) APR; Article 11(2)-(7) CR.

Safe country of origin	Optional	Optional	Optional	Optional	Optional	Optional
National security or public order	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory
Admissible subsequent application	Optional	Optional	Optional	Optional	Optional	Optional
Nationality subject to an EU-wide rate of 20% or lower	Mandatory	Optional	Optional	Optional	Mandatory	Optional
				Up to 5% Up to 50%		
Any other asylum application	Forbidden	Forbidden	Forbidden	Forbidden	Optional	Forbidden

Some of the grounds for permissible examination of the claim on the merits are themselves ambiguous, as illustrated in the [Accelerated Procedure](#) in relation to nationals of countries subject to a Eurostat recognition rate of 20% or lower.

The APR further instructs states to prioritise the processing of cases with a “higher prospect of being returned” to their country of origin or to a third country.²¹⁰ This is equally ambiguous a formulation of legal text that is susceptible of creating considerable confusion, even though the use of the border procedure has no effect in practice on the prospect of readmission from Greece to other countries.²¹¹

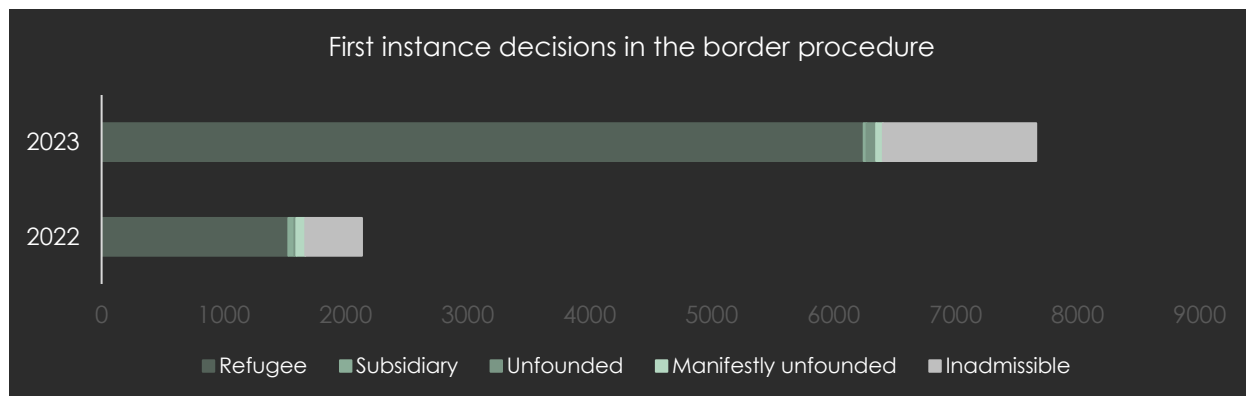
Whereas the EU legislature does not formally suggest that the border procedure be applied writ large,²¹² the expansion of its scope, in conjunction with unclear, complex rules on the processing of asylum claims on the merits, are liable to restrict the number of cases referred to the regular procedure.

Therefore, even though the CEAS continues to prohibit systematic recourse to the border procedure as a means of handling caseloads of people in need of international protection, its rules are susceptible to abuse, as consistently and arbitrarily done in Greece. Recognition rates remain illustrative of its misuse of the border procedure: the share of cases processed on the merits and found to be well-founded in the border procedure by the Asylum Service stood at 87% in 2022 and at a striking 98% in 2023. Nearly all decisions taken in the border procedure last year (97.5% of the total) concerned asylum seekers from Palestine, Afghanistan, Syria, Iraq, Yemen, Somalia, Sudan and Eritrea.

²¹⁰ Article 44(2)(a) and (3) APR.

²¹¹ Note that the overwhelming majority, i.e. over ¾, of removals last year concern nationals of countries not represented in data on irregular arrivals via Evros, the Eastern and Central Mediterranean: RSA, *Immigration detention in Greece in 2023: Refugees arbitrarily deprived of their liberty despite unfeasible deportations*, May 2024, 3-4.

²¹² Recitals 58 and 64 APR.



Source: Ministry of Migration and Asylum, [here](#)

Personal scope: The new CEAS exempts the following categories of people from the application of the border procedure across all three stages (screening, asylum, return):²¹³

- ❖ Unaccompanied children who do not pose a threat to internal security;
- ❖ Persons with special reception needs who cannot be granted necessary support;²¹⁴
- ❖ Persons in need of special procedural guarantees who cannot be granted necessary support;²¹⁵
- ❖ Persons who have medical reasons, including mental health reasons, not to undergo a border procedure;
- ❖ Persons who cannot be lawfully detained where the border procedure entails detention;
- ❖ Optionally for Member States, persons who are subject to criminal proceedings or extradition.²¹⁶

Here too, limitations on the personal scope of the border procedure should be construed in line with its stated objective to serve as a filter for presumed unfounded cases and not as a general procedural tool for states. The APR indicates a clear intention of the EU legislature to safeguard the above categories of people from the application of the border procedure on account of its reduced standards and of their particular needs in the asylum process.²¹⁷

The categories of people whose cases should be excluded from the border procedure should be established for the purposes of legal certainty, predictability and consistency in decision-making. We recall that since 2022 the Asylum Service has stopped exempting asylum applications from the border procedure on the assumption that adequate support is available to cater for any need for special procedural guarantees.²¹⁸ This is an incorrect assumption that too often deprives asylum

²¹³ Article 53 APR; Recital 16 SR; Article 11(9) CR.

²¹⁴ The European Commission may also recommend suspension of families with children from the border procedure of a particular Member State on those grounds: Article 45(4) APR.

²¹⁵ Article 21(2) and Recital 20 APR. "Necessary support" should be interpreted as synonymous to term "adequate support" used in Recital 20.

²¹⁶ Article 18(6) SR.

²¹⁷ On that point, note Administrative Court of Athens, 54/2023, 23 January 2023; Administrative Court of Appeal of Piraeus, A65/2023, 10 February 2023; A296/2021; A292/2021; A94/2021, 25 May 2021; A54/2021, 11 February 2021; A106/2020, 21 February 2020.

²¹⁸ Ministry of Migration and Asylum, Reply to parliamentary question, 167016/2024, 10 June 2024, available [here](#).

seekers of crucial support to navigate the asylum process under particularly truncated deadlines. Evidence from the Greek islands demonstrates that Asylum Service and EUAA caseworkers interview asylum seekers without a prior vulnerability assessment and disregard special procedural guarantees even where expressly requested.²¹⁹ Such a practice contravenes both EU law and should immediately be abandoned (see [Treatment of Vulnerable Groups](#)).

Based on an *effet utile* reading of the text, the different categories of exemptions from the border procedure should be treated as self-standing. Therefore, the absence of necessary support to cover special reception needs must be construed as a separate exemption from medical reasons and from the prohibition on detention.

The regular procedure formally remains the rule throughout the Greek territory. The scope of the border procedure should be clearly delineated and narrowly construed based on stable criteria which reflect its purpose and minimise ambiguity and legal uncertainty. Accordingly:

- ❖ The border procedure must not be applied to persons irregularly arriving in Greece without being apprehended at the direct time of crossing and at the exact border or territorial waters or their immediate vicinity.
- ❖ Resort to the border procedure should strictly be limited to the mandatory grounds and should not be sought even in the context of a Council Implementing Decision under the CR. Any use of the border procedure to assess the merits of applications beyond those set out in Article 42(1) APR should be directly terminated.
- ❖ The categories of persons to whom the border procedure cannot be applied due to the absence of necessary support to cover special reception needs or special procedural guarantees or due to medical reasons should be spelt out in the Greek Asylum Code. These persons should be unequivocally exempted from the border procedure from the outset to ensure legal certainty and effective application of standards in practice.

Legal implications of the border procedure

Fiction of non-entry: People subject to the border procedure are not authorised to enter the territory of the Member State and are so treated throughout their screening, asylum procedure and return procedure at the border.²²⁰ The adoption of the already legally contested “fiction of non-entry” of persons irregularly entering the territory of a Member State, regardless of their physical presence on its territory,²²¹ exacerbates risks of violation of basic human rights at borders, namely the principle of *non-refoulement*, the right to asylum, the right to an effective remedy and the right to liberty. That is given that it impermissibly restricts asylum seekers' liberty and access to rights and procedures enshrined by the asylum *acquis* and binding on Member States. Through such a fiction, people subject to the border procedure are not formally “authorised” to enter the territory of the Member State for the entire duration of the screening, asylum and return border procedure and remain in zones of undefined status, albeit undoubtedly within state territory. These

²¹⁹ RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 17-19.

²²⁰ Article 6 SR; Article 43(2) APR; Article 4(1) RBPR.

²²¹ ECRE, *Comments on the Asylum Procedure Regulation*, Juny 2024, 68, available [here](#).

are certainly to be understood as zones subject to increased state control where each Member State is to set terms and conditions for access. Furthermore, "Extensions of the fiction of non-entry principle to construct a supranational transit zone represent an increased fluidity of EU and Member State borders. Rather than being determined by traditional territorial boundaries, borders become defined by individual legal determinations. Arrivals are no longer objectively determinable based upon physical presence, but rather result from a subjective legal determination at the discretion of screening officers..."²²² "The fiction of non-entry creates a liminal legal space where states exert control by restricting access to rights for third-country nationals. In the context of asylum, the fiction of nonentry inhibits asylum seekers' mobility, access to rights and asylum procedures, and risks *refoulement*..."²²³

The adopted texts remain highly obscure on the exact repercussions of such a legal fiction on the treatment of people seeking protection. Despite longstanding concerns about the automatic – thereby arbitrary – use of detention in the border procedure to enforce the fiction of non-entry,²²⁴ as well as restrictions on asylum seekers' access to rights and procedures enshrined in the asylum *acquis*, the EU legislature has yet to explain whether and how such a fiction could be applied and maintained without deprivation of liberty and without further shrinking of applicants' rights. Alternatively, if the legal fiction of non-entry is not to be understood as deprivation of liberty, questions arise on the reasons for its introduction into the adopted texts in the first place.

On the one hand, the CEAS permits Member States to deprive people of their liberty in the border procedure insofar as they observe the requirements of necessity, proportionality and an individualised assessment. The grounds for detention in such a context are not always clearly delineated, however:

- ❖ The SR provides that detention during screening may be foreseen under domestic law and be imposed for the purpose of ensuring people undergoing screening remain available to the authorities, of preventing a risk of absconding or ensuing threats to internal security or public health.²²⁵ It does, nevertheless, specify that RCD standards should apply to persons who have made an asylum claim and RD standards should apply to those who have not.²²⁶ The application of the appropriate detention provisions in practice would inevitably depend on correct acknowledgment of "asylum seeker" status. The risks identified in [Registration](#) are therefore pertinent.
- ❖ The APR provides that measures "to prevent unauthorised entry" must comply with the RCD,²²⁷ which allows Member States to introduce domestic law grounds for detaining asylum seekers. Among other grounds, the Directive foresees deciding on an applicant's right to enter the territory under an asylum border procedure and preventing a risk of

²²² ECRE, *An analysis of the fiction of non-entry as appears in the Screening Regulation*, September 2022, 5, available [here](#).

²²³ *Ibid*, 6.

²²⁴ European Parliament, *Asylum procedures at the border: European Implementation Assessment*, PE654.201, November 2020, 7, 27, 46, 121, available [here](#).

²²⁵ Article 4(2) and Recital 11 SR.

²²⁶ Recital 11 SR.

²²⁷ Article 43(2) APR; Article 4(1) RBPR.

absconding where the applicant has not complied with a previous restriction on freedom of movement.²²⁸ The former ground would be expected to apply as an adjunct to the fiction of non-entry.

- ❖ The RBPR references prevention of unauthorised entry as a ground for maintaining detention in the return border procedure, separate from preparation or execution of the removal process.²²⁹ The conflation of the two Article 5(1)(f) ECHR limbs of immigration detention maintained by the provision is problematic and legally unsound. It also appears unnecessary given that the RBPR goes on to specify that detention may only be applied provided that a reasonable prospect of removal exists.²³⁰

On the other hand, the CEAS provides that Member States should require asylum seekers to reside at or in proximity to the border for the purpose of the border procedure,²³¹ yet grants them broad discretion to use “any adequate any appropriate location” within their territory if they so wish,²³² “taking into account geography and existing infrastructure”.²³³ The CEAS adds that an applicant’s transfer from such a location to asylum authorities or to medical institutions does not constitute entry into the territory.²³⁴ The locations hosting border procedures should be notified to the European Commission.²³⁵

It remains unclear whether the locations hosting the border procedures should be used exclusively for that purpose or whether the adopted texts would permit states to use the same locations for accommodation of both people undergoing asylum procedures “on the territory” and people subject to the border procedure and considered not to have entered the territory. Clarification offered by the CJEU on the interpretation of the Asylum Procedures Directive standards on the border procedure will be crucial to the implementation of the SR, APR and RBPR provisions.²³⁶

More broadly, the adopted texts have not mitigated the concerns levelled throughout the legislative negotiations as regards potent risks of mass deprivation of liberty and of basic rights of people seeking asylum. The Regulations do not provide clear guidance on the exact extent of permissible restrictions on liberty that Greece would be able to impose when applying the fiction of non-entry under its border procedure.²³⁷ Maintaining freedom of movement of asylum seekers without restrictions on exiting and entering accommodation facilities is paramount to ensuring compliance with the fundamental right to liberty and a sustainable **Reception** system in practice.

Deadlines: Under the border procedure, the various steps of the process must be carried out within shorter deadlines compared to those applicable in procedures on the territory, with the exception of screening. The following deadlines apply to the border procedure:

²²⁸ Article 10(4)(c) and (d) RCD.

²²⁹ Article 4(2) RBPR.

²³⁰ Article 4(4) RBPR.

²³¹ Article 8(1) SR; Article 54(1) and Recital 58 APR; Article 4(2) RBPR.

²³² Article 8(1) SR; Article 54(1) and Recitals 58 and 65 APR; Article 4(2) RBPR.

²³³ Recital 10 SR.

²³⁴ Article 54(5) APR.

²³⁵ Article 54(3) and Recital 65 APR.

²³⁶ CJEU, C-50/24 *Danané*, Reference of 26 January 2024.

²³⁷ Recital 69 APR only states that the border procedure may be applied without recourse to detention.

- ❖ Screening at the border must be completed within seven days from apprehension at the external border or disembarkation.²³⁸ That deadline is binding: screening must end upon expiry of that period.²³⁹
- ❖ The deadline for registration of asylum applications only run after the screening has ended.²⁴⁰
- ❖ The asylum application must be lodged within five days from registration, though that deadline is only indicative.²⁴¹
- ❖ The asylum border procedure must be completed within twelve weeks from registration until the applicant is not allowed to remain in the Member State,²⁴² i.e. where their asylum appeal has either been dismissed or is non-suspensive and suspensive effect has not been granted.²⁴³

Furthermore, Member States may extend the twelve-week deadline to sixteen weeks where relocation applies and the Member State of relocation is also to apply the border procedure.²⁴⁴ Conversely, under a Council Implementing Decision in situations of crisis or *force majeure* they may extend the twelve-week deadline to eighteen weeks.²⁴⁵

Specific time limits are to be introduced by Member States at national level for the different steps of the asylum border procedure.²⁴⁶ EU law no longer sets a fixed duration for the first instance procedure as was the case under the previous *acquis*.²⁴⁷

- ❖ The return border procedure must be completed within twelve weeks from the moment the applicant is no longer allowed to remain.²⁴⁸ Under a Council Implementing Decision in situations of crisis but not *force majeure*, this deadline may be extended to eighteen weeks.²⁴⁹

Contrary to the harmonisation and legal certainty objectives proclaimed by the CEAS reform,²⁵⁰ the formulation of a general twelve-week deadline for carrying out the asylum border procedure under the APR ends up exacerbating uncertainty as to the actual duration of the border procedure and seems to considerably expand its use in practice, given that the moment an

²³⁸ Article 8(3) and Recital 22 SR.

²³⁹ Article 18(5) SR.

²⁴⁰ Article 27(7) APR; Recital 15 SR.

²⁴¹ Article 51(1) APR.

²⁴² Article 51(2) APR.

²⁴³ Article 68(3)-(5) APR; Article 43(4) AMMR.

²⁴⁴ Article 51(2) APR.

²⁴⁵ Article 11(1) CR.

²⁴⁶ Article 51(2) APR.

²⁴⁷ Article 43(2) APD.

²⁴⁸ Article 4(2) and Recital 11 RBPR.

²⁴⁹ Article 6(1)(a) RBPR.

²⁵⁰ Recital 5 APR; Recital 6 QR.

applicant is no longer allowed to remain in the Member State is neither uniform across all cases subject to the border procedure, nor foreseeable *ex ante*:

- ❖ Most appeals against a negative first instance decision in the border procedure do not guarantee asylum seekers a right to remain until the conclusion of the appeal process; inadmissibility on grounds of safe third country or protection in another EU Member State are the only exceptions.²⁵¹ The rules on the automatic suspensive effect of these appeals are particularly complex and seem to lack coherence, as discussed in [Rules on Appeals](#).
- ❖ In non-suspensive appeals, the appellant is only made aware of a refusal to allow them to remain after their request for suspensive effect or an *ex officio* examination has been dismissed by the appeal court or body. Therefore, the moment upon which they are no longer allowed to remain cannot be estimated in advance and depends on circumstances beyond their control.

The ambiguity of the APR provisions is liable to encourage Member States to introduce lengthier time limits for examining asylum applications at first instance in the border procedure. Any departure from the current maximum four-week deadline for completing the asylum process at first instance would result in unacceptable regression of standards and should therefore be resisted.

The legally questionable fiction of non-entry of persons irregularly entering the territory of a Member State should not be adopted. Physical presence inside the territory of a Member State constitutes entry and is subject to the international and EU standards set out *inter alia* in the asylum *acquis* and binding on Member States.

No new restrictions on or deprivation of liberty or corollary rights should be introduced for the purposes of implementing the border procedure. Alternatively, any cases entering the border procedure should promptly be referred to the regular procedure and thereby be deemed to have entered the Greek territory.

Greek law should maintain a maximum four-week deadline laid down in Article 95(2) of the Greek Asylum Code for completing the examination of the asylum application at first instance.

Figures on decisions in the border procedure should be incorporated in monthly statistical reports published by the Ministry of Migration and Asylum to allow for an understanding of the workings of the process in real time. Pilot studies at EU level should be pursued under the Migration Statistics Regulation.

²⁵¹ Article 68(3) APR. Unaccompanied children enjoy the right to remain in all appeals against inadmissibility or in-merit rejections in the border procedure but not in cases of implicit withdrawal.

4. Reception

Material reception conditions & integration support

EU law requires Member States to ensure that asylum seekers have access to material reception conditions which respect their dignity and adequate standard of living,²⁵² as soon as possible after making their asylum application. Reception conditions should also promote individual autonomy, self-sufficiency and integration,²⁵³ and foster cohesion with local communities.²⁵⁴ In this regard, the RCD introduces a new duty on states to guarantee access to language courses, civic education courses or vocational training deemed appropriate for the purpose of enhancing their autonomy.²⁵⁵

Delivery of those objectives requires an in-depth revision of Greek policy, where camps are the only form of reception offered to asylum seekers on the islands and the mainland. The current system is characterised by a generalised lack of reception conditions, stemming from the combined effects of factors such as:²⁵⁶

- ❖ Widespread use of damaged infrastructure due to the absence of maintenance and repair services.
- ❖ Prison-like infrastructure²⁵⁷ including fencing and invasive surveillance systems set up through EU funding that have been found to breach data protection standards.²⁵⁸
- ❖ Insufficient staffing of camps, in particular as regards medical and psychosocial support. Camps face chronic, critical gaps in personnel despite the availability of EU funding. According to official statistics of the Ministry of Migration and Asylum, the largest Greek camps hosting over a thousand people at the end of last year were staffed as follows:

Health care personnel in largest camps by population: end 2023			
Camp	Psychologists	Social workers	Residents
Lesvos	3	1	5,360
Samos	1	0	3,951
Kos	0	2	3,650

²⁵² Articles 19(2) and 20(1) and Recital 58 RCD.

²⁵³ Recitals 8, 50 and 52 RCD.

²⁵⁴ Recital 65 RCD.

²⁵⁵ Article 18 RCD.

²⁵⁶ RSA, *Refugee camps in mainland Greece: What is the current situation based on actual conditions and official data?*, June 2024, 27, available [here](#); 'What is happening today in the refugee structures on the Aegean islands', 3 May 2023, available [here](#). See also Greek Ombudsman, *The Challenge of Migratory Flows and Refugee Protection*, April 2024, available [here](#).

²⁵⁷ European Ombudsman, *Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece*, 7 June 2023, para 48, available [here](#).

²⁵⁸ Data Protection Authority, 'Διοικητικό πρόστιμο και εντολή για συμμόρφωση με τον ΓΚΠΔ στο ΥΜΑ στο πλαίσιο αυτεπάγγελτης έρευνας της Αρχής', 3 April 2024, available [here](#).

Malakasa	3	2	2,565
Ritsona	0	1	2,291
Leros	1	1	2,057
Serres	1	1	1,244
Polykastro	1	1	1,206
Chios	3	0	1,081

Source: Ministry of Migration and Asylum, [here](#)

- ❖ Failure to grant financial allowances to most eligible applicants. Out of 25,484 asylum seekers entitled to reception conditions who resided in Greek camps at the end of 2023, only 9,967 received the allowance according to official data of the Ministry of Migration and Asylum. This means that over 15,000 asylum seekers eligible for reception conditions were excluded from the financial allowance.²⁵⁹
- ❖ Poor connection of isolated camps to urban services, not least through successive, often protracted interruptions in RIS transportation services.
- ❖ Lack of measures to support integration of the vast majority of applicants who are in need of international protection and obtain it practice. A positive decision triggers immediate termination of material reception conditions and an obligation on refugees to leave their accommodation place within 30 days.²⁶⁰

As a result of these deficiencies, the reception system fails to meet the minimum legal standards on dignified living of people seeking protection, creates serious obstacles in its asylum procedure and the fair and efficient processing of their claims, generates critical psychosocial effects and discourages their integration into Greek society. Retaining such a model will inevitably drive further infringements of Charter rights and minimum RCD standards, as well as undercut the inclusion of refugees into host communities.

In addition, current reception in camps lacks entails no specialised arrangements for **Vulnerable Groups**, as discussed below.

Viable alternatives to encampment have been successfully implemented in Greece through EU funding. The ESTIA programme in particular constituted a tested, effective approach to dignified reception of asylum seekers which in the last seven years had offered decentralised accommodation in apartments and support services to thousands of people, before the Greek government closed it down at the end of 2022.²⁶¹

²⁵⁹ Note that data supplied by the Greek government to Eurostat refer to 9,965 persons who received reception conditions at the end of 2023: Eurostat, *migr_asymrca*.

²⁶⁰ Article 109(1) Greek Asylum Code.

²⁶¹ RSA, 'On the termination of the ESTIA II housing programme for asylum applicants', 22 December 2022, available [here](#). See also RSA & PRO ASYL, *Structural failure: Why Greece's reception system failed to provide sustainable solutions*, June 2019, available [here](#).

Greece should fully reinstate the model of decentralised, urban reception of asylum seekers, as tested and implemented through the ESTIA programme, with full use of available EU and domestic funding options and with buy-in from local authorities throughout the Greek territory. Until a policy of dignified, decentralised housing is achieved, existing camps may solely be considered as a means to support first reception of newly arrived asylum seekers under strict conditions of temporary stay, connectivity with communities and transition into society.

Greece should set out concrete measures to ensure sufficient numbers of qualified personnel to provide health care, psychosocial support and integration support, and uninterrupted operation of all services in its reception system e.g. transport, health care, cash assistance, interpretation.

Liberty and freedom of movement

Geographical restriction: EU law reiterates the principle of freedom of movement within the territory of the Member State, albeit specifying this applies only to the country where asylum seekers are allowed to remain.²⁶² The CEAS, however, permits general restrictions of freedom of movement within a set geographical area in the form of “allocation” for the purpose of ensuring swift processing of the asylum claim or geographic distribution of applicants,²⁶³ provided such an area is “sufficiently large”, allows “access to public infrastructure” and does not affect their sphere of private life.²⁶⁴ Such a geographical restriction shall no longer apply where it is established that it prevents asylum seekers from accessing reception conditions.²⁶⁵

Greece imposes such a geographical restriction on applicants arriving on the islands of Lesbos, Chios, Samos, Leros and Kos. The policy expressly cites the EU-Turkey deal,²⁶⁶ even in the face of a complete absence of readmission prospects thereto. That policy has consistently generated prolonged mass confinement of people in inhuman conditions on the islands in stark dereliction of Greece’s EU law obligations. These conditions persist to date despite substantial investments in encampment through EU funding.²⁶⁷

The geographical restriction on the islands thereby directly undermines proper geographic distribution of the asylum-seeking population and sound management of the country’s reception system. State practice itself confirms this, as the vast majority of a total of 16,120 decisions to lift geographical restrictions last year were taken by the RIS for the purposes of decongesting overcrowded camps on the five Eastern Aegean islands. In addition, freedom of movement offers more effective a way of facilitating asylum seekers’ access to necessary services that may not be

²⁶² Article 7(1) RCD.

²⁶³ Article 8(1) and (2) RCD.

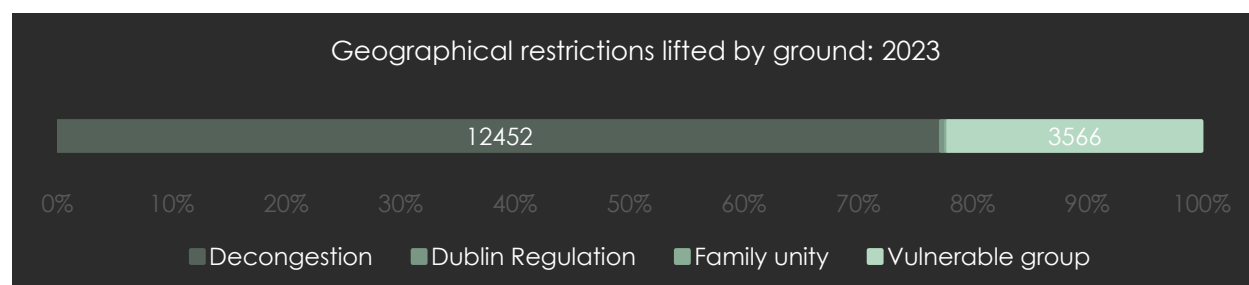
²⁶⁴ Article 8(3) RCD.

²⁶⁵ Article 8(6) RCD.

²⁶⁶ Recital 10 MD 1140/2019, Gov. Gazette B’ 4736/20.12.2019. See also RSA & PRO ASYL, *EU-Turkey deal: 5 Years of Shame – Rule of law capture by a Statement*, March 2021, 11, available [here](#).

²⁶⁷ RSA & PRO ASYL, ‘Disgraceful living conditions in the “state-of-the-art” Closed Controlled Access Centre (CCAC) of Samos’, 6 February 2024, available [here](#); RSA, ‘What is happening today in the refugee structures on the Aegean islands’, 3 May 2023.

available in a particular geographical area compared to the bureaucratic process of approving temporary permission for reasons such as necessary medical treatment.²⁶⁸



Source: Ministry of Migration and Asylum, [here](#)

Detention: The new *acquis* maintains the established definition of detention²⁶⁹ and the obligation on states to resort to deprivation of the liberty of asylum seekers only on exhaustive grounds, subject to necessity, proportionality and consideration of less coercive alternatives.²⁷⁰ The nationality of the applicant cannot *per se* justify detention.²⁷¹ Specific standards are introduced in relation to detention of children. These include the duty to perform a prior best interests assessment in order to establish whether – if ever – deprivation of liberty would be in the child's best interests.²⁷²

The same detention standards apply during the screening process for those persons who have made an asylum claim, while RD detention standards apply to those who have not.²⁷³ Any restrictions or on freedom of movement or deprivation of liberty in the screening process have to be introduced in domestic legislation.²⁷⁴ Contrary to those standards, Article 40(a) of the Greek Asylum Code foresees a “restriction on freedom” consisting of a prohibition on leaving the Reception and Identification Centre (RIC) or Closed Controlled Access Centre (CCAC) for the purposes of completing reception and identification procedures. This measure qualifies as deprivation of liberty²⁷⁵ and infringes the right to liberty since it is automatically and indiscriminately applied. This breach of the RCD is the subject matter of a January 2023 infringement procedure launched by the European Commission against Greece.²⁷⁶

Furthermore, the RCD sets out deadlines for the conduct of *ex officio* judicial review of detention which should not exceed 15 days. This time limit may be prolonged to 21 days only in exceptional cases.²⁷⁷ The RCD reiterates the right of applicants to obtain free legal assistance and representation to challenge their detention.²⁷⁸ Compliance with these standards mandates

²⁶⁸ Article 8(5) RCD.

²⁶⁹ Article 2(12) SR; Article 2(9) RCD.

²⁷⁰ Article 10(2) and (4) RCD.

²⁷¹ Article 10(1) RCD.

²⁷² Article 13(2) RCD.

²⁷³ Article 4(1) and Recital 11 SR.

²⁷⁴ Article 6 and Recital 11 SR.

²⁷⁵ Administrative Court of Syros, AP21/2023.

²⁷⁶ European Commission, 'January Infringements package: key decisions', 26 January 2023, available [here](#).

²⁷⁷ Article 11(3) RCD.

²⁷⁸ Article 11(5) RCD.

immediate action on the part of the Greek authorities to remedy the complete absence of legal assistance in immigration detention due to which only a fraction of persons deprived of their liberty manage to access a lawyer. Urgent measures should also be taken to address persisting, staggering disparities in the effectiveness of judicial review depending on whether it is conducted upon request or *ex officio*.²⁷⁹ Similar deficiencies hinder the accessibility and effectiveness of remedies against pre-removal detention under the RD due to Greece's persistent failure to comply with related Council recommendations on free legal assistance.²⁸⁰

The geographical restriction on the Eastern Aegean islands set out in MD 1140/20019 lacks purpose and should be abolished. Asylum seekers should enjoy freedom of movement throughout the Greek territory regardless of the place of accommodation where they are allocated. Transfers from the islands to the mainland should continue in order to allow applicant access to appropriate reception conditions and to avoid overcrowding.

Greece should abolish the "restriction on freedom of movement" within the RIC or CCAC for the purposes of the screening process.

Greece should urgently establish a legal aid scheme for persons subject to immigration detention.

5. Rules on responsibility

Returns to Greece: The new CEAS maintains unfair rules on responsibility for asylum seekers across EU countries. It also expressly requires refugees to seek asylum in the first EU country they enter.²⁸¹ The expectation that refugees will refrain from moving across European countries²⁸² is reinforced by several procedural changes aiming to facilitate deportations of asylum seekers and beneficiaries of international protection to countries of first entry such as Greece.

On the one hand, the AMMR widely expands Member State powers to return asylum seekers to countries of first entry through an array of significant changes to Dublin procedures:

- ❖ In "take charge" procedures, responsibility on entry grounds is extended from 12 to 20 months. The rule is maintained at 12 months only for persons disembarked following search and rescue.²⁸³
- ❖ "Take back" procedures are reformed through a shift from requests to notifications that may only be countered where the notified country demonstrates it is not responsible.²⁸⁴

²⁷⁹ RSA, *Immigration detention in Greece in 2023: Refugees arbitrarily deprived of their liberty despite unfeasible deportations*, May 2024. Similar issues apply to remedies against pre-removal detention.

²⁸⁰ Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of return, 13662/21, 10 November 2021, paras 1-2, available [here](#). See also European Commission, Reply to written question P-5159/2021, 19 January 2022, available [here](#).

²⁸¹ Article 17(1) AMMR.

²⁸² Recital 6 SR; Recitals 14, 15, 19, 24, 25 and 58 RCD; Recitals 58 and 59 AMMR.

²⁸³ Article 33(1) and (2) AMMR.

²⁸⁴ Article 41(2) AMMR.

Whereas it sets a two-week deadline following a Eurodac hit, the AMMR seems to allow states to proceed to such notification at any point in the process since failure to observe the deadline "shall not affect the obligation of the Member State responsible to take back the person concerned".²⁸⁵ The ambiguity of this rule is liable to create legal uncertainty for individuals and confusion and unnecessary bureaucracy for asylum authorities.²⁸⁶

- ❖ The scope of appeals against transfer decisions is restricted to allegations of inhuman or degrading treatment, breach of the family unity provisions of the AMMR or decisive subsequent elements.²⁸⁷ Such a limitation is a direct affront to the right to an effective remedy under Article 47 of the Charter as interpreted by CJEU case law and should be disapplied.²⁸⁸
- ❖ The transfer deadline may be extended to a total of three years where the applicant has absconded or is resisting transfer.²⁸⁹

On the other hand, the APR provides that asylum applications lodged by people previously granted protection in Greece may be dismissed as inadmissible without a prior personal interview.²⁹⁰ Forgoing an interview in such cases is not only incompatible with the right to be heard according to CJEU case law,²⁹¹ but also liable to expose higher numbers of refugees to a real risk of return to Greece without any support or even basic information on how to access documents, benefits and services,²⁹² in breach of their human rights.

The effect of these amendments will likely be felt in a considerable increase in incoming procedures to Greece, be they Dublin procedures or bilateral readmissions of status holders under the RD. Greece may receive higher numbers of requests / notifications as well as actual transfers of people from other European countries compared to current, often unreported levels. The number of deportations to Greece in 2023 stood at 254 bilateral readmissions and six Dublin returns.

²⁸⁵ Article 41(1) AMMR.

²⁸⁶ As well as a risk of exacerbating conflict between Member States: ECRE, *Comments on the Asylum and Migration Management Regulation*, May 2024, 41-42, available [here](#).

²⁸⁷ Article 43(1) AMMR.

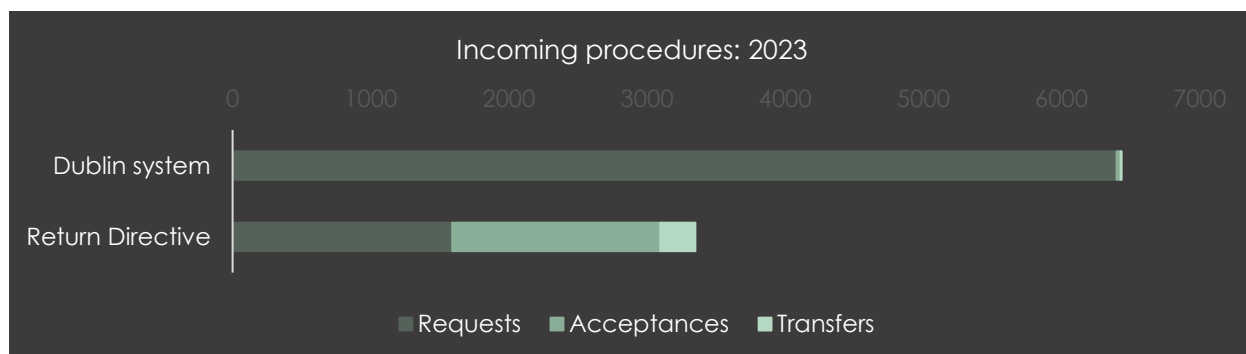
²⁸⁸ Notably, CJEU, C-63/15 *Ghezelbash*, 7 June 2016; C-490/16 *AS*, 26 July 2017; C-670/16 *Mengesteab*, 26 July 2017; C-201/16 *Shiri*, 25 October 2017; C-163/17 *Jawo*, 19 March 2019.

²⁸⁹ Article 46(2) AMMR.

²⁹⁰ Articles 13(11)(e) and 38(1)(c) APR.

²⁹¹ CJEU, C-517/17 *Addis*, 16 July 2020.

²⁹² RSA & Stiftung PRO ASYL, *Beneficiaries of international protection: Access to documents and socio-economic rights*, March 2024, 4-5, available [here](#).



Source: Eurostat (Dublin); Ministry of Citizen Protection (readmissions), [here](#)

Finally, under the AMMR, failure to comply with responsibility rules may impact the possibility of the country concerned to benefit from solidarity measures such as relocation, financial assistance or so-called “responsibility offsets”. States have no obligation to provide solidarity towards a country in respect of which the European Commission has identified “systemic shortcomings” in the application of the Dublin rules “that could result in serious negative consequences” for the AMMR.²⁹³

6. Safeguards & fundamental rights

Free legal counselling at first instance

Content: Asylum seekers have the right to request and receive free legal counselling²⁹⁴ throughout their asylum procedure at first instance.²⁹⁵ The *acquis* describes this as an “integral part” of the process²⁹⁶ Free legal counselling at first instance is to be understood as distinct from free legal assistance and representation, available at second instance. The *acquis* specifies that legal counselling should cover:²⁹⁷

- ❖ Guidance on the asylum procedure and the workings of different applicable procedures and admissibility rules;
- ❖ Assistance in lodging the asylum application, in providing information necessary for AMMR procedures and in filling in the template for family reunification;
- ❖ Guidance on any “legal issues arising in the course of the procedure”.

The EU legislature has specifically used the term “assistance” over “guidance” for the stages of lodging of the asylum application and of submission of elements relevant to AMMR procedures. The term should be construed as a right of asylum seekers not merely to information or guidance on these stages, but as a minimum to be accompanied and in fact assisted by their counsellor at

²⁹³ Article 60(3) and Recital 31 AMMR.

²⁹⁴ The Greek version uses the terms “δωρεάν νομική καθοδήγηση” in Article 16 APR and “δωρεάν νομικές συμβουλές” in Article 21 AMMR.

²⁹⁵ Article 16 APR; Article 21 AMMR.

²⁹⁶ Recital 16 APR; Recital 39 AMMR.

²⁹⁷ Article 16(2) APR; Article 21(6) AMMR.

the lodging of their claim and the submission of information relevant to AMMR procedures. Such an interpretation is faithful to the “integral” role of counselling and ensures frontloading of all necessary elements for swift decision-making and a fair and effective assessment of asylum applications.²⁹⁸

Quality and independence: EU law does not draw any distinction between counselling and assistance and representation as far as the qualifications and institutional role of actors providing them are concerned.²⁹⁹ On correct reading, free legal counselling to asylum seekers need be provided on an individual basis, by qualified professionals who are apt to advise applicants on “legal issues arising in the course of the procedure” and who enjoy independence from authorities and agencies conducting the asylum process, under conditions guaranteeing confidentiality.³⁰⁰ It must therefore be implemented by actors institutionally and functionally independent from states,³⁰¹ as well as the EUAA.³⁰²

The APR therefore sets onerous requirements in relation to the content and conditions of the provision of counselling and to necessary qualifications and independence of those providing it. These obligations can be appropriately and effectively covered if Greece opts for free legal assistance and representation at first instance.³⁰³

Free legal assistance and representation at first instance should be introduced to appropriately cover asylum seekers' needs in the process. The lodging form should include the details of the applicant's lawyer or counsellor, otherwise indicate that the applicant has waived their right to free legal counselling.

Treatment of vulnerable groups

Vulnerability assessment: The new CEAS usefully provides more elaborate standards on the identification of vulnerable groups with a view to catering for their special needs in the screening, asylum and reception processes. States are required to subject individuals undergoing screening to a preliminary vulnerability check.³⁰⁴ They must also assess whether asylum seekers require special reception or procedural guarantees as soon as possible and within 30 days from the making of an asylum claim,³⁰⁵ subject to subsequent review where such needs arise at a later stage.³⁰⁶ These processes may be merged into one.³⁰⁷

²⁹⁸ Recalling that applicants are required to present all relevant elements upon lodging their claim: Article 4(1) QR; Article 28(6) APR.

²⁹⁹ Note in particular Articles 18 and 19 and Recital 16 APR.

³⁰⁰ ECRE, *Comments on the Asylum Procedure Regulation*, June 2024, 22-23.

³⁰¹ Contrary to implications of “direct” provision by the state in European Commission, *Common Implementation Plan*, COM(2024) 251, 12 June 2024, 39.

³⁰² Article 16(4) APR should not be interpreted as permitting the Agency to carry out such functions itself.

³⁰³ Article 15(3) and Recital 16 APR.

³⁰⁴ Article 12(3) and Recital 37 SR.

³⁰⁵ Article 20(2)-(3) and Recital 17 APR; Article 25(1) RCD.

³⁰⁶ Article 20(3) APR; Article 25(1) RCD.

³⁰⁷ Article 12(5) SR; Article 20(1) APR; Article 25(1) RCD.

Vulnerability assessments are to be based on visible signs, statements, documents and the behaviour of the asylum seeker.³⁰⁸ Personnel conducting them should be appropriately trained,³⁰⁹ and should include in the applicant's case file all relevant information, including a description of signs, statements and behaviour, as well as the measures taken to address arising needs.³¹⁰ Authorities may also refer the applicant to a medical practitioner or psychologist for the purposes of obtaining advice on their need for special guarantees.³¹¹

Greek law already requires all RIC, CCAC and reception facilities to be equipped with a Medical Check and Psychosocial Support Unit³¹² and to perform medical, psychological and social assessments during screening, the outcomes of which should be included in applicants' files.³¹³ Failure to promptly detect vulnerabilities in screening and asylum procedures nevertheless remains a core deficiency of the Greek system, owed both to chronic lack of staff and to the persistent use of truncated border procedures on the islands. As a result of these systemic flaws, asylum seekers are routinely interviewed and their claims are examined before they have had the opportunity to undergo a vulnerability assessments.³¹⁴ Gaps are all the more pressing given that the Medical Care and Psychosocial Support Units of mainland camps lack the means to perform a vulnerability assessment and to update applicants' medical files accordingly.³¹⁵

Special guarantees: The APR requires "necessary support" or "adequate support" to be provided to applicants in need of special procedural guarantees,³¹⁶ still without specifying its content. Respect for this standard is paramount particularly in the [Border Procedure](#), in view of existing systemic deficiencies in the Greek asylum process.

As for reception, the RCD refers to "specific support" or "necessary support" to be provided to applicants with special reception needs.³¹⁷ The need for such support should inform, among others, the accommodation place to which these persons are allocated.³¹⁸ Compliance with this requirement undoubtedly requires an overhaul of the Greek [Reception](#) system, currently implemented exclusively in the form of camps. Since the termination of the ESTIA programme at the end of 2022, the RIS places applicants classified as vulnerable in the same camps it uses for accommodation of the rest of the asylum-seeking population. This included as many as 3,157 persons with special reception needs at the end of last year.³¹⁹

³⁰⁸ Article 20(2) APR; Article 25(1) RCD.

³⁰⁹ Article 20(5) and Recital 18 APR; Article 25(1) RCD.

³¹⁰ Article 20(2) APR; Article 25(2)(b) RCD.

³¹¹ Article 20(4) APR; Article 25(2)(c) RCD.

³¹² Article 3(3) JMD 1/7433/2019, Gov. Gazette B' 2219/10.06.2019; Article 5(2) MD 23/13532/2020, Gov. Gazette B' 5272/30.11.2020.

³¹³ Article 16(4) JMD 1/7433/2019.

³¹⁴ RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 15-19.

³¹⁵ RSA, *Refugee camps in mainland Greece: What is the current situation based on actual conditions and official data?*, June 2024, 17-20.

³¹⁶ Article 21(2) and Recital 20 APR. See also Article 12(4) SR.

³¹⁷ Articles 19(2) and 25(4) RCD.

³¹⁸ Articles 7(3) and 19(3) RCD.

³¹⁹ Ministry of Migration and Asylum, Reply to parliamentary question, 167016/2024, 10 June 2024.

The Greek authorities deem that “All camps managed by the RIS have adequate infrastructure to sufficiently cater for any special reception needs of persons belonging to a vulnerable group”.³²⁰ Yet, it remains unclear how special reception conditions afforded to people placed in camps differ from the general conditions available to the rest of the population staying in the very same sites. We remind that most applicants classified as vulnerable are placed in camps such as Ritsona, Polykastro, Serres and Malakasa, with minimal to no medical and psychosocial staff.³²¹

We further recall that the Ministry of Migration and Asylum had already declared since 2022 that “As of January 2023, a working-group will be established together with IOM, UNHCR EUAA and DG HOME aiming to develop standard operating procedures on the assessment of vulnerability and defining clearly the special receptions conditions for each vulnerable group”.³²² No updates have been reported thereon at the time of writing.³²³

The *acquis* states that an applicant’s need for special guarantees is without prejudice to the assessment of their need for international protection.³²⁴ This provision in no way means that vulnerability is not relevant to the examination of the asylum application, as incorrectly put forward in Greek law.³²⁵ On the contrary, an applicant’s belonging to a vulnerable group forms a core part of their individual position and personal circumstances in the meaning of Article 34(2)(d) APR and may constitute an indication or evidence of past persecution in the meaning of Article 4(4) QR and thereby be of direct relevance to decision-making on the claim.³²⁶

Greece should repeal the arbitrary provision of Article 67(1) of the Greek Asylum Code which arbitrarily restricts competence for certification of victims of torture or violence to public hospitals and forensic authorities.

Greece should repeal the last sentence of Article 41(d) of the Greek Asylum Code which contravenes EU law and undermines sound decision-making on asylum applications.

All camps should be equipped with a fully staffed Medical Check and Psychosocial Support Unit at all times. Staff deployed should be specialised in identifying vulnerabilities and sufficient to cater for the asylum-seeking population undergoing screening in these facilities.

Upon completion of screening, a duly filled health card, medical record, mental health record and social record must be included in the person’s case file in all cases. The asylum application lodging form should indicate whether any of the above assessments have been omitted.

Asylum Service and EUAA caseworkers must refrain from performing personal interviews where the applicant’s case file lacks any of the documents on the conduct and outcome of a vulnerability assessment.

³²⁰ *Ibid.*

³²¹ RSA, *Refugee camps in mainland Greece: What is the current situation based on actual conditions and official data?*, June 2024, 21-22.

³²² European Commission, *Task Force Migration Management Mission Report – Athens/Lesvos – December 2022*, Ares(2022)8851878, December 2022, 3.

³²³ Note European Commission, Letter to civil society organisations, Ares(2024)613054, 26 January 2024.

³²⁴ Article 25(5) RCD.

³²⁵ Article 41(d) Greek Asylum Code. For discussion, RSA, *Ειδικές διαδικαστικές εγγυήσεις στη διαδικασία ασύλου: Παρατηρήσεις επί της νομολογίας*, June 2022, available [here](#).

³²⁶ Hence, these also substantiate the admissibility of subsequent applications: Administrative Court of Athens, 54/2023, 23 January 2023; Administrative Court of Appeal of Piraeus, A582/219.



<https://rsaegean.org/en/new-pact-on-migration-and-asylum-2024>



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