

No Turning Back: Greece and the EU-Turkey Statement Seven Years On

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Executive Summary

What Is the Matter?

Seven years after the Statement between the European Union and Türkiye on the admission and return of Syrians arriving in Greece, the EU, Türkiye and Greece are still negotiating how to renew their cooperation on migration. The Statement continues to serve as a blueprint, despite the fact that the cooperation framework with Türkiye only existed for a brief moment. In Greece, meanwhile, the Statement has reshaped the asylum system into a laboratory of restrictive approaches characterized by decreasing compliance with EU minimum standards, and missing oversight and accountability.

What Should Be Done?

We show that Greek domestic policy actors have been most important in implementing current policies. However, European Union institutions (the Justice and Home Affairs Council and the European Council, but especially the European Commission and the EU Agency for Asylum) have played a significant role in encouraging, facilitating and financing policy changes.

Domestic politics in Greece make drastically altering migration policy unrealistic in the short term. However, even under current circumstances in the short term, policies could be more transparent and more could be done to foster accountability. This should include the following:

1. Increase transparency about the role of EU agencies in facilitating implementation of different aspects of the Statement, particularly the EU Asylum Agency;
2. Increase transparency and oversight of the Task Force Migration Management;
3. Identify and communicate possible infringements of EU law by Greece, based on communications the Commission received in 2022;
4. Address the needs of people who have been rejected and remain in limbo in Greece, as well as their access to asylum;
5. Conduct an independent, rights-based evaluation of the implementation of the Statement in Greece;
6. The new Asylum Procedures regulation – currently being negotiated between the Council and the EU Parliament – should clarify the consequences of failed return for access to the asylum procedure.

Introduction: Implementation Phases of the EU-Turkey Statement in Greece

In 2015, the Eastern Mediterranean route through Türkiye to Greece became the focus of policy interventions by EU Member States and EU institutions. This was partly due to the high volume of (primarily Syrian) people moving through the Greek-Turkish maritime border – some 885,000 people arrived in Greece in 2015 alone¹ – and partly due to Greece’s structural inability to address the evolving humanitarian crisis. No burden-sharing mechanism between EU states existed at that time. Meanwhile, the majority of asylum seekers arrived in just two EU states.

In October 2015, the European Commission announced a Joint Action Plan that sought to “(a) (address) the root causes leading to the massive influx of Syrians, (b) (support) Syrians under temporary protection and their host communities in Türkiye and (c) (strengthen) cooperation to prevent irregular migration flows to the EU.”² Although the Joint Action Plan did not reduce the number of arrivals,³ it laid the groundwork for the cooperation between the EU and Türkiye that would eventually culminate in the EU-Turkey Statement, adopted on March 18, 2016.

The Statement of March 18, 2016

The Statement entails nine points, including resettlement of Syrians from Turkey, re-energizing the accession process, and improving conditions in Syria and near the Turkish border. However, the crux of the Statement remains the reduction of irregular arrivals. On the issue of returns, the two sides agreed that “[a]ll new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. [...] Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey.” As of March 2020, the number of persons readmitted by Turkey from Greece under the Statement was 2,735. Another 4,030 migrants have returned voluntarily from the islands since June 2016, supported by the Assisted Voluntary Return and Reintegration Programme (AVRR). Turkey further commits to “take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU.” In return, the EU agreed to allocate €6 billion in total under the EU Facility for Refugees in Turkey. According to the EU, all funds have since been disbursed.

1 Frontex, Frontex Risk Analysis Network (FRAN) data as of January 22, 2016.

2 European Commission (15 October 2015). “EU-Turkey joint action plan.”

3 In November 2015, for example, 151,249 persons entered the Greek maritime border. For a breakdown of monthly figures, see the UNHCR Greece Sea Arrivals Dashboard available at UNHCR Operational Data Portal, Greece.

The Statement is not technically a legal document, but it is treated as such by the EU, Türkiye and Greece. The focus of the Statement is the reduction of irregular arrivals, through tighter border controls in Türkiye and returns from Greece, on the basis that Türkiye is considered a “safe third country” or “first country of asylum” for individual asylum seekers. In May 2016, the European Commission provided to the Greek Asylum Service – the state authority responsible for first-instance asylum decisions – a written assessment on the possibility for asylum seekers to obtain protection in Türkiye.⁴ This position later received high-level political approval from the Justice and Home Affairs Council.⁵

The implementation of the Statement in Greece can be broadly divided into two phases. From 2016 to 2019, significant legal reforms encouraged implementation. Since 2019, key provisions of the Statement have no longer been implemented, yet the deal itself remains the main framework of operations for asylum seekers arriving on the Greek islands, and it has been accepted by different, consecutive Greek governments. How is this the case, and who is responsible for current practice relating to the Statement? We shed light on these elements by drawing on available reports and discussions with key informants for the period 2016–2022. We then indicate where EU actors have leverage to instil change. We focus on the interplay between different Greek and EU actors’ roles and positions on three aspects of the Greek asylum system shaped by the Statement: (1) the fast-track border procedure; (2) the return of rejected applicants; (3) and the reception of asylum seekers on the Greek islands. We leave aside the issue of pushbacks at sea, given that it is the non-implementation of the Statement that affects pushbacks, rather than its implementation.

Reshaped Policy: Fast-Track Border Procedures (2016-2021)

The Statement is applicable only for the maritime border. From the beginning, this created a dichotomy of asylum procedures in Greece.⁶ For applicants who arrived on the Greek islands after March 20, 2016,⁷ a “fast track” (or accelerated) border procedure was applied until December 2021.⁸ For those arriving through the land border of Evros, the regular procedure was applicable. The “fast-track” border procedure on the Greek islands (in the Reception and Identification Centres) “has accounted for almost half of the country’s asylum caseload, far above any country applying border procedures in the

4 European Commission (2016). “Communication from the Commission to the European Parliament, the European Council and the Council: Second Report on the Progress Made in the Implementation of the EU–Turkey Statement.”

5 Being informed on aspects of practical implementation, at the meeting of the Justice and Home Affairs Council on May 20, 2016, Member States indicated that they share the EC assessment on Türkiye as a safe third country for specific nationalities, including Syrians.

6 AIDA (2022). “Greece.”

7 This is only for those who are transferred and/or apply to the Regional Asylum Office on the islands of Lesbos, Chios, Samos, Leros, and Kos.

8 Article 60 para. 4, Law 4375/2016 on six eastern Aegean islands for those who arrived after March 20, 2016. Inadmissibility is based on application of Article 33(2) (b) or (c) of the Asylum Procedures Directive.

EU”.⁹ While the procedure has not been extended, applicants on the Greek islands still fall under the procedural hurdles of the safe third country and first country of asylum concepts, and access to the asylum procedure has been plagued by difficulties.¹⁰

Responsibility for decisions rests with the Asylum Service, the main actor under the auspices of the Ministry of Migration and Asylum, and the Appeal Committees. Following the Statement’s adoption, the Asylum Service began issuing inadmissibility decisions. Almost all negative first-instance decisions were appealed. On appeal, the Committees often rejected inadmissibility decisions, deeming that the safe third country concept applied only for Syrians in Türkiye; but even then, there were exceptions.¹¹ This is noted in the European Commission’s progress report, which suggests a recommendation was made to Greece to alter the Appeal Authority and the Appeal Committees.¹² The Greek government proceeded to change the make-up of the Appeals,¹³ which have since been comprised of two judges and one member from the UN High Commissioner for Refugees. The data indicates that this significantly reduced the number of successful appeals.¹⁴ The change of composition is one example illustrating the involvement of different Greek ministries in the implementation of the Statement. Particularly at the beginning of its implementation, this included the Ministry of Migration Policy,¹⁵ the Ministry of Defence and the Ministry of Interior.¹⁶

In addition to Greek authorities, EU institutions have played a role in the policy’s adoption and implementation. First, Frontex has staff placed on the Greek islands to support Greek authorities in registration, nationality screening, and debriefing as part of the Joint Operation Poseidon. Second and more importantly, in June 2016 the EU’s Justice and Home Affairs Council (JHA Council) instructed the EU Asylum Support Office (EASO) to support Greece in jointly processing asylum applications for nationalities with low recognition rates.¹⁷ Since then, EASO – since reshaped into the European Union Asylum Agency (EUAA) – has been instrumental in facilitating the border procedure’s implementation. Two legislative reforms in Greece have expanded the EUAA’s role. EUAA staff are now allowed to assist the Greek Asylum Service in issuing inadmissibility opinions, primarily on the grounds that Türkiye is safe; to undertake vulnerability assessments, which are crucial for determining transfers to

9 Refugee Support Aegean (September 2022). “The state of the border procedure on the Greek islands.” Accelerated border processing was meant to take place as a derogation from the rules, while the “emergency” continued. Yet it was only suspended in 2021. Although the accelerated procedure has been phased out, border procedures remain in effect on the Greek islands.

10 AIDA (2021 update). “Greece.”

11 This differed from the recommendations of EASO opinions, which applied the concept to other nationalities, too.

12 European Commission (2016).

13 L 4399/2016, June 22, 2016. The law further allowed the conduct of interviews by EASO on merit (inadmissibility).

14 See Theodoropoulou, G. (2019). “Games of Responsibility: The Main Challenges that Asylum Seekers Face in Greece.” Radboud University Nijmegen, Centre for Migration Law; commissioned by The Dutch Council for Refugees.

15 The Asylum Service and Appeals Authority form part of the Ministry.

16 In 2018, the Ministry for Migration Policy merged its operations with the Ministry of Interior, which had been responsible for migration and asylum policy before 2016.

17 Greek L 4375/2016 served as the basis for joint processing. See European Asylum Support Office (EASO) (December 2016). “Operating Plan to Greece 2017.”

the mainland; and to assist in asylum procedures throughout the country.¹⁸ However, the EUAA's actions have raised concerns about the quality of admissibility opinions and the overall conduct of certain processes.¹⁹

Reshaped Policy: Returns and Readmission to Türkiye (from 2016)

Returns have never worked particularly well under the Statement, despite attempts from Greece to facilitate them by requiring asylum seekers to remain on the Aegean islands (“geographic restriction”).²⁰ By March 31, 2020, Greece returned 2,140 persons to Türkiye, with the majority returned in the first year after the Statement.²¹ This is an exceedingly low number considering the introduction of a dedicated border procedure on the islands.

In 2018, Türkiye unilaterally suspended its bilateral readmission protocol with Greece that formed the legal basis for returns. All returns stopped after March 2020 due to Covid-19. Greek authorities have requested the resumption of returns,²² which Türkiye has not accepted.²³

Despite the suspension of returns, both the European Commission and Greece appear to consider the Statement a stand-alone basis for readmission.²⁴ Asylum applications are still examined in the context of the safe third country concept and under border procedures used for persons applying for asylum in Multi-Purpose Reception and Identification Centres (RICs) on the five islands and in two RICs established on the mainland in 2022. Although the Fast-Track Border Procedure is no longer applicable as of January 2022, Refugee Support Aegean notes that “in most cases the authorities did not comply with these provisions anyway. At the same time, deadlines for asylum seekers did not change even under regular border procedure, in comparison to the fast-track procedure previously applied,” at least until early summer of 2022.²⁵

Throughout 2022, the Greek authorities continued to issue voluntary departure orders for Syrians with final inadmissibility decisions for applicants from Afghanistan, Somalia, Pakistan, and Bangladesh.²⁶ This is despite a worsening situation in Türkiye. The Greek government has also taken measures to dissuade subsequent asylum applications. In 2020, the government introduced a €100 fee, which is impossible

18 Law 4375/2016. Law 4540/2018 expanded EUAA participation in examination procedures throughout the country.

19 European Ombudsman, Decision: Case 735/2017/MDC, opened on Thursday, July 13, 2017. Decision on Thursday July 5, 2018.

20 This is to prevent absconding and to ensure that those returned have entered from the maritime border.

21 UNHCR. Returns to Turkey monthly update. Of those 35% were Pakistani nationals.

22 For example, in July 2021, Greece made a new request to the EU Commission and FRONTEX for the immediate return to Türkiye of 1,908 rejected asylum seekers living on the Aegean islands.

23 In 2021, the Fenix Humanitarian legal aid team sent questions on the status of readmissions to the Readmission Unit of the Hellenic Police. In the response, the Unit acknowledged that “the readmission operations to Turkey, based on the ‘Common EU–Turkey Statement,’ have been suspended by the Turkish Authorities since 16-03-2020.” Fenix. (2021). “Fenix calls the Greek authorities to examine the merits of asylum applications rejected on admissibility.”

24 Both the European Commission and Greece regularly call for the resumption of returns.

25 Refugee Support Aegean. (September 2022).

26 The Joint Ministerial Decision 42799/2021 established a national list of safe third countries.

for many to pay. In practice, the suspension of returns, coupled with the geographic restriction and the fee, has left thousands of people in limbo on the Greek islands, often in very poor conditions.

The main actor for returns in Greece is the Ministry of Citizens Protection, which oversees the Hellenic Police. Returns are implemented in conjunction with Frontex, but the responsibility for issuing deportation papers rests with the Hellenic Police. Returns are a priority for both the Ministry of Citizens Protection and the Ministry of Migration and Asylum. Both Ministries have adopted a securitized approach to migration. Particularly for the Ministry of Citizens Protection, this has always been the preference, irrespective of the political party in power. The prioritization of returns originates at the highest political level, as was already announced during the election campaign for the current government. The aim from the beginning has been to shift the “balance” of entries and departures.

Frontex is enlisted to facilitate voluntary and forced returns from Greece to Türkiye. In March 2023, Frontex and the Greek government announced an agreement on increased cooperation in the area of returns, including reinforced operational and technical support, with a greater operational role for Frontex. However, as long as returns to Türkiye are suspended, the cooperation is unlikely to include implementation of returns under the EU–Turkey Statement. This, in turn, raises a problem for people deemed inadmissible.

In 2021, the European Commission acknowledged that the issuance of inadmissibility decisions with no prospect for return poses a problem and that under EU law, applicants should be able to apply again.²⁷ The Commission has also “indicated to the Greek authorities that the unconditional application of a €100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure.”²⁸ Nonetheless, the fee remains in place, suggesting that restricted access to the asylum procedure is a deliberate form of deterrence – a similar approach was applied in Greece before 2015.

Reshaped Policy: Reception

Greece’s current reception system has been shaped considerably by the EU–Turkey Statement. In 2015, as part of the European Agenda on Migration, Greece and the EU Commission introduced the “Hotspots Approach,” which established reception centers (in which EASO was present for joint processing) on the islands of Lesbos, Chios, Samos, Leros, and Kos. As a direct consequence of the EU–Turkey Statement, the initially temporary “hotspots” were transformed into long-term sites, operated above

27 In response to questions, the Commission noted that in line with Article 38(4) of the Asylum Procedures Directive, “applicants whose application has been declared inadmissible are therefore able to apply again” with Greece considering the prospect of return in line with the Statement. See ECRE (2021). “Greece: EU Funded Spending Spree Continues with Tender on Closed Camps, New Legislation to Increase Deportations, Commission Response on Inadmissibility Decisions.”

28 European Parliament (2022). “Answer given by Ms Johansson on behalf of the European Commission.”

capacity and with poor conditions and imposing a de-facto detention.²⁹ The 2020 fire in Moria placed a spotlight on these conditions. The camp was initially designed for the temporary reception of 3,000 people, but the fire left 13,000 without shelter.

Although the return aspects of the Statement have not been applied since 2019, the reception system on the islands remains in place and has even deteriorated. Despite assurance from the EU Commission to fund the programme through 2027, in 2022 the Greek government terminated the ESTIA housing scheme for vulnerable asylum seekers. This resulted in the 12,500 residents benefiting from the programme being transferred from decentralized housing to closed centers. Accommodation is now primarily camp-based, in remote locations, and people are often moved at a day's notice.³⁰ An upgrade to the reception facilities on the islands was scheduled following the fire in Moria in September 2020. Five large-scale Close Controlled Access Centres (CCAC) were announced on the islands of Lesbos, Chios, Samos, Kos, and Leros. In 2023, the CCACs in Kos, Leros and Samos have been operational while in Lesbos and Chios the CCACs are under construction. In the three operational centers, living conditions significantly improved until August 2023, but the securitized approach of de-facto detention has been more apparent, too.³¹ There are still significant shortages of doctors, with some CCACs having no medical personnel on site. The situation remains dire in Mavrovouni,³² which is the temporary CCAC in Lesbos. There are also reports that the safe third country rule continues to be applied for Afghan and Somali nationals in some CCACs. As they are deemed inadmissible, they do not have access to the reception provisions, despite being allowed to remain in the CCACs.³³

Recent reception and accommodation decisions, which primarily lie with the Ministry of Migration and Asylum, are primarily determined by domestic policy preferences and Greek domestic actors. However, since 2015, EU institutions have also played a key role in reception and accommodation. In particular, the EU Commission has funded the islands' Controlled Access Centres. Following the fire in Moria, the Commission announced a dedicated task force to improve the situation on Lesbos. The Task Force Migration Management (TFMM) remains largely unexplored in the literature on the Statement,³⁴ as little is known about its activities. However, it has become increasingly influential. In the Memorandum signed with the Greek government, the TFMM is tasked with assisting with the "swift creation" of a Multi-

29 For example: MSF (5 September 2019). "Greek and EU authorities deliberately neglecting people trapped on islands;" Oxfam (9 January 2019). "Vulnerable and abandoned – How the Greek reception system is failing to protect the most vulnerable people seeking asylum;" European Court of Auditors (2017). "EU response to the refugee crisis: the 'hotspot' approach," Report No. 6/2017; Council of Europe Commissioner for Human Rights (29 June 2018). "Greece: Immediate action needed to protect human rights of migrants;" country visit.

30 McGregor, M. (2022). "Greece: ESTIA housing scheme for vulnerable asylum seekers to close down for good."

31 Greek Council for Refugees (GCR) (2023). "AIDA Report, Reception: Greece." The GCR notes the remoteness and digital identity controls in the centers.

32 Greek Council for Refugees (GCR) (2023). "Three years after Moria burned down, the promise 'No More Morias' remains an empty one."

33 Refugee Support Aegean (no date). "What is happening today in the refugee structures on the Aegean islands."

34 The TFMM is comprised of the European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex), the EU Agency for Law Enforcement Cooperation (Europol), and the Fundamental Rights Agency (FRA), with the Greek authorities on the other side.

Purpose Reception and Identification Centre (MPRIC/CCAC)³⁵ on Lesbos.³⁶ The Greek authorities are primarily responsible for implementation, with the EU side of the task force responsible for monitoring and assistance. The Memorandum is explicit in prioritizing registration, asylum processing and maintaining the MPRIC population at capacity. This will be done through: asylum processing; transfers to the mainland, when appropriate; relocation; and returns either through the Statement or to the country of origin directly. However, the presence of the task force also raises questions concerning who monitors the compliance of Greek authorities with European law and standards.

Conclusions and Recommendations

Seven years after the Statement between the European Union and Türkiye on the admission and return of Syrians arriving in Greece, the political conditions for its implementation are as hostile as ever. Policy preferences in Türkiye diverge from those of EU Member States and the EU Commission. The Statement assumes the presence of a cooperation framework with Türkiye which, in fact, only existed for a brief moment. In the foreseeable future, the Statement's provisions on return will not be applied. Meanwhile in Greece, the Statement has reshaped the asylum system into a laboratory of restrictive approaches characterized by decreasing compliance with EU minimum standards and missing oversight and accountability.

Greek domestic policy actors – through responsible line ministries and top-level decision-making – have been most important in shaping current practice. EU and Greek preferences overlap more than they diverge. There is a consensus that the Statement remains – and should remain – central to the migration management approach, an operating framework that has succeeded in reducing arrivals. European Union institutions (the Justice and Home Affairs Council, the European Council, the European Commission, and the EU Agency for Asylum) have played a significant role in encouraging, facilitating and financing policy changes. They have acquiesced in non-compliance with European rules and standards.

Recent data suggests that the initial goals of the Statement – to maintain a lower number of arrivals and more returns – are no longer being achieved. For the period of January through October 2022, the Ministry of Citizens Protection declared that 230,933 persons have been prevented from entering the country, without specifying the means utilized.³⁷ For 2022, Greece recorded 18,780 entries via land and sea. For 2023, UNHCR has already recorded 28,679 entries,³⁸ suggesting that Greece faces the prospect of increased entries and pressure on the asylum system. At the same time, under the new solidarity mechanism suggested by the EU Justice and Home Affairs

35 EU documents refer to the facilities as Multi-Purpose Reception and Identification Centres (MPRIC), while Greek documents refer to them as Closed Controlled Access Centres (CCAC).

36 The Council of State, in its decision 1335/2023 on August 8, annulled the permit for Vastria due to the lack of an environmental study. It further annulled previous approval for road construction to the CCAC. One day later, the new Minister of Migration and Asylum noted that the construction will continue as originally planned and will meet the environmental requirements laid down by the Council of State. Ministry of Migration and Asylum (9 August 2023) – Press Release Dimitris Kairides.

37 This refers to 6,736 incidents. Ministry of Citizens Protection (October 24, 2022). “Answer to parliamentary question number 460.”

38 UNHCR Operation portal (no date). “Greece.”

Council, solidarity will be flexible. This makes it exceedingly unlikely that Member States will agree to relocate asylum seekers to such an extent that pressure would be relieved from the Greek reception system.³⁹

Domestic politics in Greece make it unrealistic that migration policy will be drastically altered. However, even under current circumstances in the short term, policies could be more transparent and more could be done to foster accountability. This should include the following:

1. The EU Asylum Agency (EUAA) should increase transparency regarding its role in facilitating the implementation of aspects of the Statement. In particular, the EUAA's overall framework of cooperation with the Greek Asylum Service should become more transparent, as should issues around procedures and the quality of asylum decisions. Documents detailing these aspects, as well as data on their implementation, should be made publicly available on a rolling basis.
2. The EU Commission should increase transparency and oversight of the Task Force Migration Management (TFMM). Most issues the EU's Task Force oversees have deteriorated in the last two years, which raises questions of its oversight and of who ensures compliance on the Greek side. Modalities of oversight should be reviewed internally and communicated publicly.
3. The failing political prospects of EU-wide redistribution mechanisms to support Greece do not justify the Commission's acquiescence. As the guardian of EU law, the EU Commission should identify and communicate possible infringements of EU law by Greece, on the basis of complaints communicated to the Commission in 2022.
4. The EU Commission should offer support to and exercise pressure on Greece to: lift the €100 fee; to enable people to lodge asylum applications; to support the needs of people who have been rejected and remain in limbo in Greece; and to address their access to asylum. To encourage full application of the Procedures Directive, transfer to the mainland must be available for people to whom the safe third country rules cannot be applied.
5. An independent, rights-based evaluation of the implementation of the Statement in Greece should be conducted, including access to asylum procedures (including territory), accommodation, service provision, and returns. The Greek Ombudsman is best placed to undertake this evaluation, also examining the role, contribution and interests of domestic actors and European actors active in Greece.
6. Based on the Greek experience that people who cannot be returned to the safe third countries end up in legal limbo, the new Asylum Procedures regulation – currently being negotiated between the EU Council and the Parliament – should clarify the consequences of failed return for access to the asylum procedure.

³⁹ Within the Commission, this is said to have contributed to the acquiescence to non-compliance in Greece as the only means to “protect” the external borders.



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