

Chios, 25 January 2019

Dear Mr Mordue,

Thank you for your reply to our letter of 10th August 2018.

While we appreciate that the Commission acknowledges the role of grassroots civil society organisations and NGOs on Chios, we would like to make clear that our presence here is the result of the failures of both Greek authorities *and* the EU, including the Commission, to develop a humane and adequate approach to receiving people seeking safety in Europe.

We take issue with your statement that you “encourage [us] to continue supporting the Greek authorities in their day-to-day efforts to bring reception conditions up to standards, always respecting the law, rules and regulations that govern the operation of the Reception and Identification Centre of Vial, in particular with regard to security considerations.” First, it is shocking in itself that almost three years after the EU-Turkey Statement entered into force, we are still having an exchange about the provision of even the most basic humanitarian care necessary for dignified living. Second, we highlight that, contrary to your suggestion, our main aim here is not merely to provide support to Greek authorities in dealing with this human-made and still ongoing crisis. The current situation is the result of the failure of the EU and its Member States to take responsibility for the inhumane living conditions in the EU Hotspots. We do not approve of the idea that NGOs take over tasks which should be carried out by the state and/or EU Agencies. We are here to support and stand in solidarity with the thousands of men, women and children fleeing war, persecution and poverty. To this end, we support the Greek civil society and local NGOs. We fundamentally oppose the EU’s politics of exclusion, deterrence and externalisation. Third, we respect the law, rules and regulations governing the operations of the RIC as a matter of course. That the situation in the RIC Vial violates EU secondary law as well as its implementation in Greek national law in numerous regards is the result of breaches of the law, rules and regulations by Greek authorities as well as EU Agencies.

In short, we share your argument that the rule of law must be respected. It is, however, not NGOs but state authorities and EU Agencies who endanger the rule of law in the EU Hotspot Vial. This applies, in particular, with regard to security considerations. As we have highlighted

in our previous letters, the lack of security for the applicants for international protection who are staying in Vial is one of our greatest concerns.

It is astonishing that the Commission continues to deny any responsibility for the systemic failures documented not only in our previous letters but also in numerous reports by leading human rights organisations.¹ Although the legal framework establishes that the host country is responsible for providing the necessary services with regard to reception conditions,² the political responsibility clearly lies with the EU and its Member States. First, both the EU-Turkey Statement and the Hotspot Approach are EU policies. The particular legal responsibility of Greece is merely due to its particular geographical location. Second, EU Agencies are providing considerable operational support and are working hand in hand with Greek authorities regarding the pre-registration, conducting interviews, and drafting legal opinions assessing both admissibility and eligibility of applications for international protection, conducting vulnerability assessments, provision of information from the “infopoint” in Vial, etc. Third, as you highlight yourself, the EU provides considerable funding meant to improve reception conditions in Greece. Funding, however, does not absolve the EU and its Member States from the responsibility to ensure respect for the rule of law including human rights – to the contrary.

While we acknowledge and approve of the funding provided to Greece through AMIF and ISF, all such projects must be implemented in full compliance with “the rights and principles enshrined in the Charter of Fundamental Rights of the European Union [...] relevant international instruments, including case-law of the European Court of Human Rights.”³ Therefore, the role of the Commission should not be restricted to one of merely being an

¹ We refrain from citing all available reports as we assume that you are well aware of the situation. Some of the most recent publications: Oxfam, *Vulnerable and Abandoned – How the Greek reception system is failing to protect the most vulnerable people seeking asylum*, January 2019; European Parliament, *Hotspots at EU External Borders*, June 2018; The Greens/EFA in the European Parliament, *The EU-Turkey Statement and the Greek Hotspots*, June 2018; Greek Council for Refugees and Social Change Initiative, *Borderlines of Despair*, May 2018. Even though the reports usually focus on the situation in Lesbos where the overcrowding is even more serious, the situation in Chios is nevertheless comparable as we have witnessed during the past years and months working on the ground.

² We however note that the debate regarding legal responsibility of the EU and its Member States under International and EU law is still ongoing in legal scholarship, see e.g. Casolari, *The EU’s Hotspot Approach to Managing the Migration Crisis: A Blind Spot for International Responsibility?* in: *The Italian Yearbook of International Law* Volume XXV, p. 109ff.

³ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC O.J. (L 150), recital 33, and arts. 3(1) and 19(2).

observer who “throws large amounts of EU funds at the problem.” On the contrary, it is time for the Commission to take on its monitoring and implementing role in ensuring the respect and protection of the asylum seekers’ fundamental rights.

In particular, you have stated that many of the issues which we have addressed in our previous letters will be resolved through the issuing of another €78 million which has been made available under the EU-funded National Programme for works, infrastructure upgrades, and supplies. In light of the continuous supply of large volumes of NFIs to Vial by volunteer organisations on Chios, we are deeply worried about the lack of transparency regarding the funding. We therefore urgently ask you to ensure transparency in the spending of this money and we call on the Commission to publicise the outcomes of the monitoring of AMIF National Programme funded projects in Greece. We kindly ask you to inform us about the current state of the investigations by the European Anti-Fraud Agency OLAF regarding both a possible misuse of EU funds meant to provide food for refugees in Greece,⁴ as well as with regard to possible irregularities at the European Asylum Support Office.⁵

In your letter you refer to the “renewed commitment of the Greek authorities to implement the **EU-Turkey Statement**” as a positive development. We are astonished that given the overwhelming number of reports denouncing the cost of the implementation of the EU-Turkey Statement and the EU Hotspot Approach in terms of human rights violations, the Commission continues to believe that it is purely a matter of implementation rather than of its fundamentally flawed design.

With regard to the **still inhumane reception conditions**: After her visit to Vial, the Amnesty International Expert for Asylum Policy and Law came to the conclusion: “deaths are tolerated.”⁶ As emphasised by Amnesty International’s Secretary General following his recent visit to the EU Hotspot (RIC) Moria in Lesbos, “the deal is the main driver behind the inhumane

⁴ Lili Bayer, EU watchdog probes possible misuses of refugee funds in Greece, 25 September 2018, <https://www.politico.eu/article/eu-watchdog-probes-possible-misuse-of-refugee-funds-in-greece/>.

⁵ Jacopo Barigazzi, Anti-fraud office investigates EU asylum agency director, January 2018, <https://www.politico.eu/article/jose-carreira-olaf-anti-fraud-office-investigates-eu-asylum-agency-director/>.

⁶ Amnesty International, Franziska Vilmar, Flüchtlingslager auf Chios: Tote werden billigend in Kauf genommen, Oktober 2018, <https://www.amnesty.de/informieren/aktuell/griechenland-fluechtlingslager-auf-chios-tote-werden-billigend-kauf-genommen>.

conditions refugees and migrants face today in Moria and on some other islands in Greece.”⁷
This is now the **third winter in which families are living in camping tents in the mud.**

The concerns we raised in our previous letter regarding the reception conditions in Vial including the provision of both food and non-food items as well as regarding the asylum procedure still remain. It would seem that the provision of adequate reception conditions in the EU Hotspots is not impossible neither from a financial nor from a logistic perspective. If it is not impossible to improve living conditions in the EU Hotspots, the only other conclusion is that the inhumane reception conditions are not only being tolerated but **intended as a means of deterrence.** As the EU-Turkey Statement and the EU Hotspot Approach are policies of the EU, this would lead to the conclusion that the Commission not only tolerates but intends on creating inhumane conditions in the EU Hotspots. We kindly ask you to explain what is in your opinion the reason why living conditions remain inhumane. We attach photographs taken in Vial in December 2018 and January 2019 which show that reception conditions are still inhumane (see Annex).

With regard to the **containment policy:** We would like to draw your attention to the report by the Council of Europe’s Commissioner for Human Rights which reiterates and mirrors our concerns.⁸ The Commissioner urges the authorities to **reconsider the geographical restriction** which prevents migrants arriving to the islands from reaching mainland facilities. As you are aware, this containment policy obstructs any prospect of alleviating the problems that face people stuck on the Greek islands and demonstrably leads to predictable and therefore avoidable harm of thousands of people.

With regard to the **asylum procedures adapted to the aim of return** under the EU-Turkey Statement: According to your own data, the total number of deportations under the EU-Turkey Statement, since 21 March 2016 until 5 December 2018, amounts to 1624 persons, plus 600 persons deported under the Greece-Turkey Bilateral Protocol since 21 March 2016.⁹ According

⁷ Amnesty International, Kumi Naidoo, A scar on the conscience of Europe: Letter to Greek Prime Minister on conditions facing refugees in Greece, November 2018, <https://tinyurl.com/y7tu24ts>.

⁸ Report of the Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, Following her visit to Greece from 25 to 29 June 2018, <https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatov/16808ea5bd>.

⁹ European Commission, Operational implementation of the EU-Turkey Statement as of 5 December 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf.

to UNCHR data, the total number of men, children, and women deported from Greece to Turkey in the framework of the EU-Turkey Statement until 30 September 2018 amounts to 1738 persons.¹⁰ First, we ask you to clarify the difference and the relation between “return under the Greece-Turkey Bilateral Protocol” and “return under the EU-Turkey Statement”; in particular whether return under the first is also counted as returns under the latter. Second, we ask you to clarify the difference in the numbers of returns according to your own data versus the UNCHR data. Third, we stress that every single deportation is one too many as Turkey cannot be considered a safe third country or first country of asylum in the sense of the Asylum Procedures Directive.¹¹ Fourth, we highlight that the relatively low number of deportations shows that the return policy provided for by the EU-Turkey Statement obviously cannot be implemented while complying with the rule of law. Since EU law, as well as international law, require an individual examination of each application for international protection, the return policy leads to the containment of human beings in dire conditions in refugee camps at the EU external border, as you are fully aware. We ask you to explain the political purpose of insisting on the implementation of the EU-Turkey Statement and the Hotspot Approach.

We welcome your announcement that decongestion of the RICs will commence in earnest, and we are indeed aware of transfers taking place; however, it has thus far not solved the overcrowding of Vial.

To conclude, we are deeply concerned about the appalling conditions prevailing in the hotspots and, while efforts to alleviate the situation of the refugees might be made on paper, winter has been here for many months. Action needs to be taken with speed - not just by the Greek authorities, but by the Commission in line with its legal obligations and political responsibility.

We welcome the new Commission representative and we would appreciate the opportunity to discuss our concerns in person. We equally look forward to meeting you during your next visit to Chios in 2019.

¹⁰ UNHCR, Operational Portal Situation Greece, <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

¹¹ See e.g. Sevda Tunaboğlu and Jill Alpes, The EU Turkey Deal: What happens to people who return to Turkey?, in Forced Migration Review, <https://www.fmreview.org/resettlement/tunaboğlu-alpes>; Orcun Ulusoy and H. Battjes, Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement, <https://research.vu.nl/en/publications/situation-of-readmitted-migrants-and-refugees-from-greece-to-turk>.

We are at your disposal for any clarifications.

Yours sincerely,

Action for Education

Action for Women

Chios People's Kitchen

Chios People's Warehouse

Αλληλεγγυοι ΧΙΟΥ / Chios Solidarity

ChooseHumanity

Equal Rights Beyond Borders Chios

Humans for Humans (Imagine Center Chios)

RefuComm

Salvamento Marítimo Humanitario

Annex

Photographs taken in EU hotspot Vial in December 2018 and January 2019











