

# For A Europe That Truly Protects

## Joint NGO Policy Brief on the Screening Regulation Proposal

May 2021



Illustration by Jocie Juritz/IRC

### Introduction

In September 2020, the European Commission presented its proposal on a new Pact on Migration and Asylum, promising a ‘fresh start’ to Europe’s approach to migration. The Pact introduced a number of legislative proposals that are currently being examined in the European Parliament and the Council, including the Regulation introducing a screening of third country nationals at the external borders.<sup>1</sup>

While a new start is urgently needed to ensure Europe’s approach to migration upholds key EU values of human dignity, equality, equity and human rights, the undersigned 23 NGOs working in Greece have serious concerns about elements of the proposed Screening Regulation. We urge EU policy makers to revise the proposal, which risks undermining refugees and migrants’ rights and compounding the suffering of people seeking safety and protection in the EU. It also increases the risk of *refoulement* by facilitating conditions by which people could be subjected to substandard asylum procedures, without their vulnerabilities being officially recognised - particularly if sufficient legal aid is not assured.

As members of Greek civil society and organisations working for many years to assist and improve the protection of refugees and asylum seekers in Greece, we see the impact of existing shortcomings in the current political and policy framework on a daily basis. The policies in place have proven to be not only ineffective but also detrimental to people’s rights, dignity and well-being.<sup>2</sup>

The proposed Screening Regulation seems set to replicate many of the most worrying elements of present practice in Greece, including ineffective vulnerability screenings<sup>3</sup> and the detention<sup>4</sup> or containment<sup>5</sup> of people on the Aegean islands in unsuitable, undignified and often unsafe reception conditions.<sup>6</sup> It also risks reproducing elements of current or former Greek legislation that have already proven problematic.<sup>7</sup> This includes the lack of oversight and complaint mechanisms for asylum seekers who have reported mistakes in their initial registration by the competent authorities, such as incorrect age assessment or the non-assessment of their vulnerabilities, which can lead to neglect of their medical and protection needs.<sup>8</sup> Moreover, people could be denied access to a fair procedure at the borders, because the restrictive timeframe means that the screening could be finalised without a complete medical and vulnerability assessment and without giving them the chance to challenge the preliminary decision. The proposal also introduces new elements that give cause for concern. Foremost among them is the legal fiction of ‘non-

<sup>1</sup> 2020/0278 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

<sup>2</sup> The International Rescue Committee (2020), “The Cruelty of Containment: The Mental Health Toll of the EU’s ‘Hotspot’ Approach on the Greek Islands”, <https://eu.rescue.org/report/cruelty-containment-mental-health-toll-eus-hotspot-approach-greek-islands>; see also CRWI – Diotima (2021), “Girls on the Move in Greece.” <https://diotima.org.gr/wp-content/uploads/2021/01/Diotima-GirlsOnTheMove-1.pdf>

<sup>3</sup> Oxfam (2019), ‘Oxfam media briefing: Vulnerable and abandoned’ [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/2019-01\\_greece\\_media\\_briefing\\_final.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/2019-01_greece_media_briefing_final.pdf)

<sup>4</sup> Apart from detention of asylum seekers under L 4375/2016 and pre-removal detention under L 3386/2005 and L 3907/2011, detention without legal basis in national law or de facto detention measures are being applied for immigration purposes. [AIDA Country report, Greece, 2019, p.185-186] Detention is happening on Kos and is likely to become the standard for all reception facilities for the purpose of screening.

<sup>5</sup> <https://infocrisis.gov.gr/13303/national-situational-picture-regarding-the-islands-at-eastern-aegean-sea-19-05-2021/?lang=en>; According to the government, there is a great number of 224 people detained at Eastern Aegean Islands (19.05.2021). See also: Oxfam (2018). Oxfam and GCR applaud Council of State for ending containment policy and condemn Greek Government’s attempts to defy Court’s ruling. Press release <https://www.oxfam.org/en/press-releases/oxfam-and-gcr-applaud-council-state-ending-containment-policy-and-condemn-greek>

<sup>6</sup> On the Eastern Aegean islands pre-removal detention facilities (PRDFs) (on Lesbos and Kos), i.e. where persons are detained inter alia in order to be subject to readmission within the framework of the EU-Turkey Statement, there was no doctor, interpreter or psychiatrist present as of the end of 2019. Medical services are not provided in police stations. [AIDA Country Report, Greece, 2019, p. 23 Detention Conditions]

<sup>7</sup> L 4375/2016 and L 4636/2019. For instance, RSA et al., (2021), The Workings of the Screening Regulation, <https://bit.ly/3dOQzks>.

<sup>8</sup> OHCHR (2019), Working Group on Arbitrary Detention “Preliminary Findings from its visit to Greece (2 - 13 December 2019)”, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25421&LangID=E>

entry'. This could effectively entail blanket detention, even for the most vulnerable, under conditions that could lead to further neglect of the special needs of those in a situation of vulnerability, hindering their access to necessary care at EU borders.<sup>9</sup>

This policy brief outlines the most worrying potential impacts of the proposed Screening Regulation in relation to the protection of asylum seekers and their rights. Drawing on experience from our collective work in Greece and testimonies of asylum-seekers we have worked with, this brief also provides recommendations for amending the current proposal.

**We, the undersigned organisations, therefore, urge Members of the European Parliament and representatives of EU member states to:**

#### **I. Protect the most vulnerable and safeguard the right to asylum:**

***The proposal must be amended to guarantee that no person is incorrectly channelled into fast-track border or return procedures as this risks referring highly vulnerable people to substandard procedures and can result in their unlawful return in the absence of a fair and full assessment of vulnerabilities, medical conditions and age.***

- The experience in Greece has repeatedly shown that serious capacity shortages combined with a lack of legal assistance<sup>10</sup> can lead to considerable delays and grave mistakes during assessments.<sup>11</sup> This results in the systematic neglect of basic needs,<sup>12</sup> a deterioration in people's living conditions<sup>13</sup> and violations of their rights.<sup>14</sup> It can even affect the asylum procedure and lead to the unfounded rejection of people's asylum claims.<sup>15</sup>
- It also illustrates that the timeframe set out in the proposal for the completion of the screening within five days is highly unrealistic. While it may be possible for identity and security checks to be completed within such a tight timeframe, there is a significant risk that vulnerability assessments will be rushed, or even omitted, for the sake of speed.

***"In Afghanistan we were afraid of suicide bombers and I thought leaving there would be my salvation. But it is worse here... I have witnessed many suicide attempts. Some have been successful. I tried to hang myself, but my son saw me and called my husband. I think about death a lot, that it would be a good thing for the whole family. But then I look at my daughter and I think it's not her time yet."***  
- 32-year-old woman from Afghanistan, mother of two young children in Samos, Greece. 2020 (International Rescue Committee)

<sup>9</sup> DRC (2019), "Rights at risk" - Policy Brief, p.7; [https://drc.ngo/media/jpifsrmi/drc-policy-brief-rights-at-risk\\_self-print.pdf](https://drc.ngo/media/jpifsrmi/drc-policy-brief-rights-at-risk_self-print.pdf)

<sup>10</sup> Oxfam and Greek Council for Refugees (2019), No-Rights Zone How people in need of protection are being denied crucial access to legal information and assistance in the Greek islands' EU 'hotspot' camps, available at: <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2019-12/Oxfam%20%26%20GCR%20Briefing%20Paper%20-%20No-Rights%20Zone%20-%2006122019.pdf>

<sup>11</sup> L 4375/2016, as amended in May 2018, provides that if the fast-track border procedure is applied, the competent RAO or AAU of the Asylum Service can refer the applicant to the medical and psychosocial unit of the RIC for vulnerability to be assessed at any point of the procedure. Despite these provisions, the shortage of medical and psychosocial care can make it extremely complicated and sometimes impossible for people seeking asylum to be re-assessed during that process. Following the medical and psychosocial assessment the medical psychosocial unit of the RIC informs the competent RAO or AAU of the Asylum Service. [AIDA Country Report, Greece, 2019, p. 110]

<sup>12</sup> Major delays occur in the identification of vulnerability on the islands, due to significant lack of qualified staff, which in turn also affects the asylum procedure. [AIDA, Country Report, Greece, 2019, p. 21, Identification of vulnerability]

<sup>13</sup> Council of Europe, Commissioner for Human Rights, "Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities", 31 October 2019, available at: <https://bit.ly/2SdBqpm>; Response by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) to the Observations of the Greek Government on the Merits of Collective Complaint 173/2018, November 2019, available at: <https://bit.ly/3bN30cW>

<sup>14</sup> The Director of the EU's Fundamental Rights Agency, Michael O'Flaherty, described the EU Hotspot Moria in Lesbos as "the single most worrying fundamental rights issue that we are confronting anywhere in the European Union", EU Observer, "Greek migrant hotspot now EU's 'worst rights issue'" (7 November 2019); For more information: HumanRights360, No end in sight, The mistreatment of asylum seekers in Greece, August 2019., [https://www.humanrights360.org/wp-content/uploads/RRE\\_NoEndInSight.pdf](https://www.humanrights360.org/wp-content/uploads/RRE_NoEndInSight.pdf)

<sup>15</sup> Two cases of unaccompanied minors handled by the same caseworker, where the applicants have been rejected, following personal interviews that lasted less than an hour. Although there were strong indications that they could be victims of economic exploitation and human trafficking, not thoroughly examination of the above critical circumstances took place and therefore the latter were not properly assessed in the scope of the decision. (<https://asylumineurope.org/reports/country/greece/asylum-procedure/procedures/regular-procedure/>) IRC caseworkers reported a similar incident involving a beneficiary of our MHPSS programmes whose vulnerability assessment did not take place prior to the interview and who received a first instance rejection of his asylum claim as a consequence.

- Vulnerability checks can be complex and require time and adequate numbers of trained staff, including doctors, nurses, psychologists and qualified interpreters. They must be conducted in a suitable and safe environment to avoid further harm to the well-being and dignity of people who have experienced severe trauma. All people who arrive must have access to free legal assistance to ensure that they understand their rights and obligations, and that they are able to challenge erroneous registration of their personal data, including misregistration of their age or incorrect assessment of their vulnerability.
- In light of the severe consequences of wrong or incomplete assessments and misregistrations on the subsequent procedures, the new Screening Regulation must guarantee that member states meet these minimum requirements, that people have the right to appeal referral decisions and authorities only refer people to a subsequent asylum or return procedure once all assessments are completed.



Illustration by Jocie Juritz/IRC

## II. Ensure adequate conditions and prevent unlawful detention:

***The proposal must be amended to guarantee that the screening process respects EU standards for both reception and respect of human rights, as foreseen in the Reception Conditions Directive, and refrain from any form of detention in the absence of important individual grounds.***

- Given that a thorough assessment cannot be completed within anything close to the five days proposed and the risk that people could therefore be held in de facto detention for extended periods of time, it is essential that the proposal ensures the swift transfer of people from border facilities to appropriate accommodation, regardless of their status, while waiting for a full and fair assessment.
- It is concerning that reported violations<sup>16</sup> of peoples' rights in Greece could continue and even deteriorate, as the new proposal is legally ambiguous and raises concerns that EU standards of reception might temporarily not apply<sup>17</sup> during the screening process. The legal fiction of the "pre-entry" zone undermines the principle that fundamental rights apply to everyone in the EU without distinction.<sup>18</sup> If the regulation is to respect human rights, member states must refrain from resorting to collective detention measures during the screening process in the absence of important individual grounds.
- Women, children, including unaccompanied children and families, should always be exempt from detention-like conditions and the best interest of the child should be the guiding principle of all decisions concerning children. States must explore alternatives to detention to protect human rights and increase effectiveness of screening procedures.
- Given the traumas that asylum seekers have already experienced on their journey to Europe, the revised proposal must favour the use of an outcomes-focused and survivor-centred case management model.

***"I stayed three months in detention when I arrived on the island. When I went out of detention, I had no appointment with the doctor. A doctor eventually examined me in October. [...] The appointment was very fast, and he did not allow me to share my story."***  
- Single man from Ghana, Lesbos, 2020 (Fenix Humanitarian Legal Aid)

<sup>16</sup> HumanRights360 (2019), "No end in sight, The mistreatment of asylum seekers in Greece", [https://www.humanrights360.org/wp-content/uploads/RRE\\_NoEndInSight.pdf](https://www.humanrights360.org/wp-content/uploads/RRE_NoEndInSight.pdf)

<sup>17</sup> ECRE (2020) Screening Out Rights? Delays, Detention, Data Concerns and the EU's proposal for a pre-entry screening process, p.3, <https://www.ecre.org/wp-content/uploads/2020/12/Policy-Note-30.pdf> ; ECRE (2020) Comments on the Commission proposal for a screening regulation COM(2020) 612, p.9, <https://www.ecre.org/wp-content/uploads/2020/12/ECRE-Comments-COM2020-612-1-screening-December-2020.pdf>

<sup>18</sup> Human rights obligations apply where the State exercises jurisdiction (recent reminder in ECtHR case law in *ND and NT*). Also, the asylum acquis applies at borders, territorial waters and transit zones (art 3 APD, art 3(1) RCD).

### III. Guarantee effective independent oversight and accountability through an improved monitoring mechanism:

***The proposal must be amended to ensure that the monitoring mechanism is expanded in scope, and that independence and accountability are guaranteed and suitable consequences are included that follow reported violations. It must introduce substantial provisions that allow for thorough documentation and full transparency during procedures, as well as reporting, investigation and sanctions mechanisms for all stakeholders involved, to prevent potential abuses of power.***

- In principle, the proposal for a monitoring mechanism is welcomed. However, in its current format it is insufficient to cover broader fundamental rights violations unless it is substantially amended.
- Greece is a stark illustration of what can happen without effective, robust, resourced and independent monitoring. For years asylum seekers have suffered as a result of serious and well-documented misconduct by border personnel,<sup>19</sup> ranging from discrimination, incorrect age registration by Frontex,<sup>20</sup> and reported pushbacks that prevent people from even reaching the border,<sup>21</sup> to de facto rejections of their asylum claims outside the legal framework.<sup>22</sup>
- The debriefing forms proposed as part of the new proposal carry similar potential for abuse and could further restrict access to asylum, leading to the unlawful return of asylum seekers.
- Such violations can only be prevented if there is an effective and independent monitoring mechanism. The scope of the mechanism must be extended to cover cross-border activities through the establishment of an independent and transparent monitoring and evaluation mechanism with the involvement of Greek, EU and UN bodies or agencies, to ensure human rights compliance of all operations in the centres and at the EU's external borders.

***"The Greek police caught me and kept us in the police station for one night. They took my phone, the copy of my birth certificate, my shoelaces, and my scarf. The next day, they took us back to Turkey".***

- Boy from Afghanistan, 16 years old, Evros, 2020  
(Network for Children's Rights)

#### Key Concerns

##### I. Prioritising the protection of the most vulnerable and safeguarding the right to asylum

Although the five days deadline foreseen in the screening proposal may suffice for identity and security checks, it is not sufficient for an effective medical and vulnerability assessment. While in 2020 asylum seekers underwent a quick assessment shortly after their arrival on the Greek islands,<sup>23</sup> the proposed time frame threatens the effectiveness, fairness and accountability of the procedure and makes it highly unrealistic that people with non-immediately visible vulnerabilities will be detected and provided with necessary assistance.<sup>24</sup> It is critical that the need for speed does not overshadow the EU's obligation to

<sup>19</sup> Human Rights 360 et al. "No end in sight, The mistreatment of asylum seekers in Greece", August 2019, p. 22-25, available at: <https://bit.ly/2y52GaH>. ; See also: <https://www.theguardian.com/global-development/2021/jan/28/refugee-rights-under-attack-at-europes-borders-un-warns>

<sup>20</sup> <https://easo.europa.eu/sites/default/files/publications/Border-procedures-asylum-applications-2020.pdf>

<sup>21</sup> AIDA Country report Greece (2020), p.18

<sup>22</sup> This may result in the underestimation of the procedural guarantees provided by the international, European and national legal framework, including the right to be assisted by a lawyer. As these truncated time limits undoubtedly affect the procedural guarantees available to asylum seekers subject to an accelerated procedure, as such, there should be an assessment of their conformity with Article 43 of the recast Asylum Procedures Directive, which does not permit restrictions on the procedural rights available in a border procedure for reasons related to large numbers of arrivals. ; In November 2019, a number of 28 applications examined under the fast-track border procedure on Lesbos island, have been rejected at first instance by the Lesbos RAO, without undergoing any asylum interview before, contrary to the guarantees of the Directive 2013/32/EU. [AIDA Country Report, Greece, 2019, p. 93, 96, 97]

<sup>23</sup> Lesbos: 10 days; Kos/Leros/Samos/Chios: 1-2 days [AIDA, Country report for Greece: 2020 update, forthcoming]. Although the medical and assessments are occurring much closer to the registration, many times it is occurring after the main asylum interview in Lesbos.

<sup>24</sup> For instance, in 2019, on average, the time it took between the arrival of a person and the completion of the medical/vulnerability assessment was 2-6 months in the RIC of Lesbos, 1-8 months in the RIC of Chios, 2-3 months in the RIC Samos, 3-4 months in the RIC Leros, and 4 months in the RIC Kos. [AIDA, 2019 update, p.107]. In 2018, the relevant timelines were 1-1.5 months for Samos, up to 5 months for Lesbos, 4 months in the case of psychosocial vulnerability assessments in Leros, no vulnerability assessments for a period of 4 months in Chios and very limited vulnerability assessments overall in Kos. [AIDA, 2018 update, pp. 87-88]

ensure that people with vulnerabilities have swift access to necessary care.<sup>25</sup> Given the proposal falls short of prioritizing protection concerns, it fails to guarantee that people will have access to a fair procedure.

The lack of sufficient numbers of properly trained staff<sup>26</sup> in Greece has created serious protection gaps<sup>27</sup> which have had dire consequences for people's health and wellbeing, particularly the most vulnerable. People with serious conditions often end up in wholly inadequate reception conditions without access to essential medical care, as a result of their condition being missed or misdiagnosed during initial screening assessments. In addition, the reception centres on the Aegean islands simply don't have enough medical personnel to conduct these important medical assessments. There is often just one official doctor responsible for the first medical check of many hundreds of newly arrived people.<sup>28</sup>

As a result, too many asylum seekers<sup>29</sup> have to wait months before their initial medical assessment. This includes people suffering from physical or mental health conditions, including as a result of a grave situation in their country of origin, or from the perilous journey they endured to try to reach Europe. This suffering is compounded once they arrive in Greece when they are placed in undignified reception centres without access to sufficient support and medical care. In addition to the low numbers of medical personnel, the health services on the islands also lack the capacity and training to identify particularly vulnerable people such as victims of torture,<sup>30</sup> human trafficking and survivors of gender-based violence. Furthermore, no age-assessments have been taking place on Lesbos in the last three months, due to a lack of trained professionals.<sup>31</sup>

***"I waited for four or five months for my doctor's appointment. During my appointment, I tried to explain all my medical issues, but they did not listen and did not do any physical check-up. I also showed them all my medical papers, but they did not even look at them. I felt neglected."*** - Single man from Afghanistan, Lesbos, 2020 (Fenix - Humanitarian Legal Aid)

The current proposal for the Screening Regulation lacks the necessary provisions to guarantee that a complete assessment that ensures medical and other conditions, including mental health, are promptly, accurately, and adequately identified. Despite their designated 'mandatory' nature in the proposal, the process by which medical and vulnerability checks are to be conducted leaves significant discretionary powers to national authorities. However, if the new screening procedure's tight deadline of five days is to be followed, then there is no doubt that medical and vulnerability checks risk being rushed or even omitted. This is already the stark reality in Greece where medical checks for asylum seekers are already mandatory by law<sup>32</sup> yet so many people do not receive an age-assessment or an appropriate or timely medical assessment. Consequently, in the absence of a realistic timeframe, of sufficient and sustained resources and of a guarantee that personnel will have enough capacity to conduct robust assessments, the proposed legal

<sup>25</sup> AIDA (2020), 'Country Report Greece 2019, Update June 2020', p 107 <https://bit.ly/2KYZqfD>

<sup>26</sup> The time it takes to assess if a person is or is not vulnerable under Greek law varies considerably depending on the number of new arrivals, but also on the availability of professionals and interpreters. Insufficient number of doctors, psychologists (but also lack of space for them to have confidential interviews and examinations) as well as significant delays in recruiting interpreters limit the impact of these measures, leading to months of delays in some hotspots. [FRA, Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy, 4 March 2019, p.46-47].; RSA (2020), "The Workings of the Screening Regulation", p 16, <https://rsaegean.org/en/the-workings-of-the-screening-regulation/>

<sup>27</sup> AIDA (2020), "Country Report Greece 2019", p. 107-108, <https://bit.ly/2KYZqfD>. RSA (2020), 'Moria nightmare', <https://bit.ly/3pU2Eb0>.; Oxfam (2019), 'Oxfam media briefing: Vulnerable and abandoned', [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/2019-01\\_greece\\_media\\_briefing\\_final.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/2019-01_greece_media_briefing_final.pdf)

<sup>28</sup> [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2021/01-27/Presentationcurrentsituation\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2021/01-27/Presentationcurrentsituation_EN.pdf)

<sup>29</sup> The time elapsing between arrival and completion of the medical/psychosocial examination/ vulnerability assessment depends on the availability of qualified staff. As noted by the Authorities "on Chios RIC there were no medical services for the identification of the vulnerability between January and April 2019 and in December 2019. In Leros RIC there was a gap during November and December 2019. In Lesbos, [there was a gap in the provision of services] between May and September 2019 [...] In Samos, there was a gap between May and September 2019. During these periods there was a collaboration with local hospitals and the EODY units". [Information provided by the Ministry for Migration and Asylum, Special Secretariat for Reception, 6 February 2020, AIDA, Country Report, Greece, 2019, p.107-8]

<sup>30</sup> The identification of torture survivors, which in Greece is subject exclusively to a certification by public health service providers (art. 61, Greek International Protection Act ([L.4636/2019](https://eur-lex.europa.eu/eli/dir/2019/4636/oj))) is impossible at the borders, inter alia due to the lack of specialised/qualified staff in public health structures.; RSA (2020), "The Workings of the Screening Regulation", pp. 16—18.

<sup>31</sup> Information provided by Legal Aid Working Group of Lesbos (13.04.2021).

<sup>32</sup> Greek International Protection Act, Article 39 (5), Medical Check [L.4636/2019](https://eur-lex.europa.eu/eli/dir/2019/4636/oj)

provisions will not improve the situation of asylum seekers at Europe's borders but instead replicate much of the harm we have seen in Greece over the last five years.<sup>33</sup>

Many of the people arriving in Europe seeking protection have encountered extreme loss and trauma. As a result, many already suffer from mental health conditions upon arrival. Addressing mental health is complex in any setting, and requires time, trust and resources. Thus, the focus of the new EU pre-screening provisions on 'immediately identifiable' and 'visible'<sup>34</sup> trauma could lead to systematic gaps in the identification of people with mental health conditions or of vulnerable groups, such as LGBTQI individuals and survivors of gender-based violence,<sup>35</sup> victims of trafficking<sup>36</sup> or torture. Even if sufficiently trained and certified personnel were present to issue assessments for victims of severe trauma, forcing people to disclose their private and traumatic experiences within five days of arrival, when many will understandably be in a state of distress, risks harming people's dignity and well-being. Moreover, screening people in haste at a border area before they have had the chance to get their bearings or receive any support whatsoever, is unlikely to constitute a suitable and safe environment for traumatised people to feel able to disclose. Guaranteeing a dignified environment is essential to avoid further psychological distress and additional harm to the well-being and dignity of the most vulnerable.<sup>37</sup>

***My appointment was very bad. It increased my stress for one month after the appointment because I believe that they did not believe my explanation of my medical issues. When I started to talk about the terrible things I suffered during my life, the doctor looked at his colleagues and started smiling in a way that made me uncomfortable. The doctor told me that all these refugees had experienced these difficulties during their journey to Greece. I felt really embarrassed.*** – Afghan man, victim of torture, Lesvos, Greece, 2020 (Fenix Legal Humanitarian Aid)

***“Once, I was on my way to my session at the IRC and I saw some policemen on the way. In that moment, I thought that I was back in my country, so I started running. They stopped me and asked me why I ran and looked through my phone. I explained and they let me go.”*** - 17-year-old boy from Sierra Leone, Samos, Greece (International Rescue Committee)

Furthermore, the major stress and fear that the first registration assessment often evokes for people in the asylum process is well known. So many of the people with whom the undersigned organisations work with and assist on a daily basis tell us that they often do not fully know what constitutes grounds for asylum or fully understand the system. This not only creates anxiety and fear, but the lack of knowledge around what information they need to share with authorities can mean some people fail to disclose important aspects of their experience that could support and strengthen their asylum claim. This includes LGBTQI people from contexts where they may have been conditioned not to share or express their identity in front of anyone, including their own peers, but especially authorities, for their own safety.<sup>38</sup> This also applies to victims of torture who may have a myriad of reasons for not disclosing their experiences – whether they define them using different terminology, or they wish to leave

<sup>33</sup> GCR & Oxfam (July 2020), “Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing”, <https://www.oxfam.org/en/research/diminished-derogated-denied-how-right-asylum-greece-undermined-lack-eu-responsibility>

<sup>34</sup> 2020/0278 (COD)

<sup>35</sup> CRWI – Diotima (2019), “Accessibility and Barriers to Gender-Based Violence Services for Refugee and Migrant Girls, Boys, Women and Men in Greece” Final Report. Athens, p. 49, <https://diotima.org.gr/en/final-report-research-on-accessibility-and-barriers-to-gender-based-violence-services-for-refugee-and-migrant-girls-boys-women-and-men-in-greece/>

<sup>36</sup> CRWI – Diotima (2021), *Girls on the Move in Greece*, p.42. <https://diotima.org.gr/wp-content/uploads/2021/01/Diotima-GirlsOnTheMove-1.pdf>

<sup>37</sup> Médecins Sans Frontières' submission to the United Nations Committee Against Torture prior to the periodic review of Greece, 67th Session June 2019.

<sup>38</sup> With regard to the identification of GBV survivors that takes place either through institutions and organisations that have the mandate to do so (such as KEELPNO at RICs, state officials and NGOs in the Open Accommodation Facilities and in the urban areas) and/or through procedures where identification might occur (such as Asylum Interviews), there are still important gaps. In particular, vulnerability assessments in overcrowded RICs, where the caseload is extremely high, become very challenging and many GBV cases remain unidentified. In addition to that, inadequate and inefficiently trained personnel, whose capability of recognizing the signs of GBV is not guaranteed, limits even more the effective identification of GBV survivors; a shortcoming that becomes particularly evident in cases of male and child survivors of GBV. Further on, identification of GBV within the context of the urban settings, where services are scattered and GBV survivors may lack the tools or information to reach specialised GBV actors, remains a challenge [CRWI – Diotima (2019), “Accessibility and Barriers to Gender-Based Violence Services for Refugee and Migrant Girls, Boys, Women and Men in Greece”. Final Report.]

these traumatic experiences in the past or they are unable to speak about the events without experiencing further trauma.<sup>39</sup> Just as for survivors of gender-based violence and other people who have experienced violence, shame or fear of retaliation may also constitute important obstacles to disclosure during their vulnerability assessment. As a result, they may omit personal experiences that are extremely relevant for the following procedures. With better support, such as through the establishment of a survivor-centred case management system as an alternative to detention, their chances for a full and fair assessment would be enormously improved.



Illustration by Jocie Juritz/IRC

Besides the provision of medical, psychological and social support, the provision of legal assistance at an early stage could help address these issues and ensure that people are aware of their rights and have effective access to them. Asylum procedures are complicated processes which require legal expertise and assistance. Currently, in Greece, the likelihood of a fair procedure is diminished due to the quality of interpretation offered. At present, interpretation and legal support are provided primarily by NGOs, who lack the capacities to assist many people in appealing a negative decision. As a result, the medical and vulnerability assessments are not guaranteed to accurately reflect the complex situations faced by individual asylum seekers. The above risks violating the fundamental rights of asylum seekers to equal treatment before the law and to a standard of living adequate for their health and well-being.<sup>40</sup> Human rights violations as a result of unfair and inadequate assessments can only be prevented if the new proposal is amended to guarantee access to individual legal services and interpretation free of charge, from the moment of arrival.<sup>41</sup>

***“I have a catheter, so I need to sleep in a clean place but where I live is filthy. [...] Even the simplest things, like going to the toilet, is difficult {in a wheelchair}. There are too few toilets for people with disabilities. [...] I need medication for my infections. I get wounds because I am always seated. I need check-ups, x-rays, regular follow up by a doctor. But I get nothing.”*** - 23-year-old man from Syria, Lesvos, Greece, 2020 (International Rescue Committee)

The incorrect or incomplete assessment of someone’s medical condition can not only lead to an incorrect registration of the person in need<sup>42</sup> it can have serious consequences for their access to suitable living conditions or medical services on the Greek islands or mainland<sup>43</sup> and on procedural guarantees.<sup>44</sup> Currently, inefficient assessments and long bureaucratic procedures result in people spending months in camps that considerably affect their health and mental health.<sup>45</sup>

<sup>39</sup> According to IRC staff, victims of torture may sometimes even be unable to actually remember the course of the events, as avoiding feelings or memories of traumatic experiences is a common symptom of PTSD. One IRC client, who is a survivor of torture, was called for his first interview at a point where he was suffering from severe and complex PTSD symptoms – i.e., he could only remember his name and his country of origin. The lawyers handling his case could not gather any information about what happened in the past. He attended the interview in this state, but the lawyers requested to be present as it became clear that otherwise he would have been unable to attend the interview in the first place. People with such severe trauma need to be identified at the earliest stage of registration and supported by a person of trust throughout the whole asylum procedure.

<sup>40</sup> Universal Declaration of Human Rights, art. 7 & art. 25; “In the context of the Greek hotspots, it resulted in an arbitrary and non-transparent flawed process. A process that is based on checklists with general categories, neither fully recorded nor accessible to the person whom it concerns, with contradictory assessments by different actors and/or at different points in time. A process that clearly violates the law and medical standards. A process that leads to a total collapse of guarantees and an unjustifiable amount of suffering for refugees and persons fleeing persecution. A process that actually inflicts serious harm and trauma, instead of diagnosing and treating it properly.” [Greens/EFA, The EU-Turkey Statement and the Greek Hotspots: A failed European Pilot Project in Refugee Policy, June 2018, 19. <https://www.greens-efa.eu/fr/article/document/the-eu-turkey-statement-and-the-greek-hotspots>]

<sup>41</sup> Reception Conditions Directive, article 9, paragraph 4: “Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.”

<sup>42</sup> For instance, as reported in 2018, in some cases “strong indications of vulnerability have been ignored” in interviews conducted by EASO. A qualitative analysis published in 2018, found that out of 40 cases examined 33 cases wrongfully not identified as vulnerable, despite having undergone an EASO vulnerability assessment. [AIDA, 2018 update, p.90]

<sup>43</sup> Geographical restrictions on movement from the islands may be lifted for example in cases where gender-based violence (GBV) survivors are identified and referred to shelters in the mainland. This is provided for islands where there are no shelters for GBV survivors and victims of torture (e.g. Samos, Chios, Kos, etc.) or in case there is no capacity in the existing shelters, which is the case e.g. in Lesvos.

<sup>44</sup> [https://rsaegian.org/en/rsa\\_msf\\_proasyl\\_specialproceduralguarantees/](https://rsaegian.org/en/rsa_msf_proasyl_specialproceduralguarantees/)

<sup>45</sup> [https://equal-rights.org/site/assets/files/1248/eng\\_press\\_release\\_hias\\_equal\\_rights.pdf](https://equal-rights.org/site/assets/files/1248/eng_press_release_hias_equal_rights.pdf); The IPA and its amendments have also made it easier for new vulnerabilities to appear within an already traumatized population. A case in point is the harrowing increase in cases of sexual harassment and reports of rape, both attempted and perpetrated, and incidents of domestic violence against women in the infamous Moria

Numerous court cases in front of the European Court of Human Rights confirm this. Reception centres at external borders rarely allow sufficient access to critical infrastructure and services needed to support people with severe health conditions, such as AIDS/HIV,<sup>46</sup> for example. Under the current proposal, people with disabilities or serious illnesses, victims of torture, or survivors of gender-based violence could even be detained or held in inappropriate reception and identification centres, as is the current situation in Greece, where they do not have access to adequate support, necessary infrastructure and specialized healthcare. Given how unlikely it is that vulnerability screenings can be completed as swiftly as foreseen in the unrealistic new timeframe proposed it is essential that the proposal ensures the swift transfer of people from border facilities to appropriate accommodation, regardless of their status, while waiting for a full and fair assessment.

Due to the restrictive timeframe and lack of safeguards, the proposal increases the risks of abuse and violations of children's rights, especially unaccompanied children. In Greece, children are often incorrectly registered as adults, often because of delayed or inaccurate age assessments.<sup>47</sup> In many cases encountered by our teams, national legislation for the age assessment procedure is not followed by the relevant authorities.<sup>48</sup> The lack of legal guardians assigned to unaccompanied children to support them and monitor the procedures remains a key obstacle that risks undermining their rights, as foreseen in the Screening Regulation proposal. Consequently, unaccompanied children are likely to continue being incorrectly categorized as being of age and then placed among adults where they are unprotected and deprived of their special rights, including the possibility to be reunited with their families.

***"I came to Greece through the islands, I am a minor, but I didn't have my passport to prove it, so they wrote that I was born in 2001 [which would mean I am not seen as a minor] I lived in Moria [camp] for some time, and I was attacked there. They did something to me, but I said no. They beat me and warned me 'if you ever complain to the police, we will kill you.'" – Boy from Afghanistan, Lesvos, 2020 (Mobile Info Team)***

The proposal for a Screening Regulation must be urgently amended to guarantee that member states meet minimum requirements for a fair and thorough assessment of people's vulnerabilities, medical conditions and age. This is also crucial considering the risk of non-referral to asylum procedures in the absence of such an assessment. As organisations running programmes across Greece, we have encountered applicants for international protection who never received their vulnerability assessment before their asylum interview,<sup>49</sup> leading authorities to issue a first instance rejection of their case without having a full picture of their condition and the grounds of their asylum claim.<sup>50</sup> This must stop. The proposal must rule out any possibility that people could be incorrectly channelled into border procedures or return because of the absence of a fair and full assessment of people's vulnerabilities, medical conditions and age. While a swift move to appropriate accommodation must be assured, authorities should only refer people to a subsequent asylum or return procedure once assessments are completed. Otherwise, people such as victims of torture and children risk

camp on Lesbos. [Greek Council for Refugees and Oxfam Briefing, 2 July 2020, Diminished, Derogated, Denied How the right to asylum in Greece is undermined by the lack of EU responsibility sharing] <https://www.oxfam.org/en/research/diminished-derogated-denied-how-right-asylum-greece-undermined-lack-eu-responsibility>

<sup>46</sup>[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-opinion-hotspots-update-03-2019\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf)

<sup>47</sup> For instance, as of 23 February 2021, GCR is aware of the cases of (at least) 60 alleged unaccompanied minors whose age assessments have not been conducted for more than 7 months, due to the lack of qualified staff in the Samos RIC. In the meantime, they are deprived of access to reception conditions, living in the overspill areas of the facility.

<sup>48</sup> Joint Ministerial Decision 9889/2020 on age assessment of applicants for international protection; Gaps in the age registration upon arrival by RIS/Police/Frontex exist in the application of the age assessment process by the RIS medical and psychosocial support unit (EODY) and owing to limited coordination among different state actors (RIS, EODY, Asylum Service). These gaps have been noted in public reports such as: Council of Europe, 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, p.30: <https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatovic/16808ea5bd> ; FRA, Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy, 4 March 2019, p. 40: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-opinion-hotspots-update-03-2019\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf) ; Oxfam media briefing, 9 January 2019: [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/2019-01\\_greece\\_media\\_briefing\\_final.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/2019-01_greece_media_briefing_final.pdf) ; Refugee Support Aegean report, 18 June 2019: <https://rsaegean.org/en/why-greece%CE%84s-reception-systems-failed-to-provide-durable-solutions/>. For more information:

<https://www.refworld.org/docid/5d9745494.html>

<sup>49</sup> Alarming reports indicate that vulnerabilities are often missed, with individuals going through the asylum procedure without having their vulnerability assessment completed first. Médecins Sans Frontières (MSF) reported that, out of the total number referred to its clinic on Lesbos, almost 70% belonged to a vulnerable group that had not been recognised, including victims of sexual violence, torture or those with serious mental health disorders. [No end in sight, The mistreatment of asylum seekers in Greece, August 2019, [https://www.humanrights360.org/wp-content/uploads/RRE\\_NoEndInSight.pdf](https://www.humanrights360.org/wp-content/uploads/RRE_NoEndInSight.pdf)]

<sup>50</sup> AIDA (2020) Country Report, Greece, 2019, p. 93, 96, 97.

continuing to fall through the cracks of the system, with their suffering compounded, and people with legitimate claims for protection risk being left out.

## II. Preventing detention and undignified conditions



Illustration by Jocie Juritz/IRC

If the regulation is to fully respect human rights, member states must refrain from resorting to collective detention measures during the screening process in the absence of important individual grounds.<sup>51</sup> Deprivation of liberty should only ever be a measure of last resort.<sup>52</sup> Provisions in the proposal that suggest conducting the screening procedure under conditions that would amount to de facto detention in a 'non-territory' at the border should therefore be removed.<sup>53</sup> While the proposal suggests that detention during the screening process is a national competence,

international standards<sup>54</sup> and EU law<sup>55</sup> oblige states to resort in the first instance to less restrictive options and develop alternatives to detention that respect their fundamental human rights.<sup>56</sup> Moreover, the Reception Conditions Directive states that "the detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection."<sup>57</sup> The silence of the proposal in relation to the application of the directive's legal effects could effectively reduce existing safeguards and increase arbitrary collective migration detention by member states.<sup>58</sup> This, in turn, conflicts with EU values of dignity and human rights.

Furthermore, the ambiguity regarding the applicability of the Reception Conditions Directive during the screening stage risks a deterioration in reception standards. In light of the dreadful and ongoing conditions witnessed by the undersigned organisations<sup>59</sup> in Greece, it is clear there are significant risks in leaving reception standards to the discretion of national authorities. It could lead to further neglect of people's dignity and rights and may deprive vulnerable persons of suitable reception conditions that will adversely impact their lives and health. Currently, in some reception centres in Greece, people are detained upon arrival at the border<sup>60</sup> and are not submitted to a proper assessment of their vulnerabilities and medical conditions while in detention.<sup>61</sup> These are mostly single men from so-called 'safe countries of origin' or countries with low recognition rates. Under the new proposal people would only be assessed once they enter closed

<sup>51</sup> Amnesty International (2007), "Migration-Related Detention: A Research Guide on Human Rights Standards Relevant to the Detention of Migrants, Asylum-Seekers and Refugees" POL 33/005/2007, available at: <https://www.refworld.org/docid/476b7d322.html>

<sup>52</sup> See the Opinions adopted by the Working Group on Arbitrary Detention, 2 March 2010, U.N. Doc. A/HRC/13/30/Add.1 and in particular the Opinion No. 5/2009 (Lebanon), p. 280, para. 12.; See also: Council of Europe: Committee for the Prevention of Torture, Immigration detention - Factsheet, March 2017, CPT/Inf(2017)3, available at: <https://www.refworld.org/docid/58ca84894.html>

<sup>53</sup> OHCHR Working group on arbitrary detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, <https://bit.ly/3knV1rQ>, par. 8,19.

<sup>54</sup> International Covenant on Civil and Political Rights, General Comment No.35, para. 18.

<sup>55</sup> European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <https://www.refworld.org/docid/51d29db54.html>

<sup>56</sup> UN General Assembly, New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1, available at: <https://www.refworld.org/docid/57ceb74a4.html>

<sup>57</sup> European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <https://www.refworld.org/docid/51d29db54.html>, Recital 15

<sup>58</sup> This becomes even more evident as the proposal states that the legal effects of Art 26 and Article 27 of the Asylum Procedures Directive, which protect people from detention "for the sole reason that he or she is an applicant" of international protection, should also not apply.

<sup>59</sup> Greek Refugee Council (2020), "Conditions in Reception Facilities": <https://asylumineurope.org/reports/country/greece/reception-conditions/housing/conditions-reception-facilities/>; The International Rescue Committee (2020) "The Cruelty of Containment: The Mental Health Toll of the EU's 'Hotspot' Approach on the Greek Islands", <https://eu.rescue.org/report/cruelty-containment-mental-health-toll-eus-hotspot-approach-greek-islands>

<sup>60</sup> AIDA Country Report Greece (2020), p. 40: "On the islands of Lesbos, Kos and to a certain extent Leros, the policy of automatic detention upon arrival, persists for newly arrived persons who belong to a so-called "low recognition rate" nationality."

<sup>61</sup> *Idem*, p. 22 " Persons belonging to vulnerable groups are detained in practice, without a proper identification of vulnerability and individualised assessment prior to the issuance of a detention order "; see also: The Workings of the Screening Regulation, pp. 7-8

screening facilities. This could result in their detention without sufficient access to healthcare and medical treatment during screening or in the subsequent returns' procedure.<sup>62</sup>

Given the consequences of detention on children,<sup>63</sup> the proposal must also be urgently amended to ensure that no child will be held in detention-like conditions. This includes any child whose age is uncertain and must also apply whether a child is accompanied by an adult or not. Child rights apply to all children below the age of 18, including both unaccompanied children and children with families.<sup>64</sup> The best interest of the child must always be the basis for decision-making involving children. As detention is never in their best interest,<sup>65</sup> immigration detention of any child, accompanied or not, cannot be justified with respect to international human rights law.

***“They took us to prison for recording which lasted two days. In the beginning we were all together, then they put me in another prison and told me that «you have to go to Fylakio [RIC]». I was scared what would happen to me. Then they told me «You will stay 7 months in prison and then you will be allowed to leave». There were all Arabs and Afghans in the same prison, but I was alone...At some point, a man came for his niece and he knew my uncle - that's how I managed to talk to my uncle again. He brought translated papers, but either they didn't believe they were real or they weren't enough...”*** - Kurdish girl from Syria, 2021 (Diotima)

Likewise, the detention of their parents or other family members or people acting as their primary caregivers that could lead to the child's separation from them would also violate the principle of the best interest of the child.<sup>66</sup> Families must be kept together unless it is established that the child's safety is at risk. The proposal must therefore exclude the possibility that children and family units involving children are ever detained. Alternatives to detention must be established, especially for children and families, and appropriate care and accommodation arrangements inside communities and outside reception centres must be favoured.<sup>67</sup> The current safe zones in Greece for unaccompanied children must only be a temporary solution until they can be reunified with their family and sufficient places in appropriate shelters and foster care are created.

According to the proposal, the screening will also take place in zones of 'pre-entry'.<sup>68</sup> Under this legal fiction of the non-entry area<sup>69</sup> people will not be considered to have entered the EU. With the uncertainty created by the proposal in relation to the Reception Conditions Directive, it is thus unclear as to how far people would be subject to the EU asylum acquis. The above risks exposing them to undignified conditions during screening and violating their fundamental rights. They could end up stuck in limbo without guarantees and safeguards that take proper consideration of their medical condition, with their special rights as asylum applicants denied for the duration of the screening process.<sup>70</sup> The proposal that any third-country national

<sup>62</sup> As the most recent cases at the RIC in Kos show, detention centers in remote areas cannot cater for urgent medical needs of people and can result in the evitable death of third-country nationals: [https://www.avgi.gr/koinonia/383530\\_i-nekropsia-epibeaionei-ton-martyriko-thanato](https://www.avgi.gr/koinonia/383530_i-nekropsia-epibeaionei-ton-martyriko-thanato)

<sup>63</sup> International Detention Coalition (2012), "Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention" pp. 48-49, <https://www.refworld.org/docid/510a604c2.html> ; Commissioner for Human Rights of the Council of Europe (2016), CommHR/NM/sf 047-2016, "Immigration detention, even as a measure of last resort and for a short period of time, should never apply to children because it is a disproportionate measure which may have serious detrimental effects on them": [https://rm.coe.int/ref/CommDH\(2016\)43](https://rm.coe.int/ref/CommDH(2016)43)

<sup>64</sup> UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6" "detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof". available at: <https://www.refworld.org/docid/42dd174b4.html>

<sup>65</sup> Commissioner of Human Rights of the Council of Europe (2016): <https://www.coe.int/en/web/portal/-/immigration-detention-is-never-in-the-best-interests-of-the-child> ; see also: International Detention Coalition (2017), "Never in a Child's best interests: A review of laws that prohibit child immigration detention": [https://idcoalition.org/wp-content/uploads/2017/06/Briefing-Paper\\_Never-in-a-childs-best-interests\\_June-2017.pdf](https://idcoalition.org/wp-content/uploads/2017/06/Briefing-Paper_Never-in-a-childs-best-interests_June-2017.pdf)

<sup>66</sup> United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577.

<sup>67</sup> UNICEF (2019), UNICEF Working Paper: Alternatives to the Immigration Detention of Children, available at: [https://www.unicef.org/media/58351/file/Alternatives%20to%20Immigration%20Detention%20of%20Children%20\(ENG\).pdf](https://www.unicef.org/media/58351/file/Alternatives%20to%20Immigration%20Detention%20of%20Children%20(ENG).pdf)

<sup>68</sup> 2020/0278 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, Explanatory memorandum

<sup>69</sup> Article 4 states that people "shall not be authorised to enter the territory of a Member State". Combined with the pre-entry idea previously stated, it is unclear in which territory the screening should take place. We consider that people crossing through border areas have in fact entered EU territory.

<sup>70</sup> While the proposal states that people should be considered applicants of international protection from the moment that they apply, the non-application of the Reception Conditions Directive would mean that all rights regarding their reception, including those related to housing, health and provisions for vulnerable persons may be ineffective until the completion of the screening. This needs to be clarified by the Commission – otherwise the scope of interpretation for member states remains high.

found on a state's territory without the necessary documents would equally be subject to the screening procedure illustrates that the pre-entry provision is unnecessary for migration management.<sup>71</sup> It only creates a lack of clarity regarding the provision of basic rights and services in these non-territory areas. To avoid violations of fundamental rights the Commission must therefore ensure that anyone expressing the wish to apply for international protection has, in fact, entered EU territory and is protected by EU law.

Given the traumas that many asylum seekers have already experienced on their journey to Europe, the revised proposal must clearly favour the use of an integrated, comprehensive, and evidence-based survivor-centred case management model. A rights-based protection approach will provide safeguards, better ensuring that people understand the screening process and their legal options. The provision of information and clarity on procedures is essential to ensure people comply with all relevant procedures and obligations.<sup>72</sup> People subject to the screening process must therefore be able to maintain contact with the outside world, including legal services. Closed centres or closed areas in reception centres for the screening that amount to containment or de facto detention must be avoided. An outcomes-focused reception model for screening is necessary, centred around rights, safety, health, and mental wellbeing. This alternative model to detention can also enhance cooperation between host country and third-country nationals and increase the efficiency of screening by building trust between people and national case workers which is essential for the effective detection of vulnerabilities.<sup>73</sup> As people are empowered to claim their rights and interact with the system, coercion and unnecessary detention measures can become obsolete.<sup>74</sup>

### III. Guaranteeing an effective independent monitoring mechanism<sup>75</sup>

The proposal foresees the creation of an independent monitoring mechanism for fundamental rights during the screening process that is to be established by member states. The acknowledgment of the need for such a monitoring mechanism is welcomed. It is also long overdue in view of the persistent and well-documented human rights violations committed at European borders, including in Greece.<sup>76</sup> However, for the mechanism to be effective, it needs to be extended in its scope, with its independence guaranteed and it will need to assure accountability and sanctions in case of violations.

The staff of the undersigned organisations working in Greece in legal, medical and social programmes consistently witness the impact of bias and discrimination.<sup>77</sup> This can result in the misrepresentation of facts by authorities in the camps, including during the first registration process in the assessment of an asylum seekers' health, age and vulnerability status.<sup>78</sup> In the case of age assessments in Greece, this has contributed to a systematic

***"Upon entry, I told the police and the translator that I was 16, but because I didn't have my passport, they didn't believe me. I told them I was in school, but they understood I was a teacher in school. Therefore, they said I had to be an adult."***  
– Unaccompanied Boy, Lesbos, 2020  
(Mobile Info Team)

<sup>71</sup> The Commission's Explanatory Memorandum states that those "apprehended within the territory and who eluded border controls on entering the Schengen area" should also be screened for the sake of migration management without considering screening to constitute a 'pre-entry' stage.

<sup>72</sup> Council of Europe (2017), Legal and practical aspects of effective alternatives to detention in the context of migration, Analysis of the Steering Committee for Human Rights (CDDH), pp. 8-9, retrieved from: <https://rm.coe.int/legal-and-practical-aspects-of-effective-alternatives-to-detention-in-/16808f699f>

<sup>73</sup> International Detention Coalition (2015), "There are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition)", pp. VI-VII & 47-51 available at: <https://www.refworld.org/docid/57d022a24.html>

<sup>74</sup> International Detention Coalition (2017), "Building trust, avoiding detention: Unpacking case-management as an alternative", available at: <https://idcoalition.org/news/building-trust-avoiding-detention-unpacking-case-management-as-an-alternative/>

<sup>75</sup> <https://eu.rescue.org/press-release/turning-rhetoric-reality-new-monitoring-mechanism-european-borders-should-ensure>

<sup>76</sup> For instance, in March 2020, as a response to asylum seekers and migrants' attempts to cross the Greek borders with Turkey, Greek authorities announced the tightening of border controls to the maximum level and the temporary one-month suspension of asylum applications. The heightened tensions and the escalation of violence put men, women and children at risk and is testimony to the need for a new direction on asylum and migration in the EU.

<sup>77</sup> Bias and discrimination are structural issues present in each society and can concern people of different nationalities, ethnical origins, sexual orientation as well as those suffering from physical or mental health conditions. See: The International Rescue Committee (2020), "The Cruelty of Containment: The Mental Health Toll of the EU's 'Hotspot' Approach on the Greek Islands" <https://eu.rescue.org/report/cruelty-containment-mental-health-toll-eus-hotspot-approach-greek-islands>; For effects of bias and discrimination on age assessment and asylum procedure, see AIDA Country Report Greece (2020), p.118; For discriminatory practices witnessed during the COVID19 pandemic: <https://www.amnesty.org/download/Documents/EUR2527762020ENGLISH.pdf>

<sup>78</sup> AIDA Country Report: Greece (2020), p.114: "Moreover, UNHCR has also observed gaps in the age registration procedure followed by the police and Frontex as well as in the referrals to the age assessment procedure, which is applied contrary to the provisions provided in Greek law."

violation of fundamental rights and children's rights.<sup>79</sup> The assessments place the burden of proof on children without informing them about accessible channels of appeal and reassessment. As a result, instead of receiving care and protection in a separated area of reception centres, those who are wrongly registered as adults are 'housed' with adults. This exposes them to a high risk of abuse until the time of their asylum interview.<sup>80</sup> Also, the absence of recording and documentation of the first registration interview by Frontex means there are no channels of appeal when people encounter discrimination, bias or incorrect documentation of their age by staff.

***"After I was attacked, it was difficult to raise a complaint. The police did not want to see a black person. They chased me away. UNHCR found me a lawyer who helped me file the complaint. But I have still not heard back from the police on the investigation"***

- 23-year-old male, from the Democratic of Congo, attacked in Samos, Greece, 2020  
(International Rescue Committee)

The problem of procedural bias could be exacerbated using the newly proposed debriefing forms, which will have substantial influence on the referral decisions to subsequent procedures, whether asylum or returns. According to the proposal, these debriefing forms will contain information collected during the screening, including whether the person has applied for international protection. The decisions taken at the end of the screening will be based upon the information included in these forms.<sup>81</sup> However, without specialised training, close monitoring, and fundamental changes in the culture of border agencies, the likelihood that personnel may continue to be affected by bias and discrimination towards asylum seekers will continue and will be reflected in what is written in the debriefing forms.

Considering the countless instances in Greece where national and EU border guards unlawfully negated people's right to apply for asylum<sup>82</sup>, it is reasonable to assume that the debriefing forms could potentially become a new legal tool that authorities can use to push people back from Europe's borders. This is crucial given that under the new proposal, a person would only be referred to an asylum procedure if the request is documented over the course of the procedure in these forms. As the information recorded in debriefing forms cannot be challenged through legal channels and does not even include information about a person's vulnerability, it is likely that authorities will not take into account important grounds for people's right to obtain international protection and special assistance when making a decision. Debriefing forms must therefore be subject to clear rules and monitoring, and open for consultation by the person of concern and their lawyer at any given time. Legal channels to appeal the content of debriefing forms must be created given their unproportionate authority over people's fate.

To avoid any conflict of interest, independent actors need to be involved in the screening, including national human rights institutions. Non-governmental organisations, members of parliaments as well as journalists must have unrestricted access to reception facilities and be able to publicly report their findings. The role of the Fundamental Rights Agency in developing guidelines must be strengthened and other stakeholders, including refugees themselves, need to be consulted in the design of the mechanism. Considering Frontex and EASO are to be involved in the screening procedure, their role, its limits and the application of the monitoring mechanism to their actions must be well defined in the proposal to allow for full scrutiny. Also, as the experience in Greece shows, national monitoring mechanisms and internal complaints mechanisms often lack the tools to avoid human rights violations<sup>83</sup>, especially when people are not informed of their legal

<sup>79</sup> Council of Europe, European Committee of Social Rights, Complaint No. 173/2018 International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece ; See also: UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 9 August 2019

<sup>80</sup> Human Rights Watch (2017), <https://www.hrw.org/news/2017/07/19/greece-lone-migrant-children-left-unprotected>

<sup>81</sup> 2020/0278 (COD), Explanatory memorandum

<sup>82</sup> Refugee rights 'under attack' at Europe's borders, UN warns [28 January 2021], Available at: <https://www.theguardian.com/global-development/2021/jan/28/refugee-rights-under-attack-at-europes-borders-un-warns>; See also: The black book of pushback [18 December 2020], Available at: <https://www.borderviolence.eu/launch-event-the-black-book-of-pushbacks/>; Most recently: <https://www.spiegel.de/politik/ausland/uno-fluechtlingshilfswerk-zaehlt-hunderte-mutmassliche-pushbacks-a-01b3fb03-0af7-4643-aa48-e217729716eb> & <https://www.theguardian.com/global-development/2021/mar/19/asylum-seekers-forced-off-lesbos-pushback-crisis-europe-borders>

<sup>83</sup> UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7, available at: <https://bit.ly/2wKiqPm> ; See also: AIDA Country Report Greece: Access to the territory and pushbacks:

rights to file a complaint. Therefore, independent complaints mechanisms need to be established, fully resourced, child friendly and accessible to ensure people know they exist and that they can use them.

Finally, if these monitoring processes are to be more than a smokescreen and genuinely uphold fundamental rights, it is essential to ensure everyone is accountable for their actions and violations of legislation are sanctioned. Member states must be obliged to issue regular reports and periodic reviews on the monitoring mechanism. It is crucial that the European Commission's role as guardian of the treaties is put into practice through clear provisions on their power for overseeing and responding to these reports and regular consultations with independent oversight actors. It should also be made explicit that the mechanism can consider and act upon relevant information provided by international organisations, non-governmental organisations, journalists, EU agencies and institutions even if they are not part of the mechanism. Furthermore, stricter sanction mechanisms for all stakeholders, including member states themselves, must be put in place to guarantee the Commission can act more efficiently upon reports of violations. For instance, it should be possible to withhold EU funding by linking the mechanism to the monitoring of the effective application and implementation of the EU Charter of Fundamental Rights, as foreseen in the new EU budget.

The experience of the undersigned organisations in Greece has made it clear that the Greek 'model' must not become a blueprint of screening procedures across the EU. The systematic neglect of vulnerable people, the practice of arbitrary detention solely on the grounds of seeking asylum - including for children - and gross violations of human rights and acts of refoulement cannot be prevented under the current proposal. On the contrary, the proposal bears serious risks of aggravating the situation of the most vulnerable if protection concerns are omitted for the sake of time and supposed efficiency. If we are to put in place a system that meets the needs of both asylum seekers and of EU member states to ensure workable, speedy and efficient procedures, while protecting fundamental rights, then EU policymakers need to urgently and significantly amend the proposal for a screening regulation. This paper sets out our collective recommendations for a more effective, holistic and humane approach.

***But they caught us and they returned us. It happened more than one time; they kept us in Greece for a few days and then they would return us to Turkey. The truth is that when you have left everything behind, you don't know if you will get there or not, but you can't do anything else. They returned us in a dinghy; they wore military clothes; they wore black full face masks and had guns".*** - Asylum-seeker from Egypt, Evros, Greece, 2020  
(Network for Children's Rights)

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[https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/#\\_ftnref9](https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/#_ftnref9)

**Co-signing organisations:**

