

de: border
migration justice collective

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Tuesday, 20 December 2022

Re: European Commission's maladministration of Greece's misuse and mismanagement of EU funds in border operations

Dear Ms Pariat,

We request the Commission to promptly adopt concrete and effective measures to protect the Union budget by bringing an end to the misuse and mismanagement of EU funds by Greek authorities and beneficiaries through appropriate conditionality measures, restrictions on current funding, and the initiation of proceedings to recover affected EU funds and not to reimburse Greece for expenses related to such Greek border operations.

Together with our investigative partners Lighthouse Reports, Forensic Architecture, Border Violence Monitoring Network, and Dr Lena Karamanidou, we have, since 2020, investigated Greece's misuse and mismanagement of EU funds in Greece's unofficial policy and practice of pushbacks. We established that for many years EU-funded programmes have supported personnel, equipment, infrastructure, and provided other critical support used in widespread and

systemic illegal returns and expulsions of migrants, asylum-seekers and refugees at the Evros border and in the Aegean. Greece's responsible authority for ISF programming has thus far failed to monitor asylum and fundamental rights compliance throughout its programmes, and therefore continuously failed to protect against and respond to the ongoing misuse of EU funds.

Since at least 2018, the Commission has known that Greece is involved in serious and systematic breaches of EU law occurring in the course of Greece's border operations, including by the Hellenic Police and Hellenic Coast Guard.¹ However, despite its knowledge of the misuse and mismanagement of EU funds by ISF beneficiaries, the Commission has not taken effective measures to respond to the misuse of EU funds in these operations, and Greece's failure to monitor and protect against their misuse. The Commission has thus wrongfully failed to respond to such misuse by conditioning, restricting, and recovering amounts affected by serious irregularities resulting from Greece's misuse and mismanagement of EU funds.

The Commission has been acting in breach of its obligations to protect the EU budget and rule of law. Based on consultations with experts in EU law and EU budget law, the Commission's wrongful inaction in response to the long-standing and ongoing mismanagement and misuse of EU home affairs funds (including from the Internal Security Fund) in Greece's implementation amount to maladministration: the Commission has not taken any effective measures to respond to the harm of misuse of EU funds and protect the EU budget in line with the consequences of such serious irregularities in EU law, including as regards the Commission's role to condition, restrict and recover affected funds.

Regulation 2021/1060 laying down common provisions for the ISF and other funds, applicable to all programming since 2021, adopted 1 July 2021 (Common Provisions Regulation), requires, in Article 9(1), that both "Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds", and that the Commission ensure "that complaints related to the Charter in the implementation of EU funding are duly addressed and receive follow-up in a systematic way."²

Similar requirements are also provided in Articles 17 and 317 of the Treaty on the Functioning of the European Union and Article 33 of Regulation 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union

¹ A growing body of evidence detailing thousands of pushbacks by Greece across the Evros River shows a consistent pattern since at least 2008, when HRW qualified Greek pushbacks as "routine and systematic": HRW, [Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union](#) (November 2018). There was a sharp escalation in such cases in 2018. Between April 2008 and September 2009, UNHCR documented 27 pushbacks involving over 550 persons. Between December 2011 and August 2013, ProAsyl recorded 2,000 individuals pushed back from Greece. Between 2013 and 2017, UNHCR recorded 350 pushbacks at sea and on land involving 11,500 persons, 7,500 of which were expelled from the Evros land border. Turkey's Foreign Minister said Greece pushed back 11,867 people in 2018 and 25,404 in 2019, both at sea and on land (Ahval News, '[Turkey urges Greece to end 'pushback' of irregular migrants](#), 27 Oct. 2019); while Der Spiegel's reporting on Turkish documents reflects an estimate that 60,000 individuals were pushed back from Greece between October 2018 and October 2019 (G. Christides & others, '[Videos Show Apparent Illegal Pushback of Migrants](#), Der Spiegel, 13 Dec. 2019).

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [Strategy to strengthen the application of the Charter of Fundamental Rights in the EU](#), COM/2020/711, 02 Dec. 2020, p.10. Article 73(1) of Regulation 2021/1060 further requires that the Member State's "managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, [] and take account of the Charter of Fundamental Rights of the European Union" inter alia.

(Financial Regulation). The Commission is obligated to “satisfy itself [...] that the Member States have set up management and control systems that comply with this Regulation and the Fund-specific rules and that those systems function effectively during the implementation of programmes”.³

Specifically concerning the ISF, Regulation 515/2014 pertaining to the implementation of the Internal Security Fund – Borders Visa (ISF regulation) requires “responsible national authorities” to “ensure that procedures are in place to produce and collect the data necessary for the evaluations” according to “the common monitoring and evaluation framework”.⁴ The fund’s objectives to ensure border control “in compliance with the Union’s commitment to fundamental freedoms and human rights”,⁵ and to “guaranteeing access to international protection [...] in accordance with obligations contracted by the Member States in the field of human rights, including the principle of non-refoulement”.⁶ The Commission is also required to report to the European Parliament on the effects of the implementation of relevant financial regulations on “(b) the effective management of migration flows into the Union; (c) the development of the Common European Asylum System; (d) the fair and equal treatment of third-country nationals.”⁷

The Commission bears paramount responsibility to remedy systemic breaches of EU law and to protect the Union’s financial interests and rule of law. The Commission itself has previously affirmed that monitoring compliance with fundamental rights in funding is its role and obligation,⁸ and the European ombudsperson has clarified that these obligations are part of the principle of good administration.⁹

Regulation 2021/1060 laying down common provisions for the ISF and other funds, applicable to all programming since 2021, adopted 1 July 2021 (Common Provisions Regulation) obligates the Commission to “require a Member State to take the actions necessary to ensure the effective functioning of their management and control systems or the correctness of expenditure in accordance with the Fund-specific rules”,¹⁰ and to introduce conditionality in response to non-compliance with fundamental rights and not to reimburse expenditure where appropriate.¹¹

Thus, the Commission's wrongful inaction in response to the ongoing misuse of EU funds by Greek beneficiaries amounts to maladministration.¹² EU institutions, including the Commission, have long been aware of the nature of the serious and systemic breaches of EU law by Greek

³ [Commission Decision \(EU\) 2018/1220](#) of 6 September 2018 on the rules of procedure of the panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council [the Financial Regulation].

⁴ [Regulation 514/2014](#) of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC, Article 56(2).

⁵ [Regulation 515/2014](#), Article 3(1).

⁶ [Regulation 515/2014](#), Article 3(2).

⁷ [Regulation 514/2014](#), Article 57(2) and (3).

⁸ Greek Ombudsman, Alleged Pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection, 31 Dec, 2020, pp. 9-10.

⁹ European Ombudsman, Decision of the European Ombudsman closing her own-initiative inquiry OI/8/2014/AN concerning the European Commission, OI/8/2014/AN, 11 May 2015, para. 34.

¹⁰ [Regulation 2021/1060](#), Article 75(3).

¹¹ *Ibid.*, Article 15.

¹² European Ombudsman, [Decision in case 1233/2019/MMO on how the European Commission ensures that Member State governments spend European Structural and Investment Funds in line with the obligations stemming from the United Nations Convention on the Rights of Persons with Disabilities](#), 30 July 2020.

authorities in the context of border operations on land and at sea. The systemic breaches resulting from pushbacks, including illegal detention, torture and ill-treatment, denial of access to asylum and refoulement, have been documented and condemned widely by independent human rights organisations, investigative journalists and by EU, Council of Europe and UN bodies since at least 2018.¹³

The Greek authority responsible for implementing and reporting on ISF funding – European and Development Program Management Service (initialed YDEAP, in Greek) under the Hellenic Republic Ministry of Interior & Administrative Restructuring - and operations has failed to report on such issues (based on our review of five annual implementation reports between 2016 and 2020). There is a long record of factual denial, concealment of evidence, and obstruction of justice by Greek authorities on these matters.¹⁴ However, the Commission continued to wrongfully rely on Greek authorities to investigate and remedy these serious irregularities, including those affecting EU funds and operational support to such operations through the European Border and Coast Guard Agency (Frontex). It appears that the Commission either did not give proper consideration to the legal consequences of Greece’s systemic breaches of EU law for its support and funding of such activities, or claimed incorrectly that these breaches are not systematic and thus do not trigger consequences in relation to EU financial and operational support.

We previously submitted a request for information and documentation to the Commission concerning its positions on the consequences of Greek pushbacks on EU support and its responses thereto so far, to which the Commission responded with limited information and generic statements on 12 June 2021 (GESTDEM 2021/3024).

The Commission’s demands that Greece initiate credible, independent investigations of pushbacks have been ineffective. In September 2021, the Commission demanded the Greek authorities to establish a monitoring mechanism as a condition for the release of an additional €15.83 million in migration funding.¹⁵ Experts note that this was the Commission’s “most explicit introduction of conditionality” in the case of Greece¹⁶ However, the Commission proceeded to release the funds in wrongful reliance on Greece’s National Transparency Authority (NTA) and a new Fundamental Rights Officer and Committee (or Task Force) for Fundamental Rights Compliance at the Greek Ministry of Migration to remedy the deep-seated impunity and denial of justice around Greece’s illegal border operations. The Task Force met for the first time on 23 August 2022, and has released barely any information about its mandate or work plan, let alone commenced any investigations. The National Transparency Authority’s investigation, reported in May 2022, was the first government ‘audit’ of pushbacks (which the

¹³ CPT, [Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 28 March to 9 April 2019](#), 9 April 2019; UN Committee Against Torture, [Concluding observations on the seventh periodic report of Greece](#), CAT/C/GRC/CO/R.7, 3 Sep. 2019. See on UNHCR reporting on pushbacks between 2013 and 2017, [Alleged Pushbacks to Turkey of foreign national who had arrived in Greece seeking international protection](#), 31 Dec, 2020, p. 16.

¹⁴ ECRE, [Greece: Systematic Pushbacks Continue by Sea and Land as MEPs Demand EU Action, Deaths Up Proportionate to Arrivals](#), 30 Sept. 2022. ECRE, [Greece: Pushbacks by Sea to Go Before ECtHR, Access to Procedures Restricted on Land, Rule of Law Concerns in Asylum System Persist](#), 28 Jan. 2022.

¹⁵ Pol Afonso Fortuny and Sarantis Michalopoulos, [Commission asks Greece for transparency on pushbacks to release migration funds](#), Euractiv, 13 September 2021.

¹⁶ Jorrit Rijpma and Apostolis Fotiadis, [Infringement Proceedings and Conditionality in EU Funding Instruments](#), The Greens/EFA, June 2022, p.14.

government calls ‘prevention of departure’ and ‘interception’ incidents) commissioned by the Greek government, yet the NTA’s mandate and work make clear that the Greek authorities are unwilling to investigate and correct non-compliance with EU law. The NTA is thus not an appropriate investigative mechanism for the egregious unofficial policies of Greek border authorities: it is not a constitutionally independent public body,¹⁷ and it does not fulfill the requirements for an independent national border mechanism set out by the UN and European institutions.¹⁸ The NTA’s May 2022 report sought to deflect and dilute these allegations, revealed a failure to meet the standards for an independent and effective investigation, and ultimately upheld the persistent denial by the Greek government in response to CoE and UN calls to end such practices, and to hold them to account.

We are deeply concerned by the Commission’s failure to uphold EU law in response to such impunity and denial of justice, the resultant ongoing misuse and mismanagement of EU funds by Greek authorities, and the grave effects of this situation on the Commission’s ability to fulfill its obligations under EU law to protect the Union’s financial interests and rule of law.

We therefore request that the Commission proceed to promptly review, condition, restrict and consider recovery of affected amounts of home affairs funds that are being mismanaged and misused by Greek authorities. Specifically, we call on the Commission to affirm that the Greek authorities’ illegal return operations against migrants, asylum-seekers and refugees amount to systemic breaches of EU law, and to proceed to implement the legal consequences attendant to this finding, including with regards to EU financial and operational support.

We, along with civil society partners including legal experts in EU migration and budget laws, would appreciate the Commission’s response within a reasonable time limit; namely, 15 working days, and preferably no later than the end of the month of January 2023. We reserve the right to file a complaint before the EU Ombudsman to address this case of maladministration.

We thank you in advance for acknowledging receipt of this letter and indicating the timeline for your response.

Sincerely,



Dr Valentina Azarova

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¹⁷ IRC et al (21 organisations), [Greece’s National Transparency Authority should publish its full report regarding pushbacks](#), 8 April 2022.

¹⁸ UNHCR, OHCHR and European Network of National Human Rights Institutions (ENNHRI), [Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece](#), 14 September 2021. See also, EU Fundamental Rights Agency, [‘Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders’](#), 14 October 2022.

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