

Pushbacks and lack of accountability at the Greek-Turkish borders

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Abstract

Amid escalating geopolitical tension with Turkey, in March 2020 the Greek authorities announced a hardline approach towards asylum seekers attempting to cross its land and sea borders with Turkey. The framing of cross-border movements as a ‘threat’ to the country’s national security served to justify a derogation from the human rights standards and procedural guarantees that are granted to people seeking protection under EU law. Since then, a pattern of systematic pushbacks at the border and informal returns represents the most visible expression of this hardening of border policies at the EU’s south-eastern borders.

This paper analyses the negative impact of this heavily securitised approach on asylum seekers’ fundamental rights, in particular its implications for the right to asylum that underpins the Common European Asylum System (CEAS).

The paper also reflects on the limits and ambiguities that have characterised the EU’s response to the situation at the Greek-Turkish borders, focusing on the role and responsibilities of the Frontex Agency. It underlines the need for the EU to remedy the shortcomings in existing accountability mechanisms, to guarantee effective remedies for victims of fundamental rights violations at the border. Establishing a sustainable human- rights-compliant management of migration in the eastern Mediterranean also requires that the EU move away from its focus on containing and restricting asylum seekers’ mobility – a focus that has characterised cooperation on migration and asylum with Turkey within the framework of the 2016 EU-Turkey Statement.



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1. Introduction

EU policy developments on migration and asylum over 2020 have been heavily influenced by the outbreak of the Covid-19 pandemic. Border closures and travel restrictions introduced by states to counter the spread of the virus across Europe have impacted both intra- and extra-EU mobility, making it more difficult for people in need of international protection to seek asylum in Europe.

In parallel, since early 2020, reports concerning the widespread use of informal returns and rejections of asylum seekers at the EU external borders – so-called pushbacks – have multiplied. Pushbacks have been documented at several sections of the EU external borders (including the Western Balkans as well as the Central and Western Mediterranean).¹ However, the systematic character and the degree of violence associated with pushbacks along the Greek-Turkish borders have increasingly raised concerns from human rights monitoring bodies and NGOs.²

At the end of February 2020, just before the onset of the pandemic in Europe, Turkish President Erdoğan announced that Turkey would no longer prevent migrants and asylum seekers from crossing into Europe. Greek authorities responded to this decision with a massive deployment of military and police forces at its eastern land border in the Evros region. In only a few days, thousands of people were prevented from entering by violent means. While the situation de-escalated over the following weeks – with the Turkish government announcing the evacuation of the people still present in the border area due to concerns related to the spread of Covid-19

¹ For a comprehensive review of existing evidence of pushback cases at EU external and internal borders see: European Union Agency for Fundamental Rights (FRA), Migration: Fundamental Rights Issues at Land Borders, November 2020, at p. 18; [https://www.europarl.europa.eu/RegData/courrier_officiel/arrivee/2020/EP-PE_LTA\(2020\)007216_FULL_EN.pdf](https://www.europarl.europa.eu/RegData/courrier_officiel/arrivee/2020/EP-PE_LTA(2020)007216_FULL_EN.pdf); Refugee Rights Europe and End Pushbacks Partnership, “Pushbacks and rights violations at Europe’s borders. The state of play in 2020”, November 2020, <https://endpushbacks.com/wp-content/uploads/2020/11/pushbacks-and-rights-violations-at-europes-borders.pdf> ; Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Displaced Persons, Pushback policies and practice in Council of Europe member States, Report, Doc. 14909, 08 June 2019, <https://pace.coe.int/en/files/27728>

² See, among others, “UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers”, Press release, 21 August 2020, <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Greek Government on the visit to Greece from 13 to 17 March 2020, November 2020, <https://rm.coe.int/1680a06a86>; WeMoveEurope and Oxfam International, Complaint to the European commission concerning infringements of EU law by Greece, 22 September 2020, <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-ec-asylum-greece-eu.pdf>; for further evidence from media sources and other independent observers see also Section 3 below.

– the widespread use of violent pushbacks at both the land and sea borders has continued to shape Greek responses in the months that have followed.

This contribution provides an analysis of policy and legal developments concerning border control, asylum and migration at the Greek-Turkish borders over the last year and assesses their impact on access to protection and asylum seekers' fundamental rights. It argues that the most brutal expressions of refugee containment documented above cannot be seen in isolation from the broader framework of cooperation between the EU and Turkey on migration and its underlying logic of restricting asylum seekers' mobility into the EU.

The 2016 EU-Turkey Statement has repeatedly been presented by EU institutions as a solution to the so-called European refugee crisis, mainly in light of the drop in the number of arrivals to Greece since its launch.³ This contribution challenges this narrative by arguing that a narrow focus on the reduction of arrivals disregards the negative spillover effects produced by the Statement on the respect of fundamental rights and the rule of law in the management of EU external borders.

The analysis carried out in this contribution underlines how the bargaining logic on which cooperation under the Statement is based has incentivised the instrumental use of cross-border movements by Turkey as a way to extract financial concessions from the EU and support its foreign policy objectives in the Middle East. In turn, in a context of rising tensions between Greece and Turkey in the Aegean and Eastern Mediterranean, the Greek government has embraced an increasingly securitised and even militarised approach to border management. Cross-border movements have been framed as a 'threat' to the country's national security, justifying a derogation from EU asylum law and international standards on refugee protection.

The securitised approach to mobility at the Greek-Turkish borders has also impacted the scope and implementation of policy responses adopted to address the Covid-19 pandemic. It has underlined, in particular, how border closures and travel restrictions introduced to limit the spread of the virus have been caught in the same 'blame shifting' and 'blackmailing' strategies that have characterised relations on migration and asylum between Greece and Turkey, rather than being driven exclusively by a public health rationale.

The contribution concludes by arguing that the projection of mobility issues along the Greek-Turkish borders into the realm of foreign policy and inter-state confrontation has heavily impacted the respect of asylum seekers' fundamental rights established by international and EU law, and most notably on the absolute prohibition of *refoulement*. It concludes by recommending that EU institutions take resolute action to prompt national authorities to investigate and prosecute violations of fundamental rights at the external borders. In parallel, it underlines the need to address existing gaps in EU and national human rights oversight and

³ See, for example, European Commission, EU-Turkey Statement. Two years on. April 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf

accountability mechanisms by establishing a comprehensive and robust monitoring system truly independent from states' authorities.

2. Setting the scene: the legacy of the 2016 EU-Turkey Statement

2021 opened with news of a possible rapprochement between the EU and Turkey after a year of escalating geopolitical tensions in the Eastern Mediterranean.

According to media reports, among the issues discussed in the context of this renewed dialogue would be a revision of the 2016 EU-Turkey Statement, as a precondition for a new commitment among the parties on its full implementation.⁴ While the prospect of a relaunch of the EU-Turkey agenda on migration remains unclear at the time of writing, events at the Greek-Turkish land border over 2020 have provided a stark demonstration of the fragile foundations on which previous EU responses have been built.

Under the 2016 EU-Turkey Statement, Turkey committed to prevent new sea or land arrivals to the EU and to accept the return of migrants and asylum seekers arriving on the Greek islands.⁵ In exchange, the EU member states agreed to take a number of actions to support the Turkish government, notably the disbursement of a total of €6 billion through the Facility for Refugees in Turkey (FRT) to support the socio-economic integration of refugees in Turkey, and a pledge to resettle up to a maximum of 72,000 Syrians refugees from Turkey.

The Statement also includes a set of commitments in areas of interest to Turkey that are not directly related to the management of refugee issues. Specifically, EU member states committed to accelerate the visa liberalisation process for Turkish citizens, to upgrade the EU-Turkey Custom Union, and re-energise the Turkish accession process into the EU. Reflecting a long-standing Turkish strategic priority, the Statement also includes a commitment to support the improvement of humanitarian conditions in Syrian regions near the Turkish border, so as to allow for the local population and returning refugees to live safely in those areas.

The EU-Turkey Statement raises issues of legality and democratic accountability since it is not a fully fledged international agreement but a political declaration which has been presented in the guise of a European Council 'press release'. As underlined by scholars, this ambiguous legal status prevents democratic scrutiny by the European Parliament and judicial control by the Court of Justice of the EU, raising concerns about the compatibility of the Statement with the EU Treaty principles of interinstitutional balance and sincere and loyal cooperation.⁶

⁴ J. Barigazzi, "Turkish Foreign Minister: New EU Sanctions 'will ruin everything'", Politico Europe, 23 January 2021, <https://www.politico.eu/article/turkish-foreign-minister-new-eu-sanctions-will-ruin-everything/#>

⁵ European Council Press Release, EU-Turkey statement, 18 March 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

⁶ S. Carrera, L. den Hertog and M. Stefan (2019), "The EU-Turkey deal: reversing 'Lisbonisation' in EU migration and asylum policies", in S. Carrera, J. Santos Vara and T. Strik (eds), *Constitutionalising the external dimensions of EU migration policies in times of crisis. Legality, rule of law and fundamental rights reconsidered*, Cheltenham: Edward Elgar.

On a substantive level, the human rights challenges stemming from the Statement's design and practical implementation in Turkey and Greece have been widely documented. The 'return component' of the Statement depends on the assessment of Turkey as a safe third country for the purpose of returning Syrian refugees, an assumption that has been questioned by human rights institutions⁷, NGOs⁸, as well as by the majority of legal scholars.⁹

Under the Statement, the freedom of movement of asylum seekers arriving on the Greek islands by sea has been severely restricted with a view to facilitating their return to Turkey under a fast-track asylum border procedure.¹⁰ In spite of this expectation, the practice of 'geographical restriction' has led to significant overcrowding of so-called hotspot facilities on the Greek islands and a progressive deterioration of reception conditions.¹¹ Following the outbreak of Covid-19 in early 2020, human rights organisations raised alarms about the possible consequences of a spread of the virus in the reception facilities on the islands, calling on Greek authorities and EU institutions to take urgent measures, including evacuating those facilities.¹²

The impact of the EU-Turkey Statement on the respect of fundamental rights and the rule of law in the EU, however, is not limited to issues described above. The bargaining logic that lies at the origin of the Statement has favoured a spillover of migration and asylum issues in the realm of 'high politics', whose long-term implications are worth further consideration. The deal was negotiated in a crisis atmosphere on the assumption that 'time was running out' and that mobility along the Eastern Mediterranean route needed to be contained to avoid major repercussions on the EU legitimacy and the internal stability of its member states.¹³ As

⁷ Parliamentary Assembly of the Council of Europe, The situation of refugees and migrants under the EU–Turkey Agreement of 18 March 2016, Resolution 2109 (2016).

⁸ See ECRE strongly opposes legitimising push-backs by declaring Turkey a "safe third country", 29 January 2016, <https://www.ecre.org/ecre-strongly-opposes-legitimising-push-backs-by-declaring-turkey-a-safe-third-country/>; Amnesty International, Sent to a war zone: Turkey's illegal deportations of Syrian refugees, 2019, <https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf>

⁹ S. Carrera and E. Guild, *EU-Turkey plan for handling refugees is fraught with legal and procedural challenges*. CEPS Commentary, 2016, <https://www.ceps.eu/ceps-publications/eu-turkey-plan-handling-refugees-fraught-legal-and-procedural-challenges/>; S. Peers and E. Roman, The EU, Turkey and the refugee crisis: what could possibly go wrong?" *EU Law Analysis Blog*, 5 February 2016, <http://eulawanalysis.blogspot.com/2016/02/the-eu-turkey-and-refugee-crisis-what.html>. For an analysis of legal issues raised by the EU-Turkey Statement see N. Feith Tan and J. Vedsted-Hansen (2021, forthcoming), "Inventory and Typology of EU arrangements with third countries. Instruments and actors", ASILE Working Paper, p. 17.

¹⁰ C. Ziebritzki and R. Nestler, "Implementation of the EU-Turkey Statement: EU hotspots and restriction of asylum seekers' freedom of movement", *EU Immigration and Asylum Law and Policy Blog*, 22 June 2018, <https://eumigrationlawblog.eu/implementation-of-the-eu-turkey-statement-eu-hotspots-and-restriction-of-asylum-seekers-freedom-of-movement/>

¹¹ AIDA, Country Report: Greece, 2019 Update, <https://www.asylumineurope.org/reports/country/greece>

¹² Médecins sans Frontières, "Evacuation of squalid Greek camps more urgent than ever over COVID-19 fears", Press Release 12 March 2020, <https://www.msf.org/urgent-evacuation-squalid-camps-greece-needed-over-covid-19-fears>

¹³ On the use of 'crisis labelling' as a routine practice for handling migration-related events at the EU external borders and for securing political consent to the adoption of emergency and exceptional measures see J.

underlined by international relations scholars studying the dynamics of ‘migration diplomacy’,¹⁴ the EU priority to reduce flows at all costs allowed Turkey to put in place a strategy of coercive bargaining towards the EU, resting on the ‘threat’ (or actual generation) of cross-border movements as a way to achieve a set of previously formulated objectives.¹⁵

Since the launch of the Statement, Turkey has linked its commitment to the Statement with its foreign policy agenda in the Middle East and, specifically, its growing political and military involvement in the Syrian conflict. Specifically, Turkey has repeatedly linked the continuation of the Statement to EU support for its plan to return Syrian refugees currently in Turkey to a ‘safe zone’ under Turkish control in northern Syria.¹⁶

The Turkish government’s decision to ‘open the border’ with Greece in February 2020 was underpinned by the additional objective of securing European diplomatic support for its military operation ‘Spring Shield’ launched in February 2020 to counter the offensive of Syrian forces in the Syrian northwest province of Idlib.¹⁷ Threats to discard the Statement (usually accompanied by harsh anti-EU rhetoric) have also served Erdoğan’s objective of diverting domestic public opinion’s attention away from the difficulties experienced by the government on the Syrian front.¹⁸

At the same time, disputes over the implementation of the EU-Turkey Statement cannot be seen in isolation from the increasingly tense bilateral relationship between Greece and Turkey in the eastern Mediterranean region. Conflicts between the two countries escalated in 2019 following Ankara’s decision to start hydrocarbon drilling operations within Cyprus’ territorial waters.¹⁹ In November 2019, Greece also vehemently opposed the signing of a Memorandum

Jeandesboz and P. Pallister-Wilkins (2014), “Crisis, enforcement and control at the EU borders”, in A. Lindley (ed), *Crisis and Migration: Critical Perspectives*, London: Routledge, pp. 115–135.

¹⁴ F. B. Adamson and G. Tsurapas, “Migration diplomacy in world politics”, *International Studies Perspectives* 20(2) (2019):113-128.

¹⁵ K. M. Greenhill (2016), “Open arms behind barred doors: fear, hypocrisy and policy schizophrenia in the European migration crisis”, *European Law Journal* Vol. 22, No. 3, pp. 317–332; G. Tsouparas, “The Syrian refugee crisis and foreign policy decision-making in Jordan, Lebanon and Turkey”, *Journal of Global Security Studies*, Vol. 4, No. 4, pp. 464–481.

¹⁶ S. Adar, “Repatriation to Turkey’s ‘Safe Zone’ in Northeast Syria”, SWP Comment 2020/C 01, <https://www.swp-berlin.org/en/publication/repatriation-to-turkeys-safe-zone-in-northeast-syria/>

¹⁷ S. Adar, S. Angenendt, M. Asseburg, R. Bossong, D. Kipp, *The refugee drama in Syria, Turkey, and Greece: why a comprehensive approach is needed*, SWP Comment No. 16 April 2020, https://www.swp-berlin.org/fileadmin/contents/products/comments/2020C16_RefugeeDrama.pdf

¹⁸ A. Aydıntaşbaş, “Erdogan’s refugee gambit”, Commentary European Council on Foreign Relations, 6 March 2020, https://www.ecfr.eu/article/commentary_erdogans_refugee_gambit

¹⁹ Council of the EU Press release, “Turkey’s illegal drilling activities in the Eastern Mediterranean: Council adopts framework for sanctions”, 11 November 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/11/11/turkey-s-illegal-drilling-activities-in-the-eastern-mediterranean-council-adopts-framework-for-sanctions/>

of Understanding between Turkey and the Libyan Government of National Accord concerning the delimitation of the maritime jurisdiction areas in the Mediterranean.²⁰

In a geopolitical context marked by rising tensions, the movements of asylum seekers and migrants across the borders with Turkey were presented by Greek authorities as an integral component of Turkey's ongoing attempt to destabilise the country.²¹ As described in the next section, the framing of cross-border movements as an instance of 'hybrid warfare'²² has legitimised the adoption of conduct and measures that overtly violate EU and international standards on human rights and refugee protection. This fact, far from being merely a national issue, raises a number of pressing questions about the adherence of EU migration and asylum policies to international protection standards, most notably the right of asylum.

3. Systematic pushbacks at the Greek-Turkish borders and the EU response

On 28 February 2020, Turkish President Erdoğan announced the decision to allow refugees and migrants to freely cross the land border with Greece. While Turkey's Interior Minister Süleyman Soylu announced on March 1st that around 76,000 people were heading to Greece,²³ international organisations including UNHCR and IOM estimated that around 13,000 people had gathered at the border crossing points of Pazarkule and Ipsala.²⁴ As reported by media and independent observers, Turkish authorities proactively facilitated migrants' movements to the border areas by providing free bus transportation and instructing migrants to walk towards the Evros river.²⁵

²⁰ H. J. Barkey, "Turkey-Libya Mediterranean deal is about energy and extending Ankara's influence", *Euractiv*, 10 December 2019, <https://www.euractiv.com/section/energy/opinion/turkey-libya-mediterranean-deal-is-about-energy-and-extending-ankaras-influence/>; D. Butler and T. Gumrukcu, "Turkey signs maritime boundaries deal with Libya amid exploration row", *Reuters*, 28 November 2019, <https://www.reuters.com/article/us-turkey-libya/turkey-signs-maritime-boundaries-deal-with-libya-amid-exploration-row-idUSKBN1Y213I>; T. Allinson, M. Hussein, "Turkey-Libya maritime deal triggers Mediterranean tensions", *DW*, 29 November 2019, <https://www.dw.com/en/turkey-libya-maritime-deal-triggers-mediterranean-tensions/a-51477783>

²¹ See A. Skordas, "The Twenty-Day Greek-Turkish Border Crisis and Beyond: Geopolitics of Migration and Asylum Law (Part I)", *EU Immigration and Asylum Law and Policy*, 5 May 2020, <https://eumigrationlawblog.eu/the-twenty-day-greek-turkish-border-crisis-and-beyond-geopolitics-of-migration-and-asylum-law-part-i/>

²² D. Fiott and R. Parkes, "Protecting Europe. The EU's response to hybrid threats", Chailot Paper / 151 April 2019, European Union Institute for Security Studies, https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_151.pdf

²³ M. Stevis-Gridneff, "Greece suspends asylum as Turkey opens gates for migrants", *The New York Times*, 1 March 2020, <https://www.nytimes.com/2020/03/01/world/europe/greece-migrants-border-turkey.html>

²⁴ IOM, *More than 13,000 Migrants Reported Along the Turkish-Greek Border*, Presse Release 1 March 2020, <https://www.iom.int/news/more-13000-migrants-reported-along-turkish-greek-border>

²⁵ M. Stevis-Gridneff and C. Gall, "Erdogan Says, 'We opened the doors,' and clashes erupt as migrants head for Europe", *The New York Times*, 1 March 2020, <https://www.nytimes.com/2020/02/29/world/europe/turkey-migrants-eu.html>; DW, "Over 13,000 migrants gather on Turkey-Greece border", 29 February 2020, <https://www.dw.com/en/over-13000-migrants-gather-on-turkey-greece-border/a-52593052>; Amnesty International, "Caught in a political game: asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe's failures", 2020, <https://www.amnesty.org/en/documents/eur01/2077/2020/en/>

Greek authorities reacted by stepping up joint military and police operations along the (already heavily militarised) Evros land border. Accounts of the events by authoritative sources and independent observers show how Greek forces resorted to an indiscriminate use of force against people at the border, including beatings with truncheons, use of water cannons, tear gas, rubber bullets and even live ammunition. On the other side of the border, Turkish forces also provoked violent incidents by firing volleys of tear gas onto the Greek territory, setting fire to and dismantling the border fence.²⁶

The most disquieting aspect of the events was the alleged use of live ammunition against asylum seekers by Greek forces, an accusation that has been repeatedly dismissed as “fake news” by the Greek government.²⁷ Cases were also reported of people being held in unofficial detention facilities before being pushed back to Turkey.²⁸ Allegedly, arrests were conducted not only by members of the police, the Greek Coast Guard and the Greek army but also by people in civilian clothes operating alongside Greek police authorities.²⁹ These accounts confirm past evidence of systematic use of extra-judicial detention by Greek authorities and the involvement of paramilitary groups in informal arrests and returns.³⁰

The Greek government justified the actions taken by stating that the country “came under an illegal, mass and orchestrated attempt to raze our borders” adding that Greek authorities “stood up protecting not only our frontiers, but those of Europe too”.³¹ The same line of reasoning was also reflected in the decree adopted by the Greek government on March 2nd, suspending the possibility to lodge asylum applications for one month. The decree justified the suspension of asylum applications with reference to “The extraordinary circumstances of the urgent and unforeseeable necessity to confront *an asymmetrical threat* to the national security, which prevails over the reasoning for applying the rules of EU law and international law on asylum procedures [...]’ (emphasis added).³²

²⁶ Stevis-Gridneff & Gall, op. cit.; Amnesty International, op. cit., p. 4; L. Papadimas, “Teargas fired on Greek-Turkish border as migrant tensions flare”, Reuters, 7 March 2020, <https://www.reuters.com/article/us-syria-security-greece-idUSKBN20UOAV>

²⁷ G. Christides, S. Lüdke and M. Popp, “The killing of a migrant at the Greek-Turkish border”, *Spiegel International*, 8 May, 2020, <https://www.spiegel.de/international/europe/greek-turkish-border-the-killing-of-muhammad-gulzar-a-7652ff68-8959-4e0d-9101-a1841a944161>.

²⁸ M. Stevis-Gridneff, P. Kingsley, H. Willis, M. Browne and S. Almkhatar, “‘We are like animals’: inside Greece’s secret site for migrants”, *The New York Times*, 10 March 2020, <https://www.nytimes.com/2020/03/10/world/europe/greece-migrants-secret-site.html>

²⁹ Amnesty International, op. cit., p. 8.

³⁰ A. Drakopoulou, A. Konstantinou, and D. Koros, “Border management at the external Schengen Borders: border controls, return operations, and obstacles to effective remedies in Greece”, in S. Carrera and M. Stefan (eds) (2020), *Fundamental Rights Challenges in Border Controls and Expulsion of Irregular Immigrants in the European Union. Complaint Mechanisms and Access to Justice*, Abingdon: Routledge.

³¹ Stevis-Gridneff & Gall, op. cit.

³² Act of Legislative Content, Suspension of the submission of asylum applications, 2 March 2020 (English translation), <http://odysseus-network.eu/news/translation-of-the-greek-decree-on-asylum-at-the-turkish-border-in-english/>

The immediate response of EU institutions to Greece's hardline approach was that of avoiding any explicit condemnation of episodes of ill-treatment and abuses of migrants and asylum seekers. On 3 March 2020, the President of the Commission Ursula von der Leyen visited the Greek-Turkish and Bulgarian-Turkish borders.³³ Von der Leyen expressed gratitude to the Greek authorities "for being our European *aspida* [shield] in these times", adding that "Those who seek to test Europe's unity will be disappointed. We will hold the line and our unity will prevail".³⁴

Following a visit on 9 March 2020 to Brussels, President Erdoğan indicated Turkey's willingness to step back from confrontation.³⁵ As a result, the number of attempted border crossings dropped to a few hundred a day in the second week of March. On March 18th, as part of their efforts to contain the spread of Covid-19, the Turkish government announced the closure of its land border with Greece and started the evacuation of 5,800 persons still in the border region to closed facilities in nine Turkish provinces.³⁶ Nevertheless, the Turkish Minister of Interior indicated that this move did not mean any change to Turkey's policy and that the government had no intention of preventing anyone who wished to leave Turkey from doing so.³⁷

The rapid de-escalation of the situation at the Evros land border did not in any case restore respect for EU asylum standards at the Greek land and sea borders. Over the following months, civil society organisations and independent observers reported increasing use of different pushback practices by the Greek authorities and unidentified paramilitaries. Several episodes were documented of asylum seekers who had previously reached the Greek islands being placed into inflatable life rafts resembling 'floating tents' and then being left to drift out to sea until they were rescued by the Turkish Coast Guard.³⁸ Media also collected evidence of Greek coast guard forces deliberately sabotaging refugees' and migrants' boat engines and leaving them to drift as a way to push them back to Turkey.³⁹ In a complaint filed to the European Commission in September 2020 concerning violations of EU asylum law by Greece, Oxfam International concluded that over the year "the Greek government dramatically increased the

³³ N. Stamouli and D. M. Herszenhorn, "EU leaders deploy to help Greece seal Turkish border", *Politico Europe*, 3 March 2020, <https://www.politico.eu/article/eu-leaders-deploy-to-help-greece-seal-turkish-border/>

³⁴ Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel, 3 March 2020, https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380

³⁵ M. Stevis-Gridneff and P. Kingsley, "Turkey steps back from confrontation at Greek border", *The New York Times*, 13 March 2020, <https://www.nytimes.com/2020/03/13/world/europe/turkey-greece-border-migrants.html>

³⁶ UNHCR Turkey, *March Operational Update*, <https://data2.unhcr.org/en/documents/details/75972>

³⁷ European Commission, *Turkey 2020 Report Accompanying the Communication 2020 Communication on EU Enlargement Policy*, Brussels, 6.10.2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

³⁸ N. Keady-Tabbal and I. Mann, "Tents at sea: how Greek officials use rescue equipment for illegal deportations", *Just Security*, 22 May 2020, <https://www.justsecurity.org/70309/tents-at-sea-how-greek-officials-use-rescue-equipment-for-illegal-deportations/>

³⁹ B. Schülke-Gill, J. Bayer, "Greece: refugees attacked and pushed back in the Aegean", *DW*, 29 June 2020 <https://www.dw.com/en/greece-refugees-attacked-and-pushed-back-in-the-aegean/a-53977151>

number of pushbacks, but also intensified the level of violence against those seeking protection”.⁴⁰

4. Covid-19 border and asylum measures: the impact on asylum-seekers’ mobility and access to protection

The enactment of restrictive measures by both Greek and Turkish authorities to address the Covid-19 pandemic has contributed to further restrict access international protection at the Greek-Turkish borders. According to data provided by Frontex, in April, May and June 2020, irregular crossings along the eastern Mediterranean route experienced the biggest drop since at least 2009. The agency reported a general downward trend of irregular crossings into Europe in 2020 compared to the previous years due to the effects of the Covid-19 pandemic.⁴¹ The European Asylum Support Office (EASO) indicated that while irregular movements in the eastern Mediterranean during the first three months of 2020 experienced an increase compared to the same period of 2019, “in March Covid-19 measures came into force and the border was effectively closed”.⁴²

Cross-border mobility restrictions have been an integral component of European states’ responses to the pandemic. Measures adopted by EU member states have taken the form of internal border checks (within the Schengen area), international traffic restrictions, intra-EU travel bans and extra-EU travel bans on third country nationals. This range of ad hoc and unilateral measures initially produced an overlapping web of mobility restrictions lacking any coordination at the EU level.⁴³

On 16 March 2020, the Commission reacted to these developments by issuing a Communication on a “Temporary Restriction on Non-Essential Travel to the EU”, which was endorsed by the European Council the day after.⁴⁴ In its guidance on the implementation of the restriction, released a few days later, the Commission clarified that refusal of entry should

⁴⁰ Complaint to the European Commission concerning infringements of EU law by Greece on behalf of WeMoveEurope and Oxfam International 22 september 2020, p. 40 <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-ec-asylum-greece-eu.pdf>

⁴¹ Frontex news release, Situation at EU external borders – Arrivals down in first half of 2020, 13 July 2020, <https://frontex.europa.eu/media-centre/news-release/situation-at-eu-external-borders-arrivals-down-in-first-half-of-2020-UdNxM5>; Irregular migration into EU last year lowest since 2013 due to COVID-19, 8 January 2021, <https://frontex.europa.eu/media-centre/news/news-release/irregular-migration-into-eu-last-year-lowest-since-2013-due-to-covid-19-j34zp2>

⁴² EASO Special Report: Asylum Trends and COVID-19, *PUBLIC* Issue 2, 11 June 2020, p.5, <https://easo.europa.eu/sites/default/files/easo-special-report-asylum-covid-june-2020.pdf>

⁴³ S. Carrera and N. C. Luk, “Love Thy Neighbour? Coronavirus politics and their impact on EU freedoms and rule of law in the Schengen Area”, CEPS Paper in Liberty and Security in Europe series, No. 2020-04, April 2020, <https://www.ceps.eu/ceps-publications/love-thy-neighbour/>

⁴⁴ Communication from the Commission to the European Parliament, the European Council and the Council. Covid-19: temporary restriction on non-essential travel to the EU. COM (2020) 115 final; Conclusions by the President of the European Council following the video conference with members of the European Council on COVID-19, Statements and remarks 164/20 17/03/2020.

exempt persons in need of international protection or for other humanitarian reasons, respecting the principle of non-refoulement.⁴⁵ As underlined by previous analysis, however, the majority of EU member states (including Greece) has not explicitly exempted asylum seekers from Covid-19 entry bans and border closures adopted under their national legislation, despite the recommendations of the UNHCR and the Commission in this regard.⁴⁶

In parallel with travel restrictions, at the onset of the pandemic, a number of member states announced a general or partial closure of their asylum services, *de facto* preventing asylum seekers from accessing the asylum procedure. This is the case of Greece, which on 13 March 2020 announced a general suspension of the Greek national asylum service, which was then extended until May 18th.⁴⁷ According to a report from EASO, during the period of suspension of the asylum service, the 'intention' of newly arrived asylum seekers to apply for asylum was recorded by the police authorities at the borders.⁴⁸ Civil society actors expressed concerns for the generalised suspension of asylum services, denouncing it as a continuation of the previous decision by Greek authorities to shut down asylum procedures for one month as a response to events at the land border with Turkey.⁴⁹

Measures to address the Covid-19 outbreak resulted in a *de facto* suspension of the implementation of the EU-Turkey Statement. Resettlement from Turkey to Greece was put on hold, in line with a general suspension of resettlement-related travel announced by UNHCR and

⁴⁵ Communication from the Commission. Covid-19 Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy, C(2020) 2050 final.

⁴⁶ Carrera & Luk, *op. cit.*, p. 85; UNHCR, Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic, 9 April 2020, <https://data2.unhcr.org/en/documents/details/75453>.

⁴⁷ Infomigrants, Greece: Asylum service reopens after 11-week pause, 19 May 2020, <https://www.infomigrants.net/en/post/24843/greece-asylum-service-reopens-after-11-week-pause>; Hellenic Republic Ministry of Migration and Asylum, Important announcement of Greek asylum service. Temporary suspension of administrative services to the public, 13 March 2020, <http://asylo.gov.gr/wp-content/uploads/2020/03/Announcement-Suspension-of-Services-to-the-Public-English.pdf>; Important announcement of Greek asylum service. Temporary suspension of administrative services to the public, 10 April 2020, <http://asylo.gov.gr/en/wpcontent/uploads/2020/04/%CE%B3%CE%B1%CE%BB%CE%BB%CE%B9%CE%BA%CE%AC.pdf>

⁴⁸ EASO, COVID-19 emergency measures in asylum and reception systems, 2 June 2020, p. 10, <https://www.easo.europa.eu/sites/default/files/covid19-emergency-measures-asylum-reception-systems.pdf>

⁴⁹ C. Woollard, "Europe Covid-19: reaching the bottom or rising above", ECRE Weekly Editorial, 3 April 2020, <https://www.ecre.org/europe-covid-19-reaching-the-bottom-or-rising-above/>; for a critical assessment of recent legislative developments in the field of asylum in Greece see Greek Council for Refugees and Oxfam, "Diminished, derogated, denied. How the right to asylum in Greece is undermined by the lack of EU responsibility sharing", Report, July 2, 2020, <https://www.oxfam.org/en/research/diminished-derogated-denied-how-right-asylum-greece-undermined-lack-eu-responsibility>

IOM.⁵⁰ In parallel, Turkish authorities announced the suspension of readmission of migrants and asylum seekers from Greece.⁵¹

The interruption of return activities has been formally attributed to the practical difficulties experienced by Turkish authorities as a result of Covid-19. It should be remembered, however, that returns of asylum seekers and migrants have experienced major obstacles since the launch of the Statement. From April 2016 to March 2020, only 2,140 returns had been carried out, of which 404 were Syrians.⁵² The limited progress on returns is partly the result of legal hurdles associated with the application of the ‘safe third country notion’ to Turkey.⁵³ In addition, however, observers have pointed to the diminished ‘appetite’ of the Turkish government for returns, not least due to the growing geopolitical distance with the EU since the failed coup attempt in the country in July 2016.⁵⁴

An assessment of the long-term impact of EU and national measures to counter the spread of Covid-19 on cross-border mobility of asylum seekers across the Greek-Turkish borders is beyond the scope of this contribution. Research exploring the impact of Covid-related measures on the right to seek asylum in different geographical settings (including the United States and Australia) has pointed to the risk that Covid-19 emergency measures may “harden into permanence”. The same authors have pointed to already visible signs that a number of states (including those in the European context) are exploiting emergency measures to legitimise containment measures that would have been considered unfeasible in normal times.⁵⁵

⁵⁰ UNHCR press release, IOM, UNHCR announce temporary suspension of resettlement travel for refugees, 17 March 2020, <https://www.unhcr.org/news/press/2020/3/5e7103034/iom-unhcr-announce-temporary-suspension-resettlement-travel-refugees.html?fbclid=IwAR0o7YK3YcGvHdWnHypI0TsipgM3WpnL1gPoqmfnyuh00yYS2-upMDsBPqk>

⁵¹ Republic of Turkey, Ministry of Foreign Affairs, QA-22, 13 April 2020, Statement of the Spokesperson of the Ministry of Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Claims of Greek Minister for Migration and Asylum Notis Mitarachi in Ethos Newspaper, http://www.mfa.gov.tr/sc_-22_-yunanistan-goc-bakani-nin-iddialari-hk-sc.en.mfa; As reported by the Greek government, in January 2021 Turkey had not yet accepted to resume returns from Greece under the Statement. See Hellenic Republic, Ministry of Migration and Asylum, Greek request towards the EU, regarding the immediate return of 1.450 third country citizens, on the basis of the EU-Turkey Joint Statement, 14 January 2021, <https://migration.gov.gr/en/aitima-gia-enarksi-epistrofon-se-toyrkia/>

⁵² UNHCR, Returns from Greece to Turkey, 31 March 2020, <https://data2.unhcr.org/en/documents/download/75075>

⁵³ M. Gkliati, “The Application of the EU-Turkey Agreement: a critical analysis of the decisions of the Greek Appeals Committees”, *European journal of legal studies*, 10(1), pp. 80-123.

⁵⁴ T. Lay, *The EU-Turkey refugee deal: a Greek myth*, Free movement, 7 June 2019, <https://www.freemovement.org.uk/eu-turkey-refugee-deal-greek-myth/>; M. Ineli-Ciger and O. Ulusoy, “Why the EU-Turkey Statement should never serve as a blueprint”, ASILE Project Blog, 7 October 2020, <https://www.asileproject.eu/why-the-eu-turkey-statement-should-never-serve-as-a-blueprint/>

⁵⁵ D. Ghezelbash and N. Feith Tan, “The end of the right to seek asylum? COVID-19 and the future of refugee protection”, EUI Working Papers, 2020/55, p.8 <https://cadmus.eui.eu/handle/1814/68175>

Developments at the Greek-Turkish borders discussed in this contribution confirm this preliminary assessment. While Covid-19 measures (such as travel restrictions and suspension of asylum procedures) are supposedly driven exclusively by a public health rationale, those same measures have inevitably ended up interacting with the internal security and migration management objectives of both Greece and Turkey. In the short term, those measures acted as an additional ‘layer’ of containment, reinforcing increasingly restrictive approaches towards people seeking protection by Greek authorities and legitimising attempts at evading EU and international asylum standards.

5. Accessing international protection at the EU’s south-eastern borders: geopolitics vs fundamental rights

As pointed out in the previous section, the clampdown on asylum seekers trying to cross the border with Turkey between February and March 2020 was framed by Greek authorities as a necessary and legitimate response to Turkey’s “weaponisation” of cross border mobility as a means to promote geopolitical objectives.

The Greek government has on numerous occasions mentioned cross-border movements as one of the security challenges the country was facing in the eastern Mediterranean as a consequence of Turkey’s aggressive foreign policy.⁵⁶ In November 2020, an extraordinary meeting of the Management Board of the Frontex Agency convened to address repeated allegations of pushbacks in the Aegean Sea pointing to the need to address “concerns raised by Member States about ‘hybrid threats’ affecting their national security at external borders”.⁵⁷

The assumption that fundamental rights of asylum seekers and migrants at the border may be systematically violated – through excessive use of force, ill-treatment, arbitrary detention expulsion – on the basis of a perceived threat to national security stands at odds with established state obligations under both international, regional and EU human rights and refugee law.⁵⁸

Refusal of entry and expulsion of individuals from a state territory without an individualised assessment of their protection needs expose individuals to the risk of being returned to a country where they could face the risk of persecution or inhuman and degrading treatment. As such, they constitute a violation of *non-refoulement*, the cornerstone of the international

⁵⁶ See, for example, the intervention of Greek Minister of Citizen Protection Michalis Chrisochoidis at the LIBE Committee meeting of 06 July 2020 “Exchange of views concerning Greek/Turkish border and respect for fundamental rights”, https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200706-1645-COMMITTEE-LIBE_vd

⁵⁷ European Commission, Press Release, Extraordinary meeting of Frontex Management Board on the alleged push backs on 10 November 2020, 11 November 2020, https://ec.europa.eu/home-affairs/news/extraordinary-meeting-frontex-management-board-alleged-push-backs-10-november-2020_en

⁵⁸ A. Dicle Ergin, “What Happened at the Greece-Turkey Border in early 2020? A Legal Analysis”, Verfassungsblog, 30 September 2020, <https://verfassungsblog.de/what-happened-at-the-greece-turkey-border-in-early-2020/>; FRA, Migration: Fundamental Rights issues at the border, 8 December 2020, p. 18.

protection regime. Pushbacks may also result in returning refugees to another country which would not effectively protect them against onward transfer to an unsafe context (so-called indirect or ‘chain’ refoulement).⁵⁹

The *non-refoulement* principle is also a key tenet of the system established under the European Convention on Human Rights (ECHR) (in Article 2 and 3). The obligation of *non-refoulement* under the ECHR is absolute: it does not allow for derogation, exception or limitation, even in situations of a large-scale arrival of migrants at borders⁶⁰ or in the context of a health emergency such as the one represented by the Covid-19 pandemic.⁶¹

The practice of pushbacks also contravenes the prohibition of collective expulsion of aliens enshrined in Article 4 Protocol No. 4 of the European Convention on Human Rights (ECHR), which requires an assessment of the personal circumstances of each individual subject to expulsion. Such prohibition constitutes a corollary of the *non-refoulement* principle as it grants every individual the possibility to assert the existence of a risk of treatment that is incompatible with the Convention in case of expulsion from a state’s territory.⁶² Greece has not signed or ratified Protocol No. 4, which means that it cannot be held accountable before the European Court of Human Rights for violations of provisions included in the said Protocol.⁶³

As an EU member state, however, Greece is bound by the EU Charter of Fundamental Rights, including the obligation to respect the right to asylum (Article 18) and the prohibition of collective expulsions (Article 19). Pushback practices are also incompatible with obligations stemming from the EU asylum *acquis*. The EU Asylum Procedures directive provides that whenever an application for international protection is made (including at the border) access to an asylum procedure is to be granted (Article 6). Member states are also required to provide asylum applicants held in detention facilities or present at border crossing points at external borders with information on the possibility to lodge an application for international protection and ensure that organisations providing advice and counselling have access to applicants present at border crossing points (Article 8).⁶⁴

⁵⁹ European Union Agency for Fundamental Rights, Council of Europe (2020), *Fundamental rights of refugees, asylum applicants and migrants at the European borders*, p. 5, https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2020-european-law-land-borders_en.pdf

⁶⁰ *Ibid.*, p.7.

⁶¹ UNHCR, Key legal considerations on access to territory for persons in need of international protection in the context of the COVID-19 response, 16 March 2020, <https://www.refworld.org/docid/5e7132834.html>

⁶² European Court of Human Rights, *Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights, Prohibition of collective expulsions of aliens*. Updated on 31 December 2020, https://www.echr.coe.int/Documents/Guide_Art_4_Protocol_4_ENG.pdf: For an analysis of recent ECtHR case law concerning the scope of application of Article 4 Protocol 4 in case of large arrivals of people at the border see S. Carrera “The Strasbourg Court Judgement N.D and N.T v Spain. A Carte Blanche to Push Backs at EU external borders?”, EUI Working Paper, 2020, https://cadmus.eui.eu/bitstream/handle/1814/66629/RSCAS%202020_21.pdf?sequence=1&isAllowed=y

⁶³ M. İneli Cığır (2020 forthcoming), “An analysis of the European Court of Human Rights Judgement in the case of N.D and N.T. v. Spain”, *Law & Justice Review*.

⁶⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), L 180/60, 29.6.2013.

While the Asylum Procedures Directive allows for the possibility to transfer an asylum seeker to a “safe country of asylum” (Article 35) or a “safe third country” (Article 38), these concepts should be applied within the framework of a formal procedure granting an individual the opportunity to be heard and to rebut the presumption of safety on his or her particular case.⁶⁵

Similarly, EU legislation in the field of border control and return requires that all decisions concerning refusal of entry at the border and removals should be assessed on a case-by-case basis taking account of the personal circumstances of each individual.⁶⁶ As underlined by the FRA, failure to respect such safeguards would result in a violation of procedural requirements deriving from the principle of *non-refoulement*.⁶⁷

In spite of the position taken by the Greek government in March 2020, the scope for derogation from substantive and procedural obligations outlined above based on emergency or security-related considerations is limited under EU law. The Greek government initially invoked Article 78(3) of the TFEU (Treaty on the Functioning of the European Union) to justify the suspension of asylum procedure for one month. As underlined by UNHCR (among others), however, Article 78(3) only envisages the possibility for the Council (based on a proposal from the Commission) to adopt provisional measures in support of a member state confronted with a sudden inflow of third country nationals. It does not under any circumstances allow a derogation from key fundamental rights standards (including the principle of *non-refoulement* and the right of asylum) established by EU law.⁶⁸

In a 2020 judgment concerning the failure of Poland, Hungary and the Czech Republic to comply with their obligations under the 2015 temporary relocation mechanism, the Court of Justice of the European Union (CJEU) concluded that the possibility to derogate from the application of EU law for reasons related to the maintenance of law and order and the safeguarding of internal security granted by TFEU Article 72 must be applied strictly.⁶⁹ Legal scholars have also argued that TFEU Article 72 only allow to derogate from secondary EU legislation in the field of

⁶⁵ UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016. See also Feith Tan & Vedsted-Hansen, “Inventory and Typology of EU Arrangements with Third Countries”, p. 19.

⁶⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), Art. 4; Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Recital 6.

⁶⁷ FRA, Migration: Fundamental Rights Issues at Land Borders, November 2020, p. 21.

⁶⁸ UNHCR statement on the situation at the Turkey-EU border, 2 March 2020, <https://www.unhcr.org/news/press/2020/3/5e5d08ad4/unhcr-statement-situation-turkey-eu-border.html>

⁶⁹ The Court further added that member states are not allowed to decide unilaterally to derogate from EU law based on law and order considerations without any control from EU institutions. Court of Justice of the European Union, judgement — European Commission v Republic of Poland, Commission v Hungary, Commission v Czech Republic (Joined Cases C-715/17, C-718/17 and C-719/17), 2 April 2020, par. 144-147.

migration and asylum and not from absolute obligations under the EU Charter of Fundamental Rights (such as the right of asylum and principle of *non-refoulement*).⁷⁰

5.1 Gaps in EU fundamental rights accountability mechanisms

Besides the direct responsibilities of Greek authorities, mounting evidence of human rights violations at the Greek-Turkish borders calls into question the responsibility of the EU for tacitly accepting those violations. As already underlined, EU institutions failed to firmly condemn episodes of violence at the Evros border in early 2020. Later on, in July 2020, in the face of increasing reports of pushbacks in the Aegean, members of the LIBE Committee of the European Parliament called on the European Commission to uphold its role as ‘Guardian of the Treaties’ and ensure that Greek authorities comply with EU legislation on asylum, urging it to condemn the use of violence and impose sanctions if the breaches were confirmed.⁷¹

Measures directed at addressing the potential breach of fundamental rights in the treatment of people seeking asylum at Europe’s borders were included by the Commission within the New Pact on Migration and Asylum presented in September 2020. Proposed legislation would require each member state to establish an “Independent Mechanism for monitoring fundamental rights” which, however, seems to only address potential violations by state authorities in the context of the pre-entry screening procedures of migrants and asylum seekers at the external borders.⁷² The limited scope of the proposed mechanism casts doubt on its effectiveness to address illegal practices carried out in remote areas and those purposefully designed to escape accountability.⁷³

The involvement of the EU agency Frontex at the Greek-Turkish border also raises specific concerns from a fundamental rights perspective. On 1 March 2020, following the events at the Greek border, upon a request from the Greek government, the agency launched two Rapid Border Intervention Teams (RABITs) at both the Greek land and sea borders, stepping up its already substantial presence in the country.⁷⁴

⁷⁰ A. Pertsch, J. Püschmann, “First order, then humanity. On the involvement of Frontex at the Greek border”, 25 March 2020, [Verfassungsblog](https://verfassungsblog.de/first-order-then-humanity/), 25 March 2020, <https://verfassungsblog.de/first-order-then-humanity/>

⁷¹ European Parliament Press release, “Investigate alleged pushbacks of asylum-seekers at the Greek-Turkish border”, MEPs demand, 6 July 2020, <https://www.europarl.europa.eu/news/en/press-room/20200703IPR82627/investigate-pushbacks-of-asylum-seekers-at-the-greek-turkish-border-meps-demand>

⁷² 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, COM/2020/612 final.

⁷³ M. Stefan and R. Cortinovis, “Setting the right priorities: is the new Pact on Migration and Asylum addressing the issue of pushbacks at EU external borders?” ASILE Forum, 25 November 2020, <https://www.asileproject.eu/setting-the-right-priorities-is-the-new-pact-on-migration-and-asylum-addressing-the-issue-of-pushbacks-at-eu-external-borders/>

⁷⁴ Frontex Press Release, Statement by the Frontex Management Board, 3 March 2020, <https://frontex.europa.eu/media-centre/news-release/statement-by-the-frontex-management-board-z80tXy>

The wide range of border control and surveillance activities currently performed by Frontex at the Greek-Turkish borders may interfere with a number of fundamental rights guaranteed by the EU Charter of Fundamental Rights, first of all the right to asylum, the principle of *non-refoulement* and the right to an effective remedy (resp. Articles 18, 19(2) and 47 of the Charter).⁷⁵ This risk is not merely hypothetical as underlined by evidence of the direct involvement of Frontex-coordinated vessels in pushback operations in the Aegean Sea.⁷⁶ Evidence of Frontex-deployed officers' awareness of and participation in pushbacks has also been collected in the Evros region.⁷⁷

The agency has consistently denied any responsibility for cases of pushbacks at the Greek-Turkish borders. In a hearing before the LIBE Committee of the European Parliament in July 2020, Frontex Executive Director Fabrice Leggeri claimed that reported episodes of illegal rejections were happening in locations outside the operational area covered by the agency's operations, adding that Greek authorities should be considered as solely responsible for any violation.⁷⁸ In November 2020, upon an urgent request from the European Commission, the Frontex Management Board held an extraordinary meeting to discuss the issue of pushbacks, during which it was acknowledged that "urgent action is needed to investigate all aspects related to the matter".⁷⁹

The episodes reported above reveal long-standing questions concerning the agency's responsibility and accountability for potential fundamental rights violations in the context of its activities.⁸⁰ Over the years, EU co-legislators have introduced a number of provisions in the Frontex Regulation with a view to properly integrating fundamental rights in its activities, including the establishment of a Fundamental Rights Officer (FRO) and an Individual Complaint Mechanism.⁸¹ However, as underlined by legal analysis, the agency's fundamental rights

⁷⁵ S. Carrera, L. den Hertog, and J. Parkin (2013), "The peculiar nature of EU Home Affairs Agencies in migration control: beyond accountability versus autonomy?" *European Journal of Migration and Law*, Vol. 15, No. 4, pp. 337–358.

⁷⁶ N. Waters, E. Freudenthal and L. Williams, "Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks", *Bellingcat*, 23 October 2020, <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>

⁷⁷ L. Karamanidou and B. Kasperek, "What is Frontex doing about illegal pushbacks in Evros?", *Respond Blog*, 1 August 2020, <https://respondmigration.com/blog-1/what-is-frontex-doing-about-illegal-pushbacks-in-evros>

⁷⁸ LIBE Committee Meeting, "The situation at the Greek/Turkish border and respect for fundamental rights", 6 July 2020, https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200706-1645-COMMITTEE-LIBE_vd

⁷⁹ European Commission Press Release, Extraordinary meeting of Frontex Management Board on the alleged push backs on 10 November 2020, 11 November, 2020, https://ec.europa.eu/home-affairs/news/extraordinary-meeting-frontex-management-board-alleged-push-backs-10-november-2020_en

⁸⁰ M. Fink, "Frontex: Human Rights Responsibility and Access to Justice", *EU Immigration and Asylum Law and Policy*, 30 April 2020, <http://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/>

⁸¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

mechanisms still suffer from a number of shortcomings in terms of institutional independence, accessibility and thoroughness of follow-up procedures.⁸²

The previously underlined shortcomings are likely to become increasingly relevant in light of the expansion of the agency mandate introduced by the 2019 revision of its founding regulation. The new Frontex legal basis envisages the establishment of a standing corps of 10,000 border guards, including ‘Statutory Staff’ under the direct control of Frontex, endowed with a range of executive powers.⁸³ These latest legislative developments make it even more urgent for Frontex (and EU institutions) to clarify how compliance of the agency with its fundamental rights obligations will be ensured in the future.

6. Conclusions

The complex set of containment measures and practices affecting refugee mobility at the EU’s south-eastern borders are directly linked to the policy and legal framework that have shaped EU-Turkey cooperation on migration and asylum under the 2016 EU-Turkey Statement.

The Statement’s objective of putting an “end to irregular immigration from Turkey to Greece” has been shown to be largely unrealistic, while its actual implementation has proved incompatible with the respect of asylum seekers’ fundamental rights. In parallel, the overreliance on the Statement to address migration challenges at the south-eastern borders has made the EU increasingly vulnerable to Turkey’s recurring threats to renege on its obligations. Turkey’s instrumental use of asylum seekers’ movements as a coercive tool to pressurise the EU (and Greece) in the early months of 2020 was just the final outcome of a series of threats to ‘open the border’ that began when the ‘deal’ was still in the negotiating phase.

The instrumental use of refugees as ‘weapons’ within the context of the increasingly conflictual relations between Greece and Turkey has enabled a progressive derogation from EU and international refugee protection standards, and culminated in the violent clampdown of asylum seekers at the border by Greece in early 2020. In the specific case under consideration, an overt violation of basic human rights guarantees under international and EU law was ‘justified’ on the basis of national security considerations linked to the wider geopolitical scenario in the eastern Mediterranean.

Against this backdrop, mobility restrictions introduced as a response to Covid-19 have, at least in the short term, further reduced the already limited possibilities for asylum seekers to access

⁸² S. Carrera and M. Stefan (2018), *Complaint mechanisms in border management and expulsion operations in Europe. Effective remedies for victims of human rights violations?* Brussels: CEPS, p. 31, <https://www.ceps.eu/ceps-publications/complaint-mechanisms-border-management-and-expulsion-operations-europe-effective/>; See also M. Gkliati, “The new European Border and Coast Guard: Do increased powers come with enhanced accountability?” *EU Law analysis*, 17 April 2019, <http://eulawanalysis.blogspot.com/2019/04/the-new-european-border-and-coast-guard.html>

⁸³ Regulation (EU) 2019/1896, Art. 54-55.

protection in Greece, reinforcing and legitimising the restrictive stance adopted by the Greek government. While in principle driven solely by health considerations, those measures have fed into ongoing struggles over the (non)implementation of the EU-Turkey Statement.

The events at the Greek-Turkish borders underline the high human costs associated with the legitimisation and actual enactment of a heavily securitised approach to cross-border mobility. EU institutions and agencies (notably Frontex) need to take action to address the fundamental rights violations of asylum seekers and migrants at the EU external border, in line with the means and procedures available under their mandates. The launch in September 2020 of another round of reform of EU asylum and migration law represents an opportunity to address identified shortcomings in existing accountability instruments, and to put in place a comprehensive and independent system for monitoring compliance with fundamental rights at EU external borders.

Debates over the future of EU-Turkey cooperation on migration should consider the human rights implications as well as the broader external relations impact of arrangements with third countries that are predominantly geared towards the containment of mobility. EU and member states' faithful implementation of the 2018 UN Global Compact on Refugees⁸⁴ requires the establishment of balanced and equal partnerships with key countries of origin and transit. It also requires, as a precondition, the commitment by state parties to uphold the normative foundations of the international protection regime, notably the principle of *non-refoulement* and the right to seek asylum.

⁸⁴ United Nations, *Global Compact on Refugees*, 2018, <https://www.unhcr.org/5c658aed4.pdf>

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