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DOCUMENTO DE TRABALHO

sobre o Relatório Especial n.º 24/2019 do TCE (Quitação 2018): Asilo, recolocação e regresso de migrantes: é hora de reforçar a luta contra as disparidades entre objetivos e resultados

Comissão do Controlo Orçamental

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Introduction

In recent years, the EU has seen unprecedented levels of migration and a subsequent increase in asylum applications. The migration crisis peaked in 2015, when over 1 million people embarked upon the treacherous journey to Europe by sea, before returning to pre-crisis levels.

This surge in migration has challenged the EU framework on asylum, migration and external borders management. Established arrangements have come under heavy strain, even prompting their temporary suspension in some cases. Located on the frontline, Greece and Italy are disproportionately burdened.

With a view to addressing the crisis, the EU has devised several measures to supplement the funding provided to Member States under its migration management policy. These include the setting-up of “hotspots”¹ and introduction of temporary relocation schemes. Furthermore, it has issued legislative proposals to overhaul the Common European Asylum System. At the heart of this reform lies the revision of the Dublin III mechanism which obliges asylum seekers to file an application in their country of first entry into the Union. Its proposed revision – the Dublin IV Regulation – includes a permanent relocation system to replace the temporary quota-based distribution schemes that expired in September 2017. The Council has not yet reached a consensus on this proposal.

The temporary relocation schemes were introduced by two Council decisions in September 2015. In operation between 24 March 2015 and 26 September 2017, the schemes aimed to relocate 160 000 migrants, based on quotas. The legality of these decisions was upheld in European Court of Justice ruling 2017/C 374/05 on the joined cases brought by Slovakia and Hungary against the Council.

Relocation was executed to 22 Member States and three associated countries (Liechtenstein, Norway and Switzerland). The United Kingdom and Denmark exercised their opt-out rights under the Treaties. Hungary and Poland did not relocate any migrants.

An effective return policy is a necessary part of a comprehensive and legitimate migration policy. At the end of 2010, the EU Return Directive entered into force, setting common rules for the return of migrants staying irregularly. The Commission proposed a revision of this directive in September 2018.

The Asylum, Migration and Integration Fund (AMIF) provides the majority of EU funds for migration management. AMIF was set up for the 2014-2020 period to promote the efficient management of migration flows, and to implement and strengthen the EU’s common asylum and immigration policy.

Most AMIF funding is channelled through shared management to support the Member States’ multiannual national programmes. In addition, AMIF resources fund emergency assistance. Managed either directly by the Commission or indirectly by international organisations, this is

¹ The hotspot approach sees EU agencies (mainly EASO, Frontex and the European Union Agency for Law Enforcement Cooperation) assisting frontline Member States on the ground with identifying, registering, fingerprinting and debriefing of new arrivals, in order to ascertain those requiring international protection. Between 2015 and 2018, there were five hotspots in each of Greece and Italy. Due to low numbers of arrivals, the hotspot in Trapani was reconverted to a detention centre in October 2018.

financed almost entirely by the EU budget.

EASO assists the Greek and Italian authorities on the basis of yearly operating plans. In 2018, in Greece, EASO helped register and process asylum applications at the border, and provided support to the regular asylum procedure, the appeal authorities and the Dublin Unit. In Italy, EASO informed migrants in hotspots about asylum, helped register asylum applications, and supported the national and territorial asylum commissions and the Dublin Unit.

In addition, EASO has been involved in strengthening the capacity of national asylum authorities, improving the reception system and protecting vulnerable groups, including unaccompanied minors.

When requested by Member States, Frontex coordinates the return of irregular migrants ineligible for international protection on their territory. Its European Centre for Returns provides operational and technical support to the Member States and Schengen Associated Countries during pre-return and return operations.

From 2006 to 2016, Frontex coordinated joint operations on charter flights. In 2016, its mandate was extended to the organisation/coordination of national return operations. In December 2017, it also began supporting returns on scheduled commercial flights.

In 2017, the Court published a report on the hotspots in Greece and Italy. The European Parliament endorsed its conclusions and called on the Court to “consider a quick follow-up report on the functioning of the hotspots, adopting a broader scope by including also an analysis of the follow-up procedures, i.e. the asylum, relocation and return procedures”. This report responds to that request.

Audit scope, objective and approach.

The objective of the special report 24/2019 was to determine whether EU support to migration management (including the hotspot approach) had helped bring about effective and swift asylum and return procedures in Greece and Italy. To answer this main audit question, the Court addressed two sub-questions:

(a) Has the EU-funded support action for Greece and Italy achieved its objectives? The Court assessed whether its recommendations of special report 06/2017 had been implemented and whether the temporary emergency relocation schemes had achieved their objectives. The Court also assessed the relevance and design of a sample of EU-funded support actions, and looked at whether planned outputs had been delivered and objectives met.

(b) Have the asylum and return procedures in Italy and Greece been effective and swift? The Court examined whether the performance of asylum and return procedures in the two Member States had improved since 2015, analysed performance on the basis of data collected by the Commission, EASO, Frontex and the national authorities, and identified the reasons for any underperformance.

The audit covered the period from 2015 (when the migration crisis began and the first hotspots were set up in Greece and Italy) until the end of 2018.

The sample of EU-funded support actions contained six AMIF emergency assistance (AMIF

EMAS) and ten AMIF national programme (AMIF NP) projects

Further EU support action examined included the 2018 EASO operational support to asylum procedures in Greece and Italy, and the 2018 Frontex return support to Greece and Italy.

The main auditees were the European Commission, EASO and Frontex, as the providers of EU support to asylum, relocation and return procedures. In addition, the Court visited the Greek and Italian authorities and hotspots, and the international and non-governmental organisations implementing AMIF projects in Greece and Italy. The audit work included desk reviews of directives and regulations, strategies, policy documents, guidelines, evaluations, monitoring reports and internal documents, as well as papers published by national authorities, research bodies, academics and non-governmental organisations.

The Court did not assess the validity of individual asylum and return decisions. The purpose of the audit was not to assess the reliability of the statistical data provided by the Commission, EASO, Frontex, and the national authorities or the projects' implementing partners.

Court's findings and observations

1. The Court concludes that there are disparities between the objectives of the EU support and the results achieved. Even though the capacity of the Greek and Italian authorities has increased, implementation of the asylum procedures in Greece and Italy continues to be affected by long processing times and bottlenecks. As in the rest of the EU, returns of irregular third-country nationals from Greece and Italy are low.

Of the 11 recommendations² made by the Court in 2017 on the hotspot approach in Greece and Italy, six have been fully implemented, two have been implemented as far as the Commission and the Agencies are concerned, and one has not been implemented by Member States. Two key recommendations are still under implementation: the recommendations on the hotspot capacity and the situation of unaccompanied minors in the Greek hotspots, as the situation in the Greek hotspots remains highly critical.

The ECA recommendation that the deployment of Member States experts be sufficiently long has not yet been implemented. Although the Commission and the Agencies have repeatedly called on Member States to deploy more national experts, the shortage of national experts on EASO operations persists. By contrast, Frontex had actually deployed more staff than needed to the Italian hotspots, as it had not adjusted its plans in view of the few sea arrivals. Despite the few return operations, the Court also noted that a high share of Frontex escort experts for readmission operations to Turkey had only an escort profile and therefore could not be used for any other type of operation.

The Court found that registration and fingerprinting rates at the hotspots had improved significantly, as standard operating procedures had been established and responsibilities clearly divided between the national authorities and the EU support agencies. However,, a high share of migrants continues to move on to and apply for asylum in other EU Member States, without having their fingerprints stored in the European dactyloscopy fingerprint

² Annex III of the special report describes the follow-up of the recommendations.

database (EURODAC).

The emergency relocation schemes, temporary by design, did not reach their targets and so did not effectively alleviate the pressure on the Greek and Italian asylum systems.

A very low share of potentially eligible migrants were identified and successfully channelled towards applying for relocation whilst a high share of candidates who applied were actually relocated (80 % in Greece and 89 % in Italy). Nevertheless, the Court found a number of operational weaknesses in the relocation process. The Commission has not monitored the relocation process in the countries receiving migrants since February 2018. The temporary relocation schemes expired in September 2017 and no consensus has yet been reached on the Commission's other proposals. Voluntary relocation is taking place on an ad hoc basis, mainly for migrants who disembarked in Italy and Malta.

2. AMIF EMAS was originally designed as a small-scale instrument to address urgent and specific emergency needs. The increase in EMAS funding helped to make the Commission's crisis support more flexible and responsive. With the time, it has become the Commission's key strategic instrument for rebalancing support towards the countries most affected by the migration crisis, particularly Greece, through complementing their national programme envelopes.

The Court found that this shift occurred without establishing a performance-monitoring framework. The Commission has proposed including emergency assistance under shared management with Member States in the new financial framework 2021-2027.

Of the six EMAS projects examined, only two achieved their targets in full, three met their targets partially and one is still in the early stage of implementation. (see paragraphs 65 to 66 of the special report).

All ten examined projects under the AMIF NPs were relevant. The AMIF NP is a multiannual funding instrument but robust multiannual strategic planning mechanisms are not yet in place in Greece and Italy to ensure that funds are allocated where needed the most.

Of the five completed AMIF NP projects examined, none has achieved its targets fully: three achieved their targets partially, one did not achieve its objectives and, for the last, the data was not sufficient to assess progress. The remaining five projects were ongoing at the time of the audit (see paragraphs 73 to 75 of the special report).

The AMIF performance monitoring framework was set up late and without targets. During the course of the audit, it became apparent that more performance data was needed to facilitate a robust policy evaluation at the EU level.

3. The Court found that the national authorities in both Greece and Italy assessed the operational support provided by EASO as relevant and useful. Nevertheless, EASO operational support plans until 2018 were largely input-driven, lacking output and outcome targets to assess the EASO performance. The situation is gradually improving in 2019.

The Court also pointed out that while the shortage of Member State experts is compensated by interim service providers, the short duration of experts' deployment remains an issue. EASO operations in the Greek hotspots are affected by security issues, a lack of working

space, disagreements on vulnerability assessments with Greek Asylum Service (GAS) and the systematic overturning of non-admissibility decisions for non-Syrians by GAS.

4. It is the opinion of the Court that Greece and Italy are among the Member States that have not taken full advantage of Frontex's return potential (extended mandate and increased budget). Apart from the low number of returnees, the existence of two parallel EU-funding instruments supporting the same type of activities (forced returns funded under AMIF national programmes and Frontex operations) explains the situation.

5. Over the course of the crisis, Italy and Greece were among the countries where most irregular migrants coming to Europe have arrived. The two Member States have evolved from countries of transit to countries where migrants apply for asylum.

The Court found that in Greece, GAS processing capacity has increased since 2015, but it is still not sufficient to tackle the increasing backlog of pending asylum applications. The EU Turkey statement has had a major impact on arrivals but its cornerstone, the fast-track border procedure, is not swift enough. For the regular and accelerated procedures, the situation is even more problematic with interview dates set for as late as 2023 and 2021 respectively. A large caseload of negative first-instance decisions is moving to the appeals stage, which is lacking support and is already overloaded.

The Court notes that in the context of the sharp decrease in arrivals and asylum applications, Italy's current processing capacity at first instance is sufficient. The existing substantial backlog is expected to be cleared by the end of 2019. However, this is expected to result in heavy pressure on the appeal authorities. It took over 4 years for an asylum application lodged in 2015 to reach the final appeal stage. Without adequate support, this lengthy time frame could further increase in the future.

6. The Court found that there were far fewer actual returns than return decisions from both countries and the EU overall. The Court identified a number of reasons for this (length of the asylum process, lack of cooperation, between the asylum and return authorities, lack of cooperation with some of the third countries, absence of mutual recognition of return decision and so on see paragraphs 130 to 139 of the special report).

Assisted voluntary return and reintegration is affected by the lack of a harmonised approach within the EU. The Court detected structural weaknesses with the Assisted Voluntary Return and Reintegration (AVRR) in Italy. The AVRR programme in Greece is achieving its objectives, but the reintegration package is offered to only 26 % of applicants. A dedicated AVRR accommodation facility is an example of good practice increasing the attractiveness of the scheme.

The Court regretted that no data is collected on the swiftness of return procedures. Moreover, there are no indicators measuring the sustainability of returns, such as the number of returned migrants who attempt to come back to the EU or the success of AVRR reintegration packages.

Replies of the Commission

The Commission accepts all of those recommendations which apply to it. EASO and Frontex do the same.

Recomendações do relator para uma eventual inclusão no relatório anual de quitação

O Parlamento

1. Insta a Comissão a reconhecer o fracasso dos regimes de recolocação obrigatórios (incluindo do ponto de vista do Estado-Membro de acolhimento após a recolocação) e a propor novas medidas para fazer eficazmente face a eventuais situações de emergência semelhantes, como a crise migratória de 2015, que sejam aceitáveis para todos os Estados-Membros.

2. Insiste em que a Comissão:

(a) defina, no próximo quadro financeiro, critérios para a atribuição dos fundos da ajuda de emergência em regime de gestão partilhada com os Estados-Membros;

(b) reforce o quadro de acompanhamento do desempenho, mediante:

(i) a garantia de que os projetos de ajuda de emergência do FAMI contenham indicadores de realizações e de resultados com metas e valores de referência claros, sempre que aplicável, apresentando justificações quando esse não for o caso;

(ii) o acompanhamento e a comunicação de informações sobre os resultados alcançados pelos projetos financiados pela ajuda de emergência;

(iii) a conceção dos indicadores para o quadro comum de acompanhamento e avaliação do FAMI, incluindo os seus valores de referência e metas, antes do início dos projetos do novo quadro financeiro plurianual para o período de 2021-2027;

(c) aplique medidas para assegurar a complementaridade e uma melhor coordenação entre o FAMI e o EASO/a Frontex (por exemplo, no domínio dos regressos forçados ou do apoio às autoridades competentes em matéria de asilo).

(d) reveja o sistema de centros de registo, que se revelou ineficaz em situações de emergência,

(e) reforce as fronteiras externas da União Europeia e conceda financiamento às autoridades nacionais que executam esta tarefa.

3. Solicita ao EASO que:

(a) ajuste o modelo de destacamento de peritos, tornando-o mais previsível, dada a escassez permanente de peritos dos Estados-Membros;

(b) conclua os quadros de acompanhamento do desempenho para a Grécia e Itália, acrescentando indicadores de resultados, valores de referência e metas e recolhendo os dados de desempenho pertinentes para todos os indicadores;

(c) trabalhe juntamente com os serviços de asilo gregos para superar as discordâncias no que se refere às avaliações de vulnerabilidade e à admissibilidade de requerentes não sírios no procedimento de fronteira acelerado.

4. Solicita à Frontex que:

(a) trabalhe com a Comissão no sentido de assegurar a complementaridade e uma melhor coordenação entre o apoio ao regresso concedido pela Frontex e o financiado pelo FAMI;

(b) no contexto do número reduzido de operações de regresso a partir da Grécia, cesse de destacar responsáveis por escolta com perfil único, que não podem ser destacados para operações nos centros de registo;

(c) ajuste o plano operacional de modo a aumentar a rapidez de resposta do destacamento de pessoal nos centros de registo em Itália (designadamente peritos em recolha de impressões digitais) aos padrões das chegadas por mar.

5. Solicita à Comissão e ao EASO, em cooperação com as autoridades nacionais, que:

(a) continuem a aumentar o apoio concedido aos serviços de asilo gregos para a eliminação dos crescentes atrasos acumulados em primeira instância;

(b) prestem assistência às sobrecarregadas autoridades de recurso na Grécia e em Itália, evitando simultaneamente potenciais conflitos de interesses para o EASO na Grécia;

(c) proponham medidas que permitam a recolha sistemática de dados de desempenho sobre os tempos de tratamento e os atrasos acumulados, a fim de facilitar a elaboração de políticas e a avaliação do desempenho e de acompanhar a conformidade com a legislação da UE.

6. Insta a Comissão, em cooperação com as autoridades nacionais, a:

(a) prestarem, juntamente com a Frontex, mais apoio para combater as causas do número reduzido de regressos a partir da Grécia e de Itália, concentrando-se no número reduzido de regressos a partir das ilhas gregas e no programa de regresso voluntário assistido e reintegração em Itália;

(b) tomarem medidas para assegurar que os acordos existentes com países terceiros para o regresso de nacionais desses países, como o Acordo de Cotonu e os acordos de readmissão da UE, sejam aplicados e plenamente utilizados pelos Estados-Membros;

(c) promoverem uma abordagem coordenada na UE para o apoio à reintegração em países terceiros de regresso;

(d) prestem assistência aos países de origem para que os potenciais migrantes não escolham rotas perigosas para a viagem rumo à Europa,

(e) proponham medidas que permitam a recolha sistemática de dados de desempenho sobre a celeridade e a sustentabilidade dos procedimentos de regresso, a fim de facilitar a elaboração de políticas, a avaliação do desempenho e a investigação.