

MES-Perspektiven 2/2017

The EU-Turkey Agreement on Migration: Objective and Reality

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Abstract

The deal concluded in March 2016 between Turkey and the European Union to manage the refugee movements from Turkey to the Greek islands attracted criticism from various quarters. This thesis examines the legal and political backgrounds of the agreement and advances understanding of why it was so urgently needed.

Based on related legal texts, press reports and interviews conducted with EU officials, I evaluated the agreement itself as well as its implementation until September 2016. The findings from the research show that legal and ethical reservations are indeed justified. I concluded that the agreement may alleviate symptoms of the current refugee crisis, yet a real European migration policy was more needed than ever.

Özet

Mart 2016'da Türkiye'yle Avrupa Birliđi arasında gerekleŖen, mltecilerin Trkiye'den Yunan adalarına geiŖini dzenleyen anlaŖma eŖitli evrelerden eleŖtiri aldı. Bu tez, anlaŖmanın hukuk ve siyasi arka planını incelemeyi ve neden acilen gerekli olduđuna iliŖkin anlayıŖı iletmeyi amalar.

İlgili hukuk metinlere, basındaki haberlere ve AB grevlileriyle yapılan roprtajlara dayanarak sz konusu anlaŖmanın kendisini ve Eyll 2016'ya kadar uygulamasını deđerlendirdim. AraŖtırmanın sonuları, hukuk ve etik ekincelelerin yerinde olduđunu gsteriyor. ıkardıđım sonu; anlaŖmanın gncel mlteci krizin semptomlarını hafifletebileceđi, ancak gerek bir Avrupa mlteci politikasına en ok ihtiya duyulan dnemde olduđumuz ynnde.

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List of Acronyms

AFAD.....	Afet ve Acil Durum Yönetimi Başkanlığı (Disaster and Emergency Management Presidency)
AKP.....	Adalet ve Kalkınma Partisi (Justice and Development Party)
CAMM.....	Common Agenda for Migration and Mobility
CEAS.....	Common European Asylum System
CFSP.....	Common Foreign and Security Policy
EASO.....	European Asylum Support Office
EBCG.....	European Border and Coast Guard
EC.....	European Commission, European Communities
ECHR.....	European Convention on Human Rights
ECJ.....	European Court of Justice
ECRE.....	European Council on Refugees and Exiles
ECSC.....	European Coal and Steel Community
EctHR.....	European Court of Human Rights
EEAS.....	European External Action Service
EEC.....	European Economic Community
EFTA.....	European Free Trade Association
EP.....	European Parliament
EU.....	European Union
EURA.....	European Union Readmission Agreement
EUREMA.....	Pilot Project for intra-EU Relocation from Malta
EURTF.....	European Union Regional Task Force
GAMM.....	Global Approach to Migration and Mobility
JHA.....	Justice and Home Affairs
LFIP.....	Law on Foreigners and International Protection
MP.....	Mobility Partnership
NAP.....	National Action Plan
NATO.....	North Atlantic Treaty Organization
NGO.....	Non-governmental organization
PKK.....	Partiya Karkerên Kurdistanê (Kurdistan Workers' Party)
SIS.....	Schengen Information System

TEU.....	Treaty on European Union
TFEU.....	Treaty on the Functioning of the European Union
TP.....	Regulation on Temporary Protection
UN.....	United Nations
UNTOC.....	United Nations Convention against Transnational Organized Crime
UNHCR.....	United Nations High Commissioner for Refugees
UNDP.....	United Nations Development Programme

We can build walls, we can build fences. But imagine for a second it were you, your child in your arms, the world you knew torn apart around you. There is no price you would not pay, there is no wall you would not climb, no sea you would not sail, no border you would not cross if it is the war or the barbarism of the so-called Islamic State that you are fleeing.

– Jean-Claude Juncker in his Speech on the State of the Union 2015

Introduction

The European continent looks back on a rich history of emigration and immigration. Especially within the last decades the member states of the European Union¹ (EU) became an attractive destination to an increasing number of asylum seekers, refugees and irregular migrants. Today worldwide more than 247 million people find themselves displaced, often as a result of push factors like wars, religious persecutions, interethnic tensions, politi-

1 The European Union includes the following states: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

cal repression and the climate change.² This global development reached Europe in terms of a growing number of arriving migrants at the coast of Mediterranean EU member states as well as a rapid rise of shipwrecks off the European coasts since 2013. Due to the lack of legal ways to enter the EU, only in 2015 more than one million migrants risked their lives to reach the European Union according to numbers provided by the Council of the European Union. 150,000 had been rescued by EU ships, 3,770 people died at sea within the same time period according to official statistics.³

The ongoing civil war in Syria since 2011 can be seen as one of the main reasons for the latest huge wave of migration with more than 4.8 million refugees forced to live outside their origin country.⁴ Although the majority of these people found accommodation in the close neighbourhood of Syria, the European Union struggles to cope with what is called the ‘refugee crisis’. In this context the cooperation with third countries becomes more and more important to the EU;– be it through bilateral agreements on return and readmission or through the financial support of refugee aid outside Europe. Turkey as the only

2 According to the United Nations assessments of 2015 (UNDP: Human Development Report 2015).

3 Council of the European Union: Migration Crisis – The Inside Story. Scripted and directed by Isabelle Brusselmanns, released 18th April 2016.

4 Precise number of “total persons of concern” published by the Syria Regional Refugee Response on

16th of August 2016: 4,808,229.

country separating the conflicts in Syria and Iraq from the external borders of the EU has a key role to play in managing the current illegal immigration flows. As Donald Tusk, President of the European Council, declared on 29th November 2015 at a meeting of the EU heads of state or government with Turkey: “Approximately 1.5 million people have illegally entered the EU in 2015. Most have come through Turkey.”⁵

i) Research Question

One major attempt of the Union to solve the crisis was the conclusion of the so-called EU-Turkey Deal on Migration in March 2016. A few months after the agreement came into effect, I would like to examine it on concrete backgrounds and latest outcomes. The main research question of this thesis is to ask whether the content of the EU-Turkey refugee deal signed in March 2016 was instrumental enough in resolving the refugee crisis. Hence, the thesis will be a rather descriptive one analysing the agreement from legal and political perspectives.

ii) Literature Review

The role of migration and mobility in Turkish-European relations is described by Aydın-Düzgüt and Tocci.⁶ Although Turkey has been a migration country since the Ottoman Empire, there was no comprehensive legislation on migration and asylum yet due to the nation-

building process and the significant role of ‘Turkishness’ in emigration policy.⁷ This is changing since the 1980s, when Turkey evolved from a country mainly known for immigration to an emigration and transit migration country.⁸ The country’s accession process to the European Union since 2005 is also reflected in the Turkish asylum law because Turkey is expected to adapt the EU *acquis*.⁹ In the context of the latest migratory flows, the Turkish maintenance of the geographical limitation to the 1951 Convention presents a major challenge,¹⁰ parti-

7 İbrahim Sirkeci and Barbara Pusch (eds.): *Turkish Migration Policy*. London, 2016.

8 Kemal Kirişçi: *Turkey – A Country of Transition from Emigration to Immigration*. *Mediterranean Politics*; Vol. 12, No. 1, March 2007.

Ahmet İçduygu: *Turkey’s Migration Transition and its Implications for the Euro-Turkish Transnational Space*. *Global Turkey in Europe*, Working Paper 07, April 2014.

Ahmet İçduygu: *Turkey’s Evolving Migration Policies – A Mediterranean Transit Stop at the Doors of the EU*. *IAI Working Papers 15/31* (September 2015).

Biner in Ayşem Biriz Karaçay and Ayşen Üstübcü (eds.): *Migration to and from Turkey – Changing Patterns and Shifting Policies*. Istanbul, 2014.

9 İbrahim Kaya: *Reform of Turkish Asylum Law – Adopting the EU Acquis?* *CARIM Research Reports 2009/16*.

Kemal Kirişçi: *Turkey’s New Draft Law on Asylum – What to Make of it?* In: Paçacı Elitok, Seçil and Thomas Straubhaar, eds. (2012): *Turkey, Migration and the EU – Potentials, Challenges and Opportunities*. Hamburg.

Juliette Tolay: *Turkey’s ‘Critical Europeanization’ – Evidence from Turkey’s Immigration Policies*.

In: Paçacı Elitok and Straubhaar, eds. (2012).

10 Kemal Kirişçi: *Is Turkey Lifting the ‘Geographical Limitation’? – The November 1994 Regulation on Asylum in Turkey*. In: *International Journal of Refugee Law*, Vol. 8, No. 3, Oxford, 1996.

İçduygu (2015).

5 Introductory remarks by President Donald Tusk at the meeting of EU heads of state or government with Turkey on 29th November 2015.

6 Senem Aydın-Düzgüt and Nathalie Tocci: *Turkey and the European Union*. London, 2015.

cularly in view of the large numbers of Syrians the country is hosting.¹¹ Having said that, the EU is also struggling to establish a European migration policy based on solidarity among the member states.¹² The agreement concluded in March 2016 between Turkey and the European Union is expected to be part of a solution in the so-called refugee crisis.

However, the signatories are confronted with many reservations concerning legal and ethic shortcomings.¹³

Preliminarily an examination of the term 'migrant' is needed since there are diverse definitions of what a migrant is. Advisor on migration

11 Şenay Özden: Syrian Refugees in Turkey. MPC Research Report 2013/05.

Ahmet İçduygu and Evin Millet: Syrian Refugees in Turkey – Insecure Lives in an Environment of Pseudo-Integration. Global Turkey in Europe Working, Paper 13, August 2016.

Zümray Kutlu-Tonak: Endless Escape - From Syria to Turkey, Then to Europe. Studies in Ethnicity and Nationalism, Vol. 16, No. 1, 2016.

Ayhan Kaya and Aysu Kırış: Vulnerability Assessment of Syrian Refugees in Istanbul. s.l., 2016.

12 Corinne Balleix: From Lampedusa to the Post-Stockholm Programme – Difficult European Solidarity in the Field of Migration. European Policy Brief, No. 24 (March 2014).

Sergio Carrera, Steven Blockmans, Daniel Gros and Elspeth Guild: The EU's Response to the Refugee Crisis - Taking Stock and Setting Policy Priorities. CEPS Essay, No. 20/16, December 2015.

13 Elizabeth Collett: EU Cooperation with Third Countries – Rethinking Concepts and Investments. In: Forced Migration Review, No. 51 (January 2016).

Özgehan Şenyuva and Çiğdem Üstün: A Deal to End "the" Deal – Why the Refugee Agreement is a Threat to Turkey-EU Relations. GMF on Turkey, July 2016.

Nilgün Arısan Eralp: Challenges of the German-Led Refugee Deal between Turkey and the EU.

In: CESifo Forum, Vol. 17, No. 2, Summer 2016.

and human rights to the UNHCR Pia Oberoi for instance states that 'migrant' describes "a diverse array of people who move to and live in a country that is not their own."¹⁴ Anderson and Blinder name categories such as the country of birth, nationality and the length of a stay as fundamental data to define a migrant. The huge variability of these criteria however leads directly to a problem of comparability.¹⁵

An important distinction that has to be made is the one between 'migrant workers' and 'refugees' as the former enjoy the possibility of returning to their home countries when they wish to.¹⁶ In contrast, refugees are generally fleeing from untenable conditions such as war or persecution what makes a return on the short run not very likely. Refugees are entitled to specific legal protection according to international agreements, migrants in contrast enjoy no such protection.¹⁷

Ludger Pries distinguishes four types of migration: emigration/immigration, return-migration, diaspora-migration and transit-migration. In the case of the EU-Turkey Agreement, primary the type of transit-migration will be of particular importance.¹⁸

14 Pia Oberoi: What's in a Name? The Complex Reality of Migration and Human Rights in the Twenty-first Century. 2015.

15 cf. Anderson and Blinder in Sirkeci and Pusch, eds. (2016): p. 12 f.

16 Bertelsmann Stiftung (May 2016): Religion Monitor – Migration and Diversity.

17 ibid.

18 Ludger Pries cited in Barbara Pusch: Bordering the EU – Istanbul as a Hotspot for Transnational Migration. In:

Within the Turkish context it is necessary to acknowledge that the terms ‘migrant’ (the active party in migration), ‘immigrant’ (someone who resides to another country) and ‘emigrant’ (someone who leaves his own country) are all translated to Turkish as ‘göçmen’, as Sirkeci and Pusch underline.¹⁹ This problematic lack of differentiation reflects the Turkish immigration history which was formerly characterised by migrants who were mainly of Turkish descent and culture. Although the migration to Turkey became more heterogeneous within the last three decades, the terminology remains the same to a great extent.²⁰

With this in mind, a distinction of the international protection status determined in the EU legislation is of fundamental importance as well. There are two major forms of protection that EU member states can grant to asylum seekers:

Refugee status is based on the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. EU member states are committed to grant refugee status to third-country nationals who have a “well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group” in the country of nationality.²¹ The status of a refugee entitles

to the highest form of international protection.²²

Subsidiary protection concerns third-country nationals or stateless persons who do not meet the UN definition of refugees but “face a real risk of suffering serious harm”, that is “(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”²³ EU member states are permitted to grant people with subsidiary protection a national status.²⁴

Additionally, humanitarian shelter allows third-country nationals or stateless persons to remain in the territories of the EU member states on a “discretionary basis on compassionate or humanitarian grounds”.²⁵ The recognition of this status is object to national legislation. It is mostly offered to people who can not be returned on health

Paçacı Elitok and Straubhaar, eds. (2012): p. 181.

¹⁹ cf. Sirkeci and Pusch in Sirkeci and Pusch, eds. (2016): p. 13.

²⁰ cf. 2016: p. 15.

²¹ European Parliament/Council of the European Union (13th December 2011): Directive on Standards for the Qualification of Third-Country Nationals or

Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted.

²² ESI (17th October 2015): The 2015 Refugee Crisis through Statistics – A Compilation for Politicians, Journalists and Other Concerned Citizens; p. 21.

²³ European Parliament/Council of the European Union (13th December 2011).

²⁴ Elspeth Guild and Sergio Carrera: Rethinking Asylum Distribution in the EU – Shall We Start with the Facts? CEPS Commentary, 17th June 2016.

²⁵ European Parliament/Council of the European Union (13th December 2011).

grounds, or to unaccompanied minors.²⁶

iii) Rationale of the Research

As the EU-Turkey Agreement has been concluded only six months ago, there are legal evaluations available and papers dealing with mainly ethic concerns. What is missing in the literature is a comprehensive approach to the EU-Turkey Agreement, covering legal and political background as well as the outcome of the deal's implementation. Hence, the thesis is designed to contribute to the closure of this gap in the literature.

iv) Methodology

As the research question aims at actual outcomes of the EU-Turkey Agreement, the research is of descriptive nature. Due to the current relevance of the research I preferred using qualitative methods in order to gain newer insights into the topic. By the term 'qualitative research', any kind of research was taken into account that "produces findings not arrived by statistical procedures or other means of quantification".²⁷

To investigate the questions mentioned above, in first place I examined the legal contexts of the EU-Turkey Agreement: That is the EU acquis, the Turkish legislation on asylum and migration (with a special regard to the Europeanization process), and the treaty texts themselves.

I used primary sources such as statistics and surveys to examine

the present situation of refugees in Turkey and the implementation of the agreement as far as possible. Besides, secondary literature played an important role in the thesis as I used academic works such as articles and books to analyse the historical and legal backgrounds of the topic. Finally, unstructured interviews that I had conducted with EU officials in Brussels and Berlin between 2nd – 13th June 2016 have been evaluated and are presented in form of narratives. The interviews were held unstructured in a sense that there existed almost no predetermined list of questions and the respondents were permitted to take control of the conversation as well as to lay emphasis on areas they considered relevant.²⁸

v) Scope of the Study

In Chapter 1 relevant backgrounds of Turkey's migration and asylum policy are examined from a historical perspective as well as in view of the policies' Europeanization. Furthermore, EU migration policy is presented with a special regard to cooperation with third countries. Chapter 2 deals with the actual incidents leading to the EU-Turkey Agreement, that is in first place the civil war in Syria with millions of people fleeing their home country. The situation in Turkey and the EU's policies in response to the Syrian crisis are presented. The agreement concluded in March between Turkey and the EU to deal with the outcomes of the crisis is dealt with in Chapter 3. Relevant

26 ESI (17th October 2015): p. 21.

27 Strauss and Corbin (1998) cited in Jane Ritchie and Jane Lewis (eds.): *Qualitative Research Practice*. London, 2003; p. 3

28 cf. John Kuada: *Research Methodology*. Frederiksberg, 2012; p. 113.

associated treaties and the EU-Turkey Statement itself are presented and a comprehensive assessment of the Agreement is made. Finally, the agreement as a whole is evaluated in the Conclusion with the findings of the research.

Chapter 1 Political and Legal Framework

1.1 Turkey's Transition to a Country of Immigration

It is indispensable to take Turkey's role as a migration country in the international context into account to understand the backgrounds of the agreement concluded between the European Union and Turkey in March 2016. The trinity of being a country of emigration, immigration and transition makes it crucial to scrutinize the historic and legal features.²⁹ Although Turkey has received important inflows of immigration especially throughout the 20th century, it has been known primarily as a country of emigration, not of immigration.³⁰ In particular the migration of Turkish nationals to the booming western European countries in the 1960s and 1970s contributed to this perception. Belgium, Britain and France were the first to sign recruitment agreements due to increasing demand for labor force.³¹ The retro-

spectively most important agreement, however, was the 1961 bilateral agreement between Turkey and West Germany which initiated the so-called 'guest worker' programme in order to meet the needs for workforce in post-war Germany. Turkey, on the other hand, was to benefit from the agreement through remittances while the workers were in Germany as well as through an increase in their know-how after they would have returned back home.³² In the course of the agreements' implementation modern Turkey witnessed for the first time massive emigration of its Turkish-Muslim citizens.³³

The agreement resulted in an increase of the Turkish population in Germany from 6,700 in 1961 to 605,000 in 1973 – the year when an economic downturn resulting from the oil crisis led to a recruitment stop.³⁴ In the long term around 30 per cent of the Turkish migrants resided in Germany, additionally joined by their families.³⁵ In a similar manner the other labour-demanding industrialized countries such as France and the Netherlands increased their Turkish population from the 1960s on after the admission of 'short-term' migrants from less-developed countries such

29 cf. Kirişçi: (2007): p. 91.

30 Juliette Tolay in Paçacı Elitok and Straubhaar, eds. (2012): p. 41.

31 Ayşem Biriz Karaçay: Re-Assessing Migration Systems – The Case of Turkey. In: Ayşem Biriz Karaçay and Ayşen Üstübcü (eds.): Migration to and

from Turkey – Changing Patterns and Shifting Policies. Istanbul, 2014; p. 17.

32 Aydın-Düzgüt and Tocci (2015): p. 135.

33 Ahmet İçduygu and Damla B. Aksel in Stephen Castles, Derya Ozkul and Magdalena Arias Cubas (eds.): Social Transformation and Migration. London, 2015; p. 120.

34 cf. Ayhan Kaya cited in Aydın-Düzgüt and Tocci (2015): p. 135.

35 ibid.

as Turkey.³⁶ The 1961 agreement which was foreseen to lead only to temporary migration in order to solve a short-term labour shortage marks the initial point of Turkish migrant communities in Europe.³⁷ After the military coup in Turkey in 1980 and the eruption of a “de facto civil war” between the Kurdistan Workers’ Party (Kurdish: *Partiya Karkerên Kurdistanê*, abbreviated: *PKK*) and the Turkish state in 1984, an increasing number of asylum seekers fled from Turkey to Europe.³⁸ It was the European fear of a large-scale immigration in these days that led to the first introduction

of visa obligation for Turkish citizens coming to Europe.³⁹

The shift from a country that has been well-known as emigration-generating with only little immigration from the Balkans, the Caucasus and Central Asia to a destination of immigration occurred in the 1980s and 1990s – in the course of the overall beginning globalization process.⁴⁰ At that time, the composition of the migration flows to Turkey changed dramatically.⁴¹ Beside the facilitation of the movement of people, goods, technologies, ideas and finances, political upheavals and economic transformations in the region forced people to migrate to safer and more-developed countries such as Turkey.⁴²

In addition to that, political developments like the liberalisation of Turkey’s economy in the 1990s and the resulting economic growth as well as a liberal visa regime introduced by the Justice and Development Party (Turkish: *Adalet ve Kalkınma Partisi*, abbreviated: *AKP*) government in the early 2000s were reasons for Turkey becoming a ‘migration transition’ country.⁴³

Finally one should not underestimate the effects the beginning of negotiations for full EU membership in 2005 had. According to İbrahim Kaya, already to be an EU candidate country meant for Turkey significant increases in foreign in-

36 According to Akgündüz cited in İçduygu and Aksel, between 1961 and 1974 a total of nearly 800,000 Turkish workers went to Europe. Out of these workers, 649,000 (81 per cent) went to Germany; 56,000

(7 per cent) went to France; 37,000 (5 per cent); went to Austria and 25,000 (3 per cent) went to the Netherlands (İçduygu and Aksel in Castles et al., eds. [2015], p. 120).

37 In 2009, it was estimated that there were approximately 3.1 million Turkish citizens living abroad with 2.7 million in European countries – a substantial increase from the numbers of 1973. There are further 800,000 Turkish nationals who have taken the citizenship of their host countries between 1991 and 2002 (Kirişçi [2007]: p. 92).

38 Aydın-Düzgüt and Tocci (2015): p. 137.

According to UNHCR statistics, between 1981 and 2005 over 664,000 Turkish citizens applied for asylum in various European countries. The refugee recognition rates varied from country to country but have been very low though; – because of the multiple trial to make “fraudulent use of the asylum channel” – as İçduygu and Kirişçi state (Ahmet İçduygu and Kemal Kirişçi [eds.]: *Land of Diverse Migrations – Challenges of Emigration and Immigration in Turkey*. Istanbul, 2009; p. 6).

39 cf. Kirişçi (2007): p. 92.

40 cf. *ibid.*

41 Pusch (2012): p. 167.

42 İçduygu and Aksel in Castles et al., eds. (2015): p. 123.

43 cf. Aydın-Düzgüt and Tocci (2015): p. 138.

vestments. These, as a corollary, are reasons for growing rates of migration to Turkey⁴⁴ – “a transformation from being mainly a country of emigration to one of immigration.”⁴⁵ One can call present Turkey a migration-sending, migration-receiving and transit country at the same time.⁴⁶

Beginning in the 1980s, approximately up to one million (transit-) migrants, refugees, suitcase traders, circular migrants, clandestine workers and ethnical “Turks” entered Turkey, as Barbara Pusch noticed in 2012.⁴⁷ In contrast to previous times, the migration flows have become much more diverse within the last decades. However, Turkey is not the main destination country for all migrants crossing Turkish borders. Rather the geographic position between the Middle East, Asia, Africa and Europe; the lack of sufficient controls at the country’s southern borders and an “incomplete” migration regime turned Turkey into one of the top destinations for transit migrants wanting to enter the EU.⁴⁸ Transnational migrants are people whose “daily lives depend on multiple and constant interconnections across international borders and [whose] public identities are configured in relationship to more than one nation-state”, as defined by Nina Glick Schiller.⁴⁹ Irregular transit migration

occures generally when migrants do not have access to an orderly border-crossing to their country of destination and are consequently “forced to choose disorderly and step-by-step moves through various countries in between.”⁵⁰

But it is not only the geographical location that makes the country a migration hotspot – Turkey also constitutes a demarcation line between the global rich and the global poor. Pusch refers to the famous “Fortress Europe” when stating that the line between rich and poor is visualized by the strict EU migration regulations.⁵¹

According to numbers provided by Ahmet İçduygu and Damla B. Aksel, only between 1995 and 2013 more than half a million transit migrants heading towards the European

Union were registered in Turkey.⁵² Naturally, a not insignificant number of actual transit migrants is also stranding in Turkey instead of continuing the journey towards Europe, may it be due to a lack of money or of opportunity.

44 Kaya (2009): p. 1.

45 İçduygu and Aksel in Castles et al., eds. (2015): p. 125.

46 cf. Pusch (2012): p. 168.

47 2012: p. 167 f.

48 İçduygu and Yükseser cited in Aydın-Düzgüt and Tocci (2015): p. 138.

49 Nina Glick Schiller, Linda Basch and Cristina Szanton Blanc: From Immig-

rant to Transmigrant – Theorizing Transnational Migration. *Anthropological Quarterly*, 68:1, 1995; p. 48.

50 Ahmet İçduygu: The Irregular Migration Corridor between the EU and Turkey – Is it Possible to Block it with a Readmission Agreement? *EU-US Immigration Systems 2011/14*, San Domenico di Fiesole, 2011; p. 2.

51 Pusch (2012): p. 168.

52 İçduygu and Aksel in Castles et al., eds. (2015): p. 125.

1.2 Turkey's Evolving Migration Policies⁵³

As in many European states also in Turkey the migration policies in the first half of the 20th century were based on nationalism and nation-building.⁵⁴ As Ahmet İçduygu summarizes: "Exclusion of the non-Turkish and non-Muslim populations and inclusion of Turks and Muslims was the first comprehensive system of migration policy in the country."⁵⁵ In its last days the Ottoman Empire faced a massive exodus of the country's non-Muslim minority populations due to several push and pull factors.⁵⁶ A key part of the transforming of the multi-ethnic empire into a homogeneous nation was the compulsory population exchange between Greeks and Turks, set out in the Lausanne Treaty in 1923.⁵⁷ This forced migration of more than one million people changed the social and political patterns and influenced the economy of both Greece and Turkey: "It might be said that Greece has gained economically and lost politically, and that Turkey has gained

politically but lost economically", as Ayhan Aktar outlines.⁵⁸

Still, this compulsory population exchange had an important impact on the nation-building process of a homogeneous Turkish state: In 1906, about 20 per cent of the Ottoman population was non-Muslim; in the years between 1914 and 1924 the composition of the population changed so dramatically that in 1927 only 2.6 per cent non-Muslim citizens were counted.⁵⁹

The founding fathers of the Turkish Republic were driven by the deep-seated belief that the Ottoman Empire had been doomed to failure because of its inherent multi-ethnic and multi-cultural character. For that reason Turkish-speaking Muslims as well as ethnic groups who were considered to "easily melt into a Turkish identity" were encouraged to immigrate to the newly founded state.⁶⁰ Consequently, from the founding of the Turkish Republic in 1923 until 1997 more than 1.6 million migrants settled and successfully assimilated in Turkey on the legal basis of the Law on Settlement of 1934.⁶¹

53 More detailed information about the legal framework on migration and asylum in Turkey are inter alia provided by Juliette Tolay (2012) and İbrahim Kaya (2009).

54 cf. İçduygu (2014): p. 4.

55 *ibid.*

56 İçduygu and Kirişçi (2009): p. 2.

One important push factor was "economic nationalism" as a first step in Turkish nationalization, emerging since 1912 in the Ottoman Empire (Ayhan Aktar: *Economic Nationalism in Turkey – The Formative Years, 1912 – 1925*. *Boğaziçi Journal*, Vol. 10, No. 1–2, 1996; p. 263).

57 Sirkeci and Pusch in Sirkeci and Pusch, eds. (2016): p. 9.

58 Ayhan Aktar: *The Turkish Experience of Population Exchange Reconsidered*. In: Renée Hirschon (ed.): *Crossing the Aegean – An Appraisal of the 1923 Compulsory Exchange between Greece and Turkey*. Oxford, 2003; p. 80.

According to Colin Bundy, the act of "unmixing" saw even 1.7 million people moving in both directions (Colin Bundy: *Migrants, Refugees, History and Precedents*. In: Marion Couldrey and Maurice Herson [eds.]: *Forced Migration Review – Destination: Europe*. Issue 51, January 2016; p. 5).

59 Çağlar Keyder: *State and Class in Turkey – A Study in Capitalist Development*. London, 1987; p. 79.

60 İçduygu and Kirişçi (2009): p. 10.

61 *cf. ibid.*

Since the 1980s however, the Turkish Republic experienced new forms of – non-Muslim and non-Turkish – immigration, involving nationals of neighbouring countries, European states, as well as illegal transit migrants heading for the West.⁶² Turkey's asylum policy could be divided into "two tiers" as Turkey is one of the original signatories of the 1951 Convention Relating to the Status of Refugees⁶³ who are maintaining the geographical limitation clause excluding asylum seekers from outside Europe.⁶⁴

The state allows the United Nations High Commissioner for Refugees (UNHCR) to conduct refugee status determination procedures on Turkish territory.⁶⁵ Asylum applications are examined by the Turkish authorities in coordination with the UNHCR; recognized refugees are expected to be resettled in third countries. Within the framework of that cooperation for instance asylum seekers coming from the Soviet Union to Turkey as a western ally until 1991 were processed

and resettled in third countries like the United States and Canada.⁶⁶

The second tier of the country's "two-tier asylum policy" relates to people coming from non-European states.⁶⁷ Before the extreme increase in numbers, these people were allowed to be sheltered by the UNHCR with the condition not to locally integrate but to be resettled out of Turkey if recognized as refugees.⁶⁸ However, by the end of the Cold War, these existing policies came to a crisis because of the changes in quantity and quality of the migratory flows.⁶⁹ On the one hand, most of the mass influxes of Iranians, Iraqi Kurds in 1988 and 1991, Bulgarian Turks in 1989 and Bosnian Muslims in 1992/93 could neither be accepted in Turkey under the Law on Settlement nor under the 1951 Refugee Convention; on the other hand they led to growing concern among Turkish officials.⁷⁰ Driven by the fear of Iran possibly assisting Islamic terrorist groups in Turkey and of potential PKK militants among asylum seekers, the control of the country's eastern borders became more and

The Law on Settlement restricted possible settlement and asylum applications to people of "Turkish descent and culture", which means that only people fulfilling the ethnic or religious preconditions were allowed to immigrate to Turkey. These have been in first place different groups of Sunni Muslims from the Balkans (Kemal Kirişçi: *The Question of Asylum and Illegal Migration in European Union – Turkish Relations*. *Turkish Studies* 4 [2003]; p. 88 f.)

62 İçduygu and Kirişçi (2009): p. 11.

63 Also referred to as 'The 1951 Refugee Convention'.

64 According to the UNHCR, in 2015 the following states still maintained the geographical limitation: Congo, Madagascar, Monaco and Turkey (States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol).

65 İçduygu (2015): p. 6 f.

66 Kemal Kirişçi: *Managing Irregular Migration in Turkey – A Political-Bureaucratic Perspective*.

CARIM Analytic and Synthetic Notes, 2008/61; p. 8.

Currently 33 countries offer resettlement or humanitarian admission in UNHCR-facilitated programmes. The countries admitting most resettled refugees in 2015 were in the same order: the United States, Canada, Australia, Norway and the United Kingdom (UNHCR: *Resettlement Fact Sheet 2015*).

67 Kirişçi (2007): p. 94.

68 cf. 2007: p. 94 f.

69 Tolay (2012): p. 42.

70 Kirişçi (1996): p. 299 f.

more an issue of particular importance to the Turkish state.⁷¹

At that time the Turkish legal regulations on migration issues were altogether incomplete and incompatible as they were consisting of “a handful texts [laying] down clauses and modalities regarding the entry, exit, stay and residence of aliens”, – beside the Law of Resettlement, mainly the Law on Foreigners and the Turkish Citizenship Law.⁷² Yet there were no legal regulations regarding issues of asylum or labour. To overcome these shortcomings the Directive on Asylum Regulation was introduced in November 1994 as a first serious step in reforming Turkey’s legislation regarding migration.⁷³ Once the new regulation was adopted, the right to apply for asylum in Turkey was granted to non-European refugees as well, – but still with the condition that officially recognized refugees would be resettled in a third country.⁷⁴ Furthermore, with the introduction of Article 29 (“Deportation”) stating that

“a refugee or an asylum seeker who is residing in Turkey legally can only be deported [...] within the framework of the 1951 Geneva Convention relating to the Status of Refugees or for reasons of national security and public order”,

71 *ibid.*

72 İçduygu and Aksel in Castles et al., eds. (2015): p. 123; Tolay (2012): p. 42.

73 For a detailed analysis of the Directive on Asylum Regulation, see Kirişçi (1996).

74 Tolay (2012): p. 42.

the principle of ‘non-refoulement’⁷⁵ has almost been accepted, what stands for another important step regarding the fundamental rights of asylum seekers in Turkey.⁷⁶ The principle of non-refoulement has been the reason for several complaints and trials due to alleged Turkish violations of the obligation anchored in The European Convention on Human Rights (ECHR) “not to return persons to a country where their lives might be in danger, – even if they were not covered by the 1951 Convention”, as Kemal Kirişçi notes.⁷⁷

“A time of earthquake reforms” was succeeding the “early step” of the 1994 Asylum Regulation, –⁷⁸ throughout the 2000s, the immigration issue in general became more and more a political concern to manage.⁷⁹ Far-reaching revisions of many regulations on asylum and migration were adopted between 2002 and 2005 when Turkey was

75 Article 33 of the 1951 Convention declares the principle of non-refoulement: “No Contracting State shall expell or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion [...]” (UNHCR: Convention and Protocol Relating to the Status of Refugees).

76 Kirişçi (1996): pp. 303 and 317.

77 1996: p. 303 f.

Particularly attracting public attention was the decision of the European Court of Human Rights (ECtHR) on the Abdolkhani and Karimnia case. Turkey was found guilty for violation of a number of articles of the ECHR because of the attempt to deport the two Iranian refugees to their home country denying them the contestation of the deportation decisions (Kirişçi [2012]: p. 77).

78 Tolay (2012): p. 43.

79 Üstübcü in Biriz Karaçay and Üstübcü, eds. (2014): p. 361.

trying to align its visa policy to the Schengen negative and positive lists. In this context among others the Law on Citizenship was amended, the Law on Work Permits for Foreign Nationals as well as the additional protocols against migrant smuggling and human trafficking of the United Nations Convention against Transnational Organized Crime (UNTOC) were adopted.⁸⁰

These were followed by the National Action Plan on Asylum and Migration (NAP) for Adoption of the EU Acquis in the Field of Asylum in 2005, – the first fully-fledged approach on Turkish immigration policy and part of the EU pre-accession requirements.⁸¹ The action plan determined a time frame and the tasks Turkey intended to accomplish in order to develop a comprehensive national status-determination system, to lift the geographic limitation and to adopt EU directives on asylum and migration related topics in general.⁸² Three years after the NAP's adoption, accordingly steps were undertaken by the establishment of a task force on migration and asylum in 2008.⁸³

According to Juliette Tolay, this was not only important because it initiated the creation of a new comprehensive migration policy, but because it indicates a “change in

approach and mindset within Turkish bureaucracy”.⁸⁴

Lastly in 2013, the Law on Foreigners and International Protection (LFIP) was adopted by the Turkish parliament, representing “Turkey's main legislative document defining its asylum policy.”⁸⁵ It combines the two separate previously planned laws, namely the Law on Aliens and the Law on Asylum and is considered as rather progressive.⁸⁶ The LFIP is viewed as a “milestone advancement” in the process of aligning the Turkish migration policy system to international and EU standards. Also by this law, the principle of non-refoulement is clearly recognized, thus the “refugees' irrefutable right to cross a country's border in situations of persecution and war.”⁸⁷ Furthermore, the status of ‘subsidiary protection’ is formalized and an agency to centralize asylum applications is being introduced.⁸⁸ Although the lifting of the geographical limitation of the 1951 Convention is a major condition for Turkey to join the European Union, this law does not affect the limitation's validity.⁸⁹ Still, the process as a whole indicates

80 Tolay (2012): p. 43;
Üstübici in Biriz Karaçay and Üstübici, eds. (2014): p. 361 f.

81 Ministry of Interior (17th January 2005): National Action Plan for Asylum and Migration (2005).

82 İçduygu and Aksel (2015): p. 125.

83 Tolay (2012): p. 44.

84 ibid.

85 Juliette Tolay: The EU and Turkey's Asylum Policies in Light of the Syrian Crisis. Global Turkey in Europe, Policy Brief 10, January 2014; p. 3.

86 Üstübici in Biriz Karaçay and Üstübici, eds. (2014): p. 362.

87 Clemens Peter Leonard Wilbertz: UNHCR's World of Refugees and Asylum within a Changing Security Discourse – The Principle of ‘Nonrefoulement’ vs. the Practice of Border Closure. Copenhagen, 2012; p. 8.

88 Tolay (2014): p. 3.

89 Jonathon Burch (2013): Turkey Has New Law on Asylum, But Sets Limits for Non-Europeans.

that there are institutional changes going on in the governance of immigration in Turkey.⁹⁰

1.2.1 *The Geographical Limitation*

Although Turkey is among the first signatories of the 1951 Refugee Convention and the 1967 Protocol, non-Europeans are not legally recognized as ‘refugees’ under the current legislation.⁹¹ İbrahim Kaya puts it pointedly by stating that the only difference between ‘refugees’ and ‘asylum seekers’ in Turkey was “whether the events causing them to flee took place in Europe or elsewhere.”⁹² Historically, the geographical limitation gave states the possibility to accept the applicability of the 1951 Convention only to individuals who became refugees as a result of events in Europe. A time limitation on the other hand made it possible to accept only individuals who became refugees before 1951. In 1967 the UN adopted an additional protocol to the 1951 Convention which gave states the possibility to lift both limitations.⁹³

In Turkey, the limitation had been introduced to encounter the challenges originating in “events occurring outside Europe” and the resulting migration waves the country experienced since the 1980s at its eastern and southeastern borders.⁹⁴ By the influx of more than half a million Kurds from Iraq in 1988 and 1991 the security con-

cerns that had led to the limitation have been reinforced.⁹⁵ Kirişçi reasons that the geographical limitation has traditionally been a “central characteristic” of Turkey’s asylum policies and led to the formation of an overall two-tiered asylum policy.⁹⁶ The two tiers differ inasmuch as the first tier applies to European refugees, rooting in the Cold War years.

At that time Turkey received asylum seekers fleeing from the communist countries in Eastern Europe and the Soviet Union. In close cooperation with the UNHCR, Turkey granted refuge to them until they would have been resettled to a third country. These people would enjoy all the rights provided by the 1951 Convention.⁹⁷ Kirişçi notices, that there have been “never any of the economic, political and social problems often associated with integrating refugees” with the approximately 13,500 asylum seekers enjoying protection in Turkey between 1970 and 1996.⁹⁸

90 Üstübcü in Biriz Karaçay and Üstübcü, eds. (2014): p. 362.

91 Kaya (2009): p. 5 f.

92 2009: p. 6.

93 Kirişçi (2003): p. 103.

94 Kaya (2009): p. 5; Kirişçi (2012): p. 64.

95 Kirişçi (2003): p. 83.

96 2003: *ibid.*

97 Kirişçi (2007): p. 94.

According to Kirişçi, only a small number of asylum seekers were allowed to stay in Turkey in the long-term, mostly because they married Turkish nationals (Kirişçi [2003]: p. 83).

98 *ibid.*

The second tier of Turkish asylum policy concerns the even more discussed refugees from outside Eu-

Iraq in 1991 resulted in a change of this policy. The authorities began to deport asylum seekers arguing

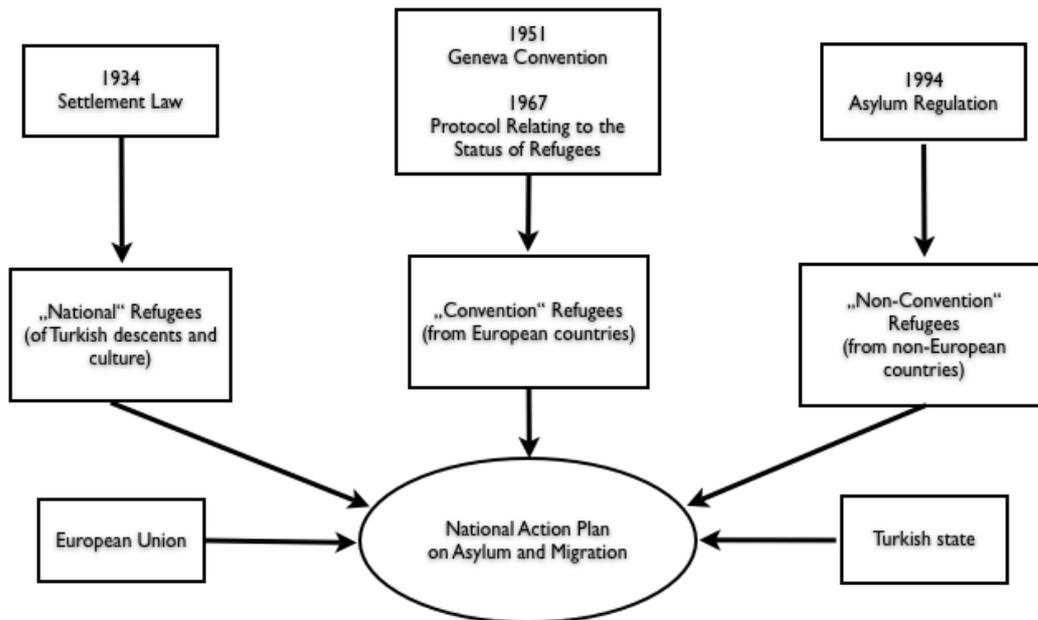


Figure 1: **Basic structure of asylum law in Turkey**¹

rope, also referred to as ‘non-Convention refugees’. Although there has not been any legal basis on which the status of these “real foreigners” could have been governed, a “policy based on pragmatism and flexibility” evolved as growing numbers of refugees began to arrive from outer Europe.⁹⁹

Iranian citizens fleeing from Ayatollah Khomeini’s post-revolutionary regime during the 1980s were the first to benefit from practices granting them residence permit in Turkey while they were waiting to be examined and resettled by the UNHCR. Turkish officials applied this practice from then on to several nationals arriving in the country. However, the massive exodus from

either that they are coming from a safe region as ‘economic migrants’ or that they had reached Turkey via a third country.¹⁰⁰ This handling led to growing criticism from the international community, combined with the demand to apply the principle of non-refoulement to ‘non-Convention refugees’ too.¹⁰¹

With the Asylum Regulation introduced in 1994, the Turkish authorities ended the dispute with the UNHCR about the legal definition

99 2003: p. 85.

100 cf. 2003: p. 86.

Another reason for deportations of people was their non-compliance with the requirement to apply for asylum within a maximum of five days. This rule has often been interpreted strictly, so that applicants exceeding the term have been refused. In 1999, the limit for filling an asylum application had been increased to ten days (2003: p. 87).

101 *ibid.*

of a 'refugee' by introducing their own status determination. However, the background of this regulation was rather security-motivated than focused on strengthening refugees' rights, Kristen Biehl calls it even the first sign of a "migration securitization" approach in Turkey.¹⁰² The regulation introduces measures for the Turkish authorities to increase their control on asylum issues and illegal movements of people into and through Turkey but could not have been interpreted as a development towards the lifting of the geographical limitation.¹⁰³

It is obvious that the limits of Turkey's obligations in international refugee law are not unproblematic at least since the country is a migration destination. The lifting of the geographic limitation became one of the major conditions that Turkey has to fulfill in order to be part of the European Union. In the past, the Turkish government defended the maintenance of the limitation with security concerns as well as with the argumentation that the lifting would lead to mass influxes of refugees.¹⁰⁴ The European side then again claims that Turkish denial of asylum status to non-European asylum seekers makes these people irregular immigrants in the EU on the long term.¹⁰⁵ Since the Union approved a delay of the

lifting of the geographical limitation until Turkey's accession, it seems to be quite unlikely that the geographical limitation will be touched on as long as Turkey's prospects of EU membership remain vague.¹⁰⁶

1.3 Europeanization of Turkish Migration and Asylum Policy

There are several definitions of the concept of 'Europeanization', – the perhaps most common view is the one paraphrased by Başak Kale, who states that "Europeanization can be defined as [the] changes caused by European integration process at the domestic level."¹⁰⁷ Héritier defines it rather as a "process of influence deriving from European decisions and impacting member states' policies and political and administrative structures."¹⁰⁸ One should add that this is not only a phenomenon affecting member states, but prospective member states too: Turkey as a EU member state candidate is expected to adapt and enforce the entire legal structure of the EU, the *acquis*,¹⁰⁹ as a fundamental prerequisite for full membership.

102 cf. Kirişçi (2007): p. 95.

Kirsten Biehl cited in Sibel Karadağ: *Europeanization of Migration and Asylum Policy – A Critical Analysis of Turkish Case [sic!]*. London, 2012.

103 Kirişçi (2003): p. 309.

104 2003: p. 83.

105 Aydın-Düzgit and Tocci (2015): p. 144.

106 cf. Kirişçi (2012): p. 65.

107 Başak Kale: *The Impact of Europeanization on Domestic Policy Structures – Asylum and Refugee Policies in Turkey's Accession Process to the European Union*. Ankara, 2005; p. 39.

108 Héritier cited in Kale (2005): p. 39.

109 By 'acquis communautaire' or shortened 'acquis', the entire body of EU legislation is indicated. The adoption of the totality of EU *acquis* ranks among the basic prerequisites of European Union membership (Siegmar Schmidt and Wolf J. Schünemann: *Europäische Union – Eine Einführung [European Union - An Introduction]*. Baden-Baden, 2013; p. 207).

The rationalist mechanisms of ‘reinforcement by reward’ is what makes candidate countries adopt and implement the EU legislation.¹¹⁰ However, the dynamic character of Europeanization should not be underestimated – just as the fact that the particular negotiating partner could also exercise power over the EU.¹¹¹ The process of Europeanization involves ups and downs and is anything but smooth.¹¹² In the case of Turkey, the EU influenced the transformation of a wide range of Turkish policies with respect to domestic and foreign politics. The country introduced “dramatic reforms” in order to meet the Copenhagen criteria.¹¹³ When Tolay in 2011 looked back on the “reform journey” undertaken by Turkish officials since 1994, she concluded that Turkish migration policies reflected an “overall compliance to EU norms and regulations”.¹¹⁴ The will to become a member of the European Union altered Turkey’s general conception of its own national identity.¹¹⁵ With a growing pressure from the outside, the country had to recognize finally its own ethnic and cultural diversity, and thereby revise its view on the foreigners in the country.¹¹⁶ Turkey has been accepted as an EU

candidate in 2005, the year when also the negotiations for full EU membership have been introduced. In this context the EU leverage over Turkey increased significantly.¹¹⁷ Since 2005, however, only little progress has been made in negotiating Turkey’s EU accession.¹¹⁸

In the 2000s, the Europeanization process led to the establishment of new administrative and legal structures in the Turkish management of migration:¹¹⁹ The EU Accession Partnership document and the National Action Plan of 2005 set forth how the Turkish legislation should be harmonised with the European Union asylum law.¹²⁰

The latter provided a timetable which Turkey intends to follow in order to adopt the EU legislation on asylum and migration, to lift the geographical limitation and to develop a fully-fledged national status-determination system.¹²¹ However, there is one crucial factor undermining Turkey’s commitment in implementing this reform process, which is the uncertainty over the country’s membership prospects. This insecurity is “discouraging officials from advising the government to make [...] changes too pre-

110 Diğdem Soyaltın (2013): *Europeanization – Analyzing the Domestic Change in Turkey*.

111 İçduygu and Üstübcü in Helen Schwenken and Sabine Ruß-Sattar (eds.): *New Border and Citizenship Politics*. London, 2014; p. 56.

112 *ibid.*

113 Kirişçi in Paçacı Elitok and Straubhaar, eds. (2012): p. 64.

114 Tolay (2012): p. 45.

115 İçduygu and Aksel (2015): p. 124.

116 *cf. ibid.*

117 Kirişçi (2003): p. 100.

118 Meltem Müftüler-Baç in Senem Aydın-Düzgit, Daniela Huber, Meltem Müftüler-Baç, E. Fuat Keyman, Jan Taşçı and Nathalie Tocci (eds.): *Global Turkey in Europe II*. Rome, 2014; p. 217.

119 İçduygu (2014): p. 3.

120 Within the framework of accession negotiations, immigration and asylum issues are part of Chapter 24 of the *acquis*, viz. Justice, Freedom and Security (European Commission: *Conditions for Membership – Chapters of the Acquis*).

121 İçduygu and Aksel (2015): p. 125.

cipitously”, as İçduygu and Aksel state.¹²² In the words of Kirişçi there is “a deep-seated concern that Turkey may become a ‘buffer-zone’ or a kind of a ‘dumping ground’ for the EU” for all the migrants Europe rejected – if the country should not obtain the EU membership after harmonizing all legislations and policies with that of the Union.¹²³

During the EU-Turkey readmission agreement negotiation process these concerns have been articulated by Turkish officials already. The issue of readmission became more and more crucial in the pre-accession process as it took a decade until both sides came to terms in December 2013 and signed an agreement on the readmission of persons residing without authorisation and the Protocol on the Initiation of the Visa

Liberalization Dialogue.¹²⁴ The package implies that Turkey would start to take back irregular migrants who reached the European Union through Turkey three years after the agreement comes into force.¹²⁵

The EU on the other hand commits itself to let the Parliament vote to abolish visas for Turkish citizens once Turkey complies with the conditions of the Visa Liberalization Roadmap and implements the readmission agreement.¹²⁶

The link to the launch of visa facilitation negotiations was an important incentive for the Turkish

party to finally sign the readmission agreement.¹²⁷ The Roadmap Towards a Visa-Free Regime with Turkey agreed upon lists requirements in five thematic blocks which are document security, migration and border management, public order and security, fundamental rights, and readmission of irregular migrants.¹²⁸

Thereby, the lifting of the visa requirements for Turkish citizens is scheduled for the end of 2017 at the latest.¹²⁹ So far, the European Commission (EC) published three reports on Turkey’s progress in fulfilling the individual agenda items. The last one published in May 2016 indicated that seven requirements out of the 72 had not yet been fulfilled, – “some of them are of particular importance.”¹³⁰ One key issue of the original EU visa liberalisation roadmap concerns Turkey’s alignment with the Schengen acquis.¹³¹ Yet this condi-

127 İçduygu and Üstübici (2014): p. 55.

128 European Commission (16th December 2013): Roadmap Towards a Visa-Free Regime with Turkey.

129 İçduygu (2015): p. 12.

130 European Commission (4th May 2016): Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap.

131 The Schengen area consists of 22 EU member states and four states who are not member of the Union but of EFTA (European Free Trade Association), all signatories to the Schengen Agreement of 1985. The cooperation entitles the nationals of the Schengen area to free movement of persons on the legal basis of Article 3 of the Treaty on European Union (TEU), Article 21 of the Treaty on the Functioning of the European Union (TFEU), Titles IV and V TFEU (cf. European Parliament: Free Movement of Persons). The basic rules concerning the control of the Schengen area’s external borders are set out in the Schengen Borders Code (Steve

122 ibid.

123 Kirişçi (2007): p. 96.

124 İçduygu and Aksel (2015): p. 125.

125 The EU-Turkey readmission agreement was initially proposed to become fully applicable from October 2017.

126 Aydın-Düzgüt and Tocci (2015): p. 143.

tion has been postponed since Turkey's visa policy is in "stark contrast with the restrictive Schengen visa regime and the political inclinations of EU member states" after Turkey stopped and even reversed its harmonization with the Schengen whitelist in the second half of the 2000s.¹³² As Turkey was able to increase political and economic bonds within its neighbourhood and does not want to lose this gains, the adoption of the Schengen regime was suspended until accession to the EU.¹³³

1.4 EU Migration Policy

The European Parliament is claiming on its website that the immigration policy of the Union as one of its "key objectives" was "forward-looking and comprehensive [...], based on solidarity."¹³⁴ In June 2016, the Commission declared that migration management was "at the top of the EU's external relation priorities."¹³⁵ The legal basis for the dealing with refugees are

the 1951 Convention, the ECHR and the Charter of Fundamental Rights of the European Union.

The 1951 Convention first of all defines who is a 'refugee', what kind of legal protection a refugee enjoys, what his or her rights and duties are.¹³⁶

The ECHR of 1950 obliges the signatories to ensure protection against killing, torture and slavery among others. The signatory countries have to provide the contractual rights to all people under their jurisdiction. Although all member states of the EU are signatories to the ECHR, the EU as a whole could not join the treaty because it has no legal personality. To provide a legal basis of fundamental rights beside ECHR and national constitutions at the European level, the EU Charter of Fundamental Rights took effect with the Lisbon Treaty on 1st December 2009.¹³⁷

In the wording of the founding treaties of the European Economic Community (EEC) migration and asylum issues remain unmentioned due to the mainly economic character of the Community.¹³⁸ Traditionally these issues were subject to the jurisdiction of the individual member states. Though, the increasing migration flows since the 1980s led to first cooperations in asylum matters in 1986, when the Commission proposed the completion of the common market and the

Peers: Amending the EU's Borders Code. Statewatch Analysis, s.l., June 2012).

In 2001, the European Commission published the Council Regulation No 539/2001, containing a list of countries whose citizens do not require visas for Schengen (the so-called 'white list') and another list of countries whose citizens are in need of visas in order to enter the Schengen area ('black list') (European Commission [21st March 2001]: Council Regulation No 539/2001 of 15 March 2001).

132 Aydın-Düzgüt and Tocci (2015): p. 144 f.

133 2015: p. 145.

134 European Parliament: Immigration Policy.

135 European Commission (7th June 2016): Towards a New Partnership Framework with Third Countries Under the European Agenda on Migration – Frequently Asked Questions.

136 Marianne Haase and Petra Bendel: Rechtsgrundlagen [Legal Bases]. Bundeszentrale für politische Bildung, 2008.

137 cf. *ibid.*

138 Treaty of Rome signed in 1957, officially known as the Treaty Establishing the European Economic Community.

dismantling of internal borders.¹³⁹

To counter the resulting security risks, common standards for the outer borders of the European Communities (EC) have been put forward. At the same time the member states' policies in asylum and migration matters were object to be made compatible. Until the 1990s, integration progress in this field had been achieved by increasing police cooperation among the member states.¹⁴⁰

With regard to asylum questions, the Dublin Convention signed in 1990 (in effect since 1997) with its 'one state only' principle is of great importance.¹⁴¹ This principle implies that asylum seekers are required to submit their applications to the member state they entered first and that only this particular member state is responsible for the case's examination. Multiple applications in several countries are to be avoided.¹⁴² When the Amsterdam Treaty had been signed in 1997, the policy fields asylum and migration as well as the securing of the external borders were moved from the third to the first pillar to be governed by the Community method.¹⁴³ This step is insofar surpris-

ing as these specific policy fields had been considered as important national competences the member states would not abandon easily.¹⁴⁴

The Amsterdam Treaty created a legal framework for the organization of a common EU asylum and migration policy, at the following Tampere summit in 1999 the European Heads of State and Government fleshed out their actions on European level. The resulting Tampere programme included three objectives in regard to asylum and migration: The milestone of the Tampere Council was the European Council's affirmation of the fundamental right to asylum and the initiative to establish a Common European Asylum System (CEAS) on basis of the 1951 Convention.¹⁴⁵ The CEAS should also lead to fairer asylum procedures with less

(ECSC) and the European Atomic Energy Community (Euratom).

2. The Common Foreign and Security Policy (CFSP) pillar, and

3. The Justice and Home Affairs (JHA) pillar, including asylum policy, control of external borders and immigration from outside the Union.

The cooperation in the CFSP and JHA pillars is of intergovernmental nature, the first pillar however is characterised by great influence of the EU institutions due to its supra-national character (John Van Oudenaren: *Uniting Europe – An Introduction to the European Union*. Lanham, 2005; p. 55).

144 Haase and Jugl (2007).

The admission of migrants coming to European countries for economic reasons is still subject to the member states' national legislation though (Céline-Agathe Caro and Lucas Schramm: *Die Flüchtlings- und Asylpolitik der EU – Eine Bestandsaufnahme* [The EU's Refugee and Asylum Policy – An Inventory]. Konrad-Adenauer-Stiftung, 2015).

145 European Commission (August 2002): Factsheet # 3.1 – Tampere, Kick-Start to the EU's Policy for Justice and Home Affairs.

139 cf. Marianne Haase and Jan C. Jugl: *Asyl- und Flüchtlingspolitik der EU* [Policy on Asylum and Refugees in the EU]. Bundeszentrale für politische Bildung, 2007.

140 Haase and Jugl (2007).

141 2007.

142 cf. Schmidt and Schünemann (2013): p. 223.

143 The three-pillar structure describes the political system of the EU established in the Maastricht Treaty 1992. The three pillars were:

1. The European Communities, namely the European Community, the European Coal and Steel Community

deviating acceptance rates between member states.¹⁴⁶ On the long-run, the Council called furthermore for common asylum procedures in order to grant EU-wide protection status to entitled persons. Secondly, an action plan of measure was invented to reduce the forced migration to the member states. Part of these are information campaigns in the countries of origin as well as the cooperation with affected countries through repatriation agreements. Other important tasks are the fight against human trafficking and illegal border crossing. Thirdly, the cooperation with the countries of origin was to be intensified in order to reduce the causes for migration and flight in the medium and long term. Here the main objectives are the local fight against poverty and unemployment to improve the overall living conditions.¹⁴⁷ The terrorist attacks in New York in September 2001 and Madrid in March 2004 affected the implementation of the ambitious Tampere decisions essentially: The ever-present trend to regard migration matters as a security challenge enhanced.

The introduction of the Schengen Information System (SIS)¹⁴⁸ and

the adoption of the Dublin II Regulation in 2003 are seen by Haase and Jugl as part of the new “harmonisation and isolation” policy of a “Fortress Europe”.¹⁴⁹ The new Dublin II Regulation is in fact not very different from its predecessor, the Dublin Convention, which was signed in 1990. The determination that the EU member state first entered by an asylum seeker has the responsibility to examine the asylum application is maintained without question. However, increasing border controls with more technical support (such as EURODAC¹⁵⁰ identification system) are signs of a tendency towards isolation.¹⁵¹ Concerned member states are controlling the green borders to non-EU states more carefully because of the responsibility and costs that accompany each asylum seeker entering their territory. Security aspects and the fight against terrorism were also the central objectives of the multilateral Hague Programme adopted in 2004. Among other measures against illegal immigration, the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) was introduced to support the border protection of the individual member

146 Schmidt and Schünemann (2013): p. 223.

147 Haase and Jugl (2007).

148 The Schengen Information System (SIS) had been set up in 1985 and was renewed in April 2013 as SIS-II. It allows the sharing of information about people whom entry to the Schengen Area was refused, may it be because they are considered as a danger to the public order or national security, or because they have been deported after an irregular stay in a

Schengen member state (Balleix [2014]: p. 2).

149 Haase and Jugl (2007).

150 In the EURODAC (European Dactyloscopy) database, the fingerprints of asylum seekers coming to the EU are saved and compared to each other (Schmidt and Schünemann [2013]: p. 223). The system makes it possible to trace migrants within the EU and supports member states in their fight against “asylum shopping” (Balleix [2014]: p. 3).

151 Haase and Jugl (2007).

states.¹⁵² With regard to asylum policy the planned EU-wide protection status to vulnerable persons as well as the establishment of a coordination unit were important objectives of the programme.¹⁵³

Unlike the major advances achieved in harmonising security-related policy fields, the regulations on humanitarian issues fell short of many non-governmental organization's (NGO) expectations.¹⁵⁴ The "vague programme" as the Hague Programme is critically evaluated, is considered as a step back after the Tampere process. NGOs like the European Council on Refugees and Exiles (ECRE), Amnesty International and the UNHCR condemned the one-sided focus on warding off refugees, – the protection of

asylum seekers seemed not to have priority in EU asylum politics.¹⁵⁵

With regard to the border protection agency Frontex, the question was raised whether European asylum policy was about the protection of refugees or about the protection *against* refugees.¹⁵⁶

The five-year plan of the Hague Programme was succeeded by the Stockholm Programme for the years 2010 through 2014. The programme was concluded in 2009 at the same time when the Lisbon Treaty came into force, which featured some basic reforms in the area of justice and home affairs as well.¹⁵⁷ By the Stockholm Programme, the EU carried on building an integrated European security architecture and an "area of justice, freedom and security with actions focusing on the interests and needs of citizens".¹⁵⁸ Relating to asylum and migration policies, the already earlier adopted strategy of "immurement" of the European continent, as well as surveillance and controls are subject to be developed further.¹⁵⁹ The military control of the external borders have been reinforced steadily since the 1990s.

152 Council of the European Union (13th December 2004): The Hague Programme – Strengthening Freedom, Security and Justice in the European Union.

The various tasks of the Frontex Agency are:

1. Coordination of the operative cooperation between member states,
2. Support for the training of border guards,
3. Carrying out risk analyses,
4. Following relevant research,
5. Support of member states in special situations (for instance by intervention teams),
6. Support in organising joint return operations,
7. Information system and exchange of information.

In general, the sole responsibility for securing the external borders still belongs to the particular state

(Schmidt and Schünemann [2013]: p. 224).

153 On this basis the European Asylum Support Office (EASO) became operational as an EU agency in 2011. The office based in Valletta/Malta is expected to support member states having difficulties in managing migratory flows and to contribute to the development of a CEAS in general (2013: p. 223).

154 Haase and Jugl (2007).

155 *ibid.*

156 *ibid.*

157 Since the Lisbon Treaty, the European common asylum and immigration policy is an ordinary legislative procedure (Art. 77 to 79 TFEU). The EU migration policy which belongs to the shared competencies (Art. 4 TFEU) now included border controls, asylum, legal immigration and the integration of third-country nationals (Balleix [2014]: p. 2).

158 The Stockholm Programme, 16th March 2010.

159 Christine Wicht: Mehr Sicherheit um jeden Preis [Better Safety at Any Price]. Eurozine,

24th March 2010; p. 1.

With the Stockholm Programme, the European Border Surveillance System (Eurosur)¹⁶⁰ was to be extended by aircrafts with surveillance cameras, satellites and drones in order to secure EU borders. Furthermore, the Frontex Agency was expanded to guarantee a continuous monitoring of illegal migration flows.¹⁶¹ In addition to that, one agreed on the usage of military against immigration.

Christine Wicht criticises that the programme does not at all deal with root causes of migration and flight, – in contrary, even growing numbers of people dying as they try to reach Europe seem to be accepted by the signatories.¹⁶² Moreover, she argues that not only the borders between the fight against terrorism and refugee defence, but also between civil foreign-policy interests and military tasks seem to be become blurred by the Stockholm Programme.¹⁶³

The ‘post-Stockholm Programme’ of June 2014 can be seen as the direct follow-up to the former programmes, although it was already conducted in the wake of the Syrian crisis. One completely new challenge addressed was the one of the so-called ‘foreign fighters’ leaving

the Union to join the war in Syria.¹⁶⁴

The Council claimed that worldwide instabilities as well as global and European demographic trends required an “efficient and well-managed migration, asylum and borders policy” in accordance with Article 80 TFEU.¹⁶⁵ The new strategy also addressed the root causes of irregular migration flows as an “essential part” of EU migration policy. Migration policies were envisaged to become a central part of the Union’s external and development policies. Thereby the focus is on the expansion of Regional Protection Programmes; on the fight of smuggling and trafficking human beings, and on the establishment of an effective common return policy as well as readmission obligations with third countries.¹⁶⁶

Much of the EU migration policy on asylum and migration is about securitisation and prevention as Detlef Sack sums up.¹⁶⁷ Yet, as it turned out in 2015 when enormous numbers of refugees reached the EU, the practical implementation of

160 The EU Border Surveillance Initiative Eurosur allows member states to exchange operational information as well as to cooperate among themselves and with the Frontex Agency. The aim of the agency is to reduce the number of migrants entering the EU illegally and to prevent cross-border criminality (Balleix [2014]: p. 3).

161 The Stockholm Programme, 16th March 2010.

162 Wicht (2010): p. 2.

163 2010: p. 3.

164 Regine Kramer: Das “Post-Stockholm-Programm” [The ‘Post-Stockholm Programme’].

In: Öffentliche Sicherheit 9–10/14; p. 49.

165 European Council (27th June 2014): Conclusions of the European Council 26/27 June 2014; p. 2.

Article 80 of the TFEU states the following: “The policies of the Union [...] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States [...]”

166 European Council (27th June 2014): p. 3.

167 Detlef Sack: The Momentum of Contestation – Airports as Borderlands on the Inside. In: Schwenken and Ruß-Sattar, eds. (2014): p. 77.

all these directives is still insufficient. Céline-Agathe Caro and Lucas Schramm name three main problems the European asylum policy is facing right now:¹⁶⁸

1. The receptivity among the member states varies significantly. Measured by the number of inhabitants, Germany, Austria, Malta and Luxembourg received the most asylum seekers in the first quarter of 2016,– whereas Slovakia and Estonia received only three and four people.¹⁶⁹

2. The recognition and return quotas differ considerably across Europe although the countries of origin as well as the causes of flight are to some extent similar.¹⁷⁰

3. The asylum standards within the member states are far from being uniform. Even though refugee status and the minimal social standards are harmonised in EU legislation, the implementation is based on national law.¹⁷¹

In addition to these weaknesses in implementing EU-wide standards, substantial EU regulations have been temporarily suspended. For months, Greece, Italy and Hungary have registered only a fractional amount of the arriving asylum seekers' fingerprints so that people could unhindered journey on towards Western and Northern Euro-

pean countries to seek asylum there.¹⁷²

Besides, since 2011 the member states are instructed not to transfer refugees on the basis of the Dublin Convention to Greece anymore. The EU rule that asylum has to be claimed in the country first entered is suspended due to systematic deficiencies in the Greek asylum system, confirmed by two decisions of the European Court of Justice (ECJ) and the ECtHR.¹⁷³

Furthermore, in 2015 the Schengen Agreement has been de facto suspended at German, Austrian, Danish, Swedish, French and Belgian borders. Since the external border control of the EU was not functioning in some crucial areas, these member states tried to reduce the number of arriving refugees by reintroducing border controls in order to relieve overloaded reception centres.

It is the lack of border controls within the community of states that makes the external frontiers in general a potential security threat. For a migrant it is sufficient to overcome the Schengen border as there are de facto no further borders to overcome. The same applies to international crime and smugglers. The logic of the Schengen area is simply "freedom of mobility on the inside [and] border security outwards," as Schmidt and Schünemann claim.¹⁷⁴

168 Caro and Schramm (2015).

169 Statista (2016): Europäische Union – Anzahl der erstmaligen Asylbewerber je eine Million Einwohner in den Mitgliedstaaten im 1. Quartal 2016 [European Union – Number of First Asylum Applications Per 1,000,000 Inhabitants in the Member States in the First Quarter of 2016].

170 Caro and Schramm (2015).

171 *ibid.*

172 *ibid.*

173 European Commission (15th June 2016): Commission Adopts Second Recommendation Identifying Steps to Restore Dublin Transfers to Greece.

174 Schmidt and Schünemann (2013): p. 222.

1.5 EU Cooperation with Third Countries in the Field of Migration

As it is not possible to improve the control of migration flows without major support from third countries, long before the onset of the so-called refugee crisis the EU increased its external cooperation in migration and asylum issues with third countries considerably.¹⁷⁵ In 2013 the European Commission stated:

„Actions in cooperation with third countries are one of the most effective ways to prevent persons from attempting to enter the EU through irregular channels, and put their life at risk by undertaking dangerous journeys towards Europe.“¹⁷⁶

The overall need for a “coherent and comprehensive” EU migration policy led to the Global Approach to Migration and Mobility (GAMM) as an overarching framework of EU external migration and asylum policy.¹⁷⁷ Though, the GAMM also presents a fundamental contradiction: It seeks to facilitate legal mobility as well as asylum issues of third country nationals and aims at strengthening border controls at the same time.¹⁷⁸

175 European Parliament (15th October 2015): EU Cooperation with Third Countries in the Field of Migration; p. 1.

176 European Commission (4th December 2013): Communication from the Commission to the European Parliament and the Council on the Work of the Task Force Mediterranean; p. 5.

177 European Commission (21st February 2014): Report on the Implementation of the Global Approach to Migration and Mobility 2012 – 2013; p. 2.

178 Thanos Maroukis and Anna Triandafyllidou: Mobility Partnerships - A Convincing Tool for the EU's Global Approach to Migration? Notre Europe Policy Paper, No. 76, 26th February 2013; p. 2.

When the GAMM was adopted in 2005, it was meant to accomplish three main goals.¹⁷⁹ The European labour market's needs should be met as the EU member states face labour market shortages and vacancies that could not be filled by domestic workforce. In addition to that the demographic pressure is increasing as the ratio between persons of working age (20 – 64 years) and persons aged 65 and above is expected to halve in the EU until 2060. In 2010, migration was already the key factor in EU population growth contributing with 62 per cent.¹⁸⁰

The second goal is to develop more stable statuses that migrants coming to Europe should benefit from. Thirdly, countries of origin are supposed to be supported in order to reduce illegal migration pressure to the EU.¹⁸¹

By the GAMM, relevant aspects of migration are meant to be addressed in partnership with non-EU countries in a “coherent and mutually beneficial way”.¹⁸² The renewed version of the approach which was launched in 2011 introduced four pillars, the GAMM should be based on:

1. The organizing and facilitating of legal migration and mobility;
2. Prevention and reduction of irregular migration and human trafficking;

179 cf. Balleix (2014): p. 9.

180 European Commission (18th November 2011): The Global Approach to Migration and Mobility; p. 2.

181 Balleix (2014): p. 9.

182 European Commission (18th November 2011): p. 5.

3. Promotion of international protection and enhancement of the external dimension of asylum policy; and

4. The maximizing of the development impact of migration and mobility.¹⁸³

In general, the approach is intended to be migrant-centered with special regard to the human rights of migrants which are considered relevant to all four pillars.¹⁸⁴ The GAMM is set up globally but with geographical priorities: Of capital importance are EU enlargement countries and the EU neighbourhood, notably the South and East of Europe. Secondly, priority is given to the EU-Africa Strategic Partnership¹⁸⁵ and the Prague Process.¹⁸⁶

Thirdly, sub-regional processes like the Rabat Process,¹⁸⁷ the Horn of Africa/East Africa framework and the overlap between Prague and Budapest processes¹⁸⁸ supplement the regional processes. Finally dialogues on migration between the EU and the countries of the African, Caribbean and Pacific Group; the Latin America and Caribbean region

and relevant Asian countries will be intensified to different extents. With a limited number of key partners, the regional processes are complemented by bilateral dialogues.¹⁸⁹

The GAMM is mainly implemented through political instruments (bilateral and regional policy dialogues, often backed up by action plans), EU legislation and legal instruments (visa facilitations, readmission agreements and directives on legal and irregular migration), operational support and capacity-building (also by EU agencies like Frontex or EASO).¹⁹⁰

1.5.1 Cooperation Frameworks

Mobility Partnerships (MP) and Common Agendas for Migration and Mobility (CMM) are the most elaborate cooperation frameworks under the GAMM.¹⁹¹ They provide political frames for dialogue and cooperation with partner countries covering all four GAMM pillars. Both address mobility issues, the facilitation of return and irregular migrants' readmission as well as, where appropriate, visa issues.¹⁹²

Still, they differ in two aspects: The establishment of a MP would include the negotiation of visa facilitation and readmission agreements. Actually for a CMM this is not the case, still an upgrade to a Mobility Partnership is possible if both parties agree.¹⁹³ Secondly, MPs are

183 European Commission (18th November 2011): p. 7.

184 *ibid.*

185 Partnership between the EU and all 53 African states (EC [18th November 2011]: p. 8).

186 The Prague Process covers the EU member states and 19 countries in the East (Western Balkans, Eastern Europe, Central Asia, Southern Caucasus, Russia and Turkey [*ibid.*]).

187 The Rabat Process covers the EU member states and 27 countries in Western, Northern and Central Africa (*ibid.*).

188 The Budapest Process brings together more than 50 countries and ten international organizations, including China, Bangladesh, Pakistan, Afghanistan, Iran, Iraq, Syria and Turkey (*ibid.*).

189 European Commission (18th November 2011): p. 9.

190 European Commission (21st February 2014): p. 2.

191 European Commission: Global Approach to Migration and Mobility.

192 *ibid.*

193 European Commission (18th November 2011): p. 11.

mostly established with neighbourhood countries, whereas CAMMs are rather considered as a framework for other third countries.¹⁹⁴ So far, Mobility Partnerships as a tool for EU cooperation in the area of migration and mobility have been signed with Cap Verde, the Republic of Moldova, Georgia, Armenia, Morocco, Azerbaijan and Tunisia. Two CAMMs have been signed with Ethiopia and Nigeria.¹⁹⁵ For the purpose of returning irregular migrants and cooperation in the fight against human trafficking, the Union is at the same time negotiating and concluding EU Readmission Agreements (EURAs) with non-EU countries of origin and transit.¹⁹⁶ Since 1999 when the Treaty of Amsterdam came into force, readmission agreements with third countries are being concluded at the Community level. These agreements include reciprocal cooperation commitments between the EU and the third-country signatory.¹⁹⁷

Readmission agreements set out obligations and procedures for the return of people who are irregularly

residing in the European Union. According to the agreements' content, third countries commit themselves to readmit their own nationals, third-country citizens as well as stateless persons who have passed through their territory.¹⁹⁸ Measures are being taken only after a return decision has been made in accordance with the procedural guarantees set by the Return Directive¹⁹⁹ and the relevant EU asylum regulations.²⁰⁰

Following lengthy negotiations and the European Parliament's (EP) approval, in December 2014 the readmission agreement with Turkey was finally signed.²⁰¹ From EU perspective, this agreement is an important step to cope with migration flows to the Union.

The Union naturally has an interest in concluding these agreements whereas the third countries for one thing would not benefit from the migrants' remittances anymore, for another would they have to pay for the readmission.²⁰² For that reasons the readiness to sign a readmission agreement is mainly influenced by cost-benefit calculations from the third-country govern-

194 European Commission: Global Approach to Migration and Mobility.

195 *ibid.*

196 European Parliament: Immigration Policy.

197 During the last 16 years, 17 EURAs were concluded with the following countries: Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Pakistan, Serbia, Moldova, Georgia, Armenia, Azerbaijan, Turkey and Cape Verde so far (European Parliament: Immigration Policy). Negotiations are ongoing or blocked with Morocco, Belarus and Tunisia (European Parliament [15th October 2015]: EU Cooperation with Third Countries in the Field of Migration; p. 37).

198 Balleix (2014): p. 6.

199 The Return Directive dates back to 2008; it clarifies common standards and procedures for returning illegally in EU member states staying third-country nationals (European Parliament/Council of the European Union [16th December 2008]: Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals).

200 European Commission: Return & Readmission.

201 European Parliament: Immigration Policy.

202 Balleix (2014): p. 6.

ment's perspective.²⁰³ Without incentives such as visa facilitation or increase in development aid, the conclusion of new readmission agreements remains vague.

In the Turkish case, the costs of such an agreement seem to be particularly high since Turkey is one of the main transit routes used by irregular immigrants heading to the EU.²⁰⁴ The government committed itself to take back great numbers of migrants – with the prospect that large parts of them will stay in Turkey because they can not be returned to their countries of origin.²⁰⁵ According to Bürgin, in particular the Commission's offer to consider visa liberalisation for Turkish citizens outweighed the financial and social costs of readmitting irregular immigrants to Turkey.²⁰⁶ The fact that a readmission agreement is one of the requirements for EU membership then again did not have a significant effect on the Turkish decision as the EU membership prospects of the country are still very uncertain. Also the agreements with Ukraine and Russia could only have been completed once the EU met the requests

to negotiate liberalisation in their visa regimes.²⁰⁷

Another cooperation framework is the Task Force Mediterranean (TFM) which came into force after in October 2013 a boat with around 500 migrants sank off the coast of Lampedusa (Italy) in order to prevent "such human tragedies from happening again."²⁰⁸ Above all, the Task Force underlined again the importance of cooperation with third countries, in particular the need for dialogue with countries of origin and transit in line with the GAMM.²⁰⁹

Corinne Balleix points out the importance of convincing third states that their interests have been taken truly into account. If the EU wants to involve these countries in its fight against illegal immigration, it "will have to pay the price" – in other words, provide incentives.²¹⁰ In this context Balleix underlines the fact that migration financing should never be mixed up with development

203 Alexander Bürgin: European Commission's Agency Meets Ankara's Agenda – Why Turkey is Ready for a Readmission Agreement. In: *Journal of European Public Policy*, 19:6, August 2012; p. 883.

204 *ibid.*

205 *ibid.*

206 cf. Bürgin (2012): p. 883 f.

In parallel to the signature of the readmission agreement between the EU and Turkey on 16th December 2013, a visa liberalisation dialogue and a roadmap towards a visa-free regime was presented to the Turkish negotiating partners (European Commission [21st February 2014]: p. 3).

207 Balleix (2014): p. 9.

208 European Commission (4th December 2013): p. 2.

209 The other "areas of action" were
2. Regional protection, resettlement and reinforced legal avenues to Europe;

← 3. Fight against trafficking, smuggling and organized crime;

← 4. Reinforced border surveillance to the protection of migrants, and

← 5. Assistance and solidarity with member states facing high migration pressure.

Thereby the EC emphasised the compliance of all actions with international human rights standards like the Charter of Fundamental Rights of the European Union, the ECHR, the 1951 Convention, the principle of non-refoulement and the EU *acquis* (4th December 2013: p. 2 f).

210 Balleix (2014): p. 10.

aid.²¹¹ Indeed, the Union is considering more aggressive approaches to third country cooperations to achieve stronger outcomes. The so-called ‘more for more’ approach is considered much more transactional than recent conditionalities of development aid which have focussed mainly on human rights protection:

“The offer is of greater financial support to those countries willing to cooperate more deeply, giving an incentive for behaviour on a broad range of migration issues from border management to counter-trafficking activities and accepting returns.”²¹²

Balleix criticizes furthermore the practice of stopping migrants “as far as possible from the EU [borders].”²¹³ Although this might help to settle disputes among EU member states, the externalisation of migration policy means to impose the burden on third states,— not only to their detriment but to the detriment of the migrants’ fundamental rights as well.²¹⁴

Chapter 2

Background of the EU-Turkey Agreement

2.1 *The Syrian Civil War*

The latest acid test for the European Union has been initiated by the steady growth in illegal immigration rates: At all EU external borders, Frontex detected a total number of 283,532 illegal crossings in

2014,— an increase of 164 per cent after an average of about 106,000 throughout the years before.²¹⁵ In 2015, however, the figure increased again dramatically to approximately one million.²¹⁶ The main reason for the rapid rise in immigration rates can be found in the far southeast of Europe: The ‘Arab Spring’ uprisings beginning in 2010 in Tunisia, Egypt and Libya triggered pro-democracy protests in Syria too, where all across the country protesters demanded President Bashar al-Assad’s resignation.²¹⁷ When the government initiated the use of force to break up the demonstrations, supporters of the opposition began to take up arms as well. The violence finally escalated in 2012 when rebel brigades were formed to battle the government forces and the country entered into a civil war.²¹⁸ In March 2016, the Syrian Observatory for Human Rights announced that about 2.5 million people have been killed or wounded since the beginning of the “Syrian Revolution”.²¹⁹ The fronts in this civil war do not run anymore only between those for or against President Assad. Rather it evolved into a multi-sided

211 *ibid.*

212 Collett (2016): p. 41.

213 Balleix (2014): p. 7.

214 *cf. ibid.*

215 European Commission: European Agenda on Migration 2015 – Four Pillars to Better Manage Migration.

216 *cf.* Gerald Knaus: On the Edge – Refugees, Europe and the Turkey Deal. Presentation at the Aspen Ministers Forum on 22nd April 2016.

217 BBC (11th March 2016): Syria – The Story of the Conflict.

218 *cf. ibid.*

219 Syrian Observatory for Human Rights (15th March 2016): About 2 Millions and Half Killed and Wounded Since the Beginning of the Syrian Revolution. *Remarks on this source can be found in the bibliography.*

conflict, pitching Syria's Sunni Muslims against the Shia Alawite sect to which Assad himself and most of his army elite belong; involving jihadists like the al-Nusra Front and the so-called Islamic State of Iraq and Syria, Kurdish fighters and international interventions.²²⁰

It has been proven that all conflict parties have committed war crimes, including the use of chemical weapons and civilian suffering as a method of war.²²¹ Although the United Nations (UN) Security Council called on all parties to end the indiscriminate use of weapons in populated areas, the civil war still generates high numbers of civilian casualties.²²²

The increase of violence and worsening of living conditions led to a severe humanitarian crisis and forced more than 13.5 million Syrians to flee their homes.²²³ Most of the displaced did not leave the country though, by August 2016 only about 5 million war refugees have travelled beyond Syria's borders to seek international protection.²²⁴ Out of them, around 2.1

million refugees are registered by the UNHCR in Jordan, Lebanon, Egypt and Iraq; 2.7 million are registered by the government of Turkey and more than 29,000 in North Africa.²²⁵

According to the figures, Turkey hosts by far the largest number of refugees from Syria. In Lebanon then again Syrians present at least 20 per cent of the population; in Jordan about 10 per cent. The neighbouring countries of Syria are struggling to cope with one of the largest refugee movements in recent history. Jeffrey H. Cohen notes that regardless of the uncertain outcome of the journey, about 13.5 per cent of the Syrian refugees have attempted to reach the shores of the European Union. Fewer than 0.5 per cent received protection in the United States.²²⁶

Beside Germany, with currently about 335,000 first time asylum applications of Syrians; and Sweden, with nearly 109,000 applications, the world's wealthiest countries give little support to the Syrians fleeing the violence in their homeland.²²⁷ In 2015, the 28 member states of the European Union altogether recognised about 330,000 beneficiaries of protection, – every other was Syrian.²²⁸ Elizabeth Col-

220 Elliot Friedland: Who's Who in the Syrian Civil War. The Clarion Project, undated.

221 BBC (11th March 2016): Syria – The Story of the Conflict.

222 *ibid.*

223 Jeffrey H. Cohen (18th April 2016): Where Have 4.8 Million Syrian Refugees Gone?

224 On 16th August 2016, the number of persons of concern was 4,808,229 according to the Syrian Regional Refugee Response.

According to the field research conducted by Şenay Özden, during the first stages of the conflict for the most part wealthy Syrians left their home country. The poor ones stayed longer – “until the situation became unbearable.” The poorest segment of Syrian society remains in Syria

to a large extent since they cannot even afford to make it to the border (Özden [2013]: p. 4).

225 Syrian Regional Refugee Response (16th August 2016).

226 Cohen (18th April 2016).

227 *cf. ibid.*

Numbers according to the website Syrian Refugees, cumulative flows over the period 2010 – 16, updated in July 2016.

228 Eurostat (20th April 2016): EU Member States Granted Protection to More than 330 000 Asylum Seekers in 2015.

lett sharply criticises Europe's "unwillingness to address the real outcomes of the Syrian crisis and share them equitably". By the EU's conduct "a message is sent to other regions that refusing to support displaced populations is permissible." The long-term implications of this are unforeseeable, but likely to be "far bigger than [...] the experience of the Syria crisis."²²⁹ İçduygu even goes so far to maintain that the Syrian refugee crisis demonstrated that "neither the Geneva Convention nor the EU directives are sufficient to respond to the needs of refugees and states in cases of mass refugee inflows."²³⁰

2.2 Syrian Refugees in Turkey

As the beginning conflict was expected to be resolved in a relatively short period of time, Turkey adopted a so-called 'open-door policy' to provide protection to those who needed it, especially by providing aid and assistance to refugees in camps near to the Syrian border. But after more than five years have passed since the beginning of the Syrian crisis, Turkey as Syria's northern neighbour remains the main destination for people fleeing the ongoing conflict. The country, which shares a 911 km long border with Syria, faced the first influx in April 2011, when 252 Syrians crossed the border to Turkey in Cilve-

gözü/Hatay Province.²³¹ By August 2016, the Turkish government had registered more than 2,700,000 Syrian refugees in the country, thus about 3.6 per cent of the overall population.²³² Although the Syrians can be found nowadays in every Turkish province, they would still be recognized as 'guests' and not as 'refugees' in accordance with the geographical limitation Turkey maintains.²³³ That means that they were granted no legal right and implicitly assumed to be staying only for a while. Some Syrians in Turkey were disturbed by this guest status because it implies that their stay depends primarily on the host and its hospitality.²³⁴

When their exile was prolonged later, the status was changed to 'temporary protection', so that more than 95 per cent of the Syrian refugees in Turkey for the first time enjoyed a defined legal status.²³⁵

The general shift from "emergency

231 M. Murat Erdoğan and Can Ünver (eds.): Perspectives, Expectations and Suggestions of the Turkish Business Sector on Syrians in Turkey. TISK Report, Ankara, December 2015; p. 16 f.

232 Syrian Regional Refugee Response (16th August 2016).

233 According to the TISK Report of December 2015, Syrian asylum seekers are present in each of Turkey's 81 provinces. 12 provinces hosted at that time less than 100 Syrians; 7 more than 100,000 (Erdoğan and Ünver, eds. [2015]: p. 25).

234 Jade Cemre Erciyas: Guests, Asylum-Seekers, Refugees or Transit Migrants? Syrians in Turkey in 'Purgatory'. Human Geography, Vol. 9, No. 2, 2016; p. 29.

235 İçduygu and Millet (2016): p. 4; and

Günter Seufert: Die Türkei als Partner der EU in der Flüchtlingskrise [Turkey as a Partner of the EU During the Refugee Crisis]. SWP-Aktuell 98, December 2015; p.5.

Noteworthy that the recognition rates differ greatly between citizenships,—for Syrian citizens the rate is 97.2 per cent (ibid).

229 Collett (2016): p. 42.

230 İçduygu (2015a): p. 13.

response” to “long-term planning” is also reflected by the fact that initially the Turkish Red Crescent and the Disaster and Emergency Management Presidency (Turkish: *Afet ve Acil Durum Yönetimi Başkanlığı*, abbreviated: *AFAD*) were in charge of the refugees’ reception and assistance.²³⁶ Since 2015, the establishment of the General Directorate of Migration Management represents the shift to a long-term perspective in Turkish policy.²³⁷

Still, as outlined by Şenay Özden, Syrian refugees are not treated like non-European asylum seekers should be treated either: It is not possible for them to register at the UNHCR in order to be resettled to a third country.²³⁸ Because of a change in Turkish policy, the UNHCR stopped registering Syrians. It has not yet been clarified whether this change happened in light of unexpected huge numbers of asylum seekers or in order to prevent interference of international institutions in refugee matters on Turkish ground.²³⁹

When the civil war in Syria began, Turkey was in the midst of revising its asylum system to meet international and particularly EU standards.²⁴⁰ İçduygu states, that the political reaction to the Syrian crisis

has been hampered both by the expectation of a quickly ending conflict and Turkey’s parallel attempts to align its asylum and protection regime as part of the country’s Europeanization.²⁴¹ The refugee influx shaped the 2013 Law on Foreigners and International Protection by incorporating new forms of refugee statuses and labels.²⁴² This new law was the first one to actually regulate practices of asylum in Turkey, “an important advancement for international protection”:²⁴³ It covers the entry, exit and stay of migrants as well as the international protection for asylum seekers in Turkey.²⁴⁴

In 2014, the scope and benefits of refugees’ temporary protection status were expanded and specified by a separate Regulation on Temporary Protection (TP).²⁴⁵ By this regulation, the legal status of Syrians became more clear as it provides refugees with the right to lawfully stay in Turkey until safe living conditions are established in Syria.²⁴⁶ Those under temporary protection are enabled by the new TP regulation to access free health care, education and free translation service among other things.²⁴⁷ Persons in possession of temporary protection identification documents could also apply for a work permit in certain sectors, business lines and geographical areas. In the legal text on the TP, Turkish authori-

236 İçduygu (2015a): p. 9.

237 Turkish Ministry of Interior (1st July 2015): Provincial Directorates of Migration Management Has Become Operational [sic!].

238 Özden (2013): p. 5.

239 cf. *ibid.*

240 Ahmet İçduygu: Syrian Refugees in Turkey – The Long Road Ahead. Migration Policy Institute, Washington, D.C.; 2015a; p. 1.

241 İçduygu (2015a): p. 9 f.

242 2015a: p. 13.

243 UNHCR cited in İçduygu and Millet (2016): p. 6.

244 Ayhan and Kırış (2016): p. 9.

245 İçduygu and Millet (2016): p. 4.

246 İçduygu (2015a): p. 9.

247 İçduygu and Millet (2016): p. 4.

ties underlined the fact that the work permits granted in this context “will not last longer than the period of the temporary protection itself”.²⁴⁸

Besides, the regulation set out the registration of Syrian refugees with Turkish authorities, the principle of non-refoulement as well as the provision of humanitarian assistance inside refugee camps.²⁴⁹ During the first year of the crisis, the government managed to settle most of the refugees in camps; in 2016 however only some 10 per cent of the refugee population is living in refugee camps offered by the Turkish authorities.²⁵⁰ Özden notes that the Syrians in the camps lead a “totally isolated” life – still, the conditions in Turkish refugee camps are considered to be much better than in Lebanon or Jordan.²⁵¹ The majority has settled outside of the camps where they are only sporadically assisted or protected by aid organizations.²⁵² In

2013, one quarter out of them found shelter in ruins and makeshift premises.²⁵³

Naturally, there is little information available on the ones living outside camps. As found by Ayhan Kaya and Aysu Kıracı in the latest report on Syrian refugees in Istanbul, many of the families who live outside the camps face extreme poverty.²⁵⁴ In June 2016, almost a third of the Syrian households around Turkey were food insecure and 66 per cent at risk of food insecurity.²⁵⁵ In addition to that, their housing conditions are often unhygienic, without heating, and in some places even dangerous.²⁵⁶

248 Erdoğan and Ünver, eds. (2015): p. 42.

249 Özden (2013): p. 5.

250 Kaya and Kıracı (2016): p. 7.

In June 2016, there existed in total 26 refugee camps in Turkey (3RP Regional Refugee & Resilience Plan 2016–2017 In Response to the Syria Crisis: Mid-Year Report. June 2016; p. 42).

251 Özden (2013): p. 6 and 10.

The refugees registered in camps by AFAD get an identity card, are provided with health care, education and monthly financial aid to buy food from the camp shops among others. The people who reside in the camps are allowed to work in seasonal agricultural jobs or in factories. When they want to leave the camp, they need to obtain permission first (Erciyes [2016]: p. 28).

252 Kaya and Kıracı (2016): p. 7.

Reasons for becoming an “urban refugee” are above all that the numbers of refugees exceeds the overall camp capaci-

ty; secondly, some refugees were enabled to shelter in other ways because of financial independence or family ties; and thirdly, are Syrians who have entered Turkey illegally not allowed to register for a camp (İçduygu [2015a]: p. 8).

253 AFAD: Syrian Refugees in Turkey 2013 – Field Survey Results.

254 Kaya and Kıracı (2016): p. 7.

255 3RP Regional Refugee & Resilience Plan 2016–2017 in Response to the Syria Crisis (2016): p. 42.

256 Kaya and Kıracı (2016): p. 7.

Since in January 2016 a new regulation took effect, those under temporary protection are permitted by law to apply for work permits six months after their registration in

not exceed 10 per cent of the Turkish employees.²⁵⁹ Motives to introduce such a regulation were illegal employment of refugees as well as the wish to stop the exploi-

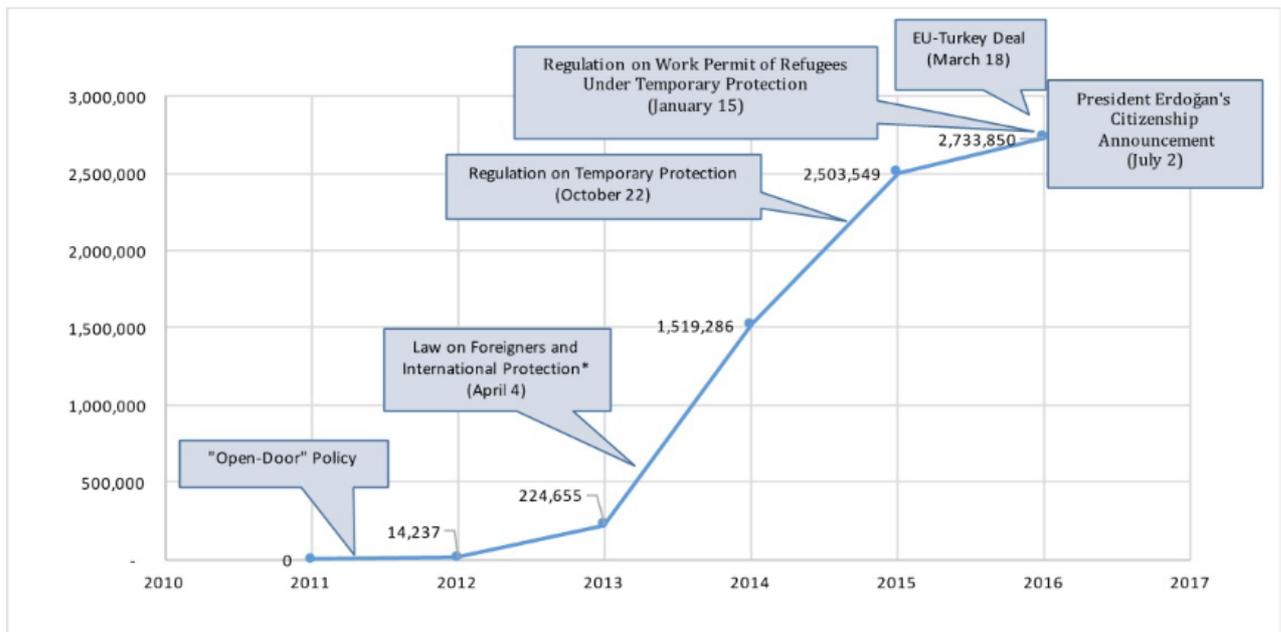


Figure 2: **Developments in Turkish asylum and migration legislation in conjunction with the trend of Syrian refugee inflow¹**

Turkey.²⁵⁷ Other stipulations are that the refugees must be paid at least minimum wage and that those working in agriculture as seasonal workers are exempted from work permit requirements.²⁵⁸ It has been also determined that in one workplace the share of refugees shall

tation in the labour market so that Syrian parents could send their children to school instead of letting them work to ensure the survival of the family.²⁶⁰

When President Recep Tayyip Erdoğan on 2 July 2016, five years after the beginning of the crisis, made the statement that Syrian refugees living in Turkey could eventually acquire Turkish citizenship, Turkish domestic politics took a new turn.²⁶¹

257 The Regulation on Work Permit of Refugees Under Temporary Protection (İçduygu and Millet [2016]: p. 5).

258 Five years after the first Syrian refugees entered Turkey, the working conditions for them are still insufficient: If they are able to find employment on the black market, they are paid less than half the minimum wage and are forced to work without security or job safety, sometimes even without guarantee of payment (Er-ciyes [2016]: p. 24).

259 İçduygu and Millet (2016): p. 5.

260 Ceylan Yenginsu: In Turkey, Young Syrians 'Work to Survive'. In: New York Times International Weekly. 10th June 2016; pp. 1 and 4.

261 İçduygu and Millet (2016): p. 2.

Despite the immaturity and uncertain future of this push, the reactions of Turkish citizens were rather critical. When the crisis occurred in 2011, Turkish policies reflected “more traditionalist cultural values of generosity and hospitality”, and the Syrian refugees were welcomed “wholeheartedly” as guests.²⁶² As the length of the refugees’ stay increased, however, the public opinion became more and more hostile towards the Syrians.²⁶³ The costs of hosting large numbers in camps affected the public opinion as well as general security concerns.²⁶⁴ After the 2nd of July, the former hospitality towards them even turned into hate. Turkish people were afraid that the social balance within the country may be threatened or that Syrians would “take [their] jobs.”²⁶⁵ Apart from this, political opponents of the government are apprehensive of a possible gain of voters for the AKP party if the Syrian refugees became Turkish citizens and were entitled to vote.²⁶⁶ Syrian refugees are generally considered to be religious conservative.

Altogether it is not surprising that Turkey struggles to cope with the

influx of such a great number of refugees, who are not likely to return home soon due to the ongoing war in Syria, the infrastructure destruction and the weakened economy over there.²⁶⁷ From the beginning, it could not have been easy for Turkey to co-manage “the greatest migration flow of recent history” as the UNHCR called it.²⁶⁸ In the recent TISK report, the authors stress the fact that the latest crisis was also “the most far-reaching and severest humanitarian crisis that Turkey has ever faced.” They compare the Turkish commitment with the European reluctance to host “groups of 10–15 thousand due to concerns regarding public reaction and possible hardships in process management”, and conclude that Turkey for its part “has been quite successful.”²⁶⁹

2.3 *The European Union’s Response to the Refugee Crisis*

The refugee crisis demanded a quick and coherent European answer. In summer 2015, the number of Syrians realizing that they would neither have a future in their home country nor in the neighbouring states where they had sought refuge increased. Consequently, many of them chose the unsafe path to Europe, to start a new life in a stable and safe environment.²⁷⁰ The resulting unauthorised flows of Sy-

262 İçduygu (2015a): p. 14.

263 2015a: p. 11.

264 According to calculations provided in the 2015 TISK report, Turkey spent in the period between April 2011 to October 2015 about 4.6 million dollar per day on the Syrians in the country. The expenses comprised healthcare, medication, accommodation centers, urgent clothing, nutrition and shelter (Erdoğan and Ünver, eds. [2015]: p. 37).

265 Luise Sammann: Syrer in der Türkei – Erst geduldet, dann verhasst [Syrians in Turkey – First Tolerated, Then Hateful]. Deutschlandradio, 19th July 2016.

266 Sammann (2016).

267 cf. İçduygu and Millet (2016): p. 3.

268 UNHCR cited in Erdoğan and Ünver, eds. (2015): p. 16.

269 Erdoğan and Ünver, eds. (2015): p. 25.

270 2016: p. 3.

rian refugees have “challenged the fragile geopolitical balance of the region and raised concerns about the future of the borderless Schengen area.”²⁷¹ Yet the European Union’s 28 member states with their differing population sizes, economic strengths and migration and asylum traditions struggle to find common ground.²⁷²

2.3.1 *The European Agenda on Migration*

In May 2015, President of the European Commission Jean-Claude Juncker introduced the European Agenda on Migration which lines out priorities in migration, asylum and border policies and tools to “respond to the crisis situation in the Mediterranean”²⁷³ and to manage the large-scale immigration to EU member states.²⁷⁴ Beside the medium or long-term key “pillars” which are 1) reduction of incentives for irregular migration, 2) border management – saving lives and securing external borders, 3) strengthening of the common asylum policy, and 4) a new policy on legal migration, an emergency arrangement has been adopted.²⁷⁵

To disburden the particularly concerned member states Greece and Italy, 40,000 asylum seekers were intended to be relocated²⁷⁶ within

the Union according to a “distribution key”.²⁷⁷ This was not approved by Eastern European states and Great Britain so that consequently a voluntary mechanism had to be implemented and the target to resettle 40,000 persons has been missed.²⁷⁸

When the number of refugees continued to grow, Juncker nevertheless proposed a second “emergency mechanism to relocate a further 120,000 from Italy, Greece and Hungary”²⁷⁹ in his speech on the State of the Union in September 2015.²⁸⁰

A quota system to relocate these people had been finally adopted by a qualified majority voting at the Justice and Home Affairs Council a few weeks later. The member states participating in the mechanism were announced to receive a “lump sum of 6,000 € for each relocated person”.²⁸¹ However, as the quota

protection among the member states (European Commission [13th May 2015]: A European Agenda on Migration; p. 19).

277 *ibid.*

278 Caro and Schramm (2015).

For the member states, the temporary relocation scheme is of voluntary nature, for the asylum seekers however, it is obligatory (Guild and Carrera [2016]).

279 This was the first activation ever of the “emergency mechanism” set out in Article 78 (3) TFEU: “The event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned [...]”.

280 European Commission (9th September 2015): State of the Union 2015 – Time for Honesty, Unity and Solidarity (speech by Jean-Claude Juncker).

281 Council of the European Union (22nd September 2015): Justice and Home Affairs Council, 22/09/2015.

271 Emanuela Roman cited in İçduygu and Millet (2016): p. 3.

272 *cf.* Caro and Schramm (2015).

273 European Commission (13th May 2015a): Managing Migration Better in All Aspects – A European Agenda on Migration.

274 European Commission: European Agenda on Migration.

275 *ibid.*

276 Relocation refers to a distribution of persons in clear need of international

system itself is non-binding, the implementation is proceeding so slowly that, “at the current pace, it would take more than 750 years to relocate the 160,000 asylum-seekers covered by a now-expanded resettlement plan.”²⁸²

2.3.2 Hotspots

Another “immediate” (short-term) policy action out of the European Migration Agenda is the establishment of reception centers in locations with particular large numbers of refugees in Italy and Greece, so-called hotspots, under the coordination of the Commission, EASO, Frontex and Europol.²⁸³

The hotspot system was presented as “a major element in the 2015 EU response to the refugee crisis”.²⁸⁴ The main idea of the hotspot approach is to send personnel from EU agencies to Italy and Greece to support national authorities in iden-

tification and registration of arriving migrants right after they crossed the external borders of the EU.²⁸⁵

The “ultimate goal” of the hotspots is the “full 100% coverage of identification and registration of all entries”.²⁸⁶ In the hotspots there is already to be differentiated between entitled asylum-seekers (who are envisaged to be relocated in the EU) and irregular migrants (who are expected to be returned immediately to their home countries).²⁸⁷ Following the decisions of the informal meeting of EU heads of state or government on 23rd September 2015, the first hotspots have been put into operation in November 2015.²⁸⁸ By the end of August 2016, in Italy there are four hotspots established (Lampedusa, Pozzallo, Taranto and Trapani) with a total reception capacity of 1,600.²⁸⁹ In Greece there are five hotspots (Lesvos, Chios, Samos, Leros and Kos) with an overall capacity of 5,450 places.²⁹⁰

The hotspot system involves joint operational headquarters, the so-called European Union Regional Task Forces (EURTF).²⁹¹ They consist of representatives of

Denmark and the United Kingdom were not participating in the 22nd September’s decision (ibid).

282 Andrew Higgins: European Leaders Look Again for a Unified Response to Migrant Crisis.

In: The New York Times, 25th October 2015.

By September 2016, out of the 160,000 altogether 4,741 persons (that is less than 3 per cent), mostly of Syrian, Iraqi or Eritrean nationality, have been relocated from Greece and from Italy with France, the Netherlands and Finland being the member states receiving a larger number of asylum seekers. The member states provided about 13,500 available places (Anna Reimann [14th September 2016]: 160.000 angekündigt – 4741 umgesiedelt [160,000 Announced – 4,741 Relocated]. Spiegel Online).

283 Carrera et al. (2015): p. 4.

284 Sergio Carrera and Leonhard den Hertog: A European Border and Coast Guard – What’s in a Name? CEPS Paper in Liberty and Security in Europe, No. 88/March 2016; p. 8.

285 cf. Carrera and den Hertog (2016): p. 8.

286 ibid.

287 Currently, the repatriation rate from the EU is approximately 40 per cent. This percentage shall be increased by the conclusion of further readmission agreements with third countries (Caro and Schramm [2015]).

288 European Council (24th September 2015): Informal Meeting of EU Heads of State or Government on Migration, 23 September 2015 – Statement.

289 European Commission (26th August 2016): Hotspot State of Play.

290 ibid.

291 Carrera et al. (2015) p. 7.

Frontex, EASO and Europol and coordinate the work on the ground together with national authorities. Their coordination offices are situated in Catania (Sicily/Italy) and in Piraeus (Greece).²⁹²

The three EU agencies send experts to all hotspots to 'screen' the third-country nationals, that is identification, fingerprinting and registration.²⁹³ They are seconded to support the national authorities, particularly the Greek Asylum Service for Registration.²⁹⁴ As the hotspots located in the Aegean near the Turkish border are also used as detention centers in order to implement the EU-Turkey Agreement, there are varying numbers of 'Member State experts under the EU-Turkey Agreement' operating too.²⁹⁵ In the wake of the hotspot approach, the resources of EASO and Europol have been increased, the capacities of Frontex for 2015 and 2016 even tripled when it comes to the joint operations in the Mediterranean, Triton and Poseidon.²⁹⁶

292 *ibid.*

293 *ibid.*

294 European Commission (26th August 2016).

295 *cf. ibid.*

296 The Frontex Joint Operation Triton runs since 1st November 2014 in the Central Mediterranean. It is the follow-up to the Hermes and Aeneas Joint Operations and the Mare Nostrum Operation which has been established by the Italian government in October 2013 to tackle the arising "dramatic increase of migratory flows" and "tragic ship wreckages" off the Italian coast and ran for one year (Marina Militare: Mare Nostrum Operation. Undated). The main objectives of Mare Nostrum were the sea rescue of migrants as well as the fight against the smuggling of human beings in the Mediterranean Sea.

2.3.3 European Border and Coast Guard

By the end of June 2016, the EP, the Council and Commission reached an agreement on the establishment of a European Border Coast Guard (EBCG). The EBCG is envisaged as an agency "building on the foundations laid by Frontex" with a more in competences, staff and equipment.²⁹⁷ A novel element is that the agency is entitled to take action on the territory of member states even where there is no request for assistance.²⁹⁸

Another new mandate the EBCG will have is to send liaison officers to neighbouring third countries in order to launch joint operations such as repatriation of third country nationals from their territory. This cooperation could be seen as a gesture of goodwill towards Turkey since the country is obliged to take back own citizens and third state

In 2014 Mare Nostrum was replaced by Triton which has a much lesser extent in a geographic (instead of patrolling all the migrants' route down to Lybia, the ships were supposed to operate only 30 miles off Italian shores) and financial sense (Triton has about one third of the budget Mare Nostrum had). The main objective of this operation is to control the borders, not to search for migrants in distress at sea (Zeit Online [23rd April 2015]: Hintergrund – "Triton", "Mare Nostrum" und "Poseidon" [Background – 'Triton', 'Mare Nostrum' and 'Poseidon']).

The Poseidon Rapid Intervention operation on the Eastern Mediterranean route, which was launched in 2015 when Frontex met the Greek request to additionally monitor the sea (and land borders) between Greece and Turkey (Frontex [undated]: Eastern Mediterranean Route).

297 European Commission (22nd June 2016): European Border and Coast Guard Agreed.

298 European Commission: A European Border and Coast Guard.

citizens in accordance with the EU-Turkey Agreement concluded in March 2016.

Above all, Carrera and den Hertog criticize that at the expense of an EU approach to asylum, humanitarian and human rights challenges, there was too much emphasis on reinforcing external border controls and the return of irregular immigrants through the EBCG.²⁹⁹

2.3.4 Quota System

One of the most controversial ideas of the European Migration Agenda is the establishment of a Temporary EU Relocation System to redistribute asylum seekers between the member states.³⁰⁰ In contrast to the Dublin Regulation, a new distribution key made of four criteria should be applied to relocate asylum seekers in the EU: the member states' GDP (40 per cent), the number of inhabitants (40 per cent), the employment situation (10 per cent) and the number of asylum seekers the country accepted so far (10 per cent).³⁰¹ The provisional measures initially established to relocate 120,000 asylum seekers from Italy and Greece in 2015 could be converted into a permanent system in the long term.

A similar quota system exists already on domestic level in Germany: Initially created to determine the federal states' shares in common finances, the Königstein formula today defines also the proportional

distribution of refugees among the 16 German states.

Thereby, a federal state's share is based on its tax revenue (two thirds) and population size (one third).³⁰² However, the Commission's proposal drew harsh criticism especially from the East European states. They reject the quota because of its "disproportionate nature" and a lack of asylum tradition and of similar ethnic communities within their countries.³⁰³ Resistance came from the Baltic member states too who want to retain their decision-making authority. Noteworthy to mention that only one country out of them (Hungary) received refugees in advance to the debate. Other points of criticism include the disregard of the refugees' preferences for certain destination countries, may it be due to family-related reasons or on the basis of existing language skills.³⁰⁴ Currently there is no solution in sight as German Chancellor Angela Merkel clarified at a press conference in February this year: "We would make a fool of ourselves if we would already determine new contingents before even 1,000 of the 160,000 we agreed on have been distributed."³⁰⁵ In July, the

299 Carrera and den Hertog (2016): p. 16.

300 Carrera et al. (2015): p. 5.

301 Caro and Schramm (2015).

302 cf. Anna auf dem Brinke and Heidi Marleen Kuhlmann: Flüchtlingspolitik – EU-Quote mit Weitblick? [Refugee Policy – EU Quota of Vision?]. Jacques Delors Institut Berlin, 14th September 2015.

303 Caro and Schramm (2015).

Meaning that they would want to accept as few refugees as possible, and that these refugees should preferably not be Muslims.

304 2015.

305 Angela Merkel during the joint statement at the inter-governmental consultations with Prime Minister of the State

Hungarian government announced its plans to hold a referendum on the distribution of refugees among the EU member states on 2nd of October. Hungarian Prime Minister Viktor Orbán staunchly opposed to a mandatory quota system and has called on the nation to vote 'No'. The Portuguese daily newspaper *Público* commented a few days later that in case of a quota, Hungary would only have to relocate 1,294 people currently living in Greece or Italy, – an “almost laughable figure for a country of ten million inhabitants”.³⁰⁶

2.3.5 Common EU List of Safe Third Countries

In his speech on the State of the Union in 2015, Juncker indicated that relocation alone could not solve the migration issue. Therefore the Commission proposed a common EU list of safe countries³⁰⁷ to “separate better those who are in clear need of international protection and therefore very likely to apply for asylum successfully.”³⁰⁸ The list is intended to accelerate asylum procedures and to ease the

situation in the often overcrowded preliminary reception centers. It would be a “procedural simplification”, – it would not replace the fundamental right of asylum, though in the current situation it would allow national authorities to focus notably on Syrian refugees.³⁰⁹ At present, twelve member states have national lists of countries considered as safe, which differ significantly from each other. The Commission’s proposal for a first common EU list encompasses seven countries, five among them are EU candidate countries, all of them are included in at least one national list.³¹⁰

Turkey as the most debated case is an excellent example for the conditions one country needs to comply in order to become officially ‘safe’. Critics argue that Turkey could not legally be a safe third country under the EU Asylum Procedures Directive for three main reasons: The most important refutation is Turkey’s ratification of the 1951 Convention with a geographical limitation that prevents also Syrians from legally seeking asylum in the country. Secondly, terrorist attacks within the country and also the armed conflict against Kurdish fighters “brings risks of execution, torture and inhuman or degrading treatment within the country.”³¹¹ Lately the failed coup attempt in Turkey on 15th July 2016 and its

of Israel, Benjamin Netanjahu, on 16th February 2016 in Berlin (translation to English by the author).

306 *Público* (5th July 2016): No EU Membership without Taking in Refugees. In: Eurotopics – What Will Come Out of Hungary’s Refugee Referendum?

307 A country of origin is ‘safe’ according to the 1951 Convention and the EU Asylum Procedures Directive when there is a democratic system and consistently no persecution, no torture or inhuman degrading treatment or punishment, no threat of violence and no armed conflict (European Commission: An EU ‘Safe Countries of Origin’ List).

308 European Commission (9th September 2015).

309 cf. *ibid.*

310 The common EU list which has been proposed concludes Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.

311 İçduygu and Millet (2016): p. 6.

repercussions seem to confirm this perception.

Thirdly, there are occasionally reports of push-backs, arbitrary detention, physical violence and violations of the principle of non-refoulement through Turkish officials: For instance in November 2015 the experiences of an Afghan refugee who was on a boat that got damaged by the Turkish coast guard after setting off from Bodrum in Turkey. According to Rahim Noor-si's narration, 200 people died at sea after the boat sank.³¹² Another example is reported by activists from the Turkish-Syrian border: According to them, Turkish border guards shot at least eight Syrian refugees, among them four children. It is assumed that the group fled from combats in the northern Syrian town Manbij and tried to reach the Turkish province Hatay when the soldiers opened fire. Also a Human Rights Watch report published in May 2016 accused the Turkish border guards of hindering Syrian refugees from reaching Turkey by force of arms.³¹³

Interceders for Turkey as a safe third country refer to the Turkish Law on Foreigners and International Protection that has been adopted in 2013. The UNHCR calls it "a reflection of Turkey's strong commitment to humanitarian values and principles" and "an important

advancement for international protection."³¹⁴ Although Turkey maintains the geographical limitation, it is argued that in practice non-Europeans do have the opportunity to get temporary protection and even refugee status with the condition of resettling outside Turkey.³¹⁵ Other arguments in favor of Turkey are that the country officially committed itself to respect the principle of non-refoulement as well as the fact that it is (at present) not a source country of refugees, – one major criteria for being a safe third country.³¹⁶ In summer 2016, months after the implementation of the EU-Turkey Agreement, the legality of Turkey as a safe third country remains unclear.³¹⁷

Chapter 3 The EU-Turkey Agreement

In 2015 more than 800,000 people crossed the Aegean Sea from Turkey to Greece and entered thereby illegally the European Union. For the same period of time 807 deaths are documented at this route – still the actual number is assumed to be much higher.³¹⁸ Most of the arri-

312 Susanne Koelbl: Schüsse auf den Motor [Gunshots at the Motor]. In: Der Spiegel, 46/2015, 7th November 2015; p. 112.

313 Deutschlandfunk (19th June 2016): Beobachter – Grenzsoldaten erschießen syrische Flüchtlinge [Observers – Border Guards Are Shooting at Syrian Refugees].

314 UNHCR cited in İçduygu and Millet (2016): p. 6.

315 İçduygu and Millet (2016): p. 6.

316 *ibid.*

317 See for instance the report 'With Greece – Recommendations for Refugee Protection', published by The Aire Centre and ECRE in June 2016.

318 Mariam Lau: Dieser Mann hat für Angela Merkel den Flüchtlingsdeal erfunden – Nun will er die Katastrophe verhindern [This Man Invented the Refugee Deal for Angela Merkel – Now He Wants to Prevent the Catastrophe]. In: Zeit Online, 7th July 2016.

ving refugees come from the “world’s top refugee producing countries”, that is around 60 per cent from Syria, 24 per cent from Afghanistan and 8 per cent from Iraq.³¹⁹ No matter how life-threatening the journey to Europe may be, transit migrants are willing to pay nearly any price to cross the Aegean.³²⁰ When it comes to the Syrian refugees in Turkey, 13.8 per cent of those living outside and 26.3 per cent of those living inside camps want to move somewhere else, out of them 11 per cent stated that they wanted to move abroad.³²¹ One important reason for this is that they do not have hope anymore to be able to return to Syria soon. Even if the civil war would end soon, the reconstruction of the infrastructure would take a long time. They are facing the fact that they “need to build a new life where they have migrated”.³²² Because of the difficulties in making a living in Turkey due to obstacles in accessing the employment market, education and accommodation in addition to comparatively high costs of living, many came to the conclusion that “a better life with greater dignity and easier access to basic rights might be available in Europe.” The movement of Syrian refugees from Turkey to Greece is thus likely to continue throughout 2016, as İhsan Çetin notices: “While those who make the trip can

319 Kutlu-Tonak (2016): p. 122.

320 Jade Cemre Erciyes reports one case of a Circassian from Syria who even wanted to sell a kidney to raise money in order to pay smugglers to take him to Europe (Erciyes [2016]: p.27).

321 2016: p. 31.

322 Kutlu-Tonak (2016): p. 122.

obviously afford to do so, many more want to go but can’t afford it.”³²³

3.1 Formation of the Agreement

As the initial point of the EU-Turkey Agreement may be regarded the 2nd September 2015, the day when the photograph of Alan Kurdî was published all over the world. A picture of the three-year old, lying with his face on the beach of Bodrum in Turkey, dead. Alan, his older brother and his mother drowned when they tried to reach the Greek island Kos from Bodrum in an inflatable boat.

It was against this background that Gerald Knaus, political advisor and founding chairman of the think tank European Stability Initiative (ESI),³²⁴ began to write an essay titled “Why People Don’t Need to Drown in the Aegean”.³²⁵ In his “policy proposal” Knaus discusses the contrary approaches in EU refugee policy: On the one side humanity and the concept of welcoming culture (German: *Willkommenskultur*) as above all Germany is responding “with open arms” to the refugee influx, with chancellor Merkel becoming “the face of [...] generous asylum policy”.³²⁶

323 İhsan Çetin (18h January 2016): Why Do Syrian Refugees Leave Turkey? Middle East Monitor.

324 The think tank ESI is located in Berlin, with small offices in Paris, Brussels, Istanbul, Vienna, Sarajevo and London. Altogether 14 people work currently in the ESI offices.

325 Lau (2016).

Gerald Knaus: Why People Don’t Need to Drown in the Aegean – A Policy Proposal (Draft). ESI, s.l.,

17th September 2015.

326 Knaus (2015): p. 1.

On the other side, a “radically opposed agenda” is being pursued by Hungarian prime minister Orbán and European right-wing populist parties who do not want any Muslim refugees to enter their countries, who label them as ‘economic migrants’ or even as an ‘Islamic invading army’ jeopardising European values and nations.³²⁷ However, according to Knaus neither the German nor the Hungarian approaches would offer a solution to the increasing numbers of people entering the EU via Greece and the Balkan countries. Likewise, neither of them will prevent refugees from drowning in the Aegean.³²⁸ In Knaus’ point of view, migration movements are controllable through regulations and agreements; it is possible to create equal opportunities so that not only the young, strong and rich would have the chance to reach Europe but women, children and poor people too.³²⁹

According to the ESI, an interim solution would be in the hands of Germany and Turkey: Germany as the country in the “epicentre of this debate”, in the “heart of Schengen” with its land borders with many countries, is the “destination of choice” for most of the asylum seekers.³³⁰ The collaboration with Turkey then again is proposed in order to restore the control of the EU’s external borders while addressing the humanitarian crisis at the same time:

“The key to stopping the uncontrolled arrival of hundreds of thousands of migrants and asylum seekers in the European Union and the Eastern Mediterranean in recent months is held by Turkey.”³³¹

The central propositions of the “two-pronged strategy” are that Turkey would take back all refugees that reached the Greek island after a certain date; secondly, Syrian refugees should have a “safe and realistic” option for claiming asylum in the EU from Turkey to reduce the incentive to risk their lives by crossing the Aegean;— here the ESI recommends that Germany should take the 500,000 Syrians it is already preparing for directly from Turkey instead of waiting for them to make their way to Central Europe. However, Germany should not bear the whole “refugee burden” – in the long run, Germany’s offer should lead to a burden-sharing arrangement at EU level.³³²

By the implementation of these measures several objectives would be achieved: The people smuggling on the Aegean route would stop for the term, risky passages to Greece would come to an end as people arriving illegally on the islands would be returned anyway. Furthermore, the strategy would reduce the political pressure since it would enable the German government to regain control of the crisis. When Hungary and the other transit countries would be relieved of security challenges created by the uncontrolled movement of refu-

327 2015: p. 1 f. and Lau (2016).

328 Knaus (2015): p. 2.

329 cf. Lau (2016).

330 Knaus (2015): p. 6.

331 2015: pp. 2 and 4.

332 2015: pp. 2 and 8.

gees, xenophobic polemic would diminish.

Turkey would profit insofar as the proposal would lead to the relocation of a huge number of refugees currently living there. In addition to that, the country might lose its attraction to transit migrants from as far as Central Asia.³³³ On 17th September 2015 Knaus sent the policy proposal to European governments, EU officials, parliamentarians and journalists.³³⁴ The author's old acquaintances in the Turkish Embassy Berlin and Brussels received a copy as well. Knaus argued that particularly they needed to support the moderate conservative and social democratic Central European governments as the alternative was the strengthening of anti-Islamic and pro-Russian parties.³³⁵

As the numbers of refugees continuously rose, Knaus sent out a second proposal on his concept, titled "The Merkel Plan",³³⁶ – although he never came to meet Angela Merkel, as Mariam Lau notices.³³⁷

By this new proposal, Knaus developed his strategy further and added some new points. He introduced the recommendation that Germany should support Turkey in obtaining visa-free travel with the Union. Knaus also underlines the importance of the EU candidate country again as there were "more

than 1.9 million Syrian refugees registered in Turkey" and most refugees trying to reach Europe would start from there.³³⁸ Beside this single novelty, Knaus discusses in detail why current approaches would not work and why immediate action was needed.³³⁹

a) The provision of more funding for the refugees in Turkey, Lebanon and Jordan was "a good idea for humanitarian reasons" but would not prevent refugees from leaving these regions. The conditions in the refugee camps were not the main reasons why people leave as can be seen in the example of the possibly "best-equipped refugee camps in the world" on Turkish ground.³⁴⁰ What refugees leaving for Europe are looking for was hope and future.

b) A single EU Asylum Agency to assess claims and grant protection is perceived to be a good idea, as the different national asylum systems have been "revealed as completely dysfunctional". However, the establishment of such an agency would take years.

c) A common list of safe countries of origin would indeed be useful with regard to asylum seekers who come from the listed countries. It would however neither reduce the numbers of people crossing the Aegean nor would it change the situation for Syrian refugees.

d) The improvement of EU burden sharing should certainly be part of the solution. But already the plan on relocation of the 160,000 refu-

333 2015: p. 9.

334 Lau (2016).

335 *ibid.*

336 Gerald Knaus: The Merkel Plan – Restoring Control; Retaining Compassion – A Proposal for the Syrian Refugee Crisis. ESI, s.l., 4th October 2015a.

337 Lau (2016).

338 Knaus (2015a): p. 8.

339 2015a: p. 2 ff.

340 2015a: p. 2.

gees from Italy and Greece strained the intra-EU relations a lot, so that it should be difficult to reach agreements on even larger numbers. And again, also a relocation system would not reduce the number of arrivals. According to Knaus, the same applies to “better managed and equipped reception centres in Greece.”³⁴¹

e) The persecution of people smugglers would not be expedient to solve the refugee crisis insofar as there will either be new criminals to meet the demand or the refugees would organize the passage on their own as they are already in Turkey anyway.

f) A “European solution”: Knaus points out that the current or planned actions of the European institutions would not make a difference in the short term. Even if fully implemented neither would the border controls at the Aegean be restored nor would the number of new arrivals in the EU be reduced.³⁴²

g) To build higher fences may seem to be a simple solution leaving aside humanity, morality or legal commitments. Some variations of the idea are the reinforcement of Frontex or the restoration of border controls within Schengen area. Knaus argues that although walls may actually work – if defended like the former Iron Curtain

with “watch-towers, military border patrols and shoot-to-kill policy” – fences still could not be built on water. That is why even a new European border and coast guard could not stop illegal influxes via the Greek islands completely.³⁴³

h) Finally, working with Turkey was insofar the right approach as an effective control of EU borders depends above all on neighbour countries and their cooperation. Knaus refers to the example of Libya, a quasi-failed state that has “created an almost impossible situation for the Italian coast guard in the Mediterranean.”³⁴⁴

In the Eastern Mediterranean, only Turkey had the ability to stop irregular migration flows in the short term.³⁴⁵ But Europe needs arguments in order to convince Turkey to stop irregular migration. An “attractive argument” would be the promise to accelerate visa liberalisation negotiations for Turkish citizens.³⁴⁶

Three days after the second essay, on 7th October 2015, Merkel took up the major idea out of Knaus’ proposals. Owing to increasing refugee numbers, she has faced massive criticism even from politicians of her own party. That may be the motive for the following

341 2015a: p. 4.

In this context, Knaus also mentioned the commitment of the United States and the United Kingdom to accept “a few thousand” Syrian refugees over the next year, respectively 20,000 over five years. Summed up, those figures would be “less than the numbers arriving each week in Greece”.

342 2015a: p. 4.

343 2015a: p. 5.

344 2015a: p. 5 f.

345 Still, there are limits to the efforts made by the Turkish coast guards since refugee boats depart simultaneously from many points in columns. While a coast guard boat stops one of them, others will reach the Greek coast. Also intercepted refugees are likely to retry later (2015a: p. 6 f.)

346 2015a: p. 7.

statement in the political talk show “Anne Will”:

“We must better protect our external borders, but this is only possible if we reach agreements with our neighbours, for example with Turkey, on how to better share the task of dealing with the refugees. And this will mean more money for Turkey, which has many expenses because of the refugees, in a way so that the human traffickers and smugglers in the Aegean will not earn money, but in an orderly way, this will also mean that we fulfil certain wishes of Turkey concerning the visa issue.”³⁴⁷

A few weeks later the plan finally became a European one when Diederik Samsom, party leader of the Dutch Social Democrats, told Prime Minister Mark Rutte about the proposal. Samsom just came back from a trip to Izmir, where he noticed that the Turkish coast guard could never prevent all refugee boats from setting off. In the night of his visit 20 boats left the Turkish coast, the other morning two drowned children were washed ashore. These occurrences reminded Samsom of the ESI text he had read before. Prime Minister Rutte proposed the plan to the European Commission. The plan was accepted and negotiations with Turkey began. The originator of the “Merkel Plan” Gerald Knaus was not involved at any point in the implementation of his strategy.³⁴⁸

3.2 Basis of the Agreement

In order to secure EU borders, stem irregular migration and bring

order to migratory flows, the need for a cooperation with Turkey has been stressed by the European Council several times.³⁴⁹ Between April 2015 and March 2016 about ten EU summits were held dealing with the migration crisis. Building on the EU-Turkey Joint Action Plan reached on 15th October and activated at the Meeting of Heads of State or Government with Turkey on 29th November 2015, the EU-Turkey statement was agreed between the members of the European Council and Turkey on 18th March 2016.³⁵⁰ Its formulation is reflected in several EU communiques: The statement’s principles are set out in the bilateral readmission agreement between Greece and Turkey signed in 2001; the 2015 EU-Turkey Joint Action Plan and the 7th March statement after the meeting of EU heads of state or government with Turkey.

3.2.1 Greece-Turkey Readmission Agreement

The readmission protocol which has been signed by Turkey in line with the EU acquis in November 2001 came into force in 2002.³⁵¹ According to the agreement, individuals reaching Greece who either do not apply for asylum or who do not fulfil asylum qualifications are classified as ‘irregular migrants’. If they are considered to be safe in Turkey, they would be returned

347 Angela Merkel cited in Knaus (2016).

348 cf. Lau (2016).

349 European Parliament (10th May 2016): On the Frontline – The Hotspot Approach to Managing Migration.

350 *ibid.*

351 İçduygu (2011): pp. 7 and 9.

there.³⁵² Since the agreement's implementation in 2002³⁵³ it did not actually function well as figures compiled by İçduygu demonstrate: Between 2002 and 2010, of 65,300 migrants Greece intended to be send back to Turkey, Turkey accepted only 10,124 to have entered Greece illegally via Turkey. Altogether, Greek authorities were able to send only 2,425 people back to Turkey.³⁵⁴

At the meeting of heads of state or government with Turkey on 29th November 2015, the Turkish government pledged that also the readmission agreement between Turkey and the EU will be fully applicable by 1st June 2016.³⁵⁵ The relevant law was signed by the President's office on 18th May and published in Turkey's Official Journal two days later.³⁵⁶ Though, in September 2016 the EU-Turkey readmission agreement has not yet been put into practice.³⁵⁷

352 Elizabeth Collett: The Paradox of the EU-Turkey Refugee Deal. Migration Policy Institute Commentary, March 2016.

353 The sources are not consistent regarding the year the agreement between Athens and Ankara has been signed, – 2001 or 2002 (see for instance the EP Study on the hotspot approach of 2016). I follow İçduygu (2011) in that question.

354 İçduygu (2011): p. 7.

355 European Council (29th November 2015a): Meeting of Heads of State or Government with Turkey – EU-Turkey Statement, 29th November 2015.

356 European Commission (15th June 2016a): Implementing the EU-Turkey Statement – Questions and Answers.

357 On 8th August, President Erdoğan told the French newspaper *Le Monde*, that the EU was not behaving sincerely towards Turkey. According to him, the EU had suggested that Turkey accepted the readmission agreement “in exchange” for visa liberalisation for Turkish citizens (*Hürriyet Daily News*: Turkey-EU

3.2.2 EU-Turkey Joint Action Plan

The EU-Turkey Joint Action Plan has been concluded on 15th October 2015 to “confront and surmount the existing challenges in a concerted manner”³⁵⁸ or simply to “stem the flows”, as stated in the European Council meeting conclusions.³⁵⁹ Its introduction at the European Council meeting followed from the EU-Turkey working dinner on 17th May and the informal meeting of the EU Heads of State or Government on 23rd September. In order to support Syrian refugees living under temporary protection in Turkey and to prevent irregular migration flows to the EU, the Action Plan identified a series of collaborative actions to be implemented urgently.³⁶⁰ As stated in the introduction, the EU and Turkey planned to “address this crisis together in a spirit of burden sharing.”³⁶¹ The Action Plan is partly consistent with the commitments both sides took already in the Visa Liberalisation Dialogue.³⁶²

Migrant Deal Row Deepens with Fresh Remarks. 8th August 2016).

On 6th September, Bulgaria's Foreign Minister Daniel Mitov emphasized that the “readmission agreement needs to be implemented before visa liberalization.” (John Irish: Enough Rhetoric, Time to Implement EU-Turkish Migrant Deal, Says Bulgaria. Reuters, 6th September 2016).

358 European Commission (15th October 2015): EU-Turkey Joint Action Plan.

359 European Council (15th October 2015): European Council Meeting (15 October 2015) – Conclusions.

360 European Commission (10th February 2016): EU-Turkey Joint Action Plan – Implementation Report.

361 European Commission (15th October 2015).

362 See chapter 1.3 Europeanization of Turkish Migration and Asylum Policy.

a) To support the Syrian refugees in Turkey and the hosting communities, the EU intended to mobilise new funds in order to subsidise Turkey and to continue providing assistance via relevant humanitarian organizations in Turkey. Furthermore the EU committed itself to continuing assistance over at least 4.2 billion euros to Syrian refugees hosted in Lebanon, Jordan and Iraq as well as Syrians displaced within their home country. By doing so, push factors forcing them to move to Turkey should be reduced. Turkey on the other hand intends to enhance the implementation of the LFIP. In addition to that, one agreed to carry on ensuring that migrants are registered and provided with documents, that Syrians under temporary protection have access to public services including education, health and employment; and that in particular vulnerable people are identified and taken care of.³⁶³

b) To reinforce cooperation as a prevention of irregular migration, the EU side intends to further support existing member states and EU resettlement schemes; to support Turkey in order to strengthen its capacities to combat smuggling and to support the cooperation between member states and Turkey in organising joint return operations of irregular migrants. The exchange of information with Turkey on smuggling networks should be enhanced; furthermore information about risks of irregular departures

as well as about possibilities to enter the EU orderly should be provided to people seeking refuge in Turkey. Lastly, the EU offered an increased financial assistance to support Turkey in meeting the requirements of the Visa Liberalisation Dialogue. Turkey, among other duties, accepted to further strengthen its coast guard; to reinforce cooperation with Frontex, Bulgaria and Greece to prevent irregular migration across the land borders; and to reinforce cooperation to “smoothly” readmit irregular migrants who are not in need of international protection and were intercepted coming from Turkish territory.

Turkey committed itself to pursue the progressive alignment with EU visa policy – notably with regard to the common origin countries of migrants.³⁶⁴

Two and a half months after the Joint Action Plan’s activation, the Commission published an implementation report stating that Turkey needed to “make further significant progress in preventing irregular departures [...] from its territory.”³⁶⁵

After the numbers of arrivals from Turkey in Greece did decline significantly since October, they were constant at a daily average of about 1,960 arrivals in January/February 2016. A possible link between migratory flows and the winter season remained unmentioned.

363 European Commission (15th October 2015) and European Commission (10th February 2016).

364 European Commission (15th October 2015) and European Commission (10th February 2016).

365 European Commission (10th February 2016).

3.2.3 7th March EU-Turkey Statement

In the Council's statement of the 7th March informal EU-Turkey summit, the EU heads of state or government addressed the migration situation with particular regards to the Western Balkans route. They welcomed progress made in the implementations of the Joint Action Plan by Turkey. The Turkish side confirmed to implement the bilateral Greek-Turkish readmission agreement, this means to accept rapid return of all migrants "not in need of international protection" crossing from Turkey to Greece as well as irregular migrants apprehended "on Turkish waters".³⁶⁶ Additionally, the NATO (North Atlantic Treaty Organization) became operational in the Aegean Sea by 7th March to "break the link between getting in a boat and getting settlement in Europe".³⁶⁷

³⁶⁶ European Council (7th March 2016): Statement of the EU Heads of State or Government, 07/03/2016.

³⁶⁷ European Council (7th March 2016).

The North Atlantic Council decided on 25th February on modalities of maritime surveillance in the Aegean. The maritime force's task is to monitor, evaluate and report human traffickers' activities between Greece and Turkey. Collected data is shared with Frontex as well as Greek and Turkish coast guards. NATO vessels are not to stop or push back refugees. However, the rescue of persons in peril at sea is any seafarers' duty and thus NATO ships would attend their duty too. If the NATO should rescue migrants in distress at sea, Turkey committed itself to take these people back (Ständige Vertretung der Bundesrepublik Deutschland bei der Nordatlantikvertrags-Organisation: NATO-Aktivität in der Ägäis zur Bekämpfung von Schleusern – Gemeinsame Initiative mit Griechenland und der Türkei wird umgesetzt [NATO Activity in Aegean to Combat Human Traffickers – Joint Initiative

The President of the European Council committed himself to work out the details of the additional Turkish propositions together with Turkey before the 17/18 March European Council. To address the migration issue, Turkey proposed the following six principles:³⁶⁸

- Return of all irregular migrants crossing from Turkey into the Greek islands with the costs covered by the EU;
- For every Syrian readmitted by Turkey from the Greek islands, resettlement of another Syrian from Turkey to the EU member states within the framework of existing commitments;
- Acceleration of the implementation of the visa liberalization roadmap with all member states and a view to lifting visa requirements for Turkish citizens at the latest by the end of June 2016;
- Speed-up of disbursement of the initially allocated 3 billion euros for a first set of projects and decision on additional funding for the Refugee Facility for Syrians;³⁶⁹
- Preparation to decide on the opening of new chapters in accession negotiations as soon as possible, building on the October

with Greece and Turkey is Being Implemented]). Undated.

³⁶⁸ European Council (7th March 2016).

³⁶⁹ The 'Refugee Facility for Turkey' was introduced by the EC on 4th March 2016 as a multi-billion fund to support humanitarian aid and development projects for refugees residing in Turkey (European Commission: EU Activates 'Refugee Facility' to Help More than 800 000 Syrians in Turkey).

2015 European Council conclusions;

- Cooperation with Turkey in any joint endeavour to improve humanitarian conditions in Syria in order to enable the local population and refugees to live in areas which will be more safe.

Furthermore, the EU heads of state or government decided to give more support to Greece to get back to a full application of the Schengen Borders Code. They also committed themselves to assist “large scale and fast-track returns to Turkey” according to the readmission agreement between Greece and Turkey, and – as of June – the EU-Turkey readmission agreement.³⁷⁰

Above all, the summit participants underlined that the measures one agreed on were urgent in view of the situation on the ground.

3.3 *The Agreement*

The “EU-Turkey Agreement” itself consists basically of the statement by the members of the European Council and the Prime Minister of Turkey Ahmet Davutoğlu published after the European Council meeting on 17/18th March 2016. As stated already in earlier communications, the major aims of a developed EU-Turkey cooperation in accordance with the agreement are to “break the business model of the smugglers” and “to offer migrants an alternative to putting their lives at risk”. These are presented as the main reasons to “end the irregular migration from Turkey to the

EU”.³⁷¹ To achieve this goal, they agreed on the following points:³⁷²

- 1) All new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey;
- 2) For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU;
- 3) Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU;
- 4) Once irregular crossings between Turkey and the EU are ending or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated;
- 5) The fulfilment of the visa liberalisation roadmap will be accelerated with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016. Turkey will take all the necessary steps to fulfil the remaining requirements;
- 6) The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey. Once these resources are about to be used in full, the EU will mobilise additional funding for the Facility up to an additional €3 billion to the end of 2018;
- 7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.
- 8) The accession process will be re-energised, with Chapter 33 to be opened during the Dutch Presidency of the Council of the European Union and preparatory work on the opening of other chapters to continue at an accelerated pace;
- 9) The EU and Turkey will work to improve humanitarian conditions inside Syria.³⁷³

³⁷⁰ European Council (7th March 2016).

³⁷¹ European Council (18th March 2016): EU-Turkey Statement, 18 March 2016.

³⁷² Abridged version of the 19th March EC Fact Sheet, the entire EU-Turkey statement is set out in the annex.

³⁷³ European Commission (19th March 2016): EU-Turkey Agreement – Questions and Answers.

3.4 Assessment of the EU-Turkey Agreement

In what follows, an assessment of the agreement will be made in accordance with its specific content.

a) “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey [...]”:

The deal has unveiled a paradox, as Collett points out: On the one hand, the Union insisted for decades on its own high asylum standards to neighbouring countries; now however, a significant reduction in arrivals to the EU is needed to achieve the self-imposed goal.³⁷⁴

That is only possible through a great increase in returns to Turkey, – but if governments really should execute the agreement in conformity with international and European law, only few returns are likely to be realized.

Above all, the maintenance of the statement to return ‘all’ migrants does undermine the general “intention to make the deal legal”.³⁷⁵ Under the legal framework of the bilateral readmission agreement between Greece and Turkey, people who do not have a right to international protection will be returned to Turkey.³⁷⁶ EU legislation allows

returns under two circumstances: Either the persons affected are “irregular migrants” because they do not apply for asylum in Greece, or because their application has been found unfounded³⁷⁷ or inadmissible.³⁷⁸ An ‘inadmissible’ application is either rejected on the basis that Turkey can be considered as first country of asylum according to Article 35; or on the grounds that Turkey is a safe third country according to Article 38 EU Asylum Procedures Directive.³⁷⁹ It can be rejected without any substantive consideration of the asylum claim since both cases indicate that the persons concerned could have claimed protection already in Turkey before arriving to the Greek islands and thus to the EU.

With regard to legal questions the first paragraph of the statement raised many concerns among observers. First of all, the collective expulsion of foreigners as stated in the text (“All new irregular migrants crossing from Turkey into Greek islands”) is prohibited according to Article 19 EU Charter of Fundamental Rights.³⁸⁰ Secondly, Tur-

ever will be accommodated in open reception centres (European Commission [19th March 2016]).

377 An ‘unfounded’ application has been rejected on the merits (Peers [2016]).

378 European Commission (19th March 2016).

379 European Commission (19th March 2016) and European Parliament/Council of the European Union (26th June 2013): Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection (Recast).

380 Article 19 EU Charter of Fundamental Rights in conjunction with ECHR and the decisions of the ECtHR (Sergio Carrera and Elspeth Guild: EU-Turkey Plan

374 Collett (2016).

375 Steve Peers: The Final EU/Turkey Refugee Deal – A Legal Assessment. EU Law Analysis, 18th March 2016.

376 European Commission (19th March 2016): EU-Turkey Agreement – Questions and Answers.

Whilst they await return, irregular migrants “may be held in closed reception centres” on the Greek islands, which are subject to EU legislation, in particular to the EU Return Directive. Asylum seekers how-

key's status as a 'safe third country' is still contested³⁸¹ – nonetheless it is one of the essential prerequisites of the agreement since this principle represents the ground for returns back to Turkey without a full examination of asylum claims. Only if Turkey indeed is a 'safe third country' for the refugees returned, the violation of the principle of non-refoulement can be avoided.³⁸² NGOs active in Turkey claim that "refugees are not always safe from mistreatment" there and that some people are allegedly returned to unsafe countries.³⁸³

A third crucial question is whether the migrants are given an "effective opportunity" to apply for asylum, as EU Asylum Procedures Directive and ECHR case law require.³⁸⁴ The EU was keen to stress the fact that applications will be treated on a "case by case basis, in line with EU and international law requirements and the principle of non-refoulement."³⁸⁵

A possible challenge to this arrangement could be asylum-seekers going to court for a complaint, maybe even calling on the ECtHR if they would have gone through the entire Greek court system or could

not access effectively to a Greek court.³⁸⁶ In late summer, the number of refugees reaching the Greek islands increased again up to 100 – 200 people per day. Possibly the coup attempt that happened in Turkey in July might lead to less stringent controls at the sea borders.³⁸⁷ Since asylum procedures drag on, around 13,000 refugees are stuck on the Greek islands – where there is officially space for 7,450.³⁸⁸ By summer, not a single person who claimed asylum in Greece after 20th March has been returned to Turkey yet.³⁸⁹

b) "For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey [...]":

This scheme aims to quickly replace the irregular flows of migrants crossing the Aegean "in dangerous conditions" by an orderly and legal resettlement process.³⁹⁰ One has to keep in mind that the refugee who is resettled to Europe by plane is not identical with the one being returned from Greece. According to Carrera and Guild, already the idea to return someone because "he or she was intercepted travelling irregularly to the EU" breaches the duty of non-discrimination based on country of origin.³⁹¹ Overall, to "substitute" one Syrian for another

for Handling Refugees is Fraught with Legal and Procedural Challenges. CEPS Commentary, 10th March 2016).

The court has argued that the ECHR already applies when a state took responsibility for irregular migrants or asylum seekers, for instance by taking them on board of a ship.

381 See chapter 2.3.5 Common EU List of Safe Third Countries.

382 cf. Carrera and Guild (2016).

383 Peers (2016).

384 *ibid.*

385 European Commission (19th March 2016): EU-Turkey Agreement – Questions and Answers.

386 cf. Peers (2016).

387 Markus Bernath: In Athen wächst die Panik [Panik Increases in Athens]. Handelsblatt, 10th September 2016.

388 *ibid.*

389 Arisan Eralp (2016): p. 22.

390 European Commission (16th March 2016): Next Operational Steps in EU-Turkey Cooperation in the Field of Migration.

391 Article 3 of the 1951 Convention (Carrera and Guild [2016]).

seems incompatible with European traditions and human right norms. In legal terms however, the '1-for-1' approach is not problematic as such: Resettlement of people in need of international protection from the country they have fled to is a common practice, yet it is not a binding legal obligation under international or EU law.³⁹² The legality of returns to Turkey has to be considered separately. Peers underlines the humanitarian nature of resettlements: "to demand a pay-off for one's humanitarian actions contradicts their ethical foundations."³⁹³

The overall number of people EU member states are willing to accept has not been increased by the March statement: 18,000 places were left remaining of the 23,000 made available through a European Resettlement Scheme in 2015 (though some of these will be taken up by resettlements from Jordan and Lebanon).³⁹⁴ Further 54,000 are remainders of a planned relocation from Hungary.

Although the country faced huge influxes of refugees, in September 2015 the Commission's proposal to relocate has been rejected.³⁹⁵ Obviously, Hungary did not agree to become a beneficiary because it did not want to host registration and distribution camps for tens of thousands of refugees.³⁹⁶ The ma-

ximum number of resettlement places is in total 72,000 according to the final statement. If the objective of ending irregular migration should not be met and the number of returns hits that number, the mechanism ends ("will be discontinued").³⁹⁷ It is not mentioned what will happen if the 72,000 would be exceeded.

A crucial point in the implementation of the '1-for-1' approach is the transformation of hotspots such as Moria (Lesvos) from an open registration centre into closed facilities – thus detention centres. As a result, NGOs have suspended nearly all operations within hotspots – "a public relations disaster" of the EU-Turkey statement.³⁹⁸ The UNHCR for instance retains only a human rights monitoring role at Lesvos hotspot while other activities have been suspended in line with its "policy on opposing mandatory detention."³⁹⁹ The International Rescue Centre proclaimed that it could not "knowingly participate in the transportation of some of the world's most vulnerable to a place where their freedom of movement is in question."⁴⁰⁰ Médecins Sans Frontières declared in June to renounce funds from EU institutions and member states completely in protest against the European refugee policy. Even before that, the organization criticized the "isolationist" EU policies and called the EU-

392 Peers (2016).

393 *ibid.*

394 European Commission (16th March 2016).

395 Peers (2016).

396 Duncan Robinson: Why Hungary Wanted Out of EU's Refugee Scheme. Brussels Blog, 22nd September 2015.

397 European Council (18th March 2016).

398 European Parliament (10th May 2016).

399 *ibid.*

400 International Rescue Centre cited in EP (10th May 2016).

Turkey Agreement “embarrassing”.⁴⁰¹

Already in May the ‘1-for-1’ scheme was redundant, as Knaus as initiator of the whole agreement reported: About eight times more Syrians have been resettled from Turkey than have been readmitted from Greece. As the number of arrivals to Greece continues to fall, “this means that there will be hardly any resettlement at all under this mechanism”. That was insofar an important observation as the “substantial and sustainable” reduction in irregular crossings between Turkey and Greece will lead to the activation of the Voluntary Humanitarian Admission Scheme (Paragraph 4). However, according to the Commission’s June report on progress in the implementation of the statement, one did not yet agree on Standard Operating Procedures. After that an assessment “should be made whether the conditions for triggering the implementation [...] have been fulfilled.”⁴⁰²

Another point of critique came up in the course of resettlement: Particularly Germany accused Turkey of sending large numbers of refugees who are seriously ill or who do have a low level of education. Academics on the other hand were allegedly not allowed to leave Tur-

key – although Germany already had granted visas to them.⁴⁰³

c) “Turkey will take any necessary measures to prevent new sea or land routes for illegal migration [...] to the EU [...]”:

This paragraph is to answer Bulgarian concerns that a new route may be established in the Black Sea region. If irregular migrants reach Bulgarian territory or waters, the EU asylum law applies the same as it is for Greece.⁴⁰⁴

d) “Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, a Voluntary Humanitarian Admission Scheme will be activated [...]”:

As recommended by the EC in December 2015, the EU member states will participate on a voluntary basis to the scheme by granting subsidiary protection to persons in need of protection who have been displaced by the conflict in Syria and were registered by Turkish authorities.⁴⁰⁵ The scheme is consistent with some previous relocation efforts within the Union, namely EUREMA I and II.⁴⁰⁶ Although the

403 Zeit Online (21st June 2016): Türkei lässt Syrer mit Visum nicht ausreisen [Syrians with Visa Cannot Leave Turkey].

404 Peers (2016).

405 European Parliament (10th May 2016): p. 15 and European Commission (15th December 2015): Commission Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey.

406 Since 2009, measures have been undertaken through EUREMA (Pilot Project for intra-EU Relocation from Malta) to assist Malta in dealing with large numbers of “recognised beneficiaries of international protection” (European Asylum Support Office [July 2012]: EASO Fact Finding Report on intra-EU Relocation Activities From Malta; p. 1).

401 Kai Küstner: ‘Ärzte ohne Grenzen’ verzichten auf EU-Gelder [Médecins sans Frontières Renounce EU Funding]. Tagesschau, 17th June 2016.

402 European Commission (15th June 2016b): Second Report on the Progress Made in the Implementation of the EU-Turkey Statement; p. 9.

approach is aligned with the principle of international cooperation outlined in the preamble to the 1951 Convention, the Commission's decision to offer member states a choice makes participation of all states unlikely.

Though the introduced principle of voluntariness is not surprising against the background of former disputes on national relocation quotas.⁴⁰⁷

Laura Robbins-Wright notices that the approach is particularly notable for its strategic orientation, in line with the common desire to achieve a 'sustainable reduction' in irregular migration from Turkey.⁴⁰⁸

e) "The fulfilment of the visa liberalisation roadmap will be accelerated [...] with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met [...]":

This commitment is transposed from the 7th March EU-Turkey Statement. Turkey still has to meet all of the 72 requirements set out in the 2013 roadmap, but the process as a whole should be accelerated. The Commission planned to make a legislative proposal to lift the visa requirements for Turkish citizens at the end of April 2016.⁴⁰⁹

Until May however, Turkey did not fulfil seven out of the 72 conditions regarding the fight against corruption, data protection, judicial cooperation with all EU member states, enhanced cooperation with Europol

and the revision of Turkish legislation and practices on terrorism.⁴¹⁰

Nilgün Arisan Eralp underlines the important fact that "the EU has not committed itself to opening the way for visa free travel via waiving Turkey's obligations."⁴¹¹ The facilitation of the visa liberalisation process has been agreed conditional on Turkey's fulfilment of all 72 benchmarks of the 2013 road map. That is, only if all 72 conditions are met the Commission makes a proposal to the Justice and Home Affairs Ministers in the Council as well as to the Parliament to decide on the lifting of visa requirements for Turkish citizens. As the EU is having other dialogues ongoing for example with Georgia, Ukraine and Kosovo, one could not afford to make any non-contractual concessions anyway.⁴¹²

Knaus argues that the Union got on the wrong track by linking two things that have nothing to do with each other. Amendments in the law on terrorism would not change anything under the present state of emergency anyway. The situation for journalists or opposition members for instance would not improve at all. But the visa liberalisation would help endangered Turkish citizens to apply for asylum in Europe.⁴¹³

In June Prime Minister Binali Yıldırım stressed that Turkey had

407 cf. Laura Robbins-Wright: The EU Humanitarian Admission Scheme for Syrian Refugees in Turkey. 24th January 2016.

408 Robbins-Wright (2016).

409 European Commission (16th March 2016).

410 European Commission (4th May 2016).

411 Arisan Eralp (2016): p. 23.

412 Interview with Birgit Sippel (MEP), conducted on 2nd June 2016.

413 Lenz Jacobsen (1st August 2016): "Plan B wäre viel schlimmer" ["Plan B Would Be Much Worse"].

In: Zeit Online.

no intention of addressing one of the outstanding conditions: “amendments to the Anti-Terror Law [...] are out of question for us, even if changes would lead to the visa exemptions being granted.”⁴¹⁴

After the July coup attempt in Turkey, willingness to deal with the law decreased even more.

Other factors recently influencing the visa-liberalisation process are discussions about an ‘emergency brake’ to suspend visa-free travel for non-EU citizens in particular circumstances. Members of the EP agreed on 7th July that the EU should have a suspension mechanism in place.⁴¹⁵

f) “The EU [...] will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey [...]”: The disbursements agreed upon during negotiations can legally speaking only be spent on projects that assist the Syrian refugee population in Turkey.⁴¹⁶ If the money is about to be used to the full (and commitments are met), an additional funding of 3 billion euro will be mobilised till the end of 2018. The Facility for Refugees in Turkey covers immediate humanitarian needs as well as ongoing development needs.⁴¹⁷ The “largest EU humanitarian aid programme” is conducted by the World Food Pro-

gramme in partnership with AFAD, the Turkish Red Crescent and the Turkish Ministry of Family and Social Policy. By September 8th, the total amount contracted for actions under the Facility for Refugees in Turkey was 652 million euro, with 181 million disbursed so far.⁴¹⁸

g) “The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.”:

This paragraph refers to the possible extension of the existing customs union in order to cover services and investment issues.⁴¹⁹

Three months after the agreement, the Commission expected that draft negotiating directives would be prepared in the 4th quarter of 2016 and tabled to the Council for adoption.⁴²⁰

h) “The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015 [...]”:

It has been decided to open Chapter 33 (Financial and Budgetary Provisions) during the Netherlands presidency.⁴²¹ By the end of June, after more than a decade of negotiations, altogether only one negotiation chapter has been closed, – fifteen other chapters out of 35 have been opened but not yet closed. Important chapters such as 23 (Ju-

414 Binali Yıldırım cited in *Hürriyet Daily News: Turkey Could Forego Visa-Free Europe for Sake of Terror Law – PM*. 14th June 2016.

415 Georgi Gotev: *MEPs Back Visa-Free Travel Suspension Mechanism*. *EurActiv*, 7th July 2016.

416 Peers (2016).

417 European Commission (16th March 2016).

418 European Commission (8th September 2016): *EU Announces More Projects under the Facility for Refugees in Turkey – €348 Million in Humanitarian Aid to Refugees in Turkey*.

419 *ibid.*

420 European Commission (15th June 2016b): p. 14.

421 Chapter 33 has been opened accordingly on 30th June 2015.

diciary and Fundamental Rights) and 24 (Justice, Freedom and Security) are still unilaterally blocked by Cyprus.⁴²²

The International Strategic Research Organization criticizes in an analysis that the “opening of new chapters with Turkey should not take place in exchange of cooperation in [the] refugee crisis” – on the contrary, it should be a means to achieve “more efficient cooperation” in the crisis.⁴²³ The use of accession negotiations as an instrument could possibly harm the Union’s normative notion and its values.⁴²⁴

i) “The EU and its Member States will work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe.”:

It remains to be seen whether this is a viable plan or not. Steve Peers notes that it would be problematic even to return Syrians to Turkey when there was “any dispute about [...] safety” in the “alleged safe zone” as the Turkish government may intend to send them there.⁴²⁵ EU officials of the European External Action Service (EEAS) confirm this perception saying that it was not possible at the moment to establish such a zone because it would run

counter the principle of non-refoulement.⁴²⁶

Conclusion

Since the EU-Turkey Agreement is in force, discussions on its failure are ongoing. Even the President of the European Commission Jean-Claude Juncker indicated that the agreement was in great danger.⁴²⁷ The deal seems not only to become more and more an issue of EU-Turkey relations, but to even jeopardize them due to a lack of trust among the signatories.⁴²⁸ Turkey accuses the Union of dishonesty and failure to comply with the condition of visa liberalisation, – the EU on the other side blames Turkey for blackmailing over refugees they could ‘send’ to Europe.⁴²⁹

Altogether, the agreement does not seem to deal any longer with a humanitarian crisis but became part of the Turkish EU membership debate.⁴³⁰ Ahmet İçduygu and Ayşem Biriz Karaçay call this politi-

422 Interview with EU Officials, conducted on 2nd June 2016.

423 International Strategic Research Organization cited in Erdoğan and Ünver, eds. (2015); p. 18.

424 cf. ibid.

425 Peers (2016).

426 Interview with EU Officials, conducted on 2nd June 2016.

427 Deutschlandfunk (30th July 2016): EU-Kommissionschef sieht Abkommen mit Türkei gefährdet

[EU Commission President Sees Agreement with Turkey Jeopardized].

428 cf. Şenyuva and Üstün (2016): p. 3.

429 cf. 2016: p. 3 f.

Advisor to Erdoğan Burhan Kuzu for instance wrote in May on Twitter that Turkey would “send off the refugees” if the visa liberalisation would not be realized. Erdoğan himself is quoted saying to Donald Tusk that Turkey “could open the doors to Greece and Bulgaria at any time [...]” (Carsten Luther [12th May 2016]: Fressen, was Erdoğan auffischt? [Eat What Erdoğan Serves?]. In: Zeit Online).

430 Şenyuva and Üstün (2016): p. 3.

cization a “strategic use of ‘migration diplomacy’ as a bargaining tool” in the context of Turkish membership negotiations.⁴³¹ A “risk of over-politicizing bilateral relations” is also mentioned in the TISK report when it comes to the logic the EU employed to handle the refugee crisis.

Certainly the Turkish side gained bargaining power as the EU seems to be more dependant on Turkey than the other way around. In the course of the crisis, usual power relations have changed.⁴³²

The dependance even becomes more obvious when it comes to a possible failure of the deal: If Turkey no longer committed to take refugees back from the Greek islands, the message would be that reaching Greece means to stay in the EU and large numbers of people would again try to cross the Aegean Sea. If the readmission to Turkey should fail, in first place an enforced Frontex agency would have to secure the external border to Turkey.

Arriving people who cannot be rejected for humanitarian reasons would need to be gathered in reception camps near the borders in order to be distributed according to quotas. Obviously, the Union’s “plan B” for this case is the cordoning off of the borders in the Balkans and the creation of poor conditions for refugees as a deterrent in Central Europe – a plan in the spirit of

431 Ahmet İçduygu and Ayşem Biriz Karaçay: Demography and Migration in Transition – Reflections on EU-Turkey Relations. In: Paçacı Elitok and Straubhaar, eds. (2012): p. 36.

432 Seufert (2015): p. 7.

Orbán.⁴³³ According to this proposal, the Greek islands would become an European detention centre, similar for instance to Australia’s offshore detention centre on Nauru island. The plan is contrary to the 1951 Convention and the principle of non-refoulement, as refugees would be expelled before they had the legal chance to claim asylum. Nevertheless, political leaders in several EU member states alluded to the Australian model favourably “as an example to be followed in Europe.”⁴³⁴

In late summer 2016, the situation in Greece is already very tense with around 10,000 refugees stranded on the islands – where there is officially space for 7,450 –, and further 48,000 on the mainland.⁴³⁵

The Greek islands became already a “refugee colony” as Giorgos Christides calls it, – a waiting area, with the migrants “waiting for a decision on their asylum application, officials waiting for reinforcement and all of them waiting to see whether the deal will last.”⁴³⁶

The main challenge of the agreement is the legal processing happening in the Greek hotspots. Ongoing appeal proceedings prevented deportations to Turkey so

433 Lenz Jacobsen (1st August 2016).

434 Keeya-Lee Ayre: Europe, Don’t Copy Australia. In: Forced Migration Review – Destination: Europe. Issue 51, January 2016; p. 77.

435 Numbers according to Zeit Online (30th August 2016): Wieder mehr Flüchtlinge in Griechenland [Again More Refugees in Greece].

436 Giorgos Christides (14th May 2016): In der Flüchtlingskolonie [In the Refugee Colony].

In: Der Spiegel, 20/2016; p. 98.

far. The implementation of the EU-Turkey deal requires fast-track procedures but till now not a single Syrian who claimed asylum has been returned to Turkey.⁴³⁷

Particularly when German politicians assess the latest EU measures, they seem to consider only the number of refugees arriving in their own country: German Interior Minister Thomas de Maizière stated in July, that the refugee crisis was “not solved yet” – but the solution was “well underway in Europe and Germany”. The statement is based on the numbers of first registrations in German reception centres.⁴³⁸ The decrease in numbers, however, primarily traces back to the shutdown of the Balkans route in March. Managing Director of the human rights organization Pro Asyl Günter Burkhardt does not share the view that the situation was improving, – the decline in numbers of refugees was rather a “warning signal” than “a reason for joy.”⁴³⁹ It was a sign that human rights and refugee protection are in a severe crisis.⁴⁴⁰

The question does indeed arise as to whether refugees would increasingly try to reach the European Union via other, more dangerous

437 Reasons are the refusal of Greek officials to consider Turkey as a safe third country and lack of professional support from the member states (Giorgos Christides: Ruhe in Deutschland, Rauch auf Lesbos [Calm in Germany - Smoke on Lesbos]. Spiegel Online, 22nd September 2016).

438 Spiegel Online (8th July 2016): De Maizière meldet deutliche Entspannung in der Flüchtlingskrise

[De Maizière Reports Significant Easing in Refugee Crisis].

439 *ibid.*

440 *ibid.*

routes since the Eastern Mediterranean route is blocked through the agreement. The second most popular route is the Central Mediterranean between Libya and Italy, where the death toll is about ten times as high as in the Aegean Sea. By September 2016, the number of recorded deaths in the Mediterranean has already reached almost the total number of 2015.⁴⁴¹

Despite the significant weaknesses of the EU-Turkey Agreement, the major aim of preventing migrants from illegally crossing the Aegean Sea was achieved: The overall number of arrivals on the Greek islands decreased and the average number of deaths sank significantly from 122 in the first three months of the year to 2 in the following five months.⁴⁴² That means that also the business of the people smugglers has been weakened, thus the second objective has been achieved so far.⁴⁴³

Madeleine K. Albright, Joschka Fischer and George A. Papandreou share the view that “an imperfect deal is better than an untenable status quo”, – to really overcome

441 Recorded deaths in the Mediterranean in 2014: 3,279 total; in 2015: 3,673 total; in 2016: 3,501 as of 23rd September 2016 (Missing Migrants Project). 75 per cent of all migrant deaths in 2016 were recorded in the Mediterranean (*ibid.*).

442 *ibid.*

443 Still one should keep in mind that the migrants are dependent on the smugglers, as most of the people in need of international protection could never reach Europe since it is very difficult to get a visa. For that reason “intensifying the fight against migrant smuggling and trafficking could also reduce the access of migrants to the European asylum procedures, unless more visas are issued” (Balleix [2014]: p. 6).

the current crisis however, some more “short-term actions and long-term initiatives” were needed.⁴⁴⁴ First of all, the situation on the Greek islands needs to be improved immediately. That is shown once more after huge parts of the completely overcrowded Moria refugee camp on Lesbos burnt down and the precarious security situation in the camps became clear once more.⁴⁴⁵

Secondly should the European governments pursue implementations of the agreements’ obligations even if migration pressure in the Aegean is diminished. In particular the visa liberalisation for Turkish citizens needs to be implemented on the long run. Furthermore, the Voluntary Admission Scheme for Syrian refugees should be realized with as many member states participating as possible. In general, there should be more legal migration channels to defuse the whole situation.⁴⁴⁶ Lastly, the USA as an important partner of the EU is called on to participate and to receive more refugees than the 10,000 earlier agreed on.⁴⁴⁷

All things considered, the member states of the European Union should finally meet their responsibilities in this situation that became

an internal crisis as a result to lack in cooperation. The current migration flow may only be a beginning,— but it has shown that a coordinated policy is urgently needed. It is very likely that a common strategy on asylum and migration shared by all member states would even cost less than current border management measures and third country cooperations.⁴⁴⁸

The March agreement may have positive outcomes on the short run, it can not be a substitute for a real European migration policy. A common approach is inevitable as the migrant question turned into a serious threat to the Union’s future: It is now an issue of Europe’s identity.⁴⁴⁹

444 Madeleine K. Albright, Joschka Fischer and George A. Papandreou (23rd May 2016): Der Türkei-Deal ist besser als sein Ruf [The Turkey Deal is Better than its Reputation]. In: Zeit Online.

445 UNHCR (20th September 2016): Feuer im Aufnahmезentrum in Moria auf Lesbos [Fire in Reception Centre in Moria on Lesbos].

446 Interview with President of the EP Martin Schulz, conducted on 13th June 2016.

447 cf. Albright et al. (2016).

448 cf. Balleix (2014): p. 10.

449 Ian Bremmer (23rd November 2015): The Migrant Issue is Dividing Europe. TIME, Vol. 186, No. 21; p. 12.

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450 The data provided by the Syrian Observatory for Human Rights is used by many broadcasters such as CNN or BBC. Still, the integrity of the information office is controversial. Particularly from Russian side the credibility of the influential one-man agency situated in Coventry, Great Britain, is questioned (see for instance the article ‚Who is Behind Syrian Observatory for Human Rights? Nimrod Kamer Investigates for RT‘ published in the RT English online edition on 2nd October 2015).

Annex



PRESS RELEASE
144/16
18/03/2016

EU-Turkey statement, 18 March 2016

Today the Members of the European Council met with their Turkish counterpart. This was the third meeting since November 2015 dedicated to deepening Turkey-EU relations as well as addressing the migration crisis.

The Members of the European Council expressed their deepest condolences to the people of Turkey following the bomb attack in Ankara on Sunday. They strongly condemned this heinous act and reiterated their continued support to fight terrorism in all its forms.

Turkey and the European Union reconfirmed their commitment to the implementation of their joint action plan activated on 29 November 2015. Much progress has been achieved already, including Turkey's opening of its labour market to Syrians under temporary protection, the introduction of new visa requirements for Syrians and other nationalities, stepped up security efforts by the Turkish coast guard and police and enhanced information sharing. Moreover, the European Union has begun disbursing the 3 billion euro of the Facility for Refugees in Turkey for concrete projects and work has advanced on visa liberalisation and in the accession talks, including the opening of Chapter 17 last December. On 7 March 2016, Turkey furthermore agreed to accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters. Turkey and the EU also agreed to continue stepping up measures against migrant smugglers and welcomed the establishment of the NATO activity on the Aegean Sea. At the same time Turkey and the EU recognise that further, swift and determined efforts are needed.

In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey today decided to end the irregular migration from Turkey to the EU. In order to achieve this goal, they agreed on the following additional action points:

- 1) All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the EU.
- 2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the EU irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons. The Members of the European Council welcome the Commission's intention to propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken in the framework of this arrangement to be offset from non-allocated places under the decision. Should these arrangements not meet the objective of ending the irregular migration and the number of returns come close to the numbers provided for above, this mechanism will be reviewed. Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued.
- 3) Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect.
- 4) Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced,

a Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme.

5) The fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met. To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required assessment of compliance with the benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision.

6) The EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March. A first list of concrete projects for refugees, notably in the field of health, education, infrastructure, food and other living costs, that can be swiftly financed from the Facility, will be jointly identified within a week. Once these resources are about to be used to the full, and provided the above commitments are met, the EU will mobilise additional funding for the Facility of an additional 3 billion euro up to the end of 2018.

7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.

8) The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015. They welcomed the opening of Chapter 17 on 14 December 2015 and decided, as a next step, to open Chapter 33 during the Netherlands presidency. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States' positions in accordance with the existing rules.

9) The EU and its Member States will work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe.

All these elements will be taken forward in parallel and monitored jointly on a monthly basis.

The EU and Turkey decided to meet again as necessary in accordance with the joint statement of 29 November 2015.

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