

On solid ground?

Eleven facts about the EU-Turkey Agreement

The Hague – 12 September 2016¹

The EU-Turkey statement, signed on 18 March 2016, has had a dramatic impact on refugee movements in the Eastern Mediterranean. It reduced crossings on the Aegean Sea from 115,000 in the first two winter months of the year to 3,300 in the summer months of June and July. It saved lives: 366 people drowned in the first three months of the year; this number fell to 7 in the three months from May to July. And it achieved this without either diverting refugees to take other, more dangerous routes or breaking EU and international refugee law that prohibits sending people who request asylum back without due process. There have been no mass expulsions; in fact, more people had been sent back from Greece to Turkey in the three months preceding the agreement than in the five months since it was concluded. This impact is in a sharp contrast to the situation in the Central Mediterranean, where numbers of crossings, and deaths, are very similar to 2015. The difference is that the EU has a credible plan in the Aegean, and no credible plan in the Central Mediterranean.

However, some key issues have to be addressed urgently to ensure the continued success of this agreement. Most importantly, the EU must work with Turkey to ensure that Turkey is a safe country, offering protection under the existing Temporary Protection Scheme for Syrians or a credible asylum process to everyone sent back from the Greek islands. Unless this is achieved the number of people on the islands will inexorably rise until a breaking point is reached. This should be achievable. The number of people on the Greek islands on 5 September was 12,000. If half of them could be sent back to Turkey in the next six months – 1,000 a month – the agreement would be secure. For this Turkey would need to guarantee a quality process without delay as well as decent reception conditions for 6,000 people; and provide access to social services and decent living conditions for those granted protection. If the EU, Greece and Turkey are able to ensure these rights for a manageable number of asylum seekers now on the Greek islands the agreement is secure. If they do not, it will fail. The EU and Greece must also cooperate better to process the requests for asylum of everyone on the islands, including non-Syrians; all this while improving conditions for everyone there and on the mainland. The EU must also fulfil its promises under the EU-Turkey Agreement to Turkey if it wants to see Turkey make an extra effort, including visa liberalisation and a serious resettlement of a significant number of Syrian refugees.

If the EU-Turkey agreement is implemented in full, it will ensure control in the Aegean in the coming year, in line with existing EU legislation. This could demonstrate that it is possible to combine control of borders with respect for the Refugee Convention. It is a way to combine empathy and respect for refugee rights with control and security concerns.

¹ Presented by ESI at meetings and public presentations with policy makers, human rights institutions and international lawyers in [The Hague, Amsterdam and Hilversum](#) in early September 2016.

Eleven basic facts about the EU-Turkey agreement

FACT ONE: The refugee crisis of 2015 was largely about the Aegean, where more than 85 percent of all crossings to the EU took place.

Detections of illegal border-crossings, 2015²

Route	Border crossings
Eastern Mediterranean (sea and land)	885,386
Central Mediterranean	153,946

FACT TWO: There has been a dramatic fall in the number of crossings in the Aegean since March 2016.

Arrivals on the Greek islands from April until July³

Date	Arrivals
January total	59,902
February total	55,222
March total	26,623
April total	3,419
May total	1,465
June total	1,489
July total	1,855
August total	3,437

² Source: [Frontex](#)

³ Source: [UNHCR \(Weekly report, 4 August 2016\)](#)

FACT THREE: While the EU-Turkey agreement has reduced the number of crossings in the Aegean, EU policies have not managed to contain numbers reaching Italy. Arrivals in the Central Mediterranean in 2016 are similar to those in 2015.

Detections of illegal border crossings by sea, April-Aug. 2015 and April-Aug. 2016⁴

Route	2015 (Apr-Aug)	2016 (Apr-Aug)
Eastern Mediterranean	225,505	39,253
Central Mediterranean	105,984	96,266

FACT FOUR: There has been no redirection of refugee/migrant flows from the Aegean to the Central Mediterranean. These are separate and independent flows as the nationalities show.

Top nationalities of arrivals in Greece and Italy in 2016, as of 8 September 2016⁵

Greece		Italy	
Syria	48%	Nigeria	20%
Afghanistan	25%	Eritrea	12%
Iraq	15%	The Gambia	7%
Pakistan	4%	Ivory Coast	7%
Iran	3%	Guinea	7%
Other	4%	Sudan	7%
		Somalia	5%
		Senegal	5%
		Mali	5%
		Other	4%
Total	164,730	Total	124,475

FACT FIVE: Since March the number of people drowning in the Aegean has dropped sharply.

Deaths on the Aegean until 7 September 2016⁶

Month	Deaths
January	272
February	49
March	45
April	10
May	0
June	0
July ⁷	7
August ⁸	3

⁴ Source: UNHCR for [Greece](#) and [Italy](#)

⁵ Source: [UNHCR](#)

⁶ Source: [IOM](#)

⁷ Al Jazeera, „[Refugees drown off coast of Greece’s Lesbos](#)”, 13 July 2016

⁸ Yahoo News, „[Greek Turkish authorities rescue migrants in Aegean Sea](#)”, 17 August 2016

FACT SIX There have been no mass expulsions from Greece under the agreement – in fact, twice as many irregular migrants have been readmitted from Greece to Turkey under a bilateral readmission agreement BEFORE the EU-Turkey Agreement was in force (967 Jan to March 2016) than under the agreement since (502).

Table: Transfers of migrants from Greece to Turkey until 9 September 2016⁹

<u>Date</u>	<u>Transfers</u>
4 April	202
8 April	123
26 April	49
27 April	12
18 May	4
20 May	51
8 June	8
9 June	13
16 June	6
17 August	8
18 August	6
25 August	2
7 September	5
8 September	13
Total	502

FACT SEVEN: The number of people stuck on the Greek islands is rising; so is – albeit still slowly – the number of daily arrivals.

Daily Arrivals from Turkey in 2016¹⁰

<u>Date</u>	<u>Daily Greek islands</u>
Daily average January	1,932
Daily average February	1,904
Daily average 1-20 March	1,148
Daily average 21-31 March	333
Daily average April	121
Daily average May	55
Daily average June	51
Daily average July	59
Daily average August	111

⁹ Source: [European Commission](#)

¹⁰ Source: [UNHCR \(Weekly report, 4 August 2016\)](#)

FACT EIGHT: The number of people stuck on the Greek islands is still small compared to those stuck on the Greek mainland (24 August: 47,000) but it is beyond existing capacities to host people decently.

Table: Capacity and occupancy on the Greek islands, 5 September 2016¹¹

Island	Capacity	People
Lesvos	3,500	5,388
Chios	1,100	3,316
Samos	850	1,351
Kos	1,000	1,531
Leros	1,000	719
Karpathos		94
Rhodes		91
Megisti		19
Kalymnos		6
Total	7,450	12,515

FACT NINE: The number of people the EU has resettled FROM Turkey remains very modest.

Resettlements of Syrians from Turkey to EU countries until 9 September 2016¹²

Countries	Syrians resettled from Turkey
Germany	609
Sweden	269
France	197
Netherlands	170
Italy	75
Finland	62
Spain	57
Luxemburg	27
Lithuania	25
Portugal	12
Estonia	11
Latvia	6
Total	1,583

FACT TEN: Despite repeated calls from the Commission, so far only some 3,500 asylum seekers have been relocated from Greece in 15 months. (A June 2015 decision foresaw 16,000; this was increased in September 2015 to more than 60,000.)

¹¹ Source: [UNHCR](#)

¹² Source: [European Commission](#)

Table: Relocations from Greece until 9 September 2016¹³

Country	Offers (total IT Relocated from and GR)	Greece
France	3,320	1,431
Netherlands	925	439
Finland	970	419
Portugal	1,642	307
Germany	250	195
Spain	400	151
Romania	1,502	147
Belgium	230	125
Luxembourg	200	104
Lithuania	420	77
Ireland	200	69
Slovenia	130	60
Latvia	491	55
Cyprus	80	42
Estonia	136	36
Malta	131	24
Czech Republic	50	12
Croatia	26	10
Bulgaria	1,302	6
Slovakia	100	3
Sweden	300	0
Switzerland	360	0
Poland	100	0
Liechtenstein	43	0
Total	13,478	3,712

FACT ELEVEN: The EU has not sent enough asylum case workers and interpreters to Greece. (If one case worker would do one interview a day, 200 officials should have been enough to process 4,000 cases in a month).

Asylum officials/ interpreters - pledged by 5 July and deployed by 5 September¹⁴

Countries	Reply to call: interpreters	Reply to call: asylum officials
France	73	100
Germany	7	100
Spain	0	61
Belgium	13	50
Sweden	0	50
Portugal	0	40
Total requested	400	472
Total pledged	131	494
Total deployed	70	61

¹³ Source: [European Commission](#)

¹⁴ Source: [European Commission](#)

Basic legal concepts – and what needs to be

The relevant EU directive sets out common procedures for granting and withdrawing international protection. It defines the concept of a safe third country as follows:

EU Asylum Procedures Directive Article 38 - The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national law, including:

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. **Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant** and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).”

In Article 35, the same Directive deals with the concept of first country of asylum, which is applicable to Syrians under Turkey’s Temporary Protection Scheme for Syrian refugees:

A country can be considered to be a first country of asylum for a particular applicant if:

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement,

provided that he or she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.

Right after the agreement was reached UNHCR confirmed that as agreed the EU-Turkey statement was in line with international and European law:

“... it is explicit that any modalities of implementation of the agreement will respect international and European law. In UNHCR’s understanding, in light of relevant jurisprudence, this means that people seeking international protection will have an individual interview on whether their claim can be assessed in Greece, and the right to appeal before any readmission to Turkey. This would also entail that once returned, people in need of international protection will be given the chance to seek and effectively access protection in Turkey. **We now need to see how this will be worked out in practice,** in keeping with the safeguards set out in the agreement - many of which at present are not in place.

Firstly, Greece’s reception conditions and its systems for assessing asylum claims and dealing with people accepted as refugees must be rapidly strengthened. The safeguards in the agreement have to be established and implemented. This will be an enormous challenge needing urgent addressing.

Secondly, **people being returned to Turkey and needing international protection must have a fair and proper determination of their claims, and within a reasonable time. Assurances against refoulement, or forced return, must be in place.** Reception and other arrangements need to be readied in Turkey before anyone is returned from Greece. People determined to be needing international protection need to be able to enjoy asylum, without discrimination, in accordance with accepted international standards, including effective access to work, health care, education for children, and, as necessary, social assistance.”¹⁵

UNHCR elaborated on procedural safeguards to be met by the Greek and European asylum case workers on 23 March in a legal opinion:

„in the case of safe third country: rules requiring a connection between the applicant and the third country; case-by-case consideration of the safe third country concept; individual examination of whether the country concerned is safe.”

As for the „meaningful link” between a person to be returned and Turkey UNHCR recommended:

“a formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards.”¹⁶

Concerning the meaning of “sufficient protection” under the first country of asylum concept, UNHCR wrote that protection can be considered sufficient if the following principles are respected:

“- no risk of persecution within the meaning of the 1951 Convention or serious harm¹⁶ in the previous state;

¹⁵ [UNHCR, 18 March 2016](#)

¹⁶ [UNHCR, 23 March 2016](#)

- no risk of onward *refoulement* from the previous state;
- compliance, in law and practice, of the previous state with relevant international refugee and human rights standards, including adequate standards of living, work rights, health care and education;
- access to a right of legal stay;
- assistance of persons with specific needs;
- timely access to a durable solution.”¹⁷

All of this establishes a clear agenda for the EU, Greece and Turkey. If they are able to ensure these rights for a manageable number of asylum seekers now on the Greek islands the agreement is secure. If they do not, it will fail.

Besides this central concern, the EU and Greece must also cooperate better to process the requests for asylum of everyone, including non-Syrians, now on the islands; while improving conditions for everyone there and on the mainland. The EU must also fulfil its promises under the EU-Turkey Agreement to Turkey if it wants to see Turkey make an extra effort, including visa liberalisation and a serious resettlement effort of Syrian refugees in significant numbers.

If the EU-Turkey agreement is implemented in full, it would ensure control in the Aegean in the coming year, in line with existing EU legislation. This could demonstrate that it is possible to combine control of borders with respect for the Refugee Convention. It is a way to combine empathy and respect for refugee rights with control and security concerns.

¹⁷ [UNHCR, 23 March 2016](#)