



The devil in the detail

Why the EU-Turkey deal will fail and how to get to a deal that works

Evening - 29 November 2015

What the EU and Turkey have agreed today will not achieve its main goal, which [according to European Council President Donald Tusk](#) is “to stem the flow of migrants to Europe”.

Unless this deal is substantially improved in the coming days and weeks, it simply sets the stage for failure. The influx of refugees coming into the EU from Turkey will not abate. Both sides will then blame each other. Frustration will erode already dangerously low levels of trust. Precious time will have been wasted.

However, there is a chance to achieve a success – to reduce the numbers of refugees arriving in the EU via Greece and at the same time ensuring that Syrian refugees can obtain asylum in the EU. The devil really lies in the detail.

There are five measures in the EU-Turkey deal reached today that are supposed to help lower the number of refugees arriving in the EU.

Measure 1: The EU-Turkey statement states that

“... both sides will, as agreed and with immediate effect, step up their active cooperation on migrants who are not in need of international protection, preventing travel to Turkey and the EU, ensuring the application of the established bilateral readmission provisions and swiftly returning migrants who are not in need of international protection to their countries of origin.”

Firstly, how many migrants are *not* in need of international protection? Very few.

More than half of the refugees arriving in the Europe are Syrians. In 2014, 95% of all Syrian refugees received protection in the EU (Eurostat). This makes only 5 percent that could be sent back. The second-biggest group (20 percent) are Afghans. Their recognition rate was 63 percent.

Secondly, who will determine which refugees are in need of international protection and which are not? This requires an asylum procedure, including the possibility to appeal a negative decision to a court. It is illusory to believe that Greece could conduct such a procedure for the 200,000 refugees that currently arrive on its islands each month. Even Germany with its large

administration decided only 32,000 asylum claims in October (Germany's asylum authority, [data for October](#)).

The statement mentions applying “the established bilateral readmission provisions”. This is a reference to the Greece-Turkey readmission agreement from 2001. Between 2002, when it entered into force, and the end of last year, Greece asked for the readmission of 135,000 rejected asylum seekers and irregular migrants. Turkey accepted 13,100 of these. In the end 3,800 (3 percent) were returned to Turkey.

In 2015, Turkey has accepted more requests. But so far, only 8 people have actually been returned from Greece to Turkey. The problem is obvious: by the time Turkey has agreed to readmit someone and paperwork is completed, the person is usually no longer in Greece.

Readmission of irregular migrants from Greece to Turkey (source: Hellenic Police)

Year	Migrants whose readmission Greece requested	Migrants accepted by Turkey	Migrants actually readmitted
2012	20,464	823	113
2013	3,741	370	35
2014	9,691	470	6
Jan-Sept 2015	8,727	2,395	8

Even if Turkey accepts *all* Greek readmission requests (so far 9,000 this year) and even if Greece manages to request more readmissions – 20,000, even 30,000 per year – this would not make much of an impact. Currently, more refugees arrive on Greek islands *per week* (some 35,000).

Measure 2: The second measure that could lead to a reduction in the number of refugees reaching the EU is the EU-Turkey readmission agreement, which will now come into effect in June 2016.

Everything we said here about the bilateral agreement with Greece also goes for this agreement. It applies to all EU countries – not only Greece, but Germany, Sweden, Austria and other EU states. In theory, all will be able to send back to Turkey rejected asylum seekers and irregular migrants.

However, if refugees reach these countries through the Western Balkans, the EU-Turkey readmission agreement no longer applies: it requires that persons to whom it is applied “illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Turkey” ((EU-Turkey readmission agreement, [Art. 4](#)). Those who take the Balkan route enter the EU “directly” from Serbia, not Turkey. So, this readmission agreement is even less relevant than the Greek one.

Measure 3: The third measure is Turkey's intention “to adopt immediate measures to further improve the socio-economic situation of the Syrians under temporary protection”.

So far, the EU has tried in vain to extract from Turkey a commitment to allow Syrian refugees access to the labor market. The current commitment is vague in its language, but might include labour market access. This would be a very important step forward. However, even if Turkey permits this, it will still be more attractive for many Syrians to go to Germany and Sweden than to remain in Turkey. And of course, it doesn't apply at all to non-Syrians who cross to Greece.

Measure 4: The EU promises to “provide immediate and continuous humanitarian assistance in Turkey... The EU is committed to provide an initial 3 billion euro of additional resources”.

Improving the conditions of Syrian – and other – refugees in Turkey is of course both commendable and urgently needed. This offer amounts to a significant commitment. However, the two main problems of the 2.2 million Syrian refugees in Turkey are work and education: they are not allowed to work legally and some 500,000 of 700,000 Syrian school-age kids are out of school, due to the language barrier and the limited capacities of Turkish schools. As relatively few Syrians refugees in Turkey are accommodated in refugee camps, they may be beyond the reach of humanitarian aid.

Even if Syrian refugees were granted access to education and increased humanitarian support it is doubtful whether this would convince many of them to stay in Turkey. Syrian refugees are looking for a place where they can start new lives after many years of waiting – where they can work legally, re-train if needed, where there is decent social assistance if they do not find a job straight away and where their children will receive a quality education. In short, the refugees are seeking a long-term perspective. In this regard, Germany will always remain more attractive than Turkey for most of them.

Measure 5: Lastly, there is the promise “to enhance the fight against criminal smuggling networks”. There is a multitude of reasons why this means little. Fighting smugglers is like Sisyphus rolling his rock up a hill; any who are captured are quickly replaced by others. They respond quickly to the demand generated by the refugees. Turkey is unlikely to be willing or able to commit the resources that would be needed to patrol its entire Aegean coast in order to please the European Union.

Individually and collectively, these measure will have a very limited impact. However, as ESI has argued for many weeks now, there is a chance to cut a better deal. Germany has now accepted the idea of taking contingents of refugees from Turkey. This initiative – especially if matched by other, willing EU member states – is the only one that could make a genuine difference.

A deal that really works: Merkel Plan 2.0

In recent weeks ESI analysts presented an alternative plan in many European capitals (Berlin, Brussels, Stockholm, The Hague, Vienna, Warsaw). It is an elaboration of our policy proposal [The Merkel Plan – Restoring control, retaining compassion – A proposal for the Syrian refugee crisis](#) of 4 October 2015.

1. Germany and a coalition of the willing – Austria, Sweden, the Netherlands, France and others – commit to accepting large contingents of Syrian refugees directly from Turkey. The process of identifying refugee families begins on 1 January 2016. This will have to be done rapidly, and in close cooperation with the Turkish authorities. The regular UNHCR process would take much too long to have any effect.
2. Turkey agrees to take back all refugees, including asylum seekers, who reach Greek islands from that date. To do that, Greece treats Turkey as a safe third country (see our briefing [Turkey as a "Safe Third Country" for Greece](#). Turkey and Greece, with support from others (Frontex, the European Asylum Support Office and other EU countries) begin immediate preparations for this.
3. Turkey's asylum authority immediately begins to issue decisions in response to asylum claims. It has already conducted many of the necessary interviews. It has to demonstrate that asylum seekers, irrespective of their nationality, can receive international protection in Turkey. Turkey also adopts in an urgent procedure all bylaws to enable recognised refugees and asylum seekers to have access to the rights envisaged under Turkey's 2013 law on Foreigners and International Protection.
4. In return for Turkey's cooperation, the European Commission begins *right away* the process of lifting the Schengen visa requirement for Turkey. This legal process always lasts a few months. It should hold out a concrete promise to Turkish citizens:

“If Turkey implements the existing readmission agreements with Greece in full and agrees to take back all **new** arrivals to these two countries from 1 January 2016, and implements a concrete set of other priority conditions from the roadmap until March, then Turkish citizens will be able to travel without a visa to the EU from 1 April 2016.”

If this readmission to Turkey proceeds as planned, the Justice and Home Affairs Council and the European Parliament votes in March in favour of lifting the visa requirement for Turkish citizens. The decision becomes effective on 1 April 2016.

5. The EU and Turkey immediately conduct a joint needs assessment of the needs of Syrian refugees in Turkey, with a focus on ensuring education for all school-age children (currently 500,000 out of 700,000 Syrian school-age children do not go to school). They identify the number of teachers needed, where they can be found, which buildings to use for classes, which equipment and textbooks are necessary, and how much all of this will cost. EU assistance will be visible to the Turkish public. In parallel, Turkey will propose a gradual opening of the labour market to Syrians who enjoy protection in Turkey.

For more information please look at the ESI special website on the refugee crisis: www.esiweb.org/refugees Or write to: g.knaus@esiweb.org (Gerald Knaus) or a.stigmayer@esiweb.org (Alexandra Stigmayer)

Excerpt from ESI paper

TURKEY AS A “SAFE THIRD COUNTRY” FOR GREECE 17 October 2015

Restoring control in the Aegean – lawfully

For a resolution of the Syrian refugee crisis in the Aegean, ESI proposes that Greece declares Turkey a “safe third country”; that Turkey agrees to take back new migrants reaching Greece from its territory from a certain agreed date; and that Germany agrees to offer asylum in Germany to 500,000 Syrian refugees registered in Turkey over the coming 12 months. Other EU member states then also offer to take Syrian refugees directly from Turkey.

A “safe third country” describes a country that it safe for asylum seekers of nationalities other than that of this country. The ESI proposal is based on the assumption that Turkey is a safe third country for asylum-seekers from Syria, Iraq, Afghanistan and other countries, so that Greece could return them to Turkey without jeopardising their rights and safety. This would quickly reduce the number of boats crossing the Aegean as the dangerous passage would become pointless – everybody reaching Greece would be returned back to Turkey.

Greece already has a readmission agreement with Turkey. The agreement details the modalities of returns to Turkey of both irregular Turkish citizens and third-country nationals who reached Greece via Turkey. These include migrants who crossed into Greece illegally (socalled “economic migrants” who have no right to remain), as well as asylum-seekers, but only if and after their asylum claims were rejected in Greece and they were then ordered to leave. The vast majority of people currently arriving in Greece are asylum seekers. Greece has an obligation under EU law and the UN Refugee Convention to admit persons seeking asylum, to examine their claim and to grant them asylum if they qualify for it. It cannot simply send them back to Turkey without looking at their claim. It is also illegal under international, EU and Greek laws for Greek border guards - or any other border guards operating as part of an EU mission – to block their movement on the sea in Greek territorial waters.

However, Greek and EU legislation allows that Greece judges a third country “a safe third country” for individual applicants. It can then return them to this country for a substantive examination of their asylum claim. 6 Greece still needs to look at the claim, but it does not have to examine it in substance. It can declare it “inadmissible” and return the asylum seeker to the safe third country for a substantial examination of the claim.

If the Greek authorities reject an asylum claim as inadmissible based on the safe third country concept, they have to inform the applicant and provide him with a document for the authorities of the third country (Turkey) stating that they have not examined the application on merits.⁹ Under Greek legislation, the rejected applicant can lodge an administrative appeal against the inadmissibility decision within 15 days and has a right to remain in Greece until he is notified of the final decision.¹¹ If the appeals body upholds the first-instance decision, the applicant can appeal to a court. However, this court appeal has no suspensive effect; the applicant is still obliged to leave.

The whole paper can be found here: [Turkey as a "Safe Third Country for Greece](#) (17 October 2015)