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EU-Turkey agreement: solving the EU asylum crisis or creating a new Calais in Bodrum?

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Turkey, a historical land where the East is said to meet the West, is the only country separating war-torn Syria and Iraq from the external borders of the EU. The Turkish coast is just a stone's throw away from the Greek Dodecanese Islands, which have become, for many refugees, the port of entry into the EU. It is therefore no surprise that Turkey, due to its geographical position, has a key role to play in managing the current refugee crisis. Turkey knows it is a key player on this issue and now the EU arguably needs Turkey more than Turkey needs the EU. Yet, the question is: how will Turkey stem the flow?

Following the [EU-Turkey working dinner](#) on 17 May 2015 and [the informal meeting of the EU Heads of State and Government](#) on 23 September 2015, there was a call for reinforced cooperation between the EU and Turkey on migration and asylum challenges. After weeks of disunion on how to foster and implement solidarity at the EU level, the focus has turned to the question of aid for neighbouring countries, most notably Turkey. The [conclusions of the European Council of 15 and 16 October 2015](#) confirmed this would be the way forward. At that time, an [Action Plan elaborated jointly by the EU and Turkey](#) was agreed ad referendum. Following the [extraordinary meeting of the European Council with Turkey](#) on November 29, the Action Plan was finally 'activated'.

The content of the Action Plan reveals the intended approach of the EU to dealing with the asylum crisis: by cooperating with Turkey, the number of refugees reaching the EU should decline significantly. In exchange for a number of concessions, mainly about easing visa requirements for Turkish nationals and [reactivating the negotiations on Turkey's accession to the EU](#), Turkey agreed to offer his help to the divided European Union.

According to the Action Plan, the refugee crisis will be tackled by supporting Syrians under temporary protection in Turkey and by strengthening cooperation to prevent irregular migration flows into the EU. While the first part of the plan aims to weaken push-factors in Turkey by providing technical and financial assistance, the second part targets irregular migration, the ultimate goal being to reduce the departure from Turkey to the EU. It is worth noting that the migration crisis is depicted as a refugee issue in the Action Plan's first section

regarding the temporary protection of Syrians in Turkey, whereas the same crisis is presented as an irregular migration problem in the second section dealing with migrants, including Syrians, trying to enter the EU irregularly from Turkey. Arguably, such evasive language is not an accident but is used for political purposes.

I. Supporting Syrians under temporary protection in Turkey

The EU acknowledged that Turkey has been making important efforts to provide Syrians with emergency needs. Hosting about 2 million refugees has undoubtedly had an impact on the 74 million Turkish population. Even if the estimated total of one million migrants reach the EU in 2015, the Union will still welcome far fewer refugees proportionally than Turkey. The EU is expected to contribute as much as three billion Euro to Turkey's efforts in order to improve socio-economic conditions of Syrians under temporary protection in Turkey.

Behind the humanitarian veil, the EU's real intention is quite different. It is expected that Syrians stay in Turkey and that this country facilitates their inclusion into its society. This includes increasing access to the labour market and public services, such as education, healthcare and emergency accommodation. At a time when some leaders in the EU are in fact calling for a limitation of migrants' social and economic rights in their own countries, this may seem contradictory. Yet, it reveals the current climate and the lack of political courage in the EU, with the arguable exception of the German Chancellor, to welcome refugees on its own territory.

However, as of now, the temporary protection status prevents Syrians from fully integrating into Turkish society and having access to public services. The Temporary Protection Regulation (TPR) was adopted in October 2014 on the basis of Article 91 of the recent Law on Foreigners and International Protection. Temporary protection is to be granted in "a mass influx situation", when the individual processing of international protection needs becomes impractical due to the high number of persons seeking protection, as in the case of Syrians. The existence of a temporary protection regime for people fleeing Syria means that these persons are neither refugees nor asylum seekers under Turkish domestic law. This is not problematic per se, but the Turkish regulation does not set a maximum time limit for temporary protection, nor does it provide former temporary protection beneficiaries with a right to apply for international protection, contrary to the UNHCR Guidelines on Temporary Protection and the EU Directive on Temporary Protection. Moreover, although the TPR does provide safeguards against *refoulement*, it does not guarantee an explicit right to work, education, and social assistance for its beneficiaries. Regarding education in particular, Human Rights Watch recently reported that many obstacles prevent Syrian refugee children from attending school, including financial hardship which means that some children work instead. Because of their 'temporary protection' status, Syrians cannot apply for asylum in Turkey and they have fewer social rights than Turkish nationals, contrary to the Geneva

Convention (Articles 22 – 24).

To stem the flow of refugees, European leaders hope that improving the living conditions of Syrians in Turkey, with the financial support of the EU, will discourage them from searching for a better life in the EU. Clearly, the aid offered to help Syrians in Turkey is intended to keep them there and prevent further arrivals of refugees in the EU. As Donald Tusk, the President of the European Council, put it before the European Council meeting of 15 October 2015, 'an agreement with Turkey makes sense only if it effectively contains the flow of refugees'. However, Turkish law fails to offer Syrian refugees a secure status and prevents them from sustaining themselves in Turkey. As a result, the number of Syrians and other asylum seekers willing to cross to Europe is not likely to decline significantly. Therefore, under the second part of the Action Plan, the EU calls for Turkey to tighten controls at its western borders.

II. Holding back migrants in Turkey

Migrants, including Syrians, would also be discouraged from embarking on a perilous journey to the shores of the EU by the strengthened capacity of coast guards. Migrant smuggling and human traffickers will also be combatted by increased patrols and surveillance. Indeed, on November 30, the day after the activation of the Action Plan, Turkey arrested 1,300 asylum seekers in efforts to secure its borders. While officially this aims to prevent further loss of life at sea, the danger is that migrants may take even greater risks to reach Greece's shores. This raises also the question of the right to leave any country as guaranteed by Article 12 of the International Covenant on Civil and Political Rights and of the legality of the restrictions That States can impose on it. Combatting smuggling is undoubtedly a legitimate objective, but this will not prevent migrants from wanting to come to the EU. To a large extent, smuggling exists due to the lack of legal routes to reach the EU and apply for asylum.

The Action Plan also calls for reinforced cooperation and accelerated procedures in order to readmit irregular migrants who are not in need of international protection. This targets both migrants that have not actually applied for asylum in the EU and that are illegally staying, and those that have applied for international protection but have received a negative decision. In these cases, the Return Directive is applicable and people will be returned either to their country of origin or to a country of transit in accordance with readmission agreements. It was precisely agreed at the extraordinary meeting on November 29 that the EU-Turkey readmission agreement will become fully applicable from June 2016.

In accordance with its readmission obligations, Turkey will have to readmit not only its own nationals but also third-country nationals who have illegally entered the territory of the EU after having stayed in, or transited through, Turkey. According to the EU, readmission agreements with third countries of both origin and transit constitute a cornerstone for

effective migration management and for the efficient return of third country nationals irregularly present in the EU. It is also meant to discourage potential migrants from coming to the EU through irregular channels. Another so-called Action Plan, which was decided at the Valletta summit on 11-12 November, reaffirms that cooperation with third countries in order to facilitate the return of irregular migrants must be strengthened.

If Turkey were considered a 'safe third country' for asylum seekers, as the Action Plan seems to imply, it may be feared that as of June 2016 asylum seekers who have illegally entered the territory of the EU after having stayed in, or transited through, Turkey could also be returned to Turkey. The concept of "safe third country" must be distinguished from that of "safe country of origin", which refers to a country where its own nationals are generally not persecuted. The 'safe third country' rule asserts that asylum seekers should have applied for asylum in the first safe country they were able to reach for, as the argument goes, there is no right to choose the country of asylum. This concept is based on an extensive interpretation of Article 31 of the Geneva Convention, which was designed to condemn States that impose penalties on refugees who illegally enter their territory coming *directly* from territories where their life or freedom are threatened.

As a result, the safe third country rule determines the admissibility of an asylum application, not its merits. Indeed, pursuant to Article 33(2)(c) of the recast Asylum Procedures Directive, an application for international protection may be considered inadmissible on the basis of a safe third country exception. Accordingly, asylum seekers become undeserving of international protection in the EU because they should have applied for asylum in Turkey.

In accordance with Article 38 of the recast Asylum Procedures Directive, for a country to be considered "safe" for asylum seekers, certain conditions must be met. Specifically, the Directive requires that 'life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion'; that the right to freedom from torture and cruel, inhuman or degrading treatment is respected; that the principle of non-refoulement is respected; and that there exists the possibility to request refugee status. Moreover, the applicant must have meaningful connections with the third country; having transited through that country is not sufficient. Finally, whether the third country is safe must be assessed on a case-by-case basis for each individual applicant.

Turkey is traditionally a country of emigration which does not have a well-functioning asylum regime, and refugees enjoy "temporary protection" instead of "refugees" status. Although Turkey ratified the 1951 Refugee Convention and its 1967 Protocol, it maintained the original geographic limitation so as to limit the rights therein only to refugees coming from Europe. It is only since the new Law on Foreigners and International Protection (LFIP) that entered into force in April 2014 that Turkey has a proper legal framework for asylum.

As a result, it is doubtful whether Turkey can be considered “safe” for asylum seekers. More generally, Turkey has limited reception capacity as well as little political will to offer effective protection to asylum seekers. According to the case law of the European Court of Human Rights, due to deficiencies in the reception arrangements for asylum seekers, which the 3 billion euro package is intended to improve, the return of an asylum seeker to Turkey may be in breach of Article 3 of the Convention.

III. Shifting responsibilities

Through this reinforced cooperation with Turkey, European leaders have decided to further protect EU’s external borders in order to stop the influx of people looking for international protection in the EU. The agreement allows EU Member States to externalise the management of migration outside of their own borders. This falls short of a proper common asylum policy.

In 2015, European leaders have met on various occasions to discuss the refugee crisis. Pretending to be caught by surprise is no longer an excuse for inaction. Yet, there is no comprehensive policy to manage the flow of refugees and nothing is being said, for instance, about the possibility of humanitarian visas for Syrian refugees, or about further resettlement schemes. In the continuation of the 1999 Tampere conclusions, migration management remains focused on fighting irregular migration and strengthening EU’s external borders.

If there is to be a solution to the asylum crisis in the EU, it will not – and should not – come simply from negotiations with a third country’s government. The joint Action Plan is no more than a band-aid solution. While efforts to help build Turkey’s capacity to process applications and adequately host asylum seekers are worthwhile, they should not be seen as a substitute for EU governments’ responsibilities. Paying for Ankara’s support in deflecting the problem does not amount to burden sharing, but rather shifts the burden from the EU to Turkey. Even more concerning is the possibility that Turkey, faced with the prospect of hosting ever-larger numbers of asylum seekers and migrants as a consequence of the agreement with the EU, will also tighten the control at its Eastern borders. According to Human Rights Watch, Turkey has already closed its borders to some Syrian asylum seekers, putting an end to its open door policy, and people have reported being pushed back as they try to cross. Surely, the shift in Turkey’s border policy is linked to the agreement signed with the EU which has its share of political responsibility.

The expected cooperation between the EU and Turkey has allowed Turkey to gain bargaining power and European leaders to pretend that they are taking decisions to solve the current refugee crisis. However, the EU remains as divided as ever, and those in real need of international protection, in particular Syrians, will be stranded in Turkey, a country without a well-functioning asylum regime, where their needs are unlikely to be addressed. Mirroring the externalisation of British borders on the French territory, will there be a new Calais in

Bodrum?

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