The Greens | European Free Alliance
in the European Parliament

EU-Turkey deal: main concerns and alternatives
18 March 2016

Main concerns:

a. **The agreement commits EU Member states to serious human rights and international law violations** and is incompatible with basic EU principles guaranteeing the right to seek asylum, the prohibition of collective expulsions and the guarantee of an assessment of individual needs for international protection.

Since the agreement will take the form of a 'statement', it will not as such be legally binding. Therefore there will be no procedure to approve it at either EU (also in the Parliament) or national level, besides its endorsement by the summit meeting. Nor can it be legally challenged as such. This is a clear avoidance of democratic scrutiny.

b. **Refugees and migrants should not be used as bargaining chips**
The agreement, which states that every Syrian readmitted by Turkey would be offset by a Syrian resettled from Turkey to EU member states, not only dehumanises those involved, but also, by refusing asylum seekers' access to asylum at EU borders, flies in the face of both the principle of solidarity and the whole framework of international protection. Moreover, the statement only refers to Syrian refugees, thus completely disregarding the situation for asylum seekers originating from other countries.

In this agreement the EU commits to resettle, on a voluntary basis, a total of 72,000 people (the remaining 18,000 people that Member States already committed to resettle from non-EU countries last year plus an additional maximum of 54,000 people. These numbers are way too low and equate to only 3% of Syrian refugees already registered in Turkey. They only apply to Syrian nationals, thus not addressing the situation of refugees originating from other countries.

> The resettlement of 500 000 refugees per year for six years directly from the countries of transit, if properly distributed, would result in entirely manageable numbers for the EU. The UN Special Rapporteur on the Human Rights of migrants noted that, for Germany, this would represent 80,000: less than 10% of the numbers taken in the past year.

c. **A policy of blanket returns of all "irregular migrants arriving in Greece"[1] is incompatible with EU and international law and in complete dereliction of the principle of *non refoulement***

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[1] Combined with a renewed emphasis on restriction of entry to Turkey from other countries by imposing visas to nationalities that previously did not require one, and plans for readmission agreements between Turkey and 14 countries of origin, as envisaged under the Joint EU-Turkey Action Plan, this reveals a policy of containment in Turkey on behalf of the EU, which can trigger the complicity of Member States in chain refoulement.

The agreement envisages deportation to Turkey of all migrants:

(1) not applying for asylum; - The key issue to be addressed is **whether migrants and refugees will be given an effective opportunity to apply for asylum.** The statement does not refer to provision of information and guaranteeing effective access to asylum and a right of appeal to asylum seekers.
(2) whose application has been found unfounded or
(3) inadmissible" - It is important to highlight that one of the grounds for inadmissibility of an asylum application is the possibility for Turkey to be deemed a "first country of asylum" or a "safe third country". This ultimately leads to a circumstance where asylum applications presented in Greece are declared inadmissible based on the fact that they could be considered by Turkey, thus leading to a complete lack of individual assessment (apart from one formal interview, sometimes to a person who is not a part of asylum authorities, where the applicant has to demonstrate that Turkey is unsafe for him/her personally) and adequate consideration to be given to all asylum applications.

To this end, "*Turkey and Greece, assisted by EU institutions and agencies, will take 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*". This last point raises serious concerns in relation to accountability and responsibility of the authorities involved in forced return procedures.

"Irregular migrants" intercepted in Turkish waters will be "taken back" by Turkey. In this case, if a vessel is stopped in Turkish waters, according to the agreement, people will be sent back to Turkey. This will happen in the absence of a possibility for people intercepted to access asylum in Europe and in the absence of an individual assessment on whether Turkey is a safe country of asylum for those intercepted. The EU's asylum procedure directive will apply to those who reach the Greek islands (to be understood also as Greek waters), but the Directive does not apply to international or Turkish waters.

Concerns should also be raised in relation to the potential future negotiation of similar agreements for blanket forced returns of "all irregular migrants" arriving to other EU countries (as for example in the case of Bulgaria or Italy).

> The only way to break smuggling business models would be to proactively offer unconditional safe and legal routes to Europe through high scale resettlement programmes for refugees, the issuing of family and humanitarian visas and the creation of other avenues, including for migrant workers in low-wage sectors and family reunification.

d. **Hotspots should not become detention centres: forced return should not be prioritised over access to protection and asylum**
The intention to adapt hotspots on Greek islands "*with the current focus on registration and screening before swift transfer to the mainland replaced by the objective of implementing returns to Turkey*" and the requirement that "*sufficient detention capacity are to be put in place*" is in detriment of asylum

seekers' and migrants' fundamental rights.[2] Accelerated asylum procedures "for all stages of the procedure, from the initial interview to a possible appeal" are envisaged.

Moreover, EASO is called upon not only to support the Greek authorities in processing applications for asylum, but also **return** - a task that is outside the scope of EASO's mandate.

e. **Turkey cannot be considered a "safe third country"** as it does not fulfil many of the requirements for designation as a safe third country under the Procedures Directive.

Turkey ratified the 1951 Geneva Convention and its 1967 Protocol, but maintains a geographical limitation for non-European asylum-seekers, thus recognising refugees originating only from Europe (CoE members). The geographical limitation provides the first barrier to accessing asylum in the country. Moreover, Syrians in Turkey do not have access to refugee protection in its full sense, as enshrined in the Geneva Convention. They were at first received as 'guests' and then subject to a temporary protection regime, formalised by a Regulation on Temporary Protection only in October 2014. The basic idea behind the temporary protection regime is to host Syrians until the conflict is over and then possibly let them return to their country of origin. As such, Syrians have a right to reside in the country but are denied the prospect of a long-term legal integration. Although in January 2016, the Turkish government adopted a decision aimed at ensuring that Syrians can enter the labour market, the effects of this new regulation have not yet been seen in practice.

To be considered a "safe third country", Turkey should respect the principle of non-refoulement. In November and December 2015, Human Rights Watch and Amnesty International denounced an increase in deportations, push-backs, arbitrary detentions and physical violence against asylum seekers trying to cross the Turkish southern border coming from Syria or Iraq, or trying to enter Greece from Turkey, either by land or sea. Turkey has a record of treating asylum seekers and refugees harshly in detention: episodes of torture or inhuman or degrading treatment have been reported by the Global Detention Project and Amnesty International and condemned by the ECtHR.[3]

> NOTE: **The concepts of "safe third country" and "safe country of origin" are not to be confused.** A "Safe Third Country" concept undermines international protection and solidarity - A general concept of 'safe country of origin' is discriminatory and undermines the individual right to have claims fully and fairly processed, and may result in refugees being deported to their country of origin - in violation of the principle of non-refoulement. In the case of Turkey in particular, there is high cause for concern given the current situation.

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[2] These are set out in the COM Communication of 16 March 2016: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/next_operational_steps_in_eu-turkey_cooperation_in_the_field_of_migration_en.pdf.

[3] See for instance, Abdolkhani and Karimnia v Turkey and the recent SA v Turkey, judgement of 15 December 2015.

f. Calling for alternatives is neither idealistic nor utopian - The statement: "*the EU and Turkey today decided to end the irregular migration from Turkey to the EU*" is a utopian one

Members of the European Council agreed that <u>only once "the irregular crossings between Turkey and the EU have come to an end</u>, the Voluntary Humanitarian Admission Scheme will be activated" - EU member states will contribute to this scheme only on a **voluntary** basis.

> NOTE: The implementation of the agreement would imply a cost for the EU budget at the level of "**around EUR20 million a month**" (based on a first estimate calculated on the basis of 2,000 irregular arrivals per day).

<u>Alternative proposals: Greens' draft 10 point plan on the refugee and migration crisis</u>

1. Stop obsessing about numbers
Start managing the influx of migrants. Europe has 500 million citizens. 1 million refugees a year is an increase of 0.2 %. We can handle that together.

2. Open regular border crossings for refugees
The number of resettlement places should be significantly increased. Resettlement should not be limited to Syrian nationals and should be linked to readmission but preserved as one of the durable solutions to refugee displacement and an unconditional instrument of international solidarity. In addition to resettlement, EU Member States should make use or develop other legal pathways for refugees such as humanitarian admission programmes, private sponsorships, humanitarian visas and flexible family reunification procedures. A crucial fact is that the vast majority of those arriving in Europe (88%) are refugees (coming from Syria, Afghanistan, Iraq, Eritrea and Somalia). This is mostly a refugee movement.

3. Pay up and end the race to the bottom
Pledges by Member States for Turkey, Syria, the Africa fund, UNHCR and the World Food Program should be paid to improve the situation in the refugee camps in the countries surrounding Syria. Member States are frustrating a common European asylum and migration policy by closing internal borders, installing national quota, lowering social benefits for asylum seekers. Instead, let's honour the agreements of burden sharing among the 28 member states and common responsibility towards refugees.

4. Do not criminalise those offering humanitarian support
Do not criminalise those offering humanitarian support. Support member states and local authorities in setting up a **"firewall"** - a clear separation in law and practice between the powers and remit of health professionals, health administration, social service providers, local authorities and migration law enforcement authorities.

5. Support local authorities
They do the work on the ground and have to balance the demands of the settled community with those of refugees. Money and resources need to go to

them fast. Allow for flexibility in budget deficit of member states with regards to spending to tackle the refugee crisis.

6.   Pay attention to children
Ensure access to protection for all children, provide real guardianship and guarantee right to education. Ensure that no child is detained because of their or their parent's migration status. Informed migration policies should take into account disaggregated data on children and their families.

7.   Embrace labour migration
The use of other safe and regular channels for migrants (including for family reunification, migrant workers - including in low-wage sectors, students) have to be established as part of a comprehensive response to the current refugee and migration crisis. Safe and regular channels benefit everyone; not only do they save lives and offer access to protection, they provide receiving states with the possibility to better plan, put structures in place and minimise the risks. The availability of regular migration channels should meet labour market demands. Provide work permits for migrant workers in the low-wage sectors (including agricultural, construction and domestic workers).

Set up a strong labour inspection to tackle illegal work and prevent all forms of labour exploitation.
- In many European Union countries, work permits for low-wage sectors are highly restricted. Where they are available, they are usually tied to one employer, creating a power imbalance and dependency on the employer.
- Inflexible labour migration frameworks enable exploitative employers to deliberately undermine migrant workers' residence status as a means of controlling and preventing them from reporting abuses to the police or labour authorities.
- This relationship exposes migrant workers to exploitation and abuse and can easily result in migrants losing their right to work and reside in the destination country, if the employer does not renew their employee's permit or ends the employment relationship.

8.   Combat poverty
To tackle the root causes of migration, we need to halt climate change; make our trade and investment policies fair and combat inequality worldwide.

Integrate the specific concerns of migrants and refugees, in all EU instruments and initiatives designed to improve progress on the Europe 2020 Strategy, including:
- the implementation of the EU Social Investment Package;
- the Scoreboard for Social and Employment indicators;
- Country Specific Recommendations.

9.   Ensure access to justice
Ensure access to protection and redress for migrants and refugees who have been victims of exploitation and violence:

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- Remove all legal, administrative and practical obstacles for migrants and refugees to report abuse and seek protection and redress for violations of rights;
- Take steps to ensure that justice is made safe, effective and accessible, protecting migrants and refugees when they report abuse, and facilitating prosecution of perpetrators regardless of the status of their victim;
- Prioritise police and labour authorities' roles in upholding rights and justice over immigration enforcement;
- Recognise the validity of work relationships and violations regardless of the status of the employee;
- Guarantee the suspension of any expulsion proceeding or removal directions when seeking access to labour or criminal justice courts.

10. Face facts: the whole EU has been significantly shaped by immigration

Support those member states with limited or no facilities to host refugees and help them set up viable migrant communities. Assist Greece by responding to the emergency with concrete solidarity.

Relocation can be a helpful tool, but in order for such schemes to have any meaningful effect, the number of relocation places should be extended and the scope of the schemes should be widened, by lowering the eligibility threshold for relocation to include other nationalities, in order to adapt the instruments to the changed composition of the refugee inflow.

Relocation should only be carried out with the informed consent of the applicants concerned and in full respect of their fundamental rights, while taking their preferences and links with specific Member States as much as possible into account, as this increases the chances that relocation will be successful and the need for secondary movement reduced.