



## BULLETIN OF THE INSTITUTE FOR WESTERN AFFAIRS

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### ■ Turkey, the European Union and refugees. Agreements on handling the migrant crisis

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A European Union Summit of heads of state and government held in Brussels on March 17-18, 2016 produced agreements which raise hopes of coming to grips with the migrant crisis. The agreement also allows Germany to salvage its leading role in Europe in resolving the issue. The outcome is a major success for German diplomacy. However, it is marred by the serious flaw of the EU-Turkey agreement being based on a foundation that breaches international law.

#### Angela Merkel’s success

The German concept manages to reconcile the irreconcilable: while the latest agreements respond to the demands to abandon the “open door policy” towards migrants, as put to Germany by other European states, they also allow Germany to walk away in the belief that the country has managed to stay its policy course and, in view of the partial or complete sealing of borders along the Balkans route, will remain the only European country to fulfill the obligations of international refugee law by willingly accepting refugees.

By imposing this pan-European solution, Chancellor Angela Merkel managed to defend her vision for managing the crisis and make the solution Europe-wide in its scope. The significance of the agreements lies in the facts that they:

1. facilitate a substantial curtailing of migrant influxes into Europe thereby reducing pressures on countries located on the migration route to Germany. This approach satisfies the key demands of the countries situated along that route, i.e. Austria, Slovenia, Croatia,

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Italy and Bulgaria, as well as those of other European Union member states and, in particular, France, the Netherlands, Hungary and Poland. This lays the groundwork for the gradual mitigation of the political conflicts between such states and Germany.

2. strengthen the procedure of harmonizing the positions of individual states in keeping with the EU's common foreign policy, thereby assuaging the fears of countries with divergent political concepts. This raises hopes of returning to the good standard of European Union functioning, as postulated by all member states.

3. create the option of stabilizing the situation within state borders, restoring the Schengen area and reopening borders. This will substantially reduce the major economic and social cost of closing the internal borders of the European Union that have painfully affected individual states and their societies.

4. additionally reflect the German concept of Europeanizing the refugee problem and directly align with the Germany-proposed approach of resolving the refugee issue with a community-wide effort by having all of the states approve the plan of relocating Syrian refugees directly from Turkey to the member states (however, the agreement provides for the right of every member state to define the criteria to be met by the refugees and the ultimate limits on the number of persons to be received) and having the EU endorse the German, French and Greek concept of recognizing Turkey as "a safe third country".

5. open up a way towards continued collaboration not only within the European Union (e.g. with respect to increasing the efficiency of FRONTEX' actions on the Greek section of the EU's external borders and to providing Greece with substantial support in its struggle to manage the humanitarian disaster) but also across organizations, i.e. between the European Union and NATO (so as to become more effective in stopping migrant boats at sea and returning refugees directly to Turkey) and between the European Union and the UN (in these relations, a particularly critical role, especially with respect to legitimizing the adopted solution, has been assigned to the Office of the UN High Commissioner for Refugees).

## “Refugee crisis management”

The agreement concluded at the EU Summit on March 17-18, 2016 was drawn up by the European Commission, Germany and the EU Presidency held by the Netherlands. It proposed a strategy for “managing the migrant crisis” (as presented by Jean-Claude Juncker on March 17, 2016). The strategy rests on the four pillars of:

1. Collaborating with Turkey,
2. Curbing the unrestricted movement of migrants,
3. Restoring the fully functioning Schengen area,
4. Increasing humanitarian aid to countries struggling to provide humanitarian living conditions to refugees and migrants.

The key to preventing an escalation of the migrant crisis is the EU-Turkey agreement without which the EU would be doomed to fail in its effort to meet its goals.

With respect to curbing the migrant movement, the EU-Turkey agreement provides for:

1. Returning all new irregular migrants, regardless of nationality, crossing from Turkey into the Greek islands (effective as of March 20, 2016);
2. Resettling for every Syrian readmitted by Turkey from the Greek islands, another Syrian from Turkey to the EU (the readmission of Syrians is to begin on April 4, 2016);
3. Turkey to make every effort to stop irregular migration into the European Union, whether by sea or by land;
4. The EU to activate the Voluntary Humanitarian Admission Scheme once irregular crossings between Turkey and the EU have come to an end or have been substantially reduced.

In return for having its expectations met:

1. The Union will allocate €6 billion in aid to refugees in Turkey, of which €3 billion will be rolled out immediately. The balance will be released once the first tranche has been exhausted or by the end of 2018, whichever comes first.
2. The visa requirements applying to Turkey will be lifted. A visa-free regime is to take effect as of July 1, 2016. Until that time, Turkey will make every effort to fulfill the obligations applying to states benefitting from such a regime. At this time, Turkey meets half of the required criteria.
3. The Turkey EU accession negotiations will be reopened (one new negotiation chapter will be opened by mid-year).
4. An effort will be launched to expand the customs union with Turkey.

The European Union and Turkey have also resolved to continue work towards improving humanitarian conditions in Syria so as to reduce the scale of the humanitarian crisis, establish safe zones in Syria for the civilian population and eliminate the causes of fleeing by the citizens of that country.

A legal basis for the readmission of migrants is the Greece-Turkey Readmission Agreement of 2001 and the EU Asylum Procedures Directive of 2013 applicable to persons eligible to receive asylum or refugee status. Under these documents, irregular migrants may be returned to their states of origin. The right of return is very restrictive with respect to asylum seekers and refugees. Asylum seekers may only be sent to a safe third country or the first country of asylum. To fulfill this limiting criterion, the Greek Foreign Affairs Minister Panayiotis Kouroublis announced the recognition of Turkey as a “safe third country” in his February 5, 2016 press statement made in the follow-up of tripartite talks among the foreign affairs ministers of Germany, France and Greece (*Ekathimerini.com*, 5.02.2016). Up until now, no European state has recognized Turkey as a “safe third country” (that is as one that meets international refugee and asylum

seeker protection standards) or even - with the exception of Bulgaria - as a “safe country of origin” (that guarantees respect for the rights of its own citizens).

## Controversies and weak points of agreements

The recent international agreements are not free of defects and weak points. For one, they are expensive to implement. Some of their unavoidable costs, such as those resulting from the visa-free regime for Turkey, the very likely cost of the potential humanitarian disaster in Turkey and the resulting destabilization of the region, cannot be estimated. The assumption that underpins the agreement is that Greece is going to operate efficiently, which is highly doubtful. In addition, too much trust has been placed in Turkey, which is expected to seal its land and sea frontiers, which it may be unable to accomplish.

A point that has been particularly contested and criticized (by, among others, the UNHCR, the Norwegian Refugee Council, Amnesty International and Human Rights Watch) is the recognition of Turkey as a “safe third country” and the failure to account for the fates of the migrants turned back at high seas.

International organizations question the legitimacy of placing Turkey on the list of “safe third countries”. After all, Turkey’s compliance with the Geneva Convention of 1951 has been very spotty. What is more, Turkey country does not envision granting refugee status to victims fleeing Syria, Iraq and other non-European states torn by armed conflicts. Therefore, there are no guarantees that Turkey will adequately protect victims from being rendered from its territory and forced to return to Syria or Iraq. Serious concerns have been raised that even with the huge financial support from the European Union, Turkey will be unable to satisfy the basic needs of the refugees. The support provided in 2015 via the UN OCHA within the framework of the UN OCHA Regional Refugee and Resilience Plan for Syria helped satisfy 65% of the humanitarian needs signaled by international organizations. Thus, one third of such basic needs remained unmet. Although doubtful in legal terms, Turkey’s recognition by Greece - and indirectly by the whole European Union - as a “safe third country”, has been portrayed as politically crucial to secure legitimacy for the EU-Turkey agreement and to deploy the adopted solution.

The direct turning back of migrants at sea is also controversial. The organizations suggest that the agreement with Turkey only applies to the migrants who reach Greek islands but not to people on board the boats that are to be turned back at sea, which - especially in the case of boats returned from Greece’s territorial waters - will mean depriving the migrants of the right to apply for asylum and will be in breach of the Geneva Convention of 1951 and EU law.

Although weak points and possible complications abound and EU partners are in for tough negotiations on agreement details and on the schedule of their implementation, the majority of the commentators, especially in Germany, agree that Germany managed to refrain from officially abandoning its “Willkommenspolitik” while meeting the demands of its European partners and succeeding in sealing Europe’s borders. The agreements enable Angela Merkel to announce success also at home in Germany

where the chancellor was attacked not only by political opponents but also by members of her own party of CDU and its sister party CSU. Even though the fact of the matter was that Angela Merkel fulfilled the postulates of immigration curbing advocates, such as those of the Bavarian Prime Minister Horst Seehofer, she did not yield to demands to seal borders. She has also managed to get her EU partners to adopt a Europe-wide solution and shoulder a share of the cost of regulating the European refugee problem.

The statements expressed herein reflect solely the opinions of its author.

This article is part of a Special Series of Institute for Western Affairs Bulletins dedicated to the current issues of mass human migrations from conflict-torn countries to Europe. Its scope extends to social consequences, public perceptions and views as well as the political and economic challenges associated with the influx of refugees to Germany, Poland and other European countries. A range of perspectives on such issues will be presented in the successive editions of the Bulletin.

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