



Country Report **TURKEY**

WP5. Country Reports

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1 Executive Summary

- This report analyses the political, legal and financial instruments through which the EU and Turkey have cooperated in the field of migration and asylum between 2015 and 2021. The analysis is based on document analysis, a literature review and stakeholder interviews. The analysis focuses on the three main instruments: the EU-Turkey Statement of March 2016, the EU-Turkey Readmission Agreement, and the Facility for Refugees in Turkey (FRiT). The instruments are analyzed on six points.
- Concerning *transparency* (para. 5.1), the texts of the Statement, the Readmission Agreement and FRiT are public. The *preparation* of the Statement was not transparent, but that is characteristic for this kind of political document. The preparation of the Readmission Agreement was comparatively transparent, as it is an international agreement subject to parliamentary approval. Respondents found the preparation of projects to be funded under FRiT transparent, in particular during its second phase. The *implementation* of all three instruments is not transparent. The European Commission ceased to publish regular updates on the implementation of the Statement late 2017, and since then provides only fragmented and brief information as part of Progress Report on the European Agenda on Migration. The Turkish authorities provide information only on the selected aspects of the Statement (readmission and resettlement). As a result, there is only one-sided data on how many persons are returned from Greece to Turkey under the Statement, and how many Syrians are resettled under the 1:1 scheme. Concerning the Readmission Agreement, it is unclear whether it is still in force at all, and if so whether the provision on readmission of third country nationals by Turkey is still in force. As for the transparency of the projects funded under the FRiT, the European Court of Auditors expressed concerns about the two migration management projects funded through FRiT.
- *Accountability* (para. 5.2) of the EU, its Member States, and Turkey for the acts and arrangements under the EU-Turkey Statement is difficult to establish before courts. The failed attempts before the Court of Justice of the European Union (NF and Others v European Council, ECLI:EU:C:2018:705) and the European Court of Human Rights (JR and Others v Greece App no 22696/16 (ECtHR, 25 January 2018) that sought to challenge the legality of the Statement arrangements support this conclusion. The EU Court of Justice chose to declare itself not competent on the case, and the European Court of Human Rights chose to lower its usual standards under Article 3 ECHR in light of the challenges the Greek authorities were facing. This case law leaves an accountability gap, in particular concerning the restriction of freedom of



movement and liberty of asylum seekers on the Greek islands, and the detention/reception conditions there. Compared to the EU-Turkey Statement, establishing accountability under the EU-Turkey Readmission Agreement is a more straightforward since it is a formal international agreement. Due to the absence of any specific monitoring or supervision bodies or accountability mechanisms, shortcomings or misconduct taking place during implementation of the Statement and the financial instruments cannot be identified. Respondents mentioned that nearly all stakeholders including Turkish institutions, UN agencies, international institutions, and NGOs have internal accountability mechanisms. These mechanisms can be used, but may not necessarily constitute an effective legal remedy under international law (Article 13 ECHR, Article 47 CFR).

- The *conformity with international law* (para. 5.3) of the EU-Turkey instruments under review is problematic. Turkey's geographical limitation to the 1951 Convention, the shortcomings in the Turkish asylum system, and the fact that the Turkish capacity for hosting refugees is overburdened, make it difficult to assume that Turkey is a safe country for all asylum seekers and refugees. This raises serious issues with regard to conformity with international law of the returns under the Statement and/or the Readmission Agreement from Greece to Turkey. Our respondents suggest that, although the EU-Turkey Statement on paper does not violate international law, its implementation (and especially its containment focus) raises issues with regard to the compatibility of these arrangements with fundamental rights including the right to seek asylum. Furthermore, the implementation of the Statement has led to an immediate deterioration of the conditions on the Greek islands, which are problematic in light of the prohibition of inhuman and degrading treatment, and the right to freedom and security. Finally, the Statement has been accompanied by the closing of the Syrian-Turkish border, denying Syrians the right to seek asylum and to be protected against persecution and inhuman treatment in Syria.
- The *results* (para. 5.4) of the instruments are mixed. The projects funded under FRIT have been, and continue to be instrumental in providing Syrian refugees in Turkey with essential support. The sustainability of this, however, depends on continuation of funding. As to the effect of the EU-Turkey Statement on maritime crossings from Turkey to Greece, UNHCR figures show that the number of irregular arrivals to Greece by sea from Turkey had already decreased at the moment it was adopted. Hence, the Statement cannot be credited with having led to the decrease. The 1:1 resettlement scheme established by the Statement, at the time of writing, provides minimal



number of Syrians in Turkey with a durable solution (0,8% of the Syrian refugee population in Turkey), and is in that sense an insignificant result. Two envisioned results of the Statement that would have benefited Turkey (abolition of the EU visa requirement for Turkish nationals, and kick starting the negotiations on Turkish accession to the EU) did not materialize.

- Do the instruments promote containment of refugees or their mobility (para. 5.5) The EU-Turkey Statement, the EU-Turkey Readmission Agreement, and FRiT all seek to contain migrants and refugees in Turkey, and even within Syria. They limit the mobility of refugees within Greece as well. This is acknowledged by many interviewees and one of the respondents underlined, “*although the Instruments have containment purpose, it is not spoken of to avoid being politically incorrect*”.
- The alignment of instruments with the Global Compact on Refugees (para. 5.6) varies. The first objective of the GCR is to ease pressures on host states. The Statement and the Readmission Agreement go against this, because they increase the pressure on Turkey by requiring Turkey to prevent new arrivals to the EU and requiring Turkey to readmit those who have transited through Turkey to reach the EU. Closing the Turkish-Syrian border obviously does ease pressure on Turkey, but at the expense of what international law was designed to provide, namely: protection against persecution and inhuman treatment. The number of Syrians resettled under 1:1 scheme is insignificant and does not constitute a contribution to easing the pressure. On the other hand, most projects funded under the FRiT, including but not limited to Emergency Social Safety Net (ESSN) and Conditional Cash Transfer for Education (CCTE), contribute to the self-reliance of refugees and, to a certain extent, to easing pressures on Turkey. Hence, in that respect these projects are in line with the GCR. The instruments do not contribute significantly to the third main objective of the GCR, expanding access to third-country solutions.



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LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
CCTE	Conditional Cash Transfer for Education
PMM	Presidency of Migration Management
EC	European Commission
EU	European Union
ESSN	Emergency Social Safety Net
EURA	EU Readmission Agreement
ECHR	European Convention on Human Rights
FRiT	The Facility for Refugees in Turkey
GCR	The Global Compact on Refugees
IPA	Instrument for Pre-accession Assistance
IOM	International Organization for Migration
LFIP	Law on Foreigners and International Protection
MFA	Ministry of Foreign Affairs
NGO	Non-governmental Organization
PDMM	Provincial Directorate of Migration Management
TPR	Temporary Protection Regulation
UNICEF	United Nations Children's Emergency Fund
UNHCR	United Nations High Commissioner for Refugees



2 Introduction

This country report is a part of a series of four reports (concerning Niger, Serbia, Tunisia and Turkey) prepared under the ASILE project concerning arrangements between the EU and third countries of transit which provide modalities and facilities for the protection of persons seeking asylum while preventing onwards movement of such persons towards EU borders. The research within this working package focused on the political, legal and financial instruments and programmes employed in connection with these arrangements. This has resulted in four country reports concerning Niger, Serbia, Tunisia and Turkey. These country report will be at the basis of a comparative analysis to be published later.

The research has focused on the effectiveness, fairness and consistency of these instruments. *Effectiveness* is assessed considering the extent to which the ‘policy objectives’ of existing instruments and arrangements are met in practice, i.e. the actual expected or unexpected outputs and what has been specifically achieved by a policy. This analysis of instruments in terms of their own objectives is addressed by the research question concerning the results of instruments (*infra*). *Fairness* is examined from the perspective of states’ responsibilities, and multistakeholder accountability, as well as standards of due process, legal certainty and accessibility by individuals. Fairness is here also assessed in light of guarantees and mechanisms for preventing corruption, fraud or misuse of financial instruments in the implementation phases of existing policies. It relates to the individual rights impacts of policies. These issues are addressed by means of research questions addressing transparency and accountability (*infra*). The effectiveness and fairness of policy instruments will be assessed in relation with the consistency of instruments with international and regional human rights standards, as well as fundamental rights and EU Treaty law. Special consideration is given to the countries’ participation in relevant international and regional human rights and refugee protection instruments and monitoring courts and bodies. The consistency analysis will also address the compatibility of instruments with the Global Compact of Refugees (GCR). Consistency is addressed by means of the research questions concerning compatibility with international law, whether instruments promote mobility or containment, as well as alignment with the GCR.

A contribution which the four reports make to existing literature on European externalization of asylum and migration policy is that we highlight a hitherto underexposed ambivalence in European policy. As will become clear throughout the four country reports,



the central tension which the researchers have observed is that between the policy objective of containment of migrants and refugees in third countries on the one hand, and on the other hand the policy objective of supporting asylum systems in 3rd countries. The term *containment* is used for measures aiming at the prevention of departure of irregular migrants/asylum seekers towards the EU so as to prevent legal responsibility of the EU or European states (i.e. at preventing the applicability of the legal rules that are activated as soon as there is a jurisdictional link between a third country national and a European actors, i.e. the EU or a member state). Containment takes the form of prevention of departure (e.g. pull backs by third country coast guards); prevention of movement towards a point of departure (e.g. Nigerien Act 2016/36 criminalizing domestic transport of undocumented persons to the northern border of Niger); or prevention of movement towards a third country neighboring the EU (e.g. introduction of visa requirement for Syrians by Tunisia in 2012). Containment is in the interest of European actors because it limits their operational, legal and political responsibilities. *Supporting asylum systems* is, at first sight, in the interest of third countries because it reduces the burden they have to share. This can take the form of technical support (border control, asylum legislation), financial support for RSD and refugee reception, and operational support (in border control, RSD, training, refugee reception).

In all four country studies, we observe that European actors are supporting asylum systems in third countries as a tool for containment, which, ironically, leads to resistance by third country actors against support for their asylum systems. In generalizing terms (which will be specified in the country reports), the process is that European actors justify containment (as well as not merely containing irregular migrants/asylum seekers, but sending additional ones to third countries; e.g. plans for disembarkation platforms and the Danish/UK Rwanda schemes) by pointing to the improved quality of third country asylum systems. If third country asylum systems are up to the standards of international law, returns are possible (safe third country principle), and preventive containment as well as sending additional irregular migrants/asylum seekers are legitimate (compatible with international law) and optimal (a Euro can do so much more in Rwanda than in Europe).



3 Methodology

3.1 General methodology of the work package

Conducting fieldwork in four different countries was already expected to be a challenge from the start of the project. However, the outbreak of the Covid-19 pandemic coincided with the start of the ASILE project and brought new challenges for the researchers. According to the initial plan, data collection in the four countries was to be conducted by the researchers at the VU Amsterdam and Aarhus University so as to ensure continuity and consistency of data collection. By the summer 2020, it was clear that (international) travelling would not be possible for the research team. Therefore, instead of collecting data from a distance or fundamentally changing the data collection strategy, the research team decided to work with national researchers in Niger, Serbia, Tunisia and Turkey. Working in cooperation with the national researchers provided the additional advantage of relying more on local expertise and limit the Eurocentric character of the research. Working with a multi-sited research team required developing a new methodology for data collection. Researchers in the four countries were identified through consultation with the members of the advisory board of the ASILE project in the country concerned.

Furthermore, another challenge to overcome was the fundamentally different backgrounds and the contexts of the selected countries for the field research. Each country, with unique bilateral relation histories with the European Union, varying governmental and civil society structures, traditions and experiences, required a tailor-made data collection strategy. To ensure that such the differences and nuances are reflected in the country reports, the national researchers and VU Amsterdam researchers revised and fine-tuned the data collection strategy in each country while the VU Amsterdam researchers developed the general methodology to provide the basis for continuity and the consistency of the research.

In the following sections, general methodology and national data collection methodologies are described in detail.

3.2 General methodology

The selection of the four country studies follows a most-different-system design. We have chosen countries that maximize divergence, the only convergence being the key variable



of interest, namely: European actors are actively applying political, legal and financial instruments in the field of asylum in these countries. The axes of divergence are

- 1) Relation to the EU: Serbia is a candidate member State; Turkey has been a candidate for EU membership for a very long time, but its prospects of accession are the foreseeable future are dim; Tunisia has an Association Agreement with the EU without any prospect of accession; and Niger has no formal institutional tie with the EU.
- 2) Background: Serbia was part of the Ottoman empire, gained permanent full independent in 1878, and has then been part of the vicissitudes of Yugoslavia; Turkey has been a colonial power until the end of World War I, and has since then been a regional power; Tunisia has been part of the Ottoman empire until the French installed a protectorate in 1881, and became independent in 1956; Niger has been a French colony from 1900 until 1960.
- 3) Wealth: In 2020, Niger had a GDP of \$567,70; Serbia of \$7.730,70; Tunisia of \$3.521, 60; and Turkey of \$8.536,40 (source World Bank).

As an initial step, a desk research had been conducted to map EU and/or Member State arrangements on asylum governance with four selected countries – Niger, Serbia, Tunisia and Turkey. The working paper *“Inventory and Typology of EU Arrangements with Third Countries”* was published in January 2021 by Nikolas Feith Tan and Jens Vedsted-Hansen as an outcome of the above mentioned desk study. The working paper mapped the political, legal and financial instruments implemented by the EU in/with these countries with the aim of ensuring international protection of persons in need of it while preventing their onwards movement towards EU borders. In addition to the instruments, the working paper provided the initial list of the actors involved in adopting and implementing the instruments.

On the basis of this working paper, two clusters of research questions were designed by the VU Amsterdam researchers. The first cluster addresses the formal issues of transparency, accountability and compatibility with international law. Whereas the first two of these are procedural in nature, the last one is both substantive and procedural. These questions were addressed for all actors involved (regional authorities, international organizations, national authorities and NGOs). The second cluster of questions is about outcomes of the instruments as implemented by the implementing actors. They concern



the results of instruments in the instrument's own terms; in terms of containment/mobility; and in terms of the Global Compact of Refugees.

The general research questions for all four countries (which could be adapted to the specific context in the country concerned) were the following:

1. Transparency: Have actors involved made the instruments used between the EU and the 3rd country public; more concretely
 - a. Has the instrument been prepared in a transparent, public process (transparency about draft documents, EU-3rd country talks and negotiations, parliamentary involvement, IO and NGO stakeholder involvement)?
 - b. Is adopted instrument itself laid down in a transparent, public document (treaty, MoU, exchange of letters, action fiche, parliamentary document)
 - c. Is the instrument implemented in a transparent, public manner (procurement, parliamentary involvement, IO and NGO stakeholder involvement)
2. Accountability: To what extent, and if so to whom, are procedures available to hold actors accountable for purported violations of international human rights and refugee law, including the EU Charter of Fundamental rights as well as regional (ECOWAS, AU) law (control of European, IO and national actors by international, regional and domestic judiciary, parliament, Ombudsperson, Court of Auditors) in the implementation of the instruments?
3. Compatibility: to what extent are the instruments (and to which extent are they implemented) compatible with international human rights and refugee law, including the EU Charter of Fundamental rights as well as regional (ECOWAS, AU) law, with an emphasis on their impact on the protection of vulnerable persons and groups against violence, exploitation and discrimination. Of particular interest is the European Ombudsman Opinion on the need to ensure human rights impact assessment by implementation actors of the EU-Turkey Statement (such as the Commission and EU Agencies like Frontex and EASO).
4. Results: specifically concerning technical assistance provided to enhance reception and protection capacities within the relevant third countries: were/are the partner states prepared to absorb and implement such assistance? To what extent have the arrangements resulted in effective and sustainable capacity-building in the reception and protection structures of the respective third countries?



5. Containment/mobility: which instruments have promoted the containment or, conversely, the mobility of individuals and groups seeking international protection?

6. Alignment: To what extent are the instruments (and to which extent are they implemented) in accordance with the three relevant GCR objectives (easing pressures on host countries; enhancing refugee self-reliance; and expanding access to third country solutions)?

Research questions 1 and 2 were addressed by analyzing, in particular, parliamentary documents and Official Journals. For accountability (Research question 3) legislation was the primary source. In addition, respondents were invited to share whether they were aware of the negotiation, agreement and implementation of the instruments, and whether they are aware of accountability mechanisms. Research question 3 was addressed by two methodologies. Respondents were invited to formulate their opinions on this topic; and the national researchers performed a legal analysis on this point. Research question 4 (results) was based on interviews, and on documents reporting about the implementation of the instruments both in the national and in the EU contexts. Research question 5 (containment/mobility) and 6 (alignment with the GCR) addressed on the basis of interviews and document analysis.

To ensure the consistency in the data collection, three extra steps were taken. (1) VU Amsterdam and CEPS organized a two-day methodology workshop for the national researchers conducting fieldwork research. Training sessions on fieldwork technics and ethics were provided by experts, each national data collection strategy was discussed and experts provided feedback on possible country specific problems. The training sessions provided a common understanding and approach to the fieldwork. (2) Following the workshop, regular meetings were organized with the national researchers and VU Amsterdam researchers to further develop the research questions and finalize the data collection strategy in the national context. (3) In December 2021, two online seminars were organized where the national researchers gave feedback to each other's draft reports and discussed common challenges and ways to navigate them. An Anglophone seminar brought together the national researchers from Serbia, Tunisia and Turkey and staff from VU Amsterdam and CEPS, while a Francophone seminar brought together the national researchers from Niger, Tunisia and staff from VU Amsterdam and CEPS.



3.3 National methodology

A total of 25 interviews were held with respondents working for governmental, international and non-governmental organizations that have different degrees of involvement in the preparation and implementation of EU-Turkey Instruments on migration and asylum, specifically: the EU-Turkey Readmission Agreement, the EU-Turkey Statement of 18 March 2016, the Facility for Refugees in Turkey (“FRIT”), the EU Regional Trust Fund in Response to Syrian Crisis (“Madad Fund”) and the migration management component of the Instrument for Pre-accession Assistance (“IPA”) that were folded into FRIT.

The interviews were held between June – October 2021, with one exception through Zoom due to ongoing effects of the Covid-19 pandemic. The interviews were based on the national questionnaire provided here as Annex 2, which comprised a version of the general research questions adapted to the Turkish context. It was slightly modified depending on the position of different actors. It was a deliberate methodological choice to implement the same questionnaire in each interview so that the results obtained would be comparable, even though the degree and stages of involvement of different actors naturally varied considerably. The interviewees were selected based on the role of their institution and their position within their institutions. Selected interviews were recorded with the permission of the interviewees and their consent is obtained as to the interviews.

Whereas many institutions were eager to communicate and provide assistance, it was a great challenge to arrange interviews with some others. Our request for interview with the formerly Directorate General of Migration Management (DGMM)¹ now the Turkish Presidency of Migration Management (PMM) is still pending as of this day, while a few other institutions turned down our request including the Presidency of the Republic of Turkey. The views of these institutions would be material to the themes covered in this report. Nevertheless, the report presents sufficient depth and diversity in the composition of interviewees as it reflects the opinions expressed in 25 interviews, consisting of nine respondents working for governmental organizations, for eight international organizations and for eight non-governmental organizations.

¹ With the Presidential Decree No. 85 published in the Turkish Official Gazette dated 29 October 2021 and numbered 31643, the status of the General Directorate was changed to the Presidency. DGMM is now Turkish Presidency of Migration Management (PMM).



Detailed information on the interviewed institutions and figures, their roles related to the Instruments and their modes of engagement with the Instruments can be found in the Annex 1.

We selected the most relevant legal, political and financial instruments concluded between EU and Turkey that have a direct impact on Turkish national migration laws and policies after 2015 as focal points of this research (Chapter 3). Therefore, this research mostly focuses on the EU- Turkey Statement of March 2016 and the political, legal, and financial instruments related to the Statement, which provided an important milestone for the migration management in Turkey. We will focus on the EU-Turkey Readmission Agreement as a legal instrument, the EU-Turkey Statement as a political instrument and Facility for Refugees in Turkey (FRiT) as the financial instrument and mainly make an analysis of these three instruments. At the same time, several other national and bilateral instruments are also examined and discussed within the background of each section with a view to providing a better and nuanced understanding of the context and provide a historical perspective for the recent policies.

4 Legal, Political and Financial Arrangements

Background

Due to its strategic location, Turkey has been a transit country for most migrants and refugees and a necessary stop on their way to Europe². Turkey concluded an Association Agreement with the European Economic Community (one of the predecessors of the EU) in 1963.³ Negotiations about its accession began in 1987; in 1999, Turkey became a formal candidate member state. In 2001, the EU Council adopted a decision on the principles,

² K Kirişçi, "Turkey's New Draft Law on Asylum: What to Make of it?" in S Pacaçı Elitok and T Straubhaar (eds), *Turkey, Migration and the EU: Potentials, Challenges and Opportunities* (Hamburg Institute of International Economics, 2012) 63.65, 66; F Yılmaz-Elmas, M Kutlay, H F. Büyük and O Gumus, 'Q&A Debate EU-Turkey Cooperation on 'Refugee Crisis': Is It on the Right Track' (2016) International Strategic Research Organization (USAK) Policy Brief No 22, 17.

³ OJ 1977, L 361/29.



priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey.⁴

Turkey is a party to the 1951 Refugee Convention and the 1967 Protocol, but has limited its international law obligations to refugees fleeing “events occurring in Europe” (Article 1B Refugee Convention; Article I(3) Protocol). As a consequence, with the standing reservation, Turkey is obliged under the 1951 Convention only to grant the refugee status to refugees fleeing Europe (meaning Council of Europe countries) not to the refugees from other parts of the world such as Syrians, Iraqis, Iranians, Afghans or Eritreans. Turkey is a party to the European Convention on Human Rights, and as a consequence does have international law obligations towards non-European protection seekers on the basis of Article 3 ECHR, which includes the norm of non-refoulement.

Largely driven by pre-accession and accession processes, Turkey made legislative, institutional and policy related reforms relating to asylum starting from 2001.⁵ Turkey began making gradual changes to align its asylum legislation to that of the EU beginning from 2001. An important milestone in this endeavor was the adoption of the ‘National Action Plan of Turkey for the Adoption of EU Acquis in the Field of Asylum and Migration’⁶ in 2005. The EU and the accession process overall played an important role in setting a formal agenda and a time-table for eventual adoption of Turkey’s first asylum law namely, the Law on Foreigners and International Protection

⁴ Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, 24.3.2001, OJ L 85/13.

⁵ Dimitriadi, Angeliki, et al. "EU-Turkey relations and irregular migration: Transactional cooperation in the making." *FEUTURE Online Paper* 16 (2018) p.5; U. Aydın and K. Kirişçi, 'With or without the EU: Europeanisation of asylum and competition policies in Turkey', *South European Society and Politics*, 18.3 (2013), 375-395, p. 381-383.

⁶ Turkey, 'National Action Plan of Turkey for the Adoption of EU Acquis in the Field of Asylum and Migration' (2005)

[http://www.goc.gov.tr/files/files/turkiye_ulusal_eylem_plani\(1\).pdf](http://www.goc.gov.tr/files/files/turkiye_ulusal_eylem_plani(1).pdf) (Unofficial English

Translation:http://www.madde14.org/index.php?title=T%C3%BCrkiye_Ulusal_Eylem_Plan%C4%B1



(LFIP).⁷ The LFIP, which was adopted in 2013 and entered fully in force in 2014, is largely modelled after the EU asylum *acquis*.⁸

For the first time in Turkey's history the LFIP made an explicit reference to the prohibition of *refoulement*.⁹ The LFIP foresees four main protection statuses: the refugee, the conditional refugee, the subsidiary protection and the temporary protection statuses. The Provincial Directorates of Migration Management (PDMMs), which are responsible for RSD, are required to take into account both the personal circumstances of the applicant and current general conditions of the country of origin. Considering that before the LFIP, Turkish laws only recognized refugee status, the LFIP has contributed significantly to the protection of asylum seekers and refugees in Turkey by introducing additional protection categories and clarifying rights attached to these categories.¹⁰ For instance, the Turkish law introduced the subsidiary protection status, modelled after the Directive 2011/95/EU. Similar to the EU asylum *acquis*, the LFIP also introduced problematic 'safe third country' and 'first country of asylum' notions which introduces additional hurdles for those who wish to seek asylum in Turkey.

⁷ K. Kirişçi, 'Turkey's New Draft Law on Asylum: What to Make of it?' in S. Pacaçi Elitok and T. Straubhaar (eds), *Turkey, Migration and the EU: Potentials, Challenges and Opportunities* (Hamburg Institute of International Economics 2012) 63-83, p. 73.

⁸ Meltem Ineli-Ciger, 'How have the European Union and the EU asylum *acquis* affected protection of forced migrants in Turkey? An examination in view of the Turkish Law on Foreigners and International Protection and the EU-Turkey Statement of March 2016' in Vladislava Stoyanova and Eleni Karageorgiou (eds) *Asylum at the Frontiers of Europe* (Brill 2019) pp. 115-139.

⁹ Article 4 of the LFIP notes "*No one within the scope of this of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.*"

¹⁰ Cf. M. Ineli-Ciger, "How Have the European Union and the EU Asylum *Acquis* Affected Protection of Forced Migrants in Turkey? An Examination in View of the Turkish Law on Foreigners and International Protection and the EU-Turkey Statement of March 2016." *The New Asylum and Transit Countries in Europe during and in the Aftermath of the 2015/2016 Crisis*. Brill Nijhoff (2019): 115-139, p. 128.



In 2011, Syrians began fleeing the civil war and seeking refuge in Turkey.¹¹ Turkey grants temporary protection status to all Syrians, Palestinian refugees and stateless persons living in Syria seeking refuge in Turkey, as a group.¹² Now only the Turkish President has the authority to decide which groups are to be granted the temporary protection status and when the temporary protection regime will come to an end; previously this decision was taken by the Council of Ministers. Until the temporary protection regime is terminated, asylum applications of temporary protection beneficiaries will not be processed by the Turkish authorities. Turkey's Temporary Protection Regulation, which regulates the status and rights of Syrians in Turkey, has many similarities with Directive 2001/55/EC.¹³

In 2022, UNHCR reports that Turkey hosts 3.7 million registered Syrian refugees, as well as 320.000 persons of concern from other nationalities.

4.1 Political Instruments

4.1.1 EU-Turkey Joint Action Plan

In 2015 nearly one million refugees and migrants arrived irregularly in Europe by sea; according to the UNHCR more than 856,723 refugees and migrants arrived in Greece by sea through Turkey. This figure explains the reason why cooperation with the Turkish government has become an essential part of the European policy to manage migration. The EU has reached an ad referendum agreement with Turkey in the form of a Joint Action Plan in October 2015¹⁴. The plan attempted to address the displacement crisis in three ways: “(a) by addressing the root causes leading to the massive influx of Syrians, (b) by supporting Syrians under temporary protection and their host communities in Turkey and

¹¹ Cf. Ineli-Ciger, Ozgenur Yigit, Country Fiche Turkey, p. 16-29.

¹² Cf. Provisional Article 1 of the TPR.

¹³ Cf. Ineli-Ciger, Ozgenur Yigit, County Fiche Turkey, p. 20-24.

¹⁴ European Commission, EU-Turkey Joint Action Plan, 15 October 2015 https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860



(c) by strengthening cooperation to prevent irregular migration flows to the EU.” The plan was activated on 29 November 2015 at an EU-Turkey summit.¹⁵

In the Action Plan, the Member States agreed to increase support for Syrian refugees and their host communities in Turkey, while Turkey agreed to strengthen cooperation with the EU to prevent irregular migration flows through a variety of intentions and actions. In return, the Member States pledged to accelerate the process of visa liberalization for Turkish citizens (this pledge has not been realized so far), and mobilized new funds to support the Turkish state in coping with the challenge of hosting an unprecedented number of refugees. The Commission established the Facility for Refugees in Turkey by means of the Commission Decision of 24 November 2015.

4.1.2 EU- Turkey Statement of March 2016

On 18 March 2016, EU and Turkey adopted the EU-Turkey Statement¹⁶ that had the purpose to “end the irregular migration from Turkey to the EU.” In particular, the EU and Turkey agreed that ‘[a]ll new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey.’ The Statement foresaw that after 20 March 2016, migrants who do apply for asylum or whose applications have been found unfounded or inadmissible in accordance with the Directive 2013/32/EU¹⁷, will be returned to Turkey. According to the Statement, Turkey is expected also to take any necessary measures to prevent the opening of any new sea or land routes for illegal migration from Turkey to the EU, and to cooperate with neighboring states as well as the EU to this effect.

In return for the readmission aspect of the arrangement, the EU agreed that ‘[f]or every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria’. The Statement noted that priority will be given to those who have not previously entered or tried to enter the EU irregularly. This arrangement is sometimes referred to as the 1:1 resettlement scheme.

¹⁵ European Council, Meeting of Heads of State or Government with Turkey - EU-Turkey statement, 29/11/2015 <https://www.consilium.europa.eu/en/press/press-releases/2015/11/29/eu-turkey-meeting-statement/>

¹⁶ European Council, EU-Turkey statement, 18 March 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

¹⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection *OJ L 180, 29.6.2013, p. 60–95.*



The Statement also noted that ‘once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced,’ a voluntary humanitarian admission scheme is to be activated though no such scheme has so far been activated. No reason has been submitted by the EU to explain why this scheme has never been activated.

The EU- Turkey included incentive elements for Turkey to implement the agreed instruments such as allocation of considerable funds (up to EUR 6 billion) by the EU for refugees in Turkey, accelerating the visa liberalization roadmap and re-energizing the EU accession negotiations.¹⁸

4.2 Legal Instruments

4.2.1 EU-Turkey Readmission Agreement

The readmission agreement between the European Union and Turkey (the EU-Turkey Readmission Agreement) was signed on 16 December 2013¹⁹ and entered into force on 1 October 2014. The agreement includes provisions related both to the readmission of the nationals of the EU Member States and Turkey, and to the readmission of any other persons including the third country nationals and the stateless persons that entered into, or stayed on, the territory of either side directly arriving from the territory of the other side. Article 3 of the Agreement establishes an obligation for Turkey to readmit its own nationals whereas, Article 5 obliges EU Member States to readmit their own nationals. Article 4 concerns Turkey’s duty to readmit third country nationals and stateless persons (non-Turkish nationals) transited through Turkey. Whereas, Article 6 of the Agreement establishes a duty for the EU Member States to readmit third-country nationals and stateless persons who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Turkey. Article 6 applies to third-country nationals and stateless persons who “(a) hold, at the time of submission of the readmission application, a valid visa issued by the requested Member State entering the territory of Turkey directly from the territory of the requested Member State; or

¹⁸ O. Ulusoy and H. Battjes, Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement, VU Amsterdam Migration Law Series (Amsterdam, 2017) https://rechten.vu.nl/en/Images/UlusoyBattjes_Migration_Law_Series_No_15_tcm248-861076.pdf

¹⁹ Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, OJ L 134, 7.5.2014, p. 3–27



(b) hold a residence permit issued by the requested Member State; or (c) illegally and directly entered the territory of Turkey after having stayed on, or transited through, the territory of the requested Member State”.²⁰

Article 24(1) of the EU-Turkey Readmission Agreement notes that the obligations set out in Articles 4 and Article 6 of this Agreement would become applicable 3 years following the entry in force of this Agreement and this date was 1 October 2017. However, the EU and Turkey decided to render this Readmission Agreement fully applicable sooner, as of 1 June 2016.²¹ Yet, as the Turkish Council of Ministers did not adopt a decision required for the Agreement to fully enter in force sooner, it did not become fully applicable on 1 June 2016.²² It can be assumed that the EU-Turkey Readmission Agreement fully entered in force 1 October 2017 however, application of Article 4, which concerned Turkey’s duty to readmit third country nationals and stateless persons who have transited through Turkey, was suspended by Turkey on July 2019. It is speculated that the suspension was a response to the EU sanctions due to Turkey’s gas drilling operations in Cypriot waters.²³ As of February 2022, the EU-Turkey Readmission Agreement is not fully in force.²⁴

4.3 Financial

Since 2015, three main EU funding instruments, the Instrument for Pre-accession Assistance (IPA), the Facility for Refugees in Turkey (FRIT) and the EU Trust Fund in Response to the Syrian Crisis (Madad Fund) provide significant amounts of funding for the asylum and migration related activities in Turkey. One of these instruments, IPA, was initially established before 2015 to support reforms in the EU-candidate countries while the

²⁰ Article 6(1) of the EU-Turkey Readmission Agreement.

²¹ “This decision was taken in a meeting of EU Heads of State and Government with Turkey that took place on 29 November 2015.” M. Fink and N. Idriz, ‘Effective Judicial Protection in the External Dimension of the EU’s Migration and Asylum Policies?’ in: Eva Kassoti and Narin Idriz (eds.) *The Informalisation of the EU’s External Action in the Field of Migration and Asylum* (Springer 2022) p. 121.

²² Öztürk and Soykan (2019) p. 2; Fink and Idriz (2022), p. 1212.

²³ Euroactiv, ‘Turkey Suspends Deal with the EU on Migrant Readmission, 24 July 2019. <https://www.euractiv.com/section/global-europe/news/turkey-suspends-deal-with-the-eu-on-migrant-readmission/>

²⁴ Cf. Section 5.1.2.



other two are direct response of the EU to the ongoing refugee crisis in the region. With different aims and priorities, these major funding and support instruments have different legal bases, structures and internal mechanisms.

In the section below, while information on all three financial instruments will be provided, only Facility for Refugees in Turkey will be analysed in detail since the other two instruments have different sectoral and/or regional focuses.

The Instrument for Pre-accession Assistance (IPA) for Turkey was established by the Council Regulation (EC) 1085/2006 of 17 July 2006²⁵ and became active in January 2007. Aiming to align Turkish legislation and standards with the EU and to “improve the efficiency of the Community's External Aid”, several existing EU programmes and financial supports mechanisms were replaced with one single instrument and legal framework. IPA I, covering the period between 2007 and 2013, was designed to provide financial assistance through five channels (also known as the "components"): transition assistance and institution building, cross-border cooperation, regional development, human resource development and rural development²⁶. In total 1.6 billion Euros were allocated for Turkey. The following instrument, IPA II, provided funding in Turkey between 2014 and 2020 for several sectors for capacity building in terms of EU acquis alignment and economical and social cohesion.²⁷

With the IPA II, the European Commission has introduced the sectoral based structure instead of the components of the first period of IPA. While IPA II included funding for capacity building in the migration management field, such as reception centers or strengthening the operational capacities of the Turkish Coast Guard, this funding sector

²⁵ Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1085&from=EN>.

²⁶ European Commission - Instrument for Pre-accession Assistance https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/overview-instrument-pre-accession-assistance_en.

²⁷ European Commission, European Neighbourhood Policy and Enlargement Negotiations, Turkey - financial assistance under IPA II https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/overview-instrument-pre-accession-assistance/turkey-financial-assistance-under-ipa-ii_en



has been folded into the Facility for Refugees in Turkey (FRiT)²⁸ following the October 2015 EU-Turkey Joint Action Plan.²⁹

Established in December 2014, EU Regional Trust Fund in Response to the Syrian Crisis (Madad Fund) is an instrument for humanitarian aid targeting Syrian refugees and their host countries.³⁰ The Madad Fund is supported by 21 EU member states, Turkey³¹ and the United Kingdom and focuses on funding large programmes on education, health, socio-economic support and infrastructure. The total contracted projects of the Madad Fund amounted to 2,4 billion Euros in January 2022.³² Out of this 2,4 billion Euros, Madad Fund provided more than 730 million Euros to the projects focusing on education, livelihoods and health in Turkey. Similar to the Facility for Refugees in Turkey (FRiT) funds, Madad funded contracts were awarded to both Turkish government agencies and local and international non-governmental organizations (NGOs).

4.3.1 Facility for Refugees in Turkey

In October 2015, the EU and Turkey agreed on a Joint Action Plan to “...step up their cooperation on support of Syrians under temporary protection and migration management.”³³ Within this framework of cooperation, one month later, in November 2015, the European Commission announced the establishment of the Refugee Facility for Turkey (later renamed as Facility for Refugees in Turkey - FRiT).³⁴

²⁸ See the section on Facility for Refugees in Turkey (FRiT) for detailed analyses of these projects.

²⁹ N. F. Tan and J. Vedsted- Hansen, ‘Inventory and Typology of EU Arrangements with Third Countries Instruments and Actors,’ < https://www.asileproject.eu/wp-content/uploads/2021/03/D5.1-Inventory_Typology_EU-Agreements_Final_formatted.pdf >

³⁰ EU Regional Trust Fund in Response to the Syrian crisis https://ec.europa.eu/trustfund-syria-region/index_en . For the Constitutive Agreement see https://ec.europa.eu/trustfund-syria-region/system/files/2020-12/constitutive_agreement_eutf_2020_fourth_revision.pdf.

³¹ Turkey is both a donor and a recipient country under the Madad Fund.

³² European Commission – Madad Fund Projects contracted - Status 04/11/2021 <https://ec.europa.eu/trustfund-syria-region/system/files/2022-02/26.01.2022%20Madad%20Signed%20Contracts.pdf>

³³ EU-Turkey Joint Action Plan MEMO/15/5860 https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860 .

³⁴ EU-Turkey Cooperation: A €3 billion Refugee Facility for Turkey https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6162. For the formal aspects of FRiT see Thomas



The Facility provides “a mechanism to coordinate the mobilization of resources made available under both the EU budget and additional contributions from Member States integrated into the EU budget as external assigned revenues”.³⁵ Therefore the Facility is not a fund in itself, but simply a coordination mechanism for the mobilization of resources.³⁶ The Facility consists of humanitarian-type and development-type assistance, funded under via different instruments including the humanitarian aid instrument (HUMA); the Instrument for Pre-accession Assistance (IPA); and the Instrument contributing to Stability and Peace (IcSP).³⁷ According to a recent EU Report, the first tranche of the FRIT that consisted of EUR 3 billion³⁸ was fully contracted by the end of 2017 and has an implementation deadline of 2021, while the second tranche of EUR 3 billion³⁹ was agreed in July 2018, to be committed at the end of 2019 and fully implemented by 2025.⁴⁰

As mentioned earlier, FRIT has a total budget of €6 billion in two tranches and funded actions were gathered under two categories; humanitarian and development. Furthermore, the Facility also identified six priority areas: humanitarian assistance, education, health, municipal infrastructure, socio-economic support, and migration management. Humanitarian aid actions include supporting the basic needs with monthly cash support to through the Emergency Social Safety Net (ESSN), supporting access to health care and education. Development projects, on the other hand, aiming to improve the infrastructure and the capacity with projects such as construction of schools and health centers as well as vocational trainings and skills development.

Spijkerboer, Elies Steyger, European External Migration Funds and Public Procurement Law, *European Papers* 4(2019), 493-521.

³⁵ Ibid.

³⁶ European Commission, Strategic Mid-Term Evaluation of the Facility for Refugees in Turkey: Main Report June 2021, <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/strategic_mid-term_evaluation_main_report.pdf> p. 22

³⁷ European Commission, Strategic Mid-Term Evaluation of the Facility for Refugees in Turkey: Main Report June 2021, <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/strategic_mid-term_evaluation_main_report.pdf> p. 22, 23.

³⁸ EUR 1 billion from the EU budget and EUR 2 billion from Member States.

³⁹ EUR 2 billion from the EU budget and EUR 1 billion from Member States.

⁴⁰ European Commission, Strategic Mid-Term Evaluation of the Facility for Refugees in Turkey: Main Report June 2021, <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/strategic_mid-term_evaluation_main_report.pdf> p. 23



Within the first tranche of €3 billion that was contracted between 2016-2017, about €1,4 billion was committed for humanitarian assistance while about €1,6 billion was committed for development related actions as can be seen in Figure 1⁴¹. During the second tranche, the amount committed for the development actions were considerably increased and reached to €2 billion while the amount for humanitarian projects decreased to €1 billion.

In two tranches, a total of 105 projects or actions were funded within the FRiT framework. 62 of them categorized as “Humanitarian” and 43 of the as “Development”.⁴² Figures 1 and 2 provide an overview of the priority areas and distribution of first and second tranches of the FRiT.

Figure 1

First tranche (2016-2017)	Priority area	Amount Committed in €
Humanitarian Assistance	Protection	119,860,670
Humanitarian Assistance	Basic Needs	1,057,048,507
Humanitarian Assistance	Education	115,488,941
Humanitarian Assistance	Health	75,409,641
Development Assistance	Migration Management	80,000,000
Development Assistance	Education infrastructure	844,143,447
Development Assistance	Health infrastructure	433,899,356
Development Assistance	Socio-economic support	215,284,757
Total*		2,941,135,319

⁴¹ EC - EU Facility for Refugees in Turkey; List of projects committed/decided, contracted, disbursed https://ec.europa.eu/neighbourhood-enlargement/system/files/2022-02/Facility%20table_January%202022.pdf

⁴² FRiT Priority Area Brief No. 1 Education, January 2022 <https://www.avrupa.info.tr/sites/default/files/2022-02/Facility%20for%20Refugees%20in%20Turkey%20Priority%20Area%20Brief%20No.%201%20Education%20January%202022.pdf>



* Excluding administrative and technical costs

Figure 2

Second tranche (2018-2019)	Priority area	Amount Committed in €
Humanitarian Assistance	Protection	76,513,517
Humanitarian Assistance	Basic Needs	859,800,000
Humanitarian Assistance	Education	82,833,114
Humanitarian Assistance	Health	25,565,678
Development Assistance	Protection infrastructure	20,000,000
Development Assistance	Education infrastructure	500,000,000
Development Assistance	Health infrastructure	300,000,000
Development Assistance	Municipal infrastructure	380,000,000
Development Assistance	Socio-economic support	710,000,000
Total*		2,954,712,309

* Excluding administrative and technical costs

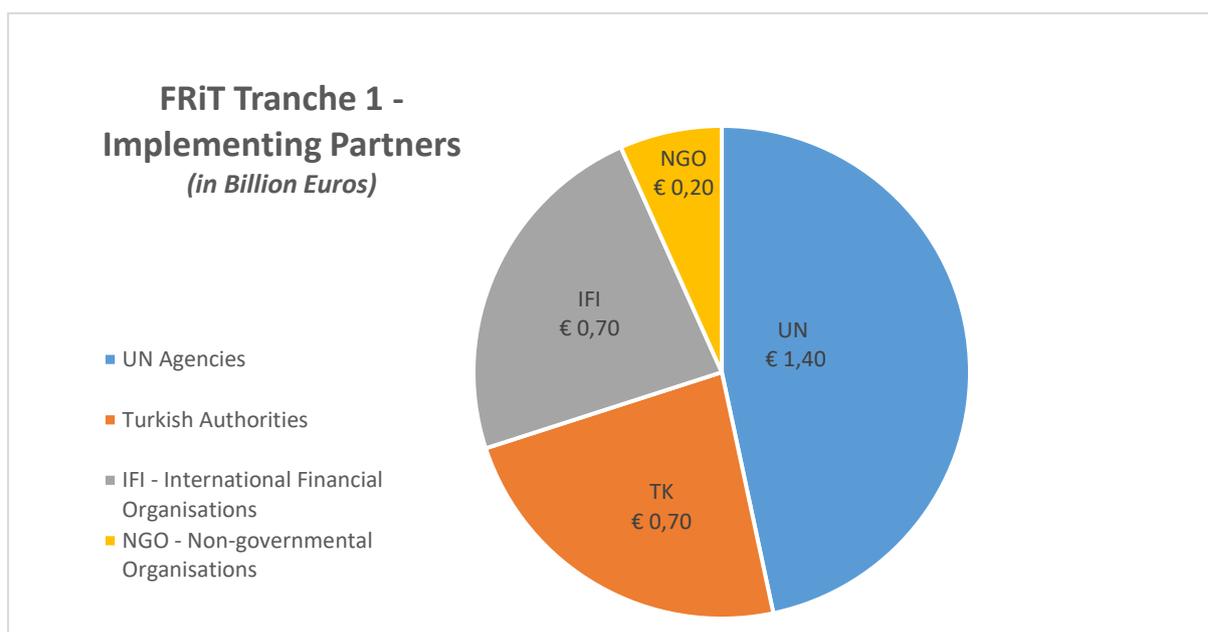
In their special report on FRiT funding, European Court of Auditors underlines that FRiT became operational and available in Turkey relatively quickly⁴³. Only 3 months after the EU-Turkey Statement, the first Steering Committee meeting was held on 17 February 2016 and rules of procedures were agreed upon. After that point, the funding was operational and its objective of contracting three billion euros in two years was successfully met.

Furthermore, as seen in the Figure 3, almost half of the all-available funding within the FRiT Tranche 1 was provided to the projects of the UN Agencies including WFP, UNHCR, UNICEF.

⁴³ European Court of Auditors, *The Facility for Refugees in Turkey: Helpful Support, but Improvements Needed to Deliver More Value for Money* (Luxembourg, 2018), pp. 23–24 <<https://doi.org/https://data.europa.eu/doi/10.2865/07509>>.

However, during the second tranche, share of the UN Agencies significantly decreased while the international organizations (such as Red Cross), international financial institutions (World Bank) and Turkish authorities (Ministry of National Education) received the biggest part of the funding.

Figure 3: Source: ECA - The Facility for Refugees in Turkey (27/2018)



The implementation “speed” of the FRiT, together with the concentration of funded organizations caused considerable problems in the transparency, accountability and delivering expected results as discussed in-depth in the below sections.

During the first tranche of the FRiT, two significant projects within the migration management priority area was supported by the European Union. With a budget of €80 million Euros, these two projects were critical for the implementation of the March 2016 EU-Turkey Statement.

The first of the two migration management projects is titled “Support to the Implementation of the EU-Turkey Statement of 18 March 2016” and was implemented by the formerly known as Turkish Directorate General for Migration Management (DGMM) now the Turkish Presidency of Migration Management (PMM) with an declared budget of



€60 million.⁴⁴ The project's objective was indicated as "...to support Turkey in the management, reception and hosting of migrants, in particular irregular migrants detected in Turkey, as well as migrants returned from EU Member States territories to Turkey."⁴⁵

The project activities included establishment of a new temporary removal center, transfer of irregular migrants and Syrian refugees within Turkey and increasing the capacity of DGMM in the field of irregular migration. Originally, two "container" centers were foreseen to be built within this project however, due to low number of readmissions from Greece to Turkey under the EU Turkey Statement, only one center with the capacity of 750 was built in Cankiri, Turkey⁴⁶. The funding also aimed to support "hosting and accommodating" irregular migrants in "appropriate conditions" by providing financial support for basic health care services, psycho-social services, translation services, food, hygiene and other facilities necessary for daily lives as well as security of facilities⁴⁷. And finally, the funding was made available for the support and expansion of GÖÇ-NET (Turkish governmental migration management database) with an irregular migration database.

The second project was implemented by IOM in cooperation with the Turkish Coast Guard (TCG) Command and titles "Enhancing the capacity of the Turkish Coast Guard to carry out search and rescue operations"⁴⁸. With a declared budget of €20 million, the project included procurement of six Search and Rescue vessels for the TCG, trainings for the TCG staff and providing psychological support to TCG staff to prevent potential burnout⁴⁹

⁴⁴ Delegation of EU to Turkey <https://www.avrupa.info.tr/en/project/support-implementation-eu-turkey-statement-18-march-2016-8006>

⁴⁵ Delegation of EU to Turkey <https://www.avrupa.info.tr/en/project/support-implementation-eu-turkey-statement-18-march-2016-8006>

⁴⁶ The Facility for Refugees in Turkey Steering Committee meeting, 08 November 2017, Selected Output Indicators January – July 2017. <https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-10/1st%20FMR.pdf>

⁴⁷ Delegation of EU to Turkey <https://www.avrupa.info.tr/en/project/support-implementation-eu-turkey-statement-18-march-2016-8006>

⁴⁸ Delegation of EU to Turkey <https://www.avrupa.info.tr/en/project/strengthening-operational-capacities-turkish-coast-guard-managing-migration-flows>

⁴⁹ Thomas Spijkerboer and Elies Steyger, 'Articles European External Migration Funds and Public Procurement Law', *European Papers*, 4.2 (2019), 493–521 (p. 517) <https://doi.org/10.15166/2499-8249/320>



5 Analysis

5.1 Transparency

5.1.1 EU-Turkey Statement

The EU-Turkey Statement is published both on the websites of the EU Council⁵⁰ (in English) and Turkish Ministry of Foreign Affairs⁵¹ (in Turkish) as a press release and still is publicly available. Since it was regarded as a “Statement” rather than an agreement on the Turkish side, it was not submitted to the Turkish Parliament for approval as an international agreement. However, office of the Prime Minister Ahmet Davutoglu issued a Directive on 5 April 2016 requesting full support of all governmental bodies and local authorities to support the DGMM for implementation of the Statement.⁵²

Designed as a political instrument, the drafting process of the EU-Turkey Statement was not transparent and involved mainly the Turkish government and EU officials. A number of stakeholders⁵³ noted that the Turkish parliament, Turkish public, some Turkish Ministries, Turkish media, or some UN agencies and international organizations were not involved with the preparation of the EU-Turkey Statement. For instance, TR23, which is one of the main actors for the implementation of the Turkish migration policies and the projects under the FRiT, pointed out that they became aware of the EU-Turkey Statement following its publication. It is noted by one of the interviewees that the political nature of the Statement and the emergency of the situation that necessitated the adoption of the arrangement at the time may have contributed to the lack of transparency during the drafting of the EU-Turkey Statement.⁵⁴

⁵⁰ Cf. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

⁵¹ Turkish Ministry of Foreign Affairs, Directorate of EU Affairs, https://www.ab.gov.tr/files/AB_Iliskileri/18_mart_2016_turkiye_ab_zirvesi_bildirisi_.pdf

⁵² Turkish Official Gazette, 05.04.2016. <https://www.resmigazete.gov.tr/eskiler/2016/04/20160405.htm>

⁵³ TR1; TR9; TR6; TR13; TR15.

⁵⁴ TR1.



Different stakeholders⁵⁵ noted that implementation of the EU-Turkey Statement (in particular implementation of the projects under the FRiT and the 1:1 resettlement scheme) involves active participation of many stakeholders including Turkish ministries, DGMM, UN agencies including UNHCR, international organizations and NGOs. Thus, compared to the drafting of the Statement implementation of the EU-Turkey Statement is much more an open process.⁵⁶ However, it should be noted that although the implementation of the Statement arrangements is a transparent process for those who are involved in this process, for the public it is still quite opaque.

There is very little publicly available data on the EU-Turkey Statement's implementation. The EU Commission has published seven reports on the progress made in the implementation of the EU-Turkey Statement⁵⁷ until the end of 2017.⁵⁸ Although they were one-sided reports promoting the Statement as a success (for example, they remain silent on visa liberalization and Turkey's accession to the EU)⁵⁹ and had a number of inconsistencies⁶⁰, they nevertheless provided data on the number of persons readmitted by Turkey under the Statement arrangements, the number of resettled Syrians under 1:1 resettlement scheme and statistics relating to sea arrivals to Greece. Yet, following October 2017, the EU instead began providing less detailed information on the implementation of the Statement only as part of the Commission reports on progress made under the European Agenda on Migration and stopped publishing reports on the progress made in the implementation of the EU-Turkey Statement. Besides these reports, only fragmented and very brief information relating to the implementation of the Statement can be found in EU-Turkey Statement Factsheets, FRiT Factsheets and

⁵⁵ TR23; TR6; TR15; TR11.

⁵⁶ TR23; TR6; TR15; TR11.

⁵⁷ Cf. <https://www.avrupa.info.tr/en/previous-reports-7560>

⁵⁸ See on this matter also Moreno-lax et al. The EU Approach on Migration in the Mediterranean, Study requested by LIBE Committee, (2021) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU\(2021\)694413_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU(2021)694413_EN.pdf)> p. 123.

⁵⁹ Cf. Progress report on the Implementation of the EU Agenda on Migration, COM(2019) 126 final, 6.3.2019, p. 15.

⁶⁰ See M. Ineli-Ciger, 'Mind the Gap! A Closer Look at the Inconsistencies in the EU-Turkey Statement Progress Reports' (*Border Criminologies*, 27 October 2017) <<https://www.law.ox.ac.uk/research-subject-groups/centrecriminology/centreborder-criminologies/blog/2017/10/mind-gap-closer>> accessed 30 October 2017.



Evaluation Reports of the FRIT.⁶¹ On the other hand, the Turkish DGMM's website releases updated data on the number of Syrians resettled under the 1:1 scheme⁶² and the number of rejected asylum seekers and migrants readmitted under the EU-Turkey Statement.⁶³ The Commission progress reports are not updated regularly which raises an issue relating to transparency. Moreover, the outlined implementation reports and factsheets provide fragmented data and leave out many crucial aspects with regard to the implementation of the Statement arrangements, such as: a) how many third country nationals and stateless persons returned to Turkey under the EU-Turkey Statement arrangements actually applied for international protection in Greece or Turkey?, b) how many international protection applications have been rejected by the Greek authorities due to Turkey being accepted as a safe third country or first country of asylum? c) which selection criteria are invoked for each Syrian resettled under the 1:1 EU resettlement scheme.⁶⁴

5.1.2 *EU-Turkey Readmission Agreement*

Similar to all EU Readmission Agreements (EURAs), the EU-Turkey Readmission Agreement is publicly available.⁶⁵ Article 90 of the Turkish Constitution provides: “The ratification of treaties concluded with foreign states on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification.”⁶⁶ This means, as a principle, for an international treaty to enter in force it needs to be approved by the Turkish Parliament. Before it was approved, the EU-Turkey Readmission Agreement and its provisions have been debated by the Turkish MPs at the

⁶¹ https://ec.europa.eu/home-affairs/what-we-do/european-agenda-migration-legislative-documents_en;
<https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-09/Vol%20I%20-%20Main%20Report.pdf>.

⁶² <https://en.goc.gov.tr/temporary-protection27>

⁶³ <https://en.goc.gov.tr/return-statistics>

⁶⁴ Although Standard Operating Procedures outline main selection criteria

⁶⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507(01)&from=EN)

⁶⁶ https://global.tbmm.gov.tr/docs/constitution_en.pdf



Parliament session and the minutes are still accessible though only available in Turkish.⁶⁷ Hence, the preparation phase of the instrument was more transparent than that of the EU-Turkey Statement. This point is raised by a number of stakeholders in their respective interviews including TR1, TR10, TR5 where they all concluded that the preparation and adoption of the Agreement, to a certain extent, was transparent. However, it is also noted that the involvement of the EU Delegation to Turkey to the drafting of the Readmission Agreement was rather limited since Brussels was the main player involved in the preparation of this agreement.

As opposed to the preparation phase of the EU-Turkey Readmission Agreement, there are serious transparency issues with regard to the implementation of the Agreement. In particular, the following aspects, still to date, are contested and not clear:

- a) has Article 4 of the EU-Turkey Readmission Agreement (establishing a duty for Turkey to readmit third-country nationals and stateless persons) entered in force?⁶⁸
- b) is the EU-Turkey Readmission Agreement officially suspended by the Turkish government and, if so, exactly when did this suspension take effect?
- c) If the Agreement is indeed suspended, is the Agreement as a whole suspended, or are only its provisions relating to third-country nationals and stateless persons not being implemented?
- d) Is the EU-Turkey Readmission Agreement still in force today?

Different sources offer different answers to the outlined questions. Whilst, the EU and Turkish Ministry of Foreign Affairs have not published any official statement about the mentioned issues⁶⁹ some news articles and academic sources cite a TV interview of the Turkish Minister of Foreign Affairs Mevlüt Çavuşoğlu where he noted that Turkey suspended the EU-Turkey Readmission Agreement in July 2019 due to the fact that the visa

⁶⁷ See for the records of debates in the Turkish Parliament on the EU- Turkey Readmission Agreement, <https://www5.tbmm.gov.tr/develop/owa/ab_komisyonu_web.birlesim_baslangic_ab2?P4=22185&P5=H&page1=51&page2=51>.

⁶⁸ See Article 24(3) of the EU-Turkey Readmission Agreement.

⁶⁹ See for the text: <https://www.avrupa.info.tr/en/readmission-agreement-6895>.



liberalization process for Turkish citizens had not been completed by the EU.⁷⁰ Yet, to date, no official confirmation by the Turkish MFA followed these news articles. Similarly, although some sources cite another interview by Minister Çavuşoğlu to report that readmission protocol between Greece and Turkey has been also suspended⁷¹ the suspension of this protocol has also not been confirmed by official sources. Moreover, there is no publicly available data on the number of readmissions which took place under this Agreement.

Article 20 of the EU-Turkey Readmission Agreement provides that upon request of a Member State or Turkey, Turkey and a Member State should conclude an Implementing Protocol on readmission. It is reported that Turkey and Bulgaria concluded such an Implementing Protocol in 2016 but this Protocol is not publicly available.⁷² In view of these issues, it can be concluded that although the drafting of the EU-Turkey Readmission Agreement can be identified as transparent to a certain extent, the implementation of this Agreement is not transparent.

5.1.3 Facility for Refugees in Turkey (FRiT)

As a major EU fund, FRiT has multiple actors and stakeholders involved in different phases and has multiple target groups and sectors with different objectives. The complexity of this instrument and overall speed of the realization of the funding (see Section 4.3.1) resulted in varying practices and experiences in the field. Transparency is especially an area where the results of those varying practices were visible. As some of the interviewed stakeholders⁷³ underlined that the focus of the FRiT was not clear and transparent due to

⁷⁰ EURACTIV 2019; RESPOND 2020; Öztürk and Soykan 2019; Ç. Akın Yavuz, 'Analysis of the EU-Turkey Readmission Agreement: a Unique Case', (2019) 21(4) European Journal of Migration and Law 486-508, p. 489.

⁷¹ Deportation Monitoring Aegean, 'Suspension of EU-Turkey Deal and Mass Deportations from Turkey' 26 July 2019, <https://dm-aegean.bordermonitoring.eu/2019/07/26/suspension-of-eu-turkey-deal-and-mass-deportations-from-turkey/>.

⁷² Anadolu Agency, Turkey, Bulgaria Sign Readmission Protocol, 5 May 2016, <https://www.aa.com.tr/en/politics/turkey-bulgaria-sign-readmission-protocol/567275>.

⁷³ TR12; TR22



the political pressure on the parties to move quickly. In this regard, the process surrounding Madad Fund was described⁷⁴ as “less political” compared to the FRiT.

Following the EU-Turkey Joint Action Plan in November 2015, a detailed needs assessment for the “preparation of an enhanced EU support to Turkey on the refugee crisis” was conducted, the outcomes of which were published in June 2016.⁷⁵ The needs assessment report was prepared in consultation and collaboration with representatives of Turkish central, regional and governmental authorities, UN agencies, international, national and local NGOs and academics.⁷⁶ The report was shared with the public at the time of publication and is still available online.

While the initial preparation phase was regarded generally transparent, the two projects in the migration management area created an exception. As detailed in Section 3.1, two projects in the migration management area was granted 80 million Euros. However, the European Court of Auditors considers the decision to use FRiT for funding migration management projects as “questionable”⁷⁷ because this was not in line with the objective of the Facility -which is to support refugees and host communities- and was not identified as a priority area to fund by the needs assessment that was conducted following the EU Turkey Joint Action Plan in 2015. Nevertheless, migration management area was selected as a priority area to fund by the Steering Committee of the Facility however, after funding the above mentioned two migration-management projects within the first tranche, the Steering Committee decided not to allocate any more money to this area⁷⁸. No further

⁷⁴ TR12.

⁷⁵ Technical Assistance for a comprehensive needs assessment of short and medium to long term actions as basis for an enhanced EU support to Turkey on the refugee crisis https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-12/2016_needs_assessment_.pdf.

⁷⁶ See Methodology section of the report; Technical Assistance for a comprehensive needs assessment of short and medium to long term actions as basis for an enhanced EU support to Turkey on the refugee crisis https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-12/2016_needs_assessment_.pdf.

⁷⁷ ECA – Special Report 27/2018 The Facility for Refugees in Turkey: helpful support, but improvements needed to deliver more value for money <https://op.europa.eu/webpub/eca/special-reports/refugees-turkey-27-2018/en/>

⁷⁸ ECA – Special Report 27/2018 The Facility for Refugees in Turkey: helpful support, but improvements needed to deliver more value for money, page 16. <https://op.europa.eu/webpub/eca/special-reports/refugees-turkey-27-2018/en/>



explanation was provided on the inclusion of those projects to the first tranche of the FRiT and exclusion from further funding.

Distribution of the funds, on the other hand, proved to be more problematic regarding the transparency. In general, two methods were adopted while selecting and funding the projects and organizations⁷⁹. For a number of projects, the implementing institution is pre-determined at the planning phase when the implementing institution has a certain specialty. This method is used especially in exclusive areas such as border management. A second method is issuance of a tender to which eligible international organizations, non-governmental organizations and consultancy firms can participate. These are announced in advance with a possibility to make preparations. In the first method, only the relevant parties are aware of the relevant project whereas in the tender method the project becomes known in the sector in general. The first method was mainly used in the first tranche of FRiT and the second one was dominant in FRiT-II. The distribution of the funds and awarded organizations (see Figures 1-3) clearly shows a distinct pre-determination during the distribution of the available funds.

Furthermore, there is also a transparency problem regarding the publicly available data. It is mentioned that access to the primary data during the preparation, implementation, monitoring and auditing periods are regularly denied by the Turkish authorities. The European Court of Auditors reports that while it was in their right to access the related primary data, their requests, as well as requests of other UN and EU bodies, were denied or they were provided with modified data.⁸⁰

⁷⁹ TR14

⁸⁰ ECA – Special Report 27/2018 The Facility for Refugees in Turkey: helpful support, but improvements needed to deliver more value for money <https://op.europa.eu/webpub/eca/special-reports/refugees-turkey-27-2018/en/>



5.2 Accountability

5.2.1 EU-Turkey Statement

Accountability of the EU, the Member States, and Turkey for the acts and arrangements concluded under the EU-Turkey Statement is difficult to establish before international or supranational courts, to say the least.⁸¹ A case was brought before the Court of Justice of the European Union (CJEU) to challenge the legality of the Statement. NF, NG and NM brought an action seeking annulment of the EU-Turkey statement before the CJEU, arguing that the Statement is an act of the European Council establishing an international agreement contrary to EU law. In its order of 28 February 2017, despite the explicit wording and institutional context of the Statement the General Court found that the Statement cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union. Instead, it held that on the European side the Statement was an act of the 28 Member States acting outside the EU framework. Consequently, it dismissed the action on the grounds that it lacked jurisdiction.⁸² Moreover, an appeal against this decision also failed on formal grounds.⁸³

Although it is clear that one of the authors of the Statement was the EU⁸⁴, the EU by denying the authorship of the Statement and the European Courts confirming this denial led to the following conclusions: first, that the Statement remains outside of checks and

⁸¹ Cf. Spijkerboer, Thomas. "Bifurcation of people, bifurcation of law: externalization of migration policy before the EU Court of Justice" *Journal of Refugee Studies* 31.2 (2018): 216-239; Costello, Cathryn, and Itamar Mann. "Border Justice: Migration and Accountability for Human Rights Violations." *German Law Journal* 21.3 (2020): 311-334, p. 319; Tsourdi, Evangelia Lilian. "Holding the European Asylum Support Office Accountable for its role in Asylum Decision-Making: Mission Impossible?." *German Law Journal* 21.3 (2020): 506-531; Lindberg, Anna Marina Fiona. "Can I talk to the manager, please? Who is responsible? Case: The Accountability of the EU within the Greek hotspots in the light of JR and others v. Greece." (2020).

⁸² Orders of the General Court in Cases T-192/16, T-193/16 and T-257/16 NF, NG and NM v European Council of 28 February 2017.

⁸³ Order of the Court (First Chamber) of 12 September 2018, NF and Others v European Council, ECLI:EU:C:2018:705.

⁸⁴ M. Ineli-Ciger and O. Ulusoy, A Short Sighted and One Sided Deal: Why The EU-Turkey Statement Should Never Serve as a Blueprint, in: Sergio Carrera and Andrew Geddes (eds) *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees* 111-124.



balances applicable to EU law⁸⁵ and second, that the EU cannot be held responsible for the breaches of international law and human rights principles that may arise from the implementation of the Statement.⁸⁶ These two conclusions certainly raise serious issues with regard to accountability relating to the EU-Turkey Statement. It has been argued previously that due to the absence of any specific monitoring or supervision bodies or accountability mechanisms, shortcomings or misconduct taking place during the implementation of the Statement cannot be identified.⁸⁷ This is still the case and the interviews conducted within the scope of this study supports this claim.

Many stakeholders⁸⁸ mentioned that human rights accountability mechanisms provided under Turkish laws as well as international human rights mechanisms such as the ECtHR can be used in case the Statement arrangements lead to a human rights violation. Though many also pointed out that although general human rights mechanisms are available there is no specific accountability mechanism in relation to the EU-Turkey Statement. As for legal accountability mechanisms available in Turkey a Turkish NGO noted that although judicial mechanisms such as individual application before the administrative court and Constitutional Court are available, their use is not widespread.⁸⁹ Another Turkish NGO⁹⁰ pointed out that quasi-judicial mechanisms such as Turkish Ombudsman's Office and Turkish Parliamentary Commissions usually do not yield any results, whereas it is time consuming and difficult to exhaust domestic legal remedies which are a prerequisite to apply for international human rights protection mechanisms including the ECtHR.

⁸⁵ Carrera, Den Hertog and Stefan 2017; Carrera, Vara and Strik 2019, 15

⁸⁶ M. Ineli- Ciger and O. Ulusoy, A Short Sighted and One Side Deal: Why The EU-Turkey Statement Should Never Serve as a Blueprint, in: Sergio Carrera and Andrew Geddes (eds) *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees* 111-124.

⁸⁷ M. Ineli- Ciger and O. Ulusoy, A Short Sighted and One Side Deal: Why The EU-Turkey Statement Should Never Serve As a Blueprint, in: Sergio Carrera and Andrew Geddes (eds) *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees* 111-124.

⁸⁸ TR1, TR2; TR12; TR11; TR4; TR9;

⁸⁹ TR22.

⁹⁰ TR24.



TR10 noted that although there is no specific accountability mechanism linked to the Statement, the EU authorities at times have alerted Turkish government authorities when they become aware of a human rights violation. This means, the EU authorities does not make use of legal accountability mechanisms or does not support victims to apply before the Turkish courts even if they become aware of human rights violations. This illustrates that there are systemic problems relating to the accountability arising from the EU-Turkey Statement arrangements. Some stakeholders pointed out the unwillingness of the EU to hold the Member States such as Greece accountable due to human rights violations arising from Greece's push back operations at the Aegean Sea and alleged shootings and using tear gas to migrants at the land border⁹¹ between Turkey and Greece in February and March 2020.⁹²

Many stakeholders shared the view that civil society involvement in human and refugee rights accountability matters in Turkey is rather limited. For instance, there are very few NGOs doing strategic litigation in the field of refugee law in Turkey and NGOs became even less active (and more hesitant to play an active role) in the field following the coup attempt on 15 July 2016.⁹³ A Turkish NGO TR22, noted that civil society supervision in Turkey can be improved and Turkish institutions such as the Ombudsman can play a more active role in relation to accountability for human rights violations. Other stakeholders including TR21, TR18, TR14 and TR15 noted that when they become aware of a human rights violation or a serious problem, they alert government institutions first and sometimes they try to solve the problem making use of their own connections in the local governments. This shows that international institutions and NGOs are reluctant to make use of legal venues for any human rights violations arising from the EU-Turkey Statement arrangements.

⁹¹ Human Right Watch Greece: Violence Against Asylum Seekers at Border, 17 March 2020. <https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border>

⁹² TR2. Cf. A. D. Ergin, "Protection" or "Instrumentalization" of Refugees: Will the European Court of Human Rights Fill in the Gaps in Pushback Cases After the Greece/Turkey Border Events?' in: in: Eva Kassoti and Narin Idriz (eds.) *The Informalisation of the EU's External Action in the Field of Migration and Asylum* (Springer 2022) p. 196-199.

⁹³ TR3.



5.2.2 *EU-Turkey Readmission Agreement*

The EU-Turkey Readmission Agreement similar to other EURAs aims to establish rapid and effective procedures for the identification and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence or residence in, the territories of the third country (in this case Turkey) or the EU Member State in question.⁹⁴ In case of a breach of international law principles arising from the implementation of the EU-Turkey readmission agreement both parties (the EU and Turkey) would be responsible and accountable. Compared to the EU-Turkey Statement, establishing accountability under this Agreement is more straightforward.

5.2.3 *Facility for Refugees in Turkey (FRiT)*

As for the projects funded under the Statement, nearly all stakeholders including Turkish institutions such as the TR23, UN agencies, international institutions and NGOs reported that they have internal accountability mechanisms and these mechanisms can be used, among others, in relation to complaints and human rights violations allegations arising from the EU-Turkey Statements.⁹⁵ Only one respondent, TR8, informed that while an accountability mechanism is included within the project, there has not been any applications to trigger it so far.

National authorities⁹⁶ underlined the existence of the national accountability procedures and systems for any possible violations however, as TR12 underlined that there is no specific system put in place linked to the EU funding. International organizations and civil society representatives⁹⁷ addressed the lack of such a procedure and told that they follow up such matters legally, formally and informally through the trust relations they have at local level. However, as TR18 explained, since they work with individual refugees and not on systemic problems, they do not have any direct communication channels with higher authorities that would enable them to flag any possible human rights issue therefore those violations or complaints are not reported and followed up systematically.

⁹⁴ EMN, Asylum and Migration Glossary, 2021, https://ec.europa.eu/home-affairs/pages/glossary/readmission-agreement_en

⁹⁵ TR12; TR13; TR15; TR11; TR16; TR17; TR25; TR24; TR14; TR21; TR22.

⁹⁶ TR4;TR7;TR9

⁹⁷ TR18; TR20; TR21; TR22



5.3 Compatibility with international law

5.3.1 EU-Turkey Statement

Stakeholders mentioned that incompatibility of the EU-Turkey Statement with international law may lie not necessarily within the instrument itself but how the Statement is being implemented.⁹⁸ Some stakeholders acknowledged that there are compatibility issues⁹⁹ whereas others did not.¹⁰⁰ It is also noted that the EU is well aware of the compatibility issues.¹⁰¹ Here, compatibility issues will be examined under three main headings.

First, the Statement is based on the assumption that Turkey is a safe third country to which refugees and asylum seekers can be returned after an expedited procedure. This is problematic in light of Turkey's geographic limitation under the 1951 Refugee Convention and shortcomings in the Turkish asylum system. One of the main legal problems with the Statement¹⁰² concerns its return aspect that is built on the assumption that Turkey can be accepted as a 'safe third country' and/or 'first country of asylum' pursuant to Article 35 and Article 38 of the Directive 2013/32/EU for Syrians and other asylum seekers.¹⁰³ The EU Commission's view that Turkey can be accepted a safe third country and first country of asylum has been contested by many commentators for good reason.¹⁰⁴ Turkey's

⁹⁸ TR12.

⁹⁹ TR12; TR21, TR18.

¹⁰⁰ TR20.

¹⁰¹ TR18.

¹⁰² For other legal problems and shortcomings of the Statement see M. Ineli- Ciger and O. Ulusoy, A Short Sighted and One Side Deal: Why The EU-Turkey Statement Should Never Serve As a Blueprint, in: Sergio Carrera and Andrew Geddes (eds) *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees* 111-124; Christoph Tometten, "Resettlement, Humanitarian Admission, and Family Reunion: The Intricacies of Germany's Legal Entry Regimes for Syrian Refugees.", *Refugee Survey Quarterly*, 37, (2018): 187–203; D. Davitti, Daria, "Biopolitical Borders and the State of Exception in the European Migration 'Crisis'", *The European Journal of International Law*, Vol. 29 no. 4, (2019): 1173–1196; H. Kaya, *The EU-Turkey Agreement on Refugees: A Critical Evaluation of Its Impact on the Fundamental Rights of Refugees*, Edward Elgar Publishing (2020) 56.

¹⁰³ COM(2016) 349 final, 5; cf. N. F. Tan and J. Vedsted- Hansen, 'Inventory and Typology of EU Arrangements with Third Countries Instruments and Actors', < https://www.asileproject.eu/wp-content/uploads/2021/03/D5.1-Inventory_Typology_EU-Agreements_Final_formatted.pdf> 9-27.

¹⁰⁴ Roman, E, Baird, T and T. Radcliffe, "Why Turkey is Not a "Safe Country" Statewatch (February 2016) <http://www.statewatch.org/analyses/no-283-why-turkey-is-not-a-safe-country.pdf>; O. Ulusoy and H. Battjes. "Situation of



geographical limitation to the 1951 Convention and the challenges that asylum seekers and migrants face in accessing the right to an effective remedy and safeguards against *refoulement* in Turkey coupled with reports that Turkey has, at times, not acted in conformity with the principle of *non-refoulement* make it difficult to assume Turkey is a safe country for all asylum seekers and refugees.¹⁰⁵ Moreover, Turkey hardly has the capacity to offer nearly 4 million asylum seekers and refugees dignified life standards and effective international protection¹⁰⁶ Despite the apparent problem with regard to the return aspect of the Statement, the Greek Foreign Ministry and Migration Ministry on 7 June 2021 declared Turkey to be a 'safe third country' for nationals of five countries (Syria, Afghanistan, Pakistan, Bangladesh, and Somalia) which compose more than two thirds of asylum applications in Greece.¹⁰⁷

Secondly, the implementation of the Statement on the Greek islands included detention (while before 20 March 2016 refugees had not been routinely detained). The conditions in the reception-centers-turned-detention centers deteriorated drastically after the implementation of the EU-Turkey statement. Concerning the detention of asylum seekers and refugees on the Greek islands, a case was brought before the European Court of Human Rights to challenge the conformity with the European Convention of Human Rights of the Greek detention practice (as part of the hotspot approach) implementing the EU-

readmitted migrants and refugees from Greece to Turkey under the EU-Turkey statement." VU Amsterdam Migration Law Series. 15 (2017); ECRE, "The EU-Turkey Deal Poses Serious Threats to Refugees and Migrants' Human Rights." (4 April 2016) <http://www.ecre.org/the-eu-turkey-deal-poses-serious-threats-to-refugees-and-migrants-human-rights/>; Alpes, M. J., Tunaboylu, S., Ulusoy, O., & Hassan, S., Post-deportation risks under the EU-Turkey statement: what happens after readmission to Turkey? (2017) <https://cadmus.eui.eu/bitstream/handle/1814/49005/PB_2017_30_MPC.pdf>

¹⁰⁵ Alpes, M. J., Tunaboylu, S., Ulusoy, O., & Hassan, S., Post-deportation risks under the EU-Turkey statement: what happens after readmission to Turkey? (2017) <https://cadmus.eui.eu/bitstream/handle/1814/49005/PB_2017_30_MPC.pdf>; H. Kaya, *The EU-Turkey Agreement on Refugees: A Critical Evaluation of Its Impact on the Fundamental Rights of Refugees*, (Edward Elgar Publishing 2020) 2020; an example of a recent report is https://www.theguardian.com/global-development/2022/feb/09/iranian-refugees-face-deportation-from-turkey-for-attending-demonstration?CMP=Share_iOSApp_Other.

¹⁰⁶

¹⁰⁷ ECRE, 'Greece: While the Designation of Turkey as Safe Country and Pushbacks Undermine Protection in Greece, the Country is Criticised for not Preventing Secondary Movement' (2021) <https://www.ecre.org/greece-while-the-designation-of-turkey-as-safe-country-and-pushbacks-undermine-protection-in-greece-the-country-is-criticised-for-not-preventing-secondary-movement/>; Infomigrants, 'Greece should not consider Turkey 'safe' for asylum seekers, rights organizations say' (20219) <https://www.infomigrants.net/en/post/33004/greece-should-not-consider-turkey-safe-for-asylum-seekers-rights-organizations-say>



Turkey Statement. In *JR and Others v Greece*, three Afghan nationals who were detained for a month in a hotspot in Chios under abysmal conditions argued that their detention constituted a violation of Article 5 of the ECHR and their detention conditions breached Article 3 of the ECHR. While it did not assess the Statement or its legal nature or implications as such, the Court, similar to the CJEU, identified the Statement as an instrument concluded between the Member States and Turkey.¹⁰⁸ It rejected the applicants' main claims on substantive grounds. The Court concluded that the one-month period of detention that aimed to guarantee the possibility of removing the applicants under the EU-Turkey Statement, was not arbitrary and could not be regarded as unlawful within the meaning of Article 5 § 1 (f) and that the applicants' detention conditions did not reach the threshold of severity required for Article 3 of the ECHR to be violated because these conditions could be explained by the exceptional and brutal increase of migratory flows, resulting in organizational, logistical and structural difficulties.¹⁰⁹

Although the detention practice and conditions are found to be not in breach of the ECHR provisions in *JR and Others v Greece*, the hotspot approach and detention component of the EU-Turkey Statement is severely criticized by many NGOs on the account that the Statement arrangements has led to “severe overcrowding, substandard reception conditions and delayed asylum procedures” in Greece.¹¹⁰ The mentioned problems, in particular, automatic detention of all new irregular arrivals and substandard detention conditions are still capable of creating issues in terms of Articles 3 and 5 of the ECHR.¹¹¹ Moreover, problems with regard to access to asylum procedures, interpreters and legal assistance especially severe delays in processing of asylum application for those asylum

¹⁰⁸ *JR and Others v Greece* App no 22696/16 (ECtHR, 25 January 2018) para 7.

¹⁰⁹ <https://www.asylumlawdatabase.eu/en/content/ecthr-jr-and-others-v-greece-application-no-2269616-articles-3-51-52-34-echr-25-january-2018>

¹¹⁰ Amnesty International, Caritas, Danish Refugee Council, Human Rights Watch, International Rescue Committee, Oxfam, Refugee Rights Europe, 'Open letter: Five years after the EU-Turkey Statement, European Civil Society demands an end to containment and deterrence at the EU's External Borders' (2021) <<https://oxfam.app.box.com/v/JointCSOLetter18March2021>>.

¹¹¹ Gkliati 2017, 213-224; Ineli-Ciger 2019, 134, 135; H. Kaya, *The EU-Turkey Agreement on Refugees: A Critical Evaluation of Its Impact on the Fundamental Rights of Refugees*, Edward Elgar Publishing (2020).



seekers who have arrived in the Greek Islands raise compatibility issues with the Directive 2013/32/EU especially its Article 6 and Article 12.

With the adoption of the EU-Turkey Joint Action Plan and the EU-Turkey Statement, Turkey's border with Syria is closed, visa requirements are introduced for Syrians arriving in Turkey by sea and air access to and Turkey began actively working towards preventing irregular arrivals to Greece.¹¹² With the adoption of the EU-Turkey Statement, displaced persons are confined to Syria as well as Turkey which infringes the right to seek asylum and this is identified as the third compatibility issue here. Right to seek asylum is not secured explicitly under the Refugee Convention however, Article 18 of the EU Charter of Fundamental Rights guarantees the right to asylum.¹¹³ The EU-Turkey Statement certainly makes the right to seek asylum more difficult for thousands of forcibly displaced persons.

5.3.2 EU-Turkey Readmission Agreement

The EU-Turkey Readmission Agreement, from the outset, does not provide any provision that violates international refugee law and/or international human rights law. In the Preamble, it is noted that “this Agreement shall be without prejudice to the rights and procedural guarantees for persons who are subject to return procedures in or who apply for asylum in a Member State as laid down in the respective legal instruments of the Union” which means an asylum seeker cannot be removed and readmitted under this agreement until his/her international application is processed in line with the EU asylum *acquis*.

The non-affected clause provided under the EU-Turkey Readmission Agreement introduces further safeguards. Article 18 of the Agreement foresees this agreement to be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Turkey arising from international law including from international conventions to which they are a party, in particular, inter alia, the 1951 Convention, ECHR, the CAT. In light of these, the text of the EU-Turkey Readmission Agreement is, on paper, compatible with international law though its implementation and whether the mentioned safeguards are observed in practice is another issue. It is noted by TR 5 that the EU-Turkey Readmission

¹¹² Ineli-Ciger, Yigit, Turkey Country Fiche, p. 16,17; N. Ö. Öztürk, ‘The Internal Effects of the EU-Turkey Deal on Turkey’s Migration and Asylum System’ in: Eva Kassoti and Narin Idriz (eds.) *The Informalisation of the EU’s External Action in the Field of Migration and Asylum* (Springer 2022) p. 274, 275.

¹¹³ Charter of Fundamental Rights of the European Union *OJ C 326*, 26.10.2012.

Agreement contributed to the protection of migrants in Turkey since following the adoption of this Agreement and the Statement, the EU became more involved and concerned with the conditions of readmitted migrants in Turkey. On a negative note, TR22 pointed out that the EU-Turkey Readmission Agreement together with the EU-Turkey Statement hinders the right to seek asylum.

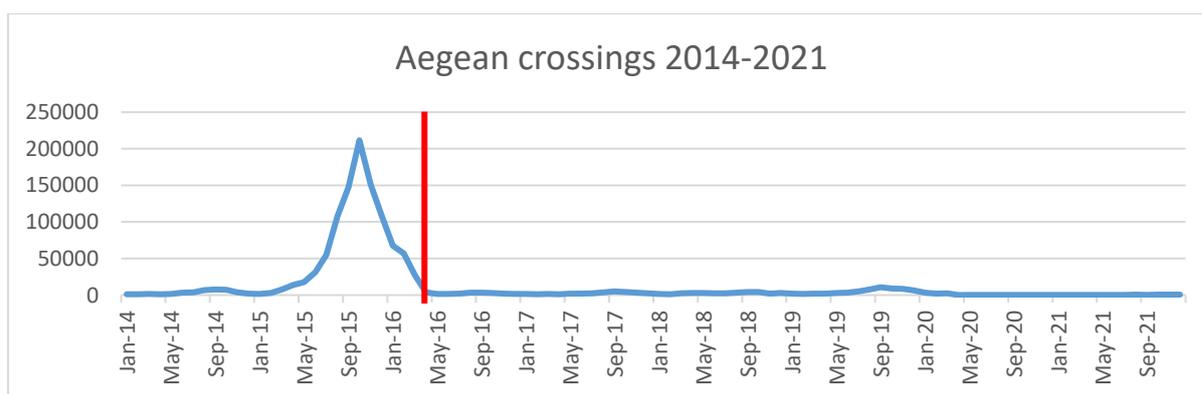
5.4 Results

5.4.1 EU-Turkey Statement

In 2015, over one million refugees and migrants arrived irregularly in Europe by sea whereas arrivals to Greece accounted for 80 per cent of this one million (UNHCR 2020). In 2019, 2020 and 2021, 59 726, 9 714 and 3 653 sea arrivals to Greece were recorded, respectively.¹¹⁴ Although one of the most celebrated outcomes of the Statement especially by the European Commission is the decrease on the number of irregular sea arrivals to Greece, the available data show that this decrease cannot be a result of EU-Turkey Statement.¹¹⁵

If there were a causal relation between the EU-Turkey Agreement and the number of migrants and of migrant deaths, one would expect a decrease of both numbers after the agreement entered into effect on 20 March 2015. UNHCR data about the number of daily arrivals on the Greek islands in Figure 4, indicate a peak at 221,663 in October 2015. Following this spike, the number of arrivals goes down quite steadily. The decreasing trend that had been occurring since October 2015 did not intensify after 20 March 2016.

Figure 4 Data UNHCR, May 2022; red line: March 2016



¹¹⁴ UNHCR data (2021) <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

¹¹⁵ Ineli-Ciger and Ulusoy, p. 111-124.



It is clear that the EU-Turkey Statement cannot have caused the decrease in the number of irregular arrivals to Greece, as the decline preceded the adoption of the Statement on 18 March 2016 and therefore, logically speaking, cannot have been its cause. It cannot be excluded that the Statement contributed to keeping the arrivals in Greece at the low numbers they already were at in March 2016. Alternatively, one might assume that the adoption of the EU-Turkey Joint Action Plan on 15 October 2015, or its activation on 29 November 2015 (*supra*, para. 4.1.1) could be the cause of the decline. However, implementation of such formal decisions takes time and it is implausible that such formal acts have significant effects on the ground. As a consequence, it is hard to consider the decrease of the number of Aegean crossings after October 2015 as a result of EU policy instruments – even though these instruments were aiming at such a decrease.¹¹⁶

Nonetheless, TR10 identified the main purpose of the EU-Turkey Statement as to decrease irregular mobility and to ensure refugees and asylum seekers to access to basic services without risking their lives and noted that these objectives have been accomplished to a great extent.

As for the resettlement arrangement agreed under the Statement, as of January 2022, according to the DGMM, so far 31,616 Syrian refugees have been resettled from Turkey to the EU.¹¹⁷ From the outset, the number of resettled Syrians is insignificant (namely 0,8%) compared to 3,7 million Syrian refugees and asylum seekers hosted by Turkey. Many stakeholders¹¹⁸ noted that 1:1 resettlement scheme is far from providing most asylum seekers and refugees a durable solution in Turkey and the resettlement element of the Statement is called weak by TR18 for instance.

The EU and Turkey initiated the Visa Liberalization Dialogue on 16 December 2013 with a view to make progress towards the elimination of the visa obligation currently imposed on

¹¹⁶ T. Spijkerboer, (2016), "Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?", September (<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/fact-check-did-eu>); N. Reslow, "An overwhelming success? Reconsidering the EU-Turkey Statement", paper prepared for the 2019 EUSA International Biennial Conference, May 2019, (<https://www.eustudies.org/conference/papers/16?page=9>) 2019.

¹¹⁷ This is as of January 2020, see DGMM Website, < <https://www.goc.gov.tr/gecici-koruma5638>>.

¹¹⁸ TR24; TR18; TR3.



the Turkish citizens travelling to the Schengen area for a short-term visit.¹¹⁹ The Visa Liberalization Dialogue is based on the Roadmap which requires Turkey to fulfil 72 benchmarks related to document security; migration management; public order and security; fundamental rights; and readmission of irregular migrants.¹²⁰ As for the Statement's objective to accelerate the visa liberalization roadmap, the EU notes that "Turkey has so far met 66 benchmarks, while six have yet to be fulfilled".¹²¹ As for the re-energizing the EU accession negotiations it is initially noted by the European Parliament following the adoption of the EU-Turkey Statement that "the accession process will be re-energized, with Chapter 33 opened during the Dutch Presidency of the Council of the European Union and preparatory work on the opening of other chapters to continue at an accelerated pace."¹²² However, in 2018 the Council concluded that "no further chapters can be considered for opening or closing" and the accession negotiations remain at a standstill.¹²³

As of 2022, no visa liberalization for the Turkish citizens took place and no real prospect of Turkey becoming an EU Member in the near future exists.¹²⁴ The Turkish President recently criticized the EU for delaying talks over the visa liberalization for the Turkish nationals and expressed his hope that progress can be made in relation to the visa liberalization and accession process in 2022.¹²⁵

¹¹⁹ Cf. Delegation of the European Union to Turkey, Visa Liberalisation Dialogue, <https://www.avrupa.info.tr/en/visa-liberalisation-dialogue-6896>.

¹²⁰ Cf. Delegation of the European Union to Turkey, Visa Liberalisation Dialogue, <https://www.avrupa.info.tr/en/visa-liberalisation-dialogue-6896>.

¹²¹ Cf. Delegation of the European Union to Turkey, Visa Liberalisation Dialogue, <https://www.avrupa.info.tr/en/visa-liberalisation-dialogue-6896>.

¹²² EU Parliament, Legislative Train Schedule, <<https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>>.

¹²³ <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf>; I. Toygur, A New Way Forward for EU-Turkey Relations (2022) <https://carnegieeurope.eu/2022/01/26/new-way-forward-for-eu-turkey-relations-pub-86264>.

¹²⁴ K. Terry, The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint, 8 April 2021, MPI, <https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on>.

¹²⁵ <https://www.hurriyetdailynews.com/eu-membership-remains-turkeys-strategic-priority-erdogan-170756>



5.4.2 EU-Turkey Readmission Agreement

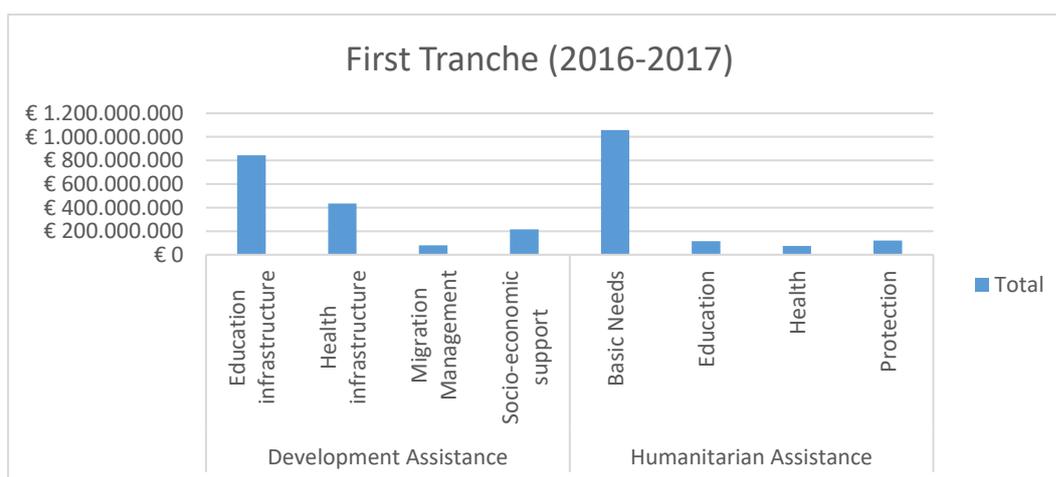
There is no publicly available data on the implementation of the EU-Turkey Readmission Agreement and no comments were made in the interviews in relation to the results of this Agreement.

5.4.3 Facility for Refugees in Turkey (FRiT)

Five years after the introduction of the Facility for Refugees in Turkey (FRiT), both tranches combined, all operational funds - €6 billion- have been committed and contracted and €4.3 billion was disbursed as of October 2021.¹²⁶ About €2.5 billion of that budget was committed to the humanitarian assistance. Several projects continue their activities however significant delays and obstacles were reported due to Covid-19 pandemic since 2019.

As mentioned before, FRiT funds were categorized under two main domains; humanitarian and development. The Emergency Social Safety Net (ESSN), the flagship humanitarian programme, is a social assistance scheme that helps the refugee population meet their daily needs through cash assistance since 2016. Reports and respondents highlighted the crucial role and the importance of the ESSN and other humanitarian assistance programmes for the livelihood and well-being of the refugees in Turkey.

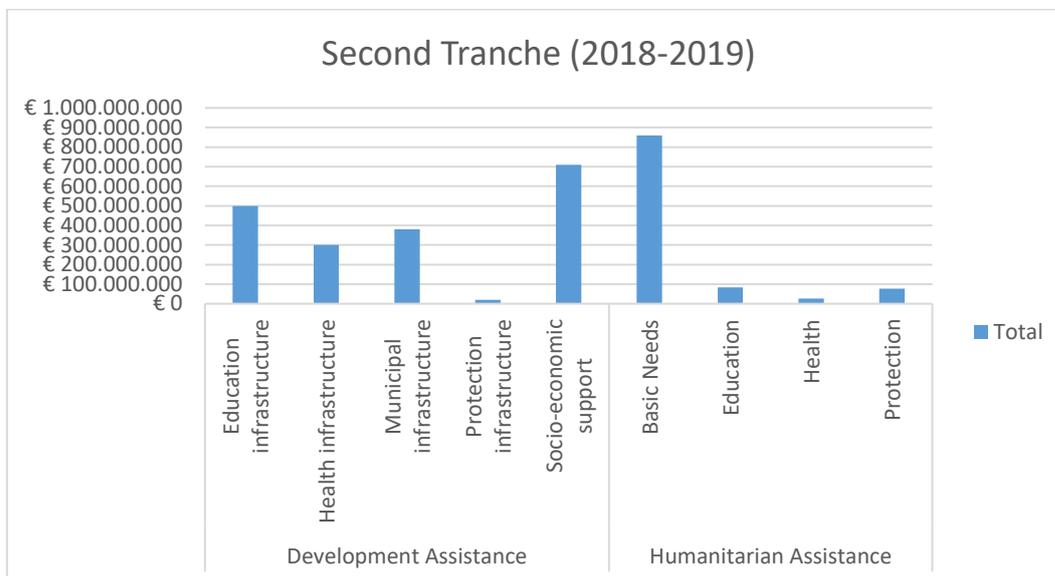
Figure 5: Distribution of the first tranche of the FRiT



¹²⁶ EC - EU Facility for Refugees in Turkey List of projects committed/decided, contracted, disbursed https://ec.europa.eu/neighbourhood-enlargement/system/files/2021-11/Facility%20table_October%202021.pdf



Figure 6: Distribution of the second tranche of the FRiT



Development assistance, aiming to provide structural support for the institutions and organizations, amount to €3.5 billion in Turkey under the FRiT. The bulk of the funding was committed to the projects in the education, healthcare and socio-economic support areas targeting mainly -if not exclusively- Syrian nationals or refugees coming from Syria. Aiming to mid to long term assistance, respondents agree that the FRiT was crucial for capacity building in many sectors. One respondent underlined that Turkey is in a very strong position in terms of receiving support compared to other Syrian refugee hosting countries, considering Turkey already has a functioning infrastructure and economy.¹²⁷

The sustainability of the projects funded by the FRiT and other financial instruments is also a re-occurring theme within the reports and interviews. While it is generally pointed out that the actions for capacity building contribute extensively to sustainability¹²⁸, all respondents agree that if sustainability is desired, then funds should not be terminated because change takes time.

¹²⁷ TR21.

¹²⁸ TR17.



5.5 Containment/mobility

5.5.1 EU-Turkey Statement

The EU-Turkey Statement, by design, restricts the mobility of migrants and refugees and enforces containment in the following ways:

- a) It requires Turkey to prevent new arrivals to the EU and to take any necessary measures to prevent the opening of any new sea or land routes for illegal migration from Turkey to the EU, and thereby confines refugees in Turkey
- b) It funds projects under the FRiT to enforce Turkey's border management and return capacity, thereby confining refugees, in particular, in Syria.
- c) Greece's push back practices together with Frontex operations at the Aegean implementing the Statement actively restrict mobility and enforce containment of refugees in Turkey
- d) The implementation of the Statement makes sure that those who have arrived in the Greek Islands by sea are detained and contained in the hotspots for a long time, sometimes in dire conditions
- e) In implementing the Statement, Greece's designation of Turkey as a safe country and declaring international protection claims of asylum seekers who have arrived by sea inadmissible based on this designation, contributes to containing refugees in Turkey.
- f) The Statement requires Turkey to readmit those who have arrived at the Greek Islands by sea and whose asylum applications are rejected or declared inadmissible, thereby contributing to containing refugees in Turkey.¹²⁹

To begin with the overall and explicit objective of the EU-Turkey Statement is to prevent new irregular arrivals to the EU and take any necessary measures to prevent the opening of any new sea or land routes for illegal migration from Turkey to the EU.

Initially, Syrians did not need visas to enter Turkey but this policy has changed following the EU-Joint Action Plan. Turkey introduced visa requirements for those Syrians travelling

¹²⁹ See section 5.5.3.



to Turkey by air and sea from a third country on 8 January 2016. Turkey built a 764-kilometer-long wall along its border with Syria and a 144-kilometer wall on its Iranian border in 2018.¹³⁰

Under the Statement Turkey also agreed to readmit migrants who do not apply for asylum in Greece or whose applications have been found unfounded or inadmissible in accordance with the Directive 2013/32/EU.

In view of this, it is clear that the prevention as well as the return aspect of the Statement actively enforces containment by restricting the mobility from refugee producing countries to Turkey and from Turkey to the EU.¹³¹ Similarly, one of the stakeholders pointed out that the short-term purpose of the Statement was to decrease irregular migration towards Europe and make the movement of those seeking international protection more difficult and this objective indeed is achieved.¹³²

Many stakeholders¹³³ stated that the EU-Turkey Statement was a migration management instrument and its main purpose was to prevent new arrivals to Europe hence, it can be seen as a containment tool. TR 5 mentioned that the main driver of the containment policy is the EU: EU actions (including Frontex operations at the Aegean Sea and pushback practices by the Greek forces) restrict mobility and promote containment. The long-term detention of asylum seekers and migrants who have arrived to the Greek islands in the so called hotspots in dire conditions are well are a form of containment within Greece.¹³⁴ Although as of December 2021, the Greek government closed some of these camps on the Greek islands which are close to Turkey, asylum seekers and migrants who used to live in the camps have been moved to so

¹³⁰ AIDA Turkey Report (2020) <<https://asylumineurope.org/reports/country/turkey/>>; Ineli-Ciger, Yigit, Turkey Country Fiche, p. 17, 18.

¹³¹ Turkey requires visas to enter Turkey for most refugee producing countries: for instance, nationals of Afghanistan, Sudan, Pakistan, Myanmar, Iraq and Somalia require a visa to enter Turkey. See Turkish MFA Website (2022) <<https://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa>>.

¹³²TR1.

¹³³ TR1; TR2; TR3; TR 5; TR24; TR18; TR4; TR9; TR16.

¹³⁴ AIDA (2020), Conditions in reception facilities in Greece, <https://asylumineurope.org/reports/country/greece/reception-conditions/housing/conditions-reception-facilities/>.



called 'Closed Controlled Structures' funded by the EU, featuring barbed wire fences, surveillance systems and ID and fingerprint scanning at the gates.¹³⁵

In light of the above, the EU-Turkey Statement can be identified as an effective containment policy tool which restricts mobility of refugees from origin and transit countries to Turkey and from Turkey to the EU, as well as within the territories of Turkey and Greece. In comparison to nearly 3.7 million Syrians that Turkey hosts, the EU Member states have so far resettled 31,616 Syrian refugees under the 1:1 resettlement scheme and this means, resettlement remains not a viable durable solution and a legal entry mode to the EU for many asylum seekers and refugees.

5.5.2 EU-Turkey Readmission Agreement

In a Q&A document¹³⁶ relating to the EU-Turkey Statement published by the Commission, it is noted that the legal basis of returning irregular migrants from the Greek islands to Turkey is the bilateral readmission agreement between Greece and Turkey and from 1 June 2016. This was to be succeeded by the EU-Turkey Readmission Agreement, following the entry into force of the provisions on readmission of third country nationals of this agreement.¹³⁷ As noted previously, it is still not known if the EU-Turkey Readmission Agreement is suspended or not, however if the Agreement is still in force and being used for the readmission of migrants from Greece to Turkey under the EU-Turkey Statement arrangements, this means the Readmission Agreement is also part of the EU-Turkey Statement hence, the containment policy.

In relation to the EU-Turkey Readmission Agreement, the Turkish MFA's website, which is last updated in March 2021, notes;

¹³⁵ EC, Hotspot Approach (2021) https://ec.europa.eu/home-affairs/pages/glossary/hotspot-approach_en#:~:text=The%20hotspot%20approach%20was%20developed,on%20Migration%20in%20May%202015%20.&text=Other%20EU%20Member%20States%20will,the%20hotspot%20approach%20upon%20request.

¹³⁶ EU Commission, Implementing the EU-Turkey Statement – Questions and Answers https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1664.

¹³⁷ *ibid.*



“The Readmission Agreement, signed on December 16, 2013, was an important turning point that greatly alleviated Europe's migration crisis. In order to implement the Agreement effectively, the project titled “Supply of Removal Centers for the Effective Implementation of the EU-Turkey Readmission Agreement” aims to complete the refurbishment of 6 newly established removal centers with a capacity of 2400 persons in total.”¹³⁸

EU's contribution to the said project is around 4,2 million Euros.¹³⁹ As the outlined project description suggests although the EU-Turkey Readmission Agreement alone is not a containment instrument, its implementation is part of a broader policy which encourages administrative detention policies and establishment of more Removal Centers in Turkey.

5.5.3 Facility for Refugees in Turkey (FRiT)

Containment of migrants and refugees is not one of the official objectives of the Facility for Refugees in Turkey (FRiT). However, all interviewees agreed that the underlying purpose of the EU financial instruments, specifically FRiT, is to prevent mobility. As one of the international organization representatives underlined, “although the Instruments have containment purpose, it is not spoken of to avoid being politically incorrect”.¹⁴⁰

While the FRiT did not have a clear mandate to fund projects to limit the mobility of the migrants and refugees, all respondents shared their common experiences from the field that these projects improved conditions for refugees and migrants in Turkey, and at the same time reduced mobility. One of the respondents¹⁴¹ specifically highlighted projects in the education and labor fields that directly impacted mobility.

¹³⁸ This Project is funded under IPA II. Cf. Turkish MFA, https://www.ab.gov.tr/supply-of-removal-centers-for-the-effective-implementation-of-the-eu-turkey-readmission-agreement_52293_en.html

¹³⁹ Turkish MFA, https://www.ab.gov.tr/supply-of-removal-centers-for-the-effective-implementation-of-the-eu-turkey-readmission-agreement_52293_en.html.

¹⁴⁰ TR16

¹⁴¹ TR6, TR7



A national authority¹⁴² pointed out that, the rule that requires children to attend schools only in their families' place of residence limits mobility within Turkey. Also, it is added that when the child starts school at a certain place, the family generally settles there and attendance to school facilitates the whole family's integration process. Registration of children in irregular status to schools are accepted and their families are encouraged by the authorities to register with DGMM so the child's education becomes an important factor impacting mobility.

On the other hand, another national authority¹⁴³ drew attention to the varying patterns of mobility according to different national groups, such as Afghans and Syrians. While instruments had positive impact for Syrian nationals on their stay in Turkey through measures such as facilitation of work permit procedures, decrease of work permit fees, flexibility in change of provinces and education projects, this is not always the case for irregular migrants or asylum seekers such as Afghan or Iraqi nationals.

In general, interviewed national authorities agreed that the advantages that the Instruments provide in Turkey in the fields of health, education and agriculture, which enhanced the conditions in Turkey, prevented the movement towards EU. However, representatives from international organizations were more critical; one¹⁴⁴ of them argued that to reach containment, rather than putting on fences, EU is adopting a more subtle way by outsourcing migration control. Another organization¹⁴⁵ defined border management as an important element of IPA and FRIT which means they are not contributing to mobility.¹⁴⁶

¹⁴² TR7

¹⁴³ TR6

¹⁴⁴ TR16

¹⁴⁵ TR12

¹⁴⁶ See also section 5.5.1.



Two projects were funded under the FRiT concerned migration management. Under the first FRiT funded project six life boats were delivered to the Turkish Coast Guard to carry out search and rescue operations.¹⁴⁷ Whereas a second project funded under the FRiT aimed to support the implementation of the EU-Turkey Statement through assistance to the DGMM in the management of returns from the EU and in the day-to-day operations in 21 removal centers in doing so the EU covered the costs of building a removal center and covered utility costs of some of these removal centers.¹⁴⁸ These projects funded under the FRiT to enforce Turkey's border management and return capacity seeks to restrict mobility of migrants and refugees from Turkey to the EU, while in the removal centers their mobility is restricted even within Turkey. Pointing out a similar aspect, TR12 noted that the EU-Turkey Statement is intrinsically not in support of mobility, considering since EU funds projects under the Statement to strengthen Turkey's management of its borders, its return capacity and establish new Removal Centers.

5.6 Alignment with Global Compact on Refugees

5.6.1 EU-Turkey Statement

The first objective of the GCR is to ease the pressures on host countries. Instead of easing pressures on Turkey, which currently hosts the largest number of refugees in the world, the EU-Turkey Statement imposes additional burdens by foreseeing Turkey to prevent new irregular arrivals to the EU and requiring Turkey to readmit those who have transited through Turkey to reach EU territories.¹⁴⁹ This is confirmed by the stakeholder interviews; TR5 explicitly noted that the EU-Turkey Statement increased the migratory pressure on Turkey. Nevertheless, financial assistance provided under the FRiT to Turkey can be considered as easing pressures on Turkey, hence as being in line with the GCR.

¹⁴⁷ European Commission, Fourth Annual Report on the Facility for Refugees in Turkey, COM(2020) 162 final, 30 April 2020, p. 13.

¹⁴⁸ European Commission, Fourth Annual Report on the Facility for Refugees in Turkey, COM(2020) 162 final, 30 April 2020, p. 13.

¹⁴⁹ The number of readmitted migrants and asylum seekers remain as 2 139 as of December 2021. <https://en.goc.gov.tr/return-statistics> See also section 5.6.3.



The second objective of the GCR is to enhance refugee self-reliance. A number of projects such as Conditional Cash Transfers for Education¹⁵⁰ and Emergency Social Safety Net (ESSN)¹⁵¹ projects funded under the FRIT improves self-reliance of refugees. These projects and others funded by the EU to increase access of Syrians in Turkey to education, healthcare and social assistance contribute to self-reliance of refugees. Following the adoption of the EU-Turkey Joint Action Plan, Turkey introduced a limited right to work for Syrians holding a temporary protection status in early 2016.¹⁵² The EU and the pledged EU funding in the EU-Turkey Joint Action Plan played a significant role in the introduction of the right to work for Syrians in Turkey. This is in line with the GCR which emphasizes the importance of fostering inclusive economic growth for host communities and refugees.¹⁵³ Yet, although Turkish laws offer Syrians a limited right to work, thousands of Syrians in Turkey still work illegally, without access to the minimum wage or social security benefits.¹⁵⁴ Introducing a right to work in Turkey, although it is not an absolute right,

¹⁵⁰ “Conditional Cash Transfer for Education Programme (CCTE) is a national social assistance programme implemented by the Turkish Ministry of Family, Labour and Social Services since 2003. The objective of the program is to improve school attendance. Extension of the CCTE programme to Syrians under temporary protection and other refugees is being implemented through a partnership between the Ministry of Family, Labour and Social Services, the Ministry of National Education, the Turkish Red Crescent (TRC) and United Nations Children’s Fund (UNICEF). The programme is being funded by European Union Directorate General for European Civil Protection and Humanitarian Aid Operations (ECHO). The objective of the Conditional Cash Transfer for Education Programme is to increase access to education and encourage children to continue their education. The eligibility criteria are: (a) all members of the family must be registered in Turkey, (b) the family must not have any regular income at the time of application (including no high value or income-generating assets), (c) no member of the family must have social security, and (d) the family must have at least one school-going child at the time of application.” See GCR Website, ‘CCTE’ <https://globalcompactrefugees.org/article/conditional-cash-transfers-education-ccte-programme-refugee-children> .

¹⁵¹ “ESSN is the Emergency Social Safety Net Programme funded by the European Union Civil Protection and Humanitarian Aid (ECHO) and implemented in partnership with the International Federation of Red Cross and Red Crescent Societies (IFRC), the Turkish Red Crescent (TRC) and Ministry of Family and Social Services. The ESSN delivers cash assistance to vulnerable people under Temporary Protection / International Protection / Humanitarian Residence Permit in Turkey, have an ID card starting with 99 number and aims to allow refugees and asylum-seekers living outside of camps across Turkey to cover their basic needs such as food, shelter, and clothing in dignity. The assistance will be based on vulnerability assessment and will be delivered through the ESSN (kızılay) card”. See Kızılaycard (2021) < <https://kizilaykart.org/EN/faq0.html> > .

¹⁵² Cf. In January 2016, Turkey adopted the Regulation concerning Work Permits of Temporary Protection Beneficiaries which introduced a right to apply for work permits for Syrians who have been granted temporary protection status for more than six months. M. Ineli-Ciger, ‘Protecting Syrians in Turkey: A Legal Analysis’ (2017) 29(4) International Journal of Refugee Law 555-580.

¹⁵³ GCR, para 79.

¹⁵⁴ Cf. M. Ineli-Ciger, “Protecting Syrians in Turkey: A Legal Analysis.” International Journal of Refugee Law 29.4 (2017): 555-580.



contributes to the self-reliance of refugees though exercise of this right should be enhanced further.

The third objective of the GCR is to expand access to third-country solutions. In particular, the GCR calls on States to establish, or enlarge the scope, size, and quality of, resettlement programmes.¹⁵⁵ In theory, the resettlement scheme agreed under the EU-Turkey Statement or so called 1:1 resettlement scheme is in line with this objective however, in practice according to the DGMM, so far 31 616 Syrian refugees (or 0.8% of the Syrian refugee population in Turkey) have been resettled from Turkey to the EU.¹⁵⁶ However, in comparison to 3.7 Syrian refugees hosted by Turkey, this resettlement figure is too insignificant to be recognized as a success or a good practice in line with the GCR. Moreover, although the EU-Turkey Statement initially foresaw once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, a voluntary humanitarian admission scheme to be launched, no such scheme has been established.

TR4 criticized the EU and noted that resettlement quotas are reduced each year and this limits access to third country solutions. TR10 too noted that there is room for improvement concerning expanding access of refugees and asylum seekers in Turkey to third country solutions. Similarly, TR12 and TR15 too pointed out that more should be done to expand access to third country solutions. Nearly all NGOs¹⁵⁷ noted that the EU-Turkey Statement does not contribute to the access of refugees to durable solutions. Thus, the EU-Turkey Statement does not contribute to the fulfilment of the GCR's objective to expand third country solutions.

The fourth objective of the GCR is to support conditions in countries of origin for return in safety and dignity; this is not applicable in the case of EU-Turkey Statement.

¹⁵⁵ GCR, para 91.

¹⁵⁶ This is as of January 2020 see DGMM Website, < <https://www.goc.gov.tr/gecici-koruma5638>>.

¹⁵⁷ TR22, TR21, TR18, TR19,



5.6.2 EU-Turkey Readmission Agreement

While the EU-Turkey Readmission Agreement, as an international agreement does not run contrary to the GCR, returning asylum seekers from EU to Turkey without providing them durable solutions in Europe is not in line with the first objective (to ease the pressures on host countries) and third objective (to expand access to third-country solutions) of the GCR.

5.6.3 Facility for Refugees in Turkey (FRiT)

Global Compact on Refugees, a relatively new framework, was only affirmed by the United Nations General Assembly in December 2018. Therefore, financial instruments for refugees and migrants in Turkey were not designed to meet the GCR objectives. Nevertheless, many funded project and activities within the FRiT instrument addresses especially two objectives of the GCR; easing pressures on host countries and enhancing refugee self-reliance.

As a country hosting the largest refugee population today, Turkish infrastructure and economy has been under substantial stress.¹⁵⁸ In 2021, Turkey alleged that it has spent more than \$40 billion providing basic services to Syrian refugees.¹⁵⁹ Compared to that, €6 billion funding provided under the FRiT may not seem very significant. Yet, financial instruments such as FRiT and Madad Fund provided much needed support, especially in the education and healthcare sectors according to respondents. However, some respondents¹⁶⁰ expressed that while the Instruments contribute to easing pressures, the support provided comes with delay and it is not sufficient. Furthermore, one respondent argued that “the EU should change its strict position as to reserving the funding exclusively to refugees and that it should include host communities as well.”¹⁶¹

Two seemingly conflicting and fundamentally different approaches to enhance the refugee self-reliance are in play in Turkey with the considerable financial support from the EU. First approach is to support the projects on access to Turkish labor market. The second

¹⁵⁸ Gökalp Aras, N. E., & Şahin Mencütek, Z. (2015). The international migration and foreign policy nexus: the case of Syrian refugee crisis and Turkey. *Migration Letters*, 12(3), 193–208.

¹⁵⁹ <https://www.reuters.com/world/europe/eu-considers-35-bln-euro-migrant-funding-turkey-diplomats-say-2021-06-23/>

¹⁶⁰ TR9, TR8, TR22

¹⁶¹ TR18



approach is providing direct cash assistance to the refugees. FRIT funded projects on access the labor market includes recognize diplomas, language and skills trainings and supporting small and middle-sized enterprises. Launched in 2016, the Emergency Social Safety Net is the biggest humanitarian programme in the history of the EU¹⁶² is in form of a direct cash assistance.

One respondent¹⁶³ underlined that, while support on access to labor market including obtaining work permit enhances refugee self-reliance, direct cash assistance creates dependency on aid. Another respondent¹⁶⁴ expressed that while refugee self-reliance is supported by the EU funds through vocational training and employment centers, it must be analyzed how much of this turns into employability. According to this respondent, an individual who works on minimum wage, can obtain half of the minimum wage through ESSN card when he/she is unemployed which increases informal employment and makes people dependent on aid.

¹⁶² European Commission: The Emergency Social Safety Net (ESSN): Offering a lifeline to vulnerable refugees in Turkey https://ec.europa.eu/echo/emergency-social-safety-net-essn-offering-lifeline-vulnerable-refugees-turkey_en

¹⁶³ TR13

¹⁶⁴ TR25



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6 Annex 1: List of interviewees

Interviewee Code	Date Conducted	Position	Level of Organization	Medium of interview
TR1	03.08.2021	Migration Practitioner	Governance National	Online
TR2	25.08.2021	National Practitioner	Governance National	Online
TR3	02.08.2021	National Practitioner	Governance National	Online
TR4	23.09.2021	Migration Practitioner	Governance National	Online
TR5	04.06.2021	Migration Practitioner	Governance National	Online
TR6	02.06.2021	National Practitioner	Governance National	Online
TR7	06.08.2021	National Practitioner	Governance National	Online
TR8	19.08.2021	National Practitioner	Governance National	Online
TR9	19.08.2021	National Practitioner	Governance National	In writing
TR10	25.05.2021	International Organization Representative	International	Online
TR11	14.07.2021	International Organization Representative	International	Online
TR12	01.10.2021	International Organization Representative	International	Online



TR13	18.08.2021	International Organization Representative	International	Online
TR14	10.07.2021	International Organization Representative	International	Online
TR15	30.06.2021	International Organization Representative	International	Online
TR16	20.08.2021	International Organization Representative	International	Online
TR17	05.08.2021	International Organization Representative	International	Online
TR18	10.09.2021	Civil Society Practitioner	International	Online
TR19	08.10.2021	Civil Society Practitioner	International	Online
TR20	07.06.2021	Civil Society Practitioner	International	Online
TR21	13.10.2021	Civil Society Practitioner	International	Online
TR22	24.06.2021	Civil Society Practitioner	National	Online
TR23	16.09.2021	Civil Society Practitioner	National	Face-to-face
TR24	21.09.2021	Civil Society Practitioner	National	Online
TR25	06.10.2021	Civil Society Practitioner	National	Online



7 Annex 2: National questionnaire

ASILE Research Questions for Turkey Field Study

1.
 - a. How is your institution/organization related to the preparation and implementation of EU-Turkey arrangements on migration and asylum with the aim of ensuring international protection of persons in need of it while preventing their onwards movement towards EU borders?
 - b. Particularly, what is the nature and degree of involvement of your institution/organization in the preparation and implementation of EU-Turkey Readmission Agreement, EU-Turkey Statement of 18 March 2016 and Facility for Refugees in Turkey (FRIT), EU Regional Trust Fund in Response to Syrian Crisis (Madad Fund) and migration management component of the Instrument for Pre-accession Assistance (IPA) folded into FRIT (“Instruments”)?
2. *Transparency*: Depending on the stage of the involvement of your institution/organization with the Instruments;
 - a.
 - i. How do you assess the transparency of the preparation of the Instruments? (For governmental institutions and EU Delegation: Did you share information on the preparation of the Instruments with public?) (For NGOs and IOs: Were you aware of any information on the preparation of the Instruments?)
 - ii. Were the Instruments prepared in a transparent process involving public participation?
 - iii. Were the draft versions of the Instruments shared with public? How were the talks and negotiations between EU and Turkey conducted, were they reflected and accessible to public?
 - iv. Was there parliamentary involvement at the form of parliamentary debates or votings?
 - v. Were other stakeholders such as IOs and NGOs involved in the preparation of the Instruments such as through submission of written opinions or involvement in bilateral or multilateral discussions?



- b.
 - i. In what form are the Instruments adopted, such as treaty, MoU, exchange of letters, action fiche, parliamentary document?
 - ii. What is the procedure and conditions for accessing these documents adopting the Instruments?
 - iii. Are they laid down in a transparent, public document?
 - iv. Are they accessible by public or any stakeholders?
 - c.
 - i. What is the extent of involvement of your institution/organization in the implementation of the Instruments?
 - ii. Would you say that the Instruments are implemented in a transparent, public manner? Is information about the implementation of the Instruments available publicly or to your institution/organization?
 - iii. To your knowledge and observation, what is the degree of parliamentary involvement, as well as IO and NGO stakeholder involvement in the implementation of the Instruments?
3. *Accountability*: To what extent, and if so to whom, are procedures available to hold actors accountable for purported violations of international human rights and refugee law in the implementation of the Instruments? The relevant legal sources can be domestic ones such as the Law on Foreigners and International Protection or international ones such as the European Convention on Human Rights or 1951 Refugee Convention (and for the EU Delegation: EU Charter of Fundamental Rights).
- a. Is there any such *administrative* control at national level and if yes, to what scope? (For governmental organizations: Are there any internal accountability mechanisms within your institution or through another governmental institution such as any hierarchical control, complaint procedures or advisory board?) (For NGOs and IOs: Are there internal accountability mechanisms available to your institution before any governmental institution such as any complaint procedures or advisory board?) If yes, does your institution/organization have any experience with such mechanisms?



- b. Are there any *judicial or quasi-judicial* accountability mechanisms before institutions such as Ombudsman Institution, the Parliament (through parliamentary inquiries), Constitutional Court and domestic courts? If yes, does your institution/organization have any experience with such mechanisms?
 - c. (For IOs: Are there any mechanisms related to accountability within your organization that is available to national stakeholders? If yes, has it been used so far with respect to accountability regarding the Instruments?)
 - d. Are there any accountability mechanisms available at international level such as European Court of Human Rights, Human Rights Committee? If yes, are you aware of any applications or have your institution/organization had any experience before such mechanisms?
- 4.
- a. *Compatibility*: How do you assess the compatibility of the Instruments as well as their implementation with the sources of human rights and refugee law including the Law on Foreigners and International Protection, European Convention on Human Rights or 1951 Refugee Convention (and for the EU Delegation: EU Charter of Fundamental Rights)?
 - b. Especially, to what extent do the Instruments address the protection of vulnerable persons and groups (persons with special need, as referred in the Law on Foreigners and International Protection) against violence, exploitation and discrimination?
 - c. Upon a complaint by several Spanish NGOs and citizens, the European Ombudsman concluded on 18 January 2017 that the political nature of the EU-Turkey Statement does not diminish the responsibility of the European Commission as an implementing actor to conduct human rights impact assessment. In addition to the assessment of human rights of vulnerable groups, the other components of such impact assessment include the extent of the ability of the relevant EU agencies and the states involved to fulfil their human rights obligations and the mitigating measures, if any needed. Considering these conclusions by the European Ombudsman, how do you evaluate the situation of EU and Turkish implementing actors of the Instruments in terms of abiding by the requirement of human rights impact assessment?



5.
 - a. *Results:* Is your institution/organization involved in the technical assistance components of the Instruments to enhance reception and protection capacities of Turkey? If yes, please describe the relevant assistance actions as well as the role and degree of involvement of your institution/organization.
 - b. Please assess the preparedness of Turkey to absorb and implement such assistance. How are/were the technical assistance components implemented? What was the existing state in Turkey concerning the areas of technical assistance and how the assistance under the Instruments complement the existing capacity?
 - c. What is the degree of effectiveness and sustainability in capacity building with respect to the reception and protection structure of Turkey? What is the difference in capacity in Turkey created by the technical assistance under the Instruments? Do you assess them to be of permanent or temporary nature?

6.
 - a. *Containment/mobility:* Considering the scope and purpose of the Instruments, what effects do you think they have on the mobility of individuals and groups seeking international protection? Do they promote their containment or mobility?
 - b. Do the actions within the scope of the Instruments entail mobility restrictions, issuance of permits of stay with limited range or other such measures that affect the mobility of such people?

7. *Alignment:* To what extent are the Instruments (and to which extent are they implemented) in accordance with the three relevant GCR objectives (easing pressures on host countries; enhancing refugee self-reliance; and expanding access to third country solutions)? How do you assess the impact of the Instruments on Turkey in line with the outlined objectives within the GCR?