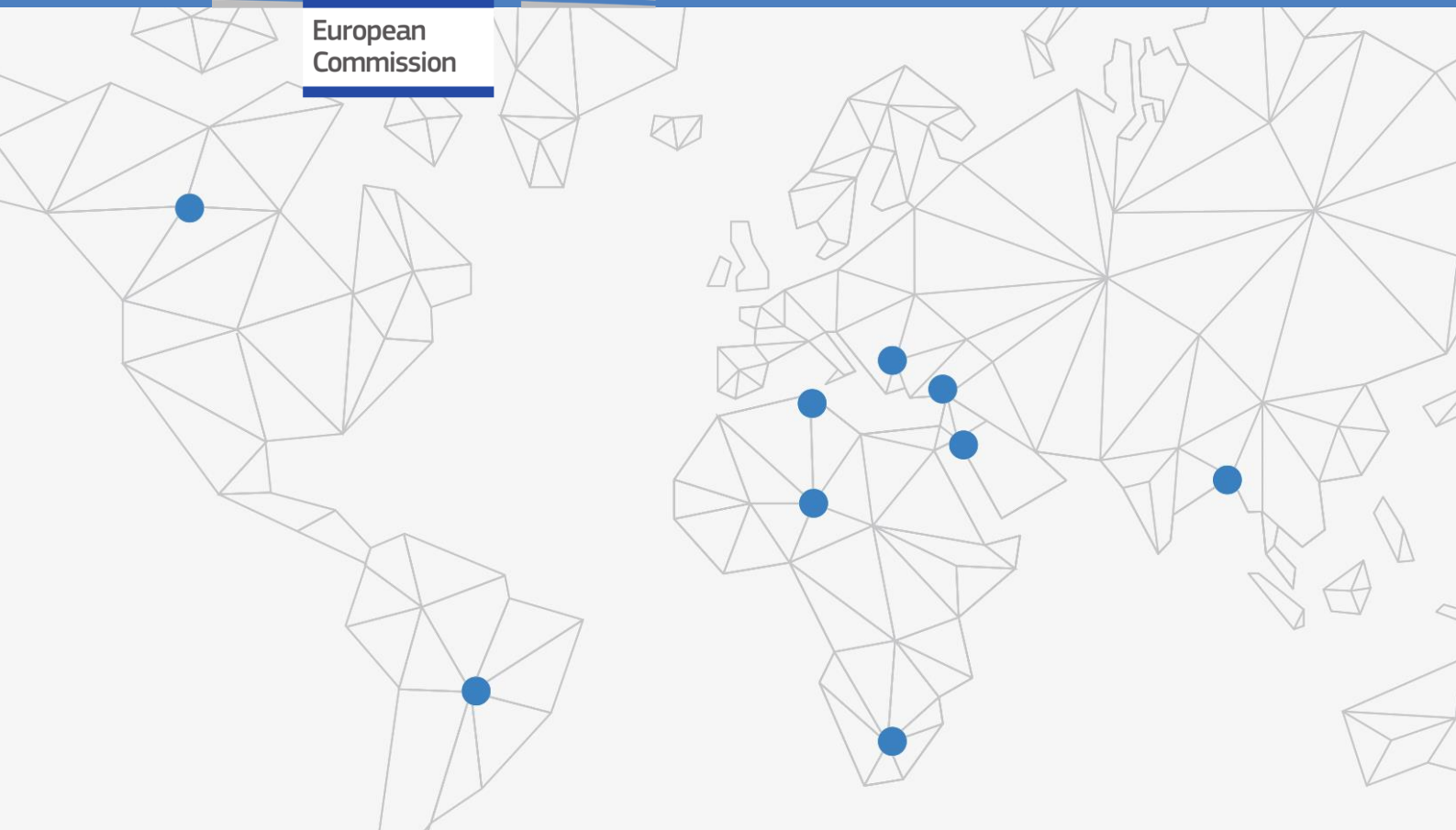


# EUROPEAN POLICYBRIEF



European  
Commission



## ASILE

Global Asylum  
Governance and  
the European  
Union's Role

*The EU-Turkey cooperation in the  
field of migration and asylum:  
What is wrong with it and how  
to fix it?*



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#### ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

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#### Abstract

The EU-Turkey Statement of March 2016, the EU-Turkey Readmission Agreement, and the EU-Turkey funding instruments in migration, including the Facility for Refugees in Turkey, constitute EU-Turkey instruments for cooperation in migration and asylum. The EU-Turkey Statement, which was adopted more than seven years ago, has been unfortunately adopted as a model for other EU-third country cooperation arrangements in the field of migration. It is important to analyse the EU-Turkey migration cooperation instruments and how they are implemented in practice, take stock of what went right and wrong, and finally draw lessons on how to improve the EU-third country cooperation instruments in terms of transparency, accountability, compatibility with international law, effectiveness, and alignment of these instruments with the Global Compact on Refugees. This policy brief, which is based on ASILE reports on the EU-Turkey migration cooperation arrangements authored mainly by national researchers who are Turkish legal academics, seeks to highlight problematic issues relating to the EU-Turkey cooperation instruments in the field of migration and asylum and their implementation and suggests ways to improve these issues.

## 1. Introduction

Turkey, as a transit country for most migrants and refugees, has been a necessary stop on their way to Europe. Since the large-scale arrival of refugees and migrants to European Union (EU) shores in 2015, cooperation with the Turkish government has become an essential part of the EU policy to manage migration. This policy brief examines the political, legal, and financial instruments through which the EU and Turkey cooperated in the fields of asylum and migration between 2015 and 2021. The analysis focuses on three main instruments: the EU-Turkey Statement of March 2016, the EU-Turkey Readmission Agreement, and EU-Turkey funding instruments in the field of migration, namely, the Facility for Refugees in Turkey (FRIT), the EU Regional Trust Fund in Response to the Syrian Crisis (Madad Fund), and the migration management component of the Instrument for Pre-accession Assistance (IPA), which were integrated into the FRIT.

## 2. Methodology

The legal, political, and financial EU-Turkey instruments in the field of migration and asylum are analysed and evaluated on the following points: effectiveness, fairness (including transparency and accountability), consistency (compatibility with international law and alignment of instruments with the Global Compact on Refugees), and their impacts on the containment/mobility of refugees and asylum seekers. The analysis is based on the [ASILE Country Report covering Turkey](#) which reviews of relevant EU-Turkey instruments, relevant literature, and stakeholder interviews. A total of 25 interviews were held with respondents working for governmental, international, and non-governmental organisations with different degrees of involvement in the preparation and implementation of EU-Turkey Instruments on migration and asylum. This study is part of a [wider research](#) within the scope of the ASILE project on EU migration cooperation with third countries, where similar research has been conducted on Tunisia, Serbia, and Niger.

## 3. Research Findings

### **KEY FINDING #1: The EU-Turkey Statement and the EU-Turkey Readmission Agreement seek to contain migrants and refugees**

The EU-Turkey Statement, the EU-Turkey Readmission Agreement, and the EU-Turkey financial instruments in the field of migration all seek to contain migrants and refugees in Turkey and even within Syria. Many interviewees acknowledged that the ultimate aim of the EU-Turkey instruments in the field of migration is containment. This heavy focus on containment does not contribute to addressing the root causes of flight from Syria or Turkey to the EU; hence, these instruments only offer a time-limited and temporary solution to the so-called problem of mass irregular arrivals to Europe. Moreover, the containment focus in the EU-Turkey Statement and

other EU-third country instruments does not effectively prevent and decrease the number of lives lost at sea ([IOM Missing Migrants Project 2023](#); [Ovacik et al. 2022, ASILE Country Report Turkey](#)). ASILE research found that the EU-Turkey Statement arrangements increased the structural vulnerability of refugees and led to more precarity among the Syrian refugee population in Turkey ([Sanlier Yuksel, 2022, ASILE Country Report Turkey](#)).

The EU-Turkey Statement, which was developed mainly by EU policymakers to stop the irregular arrival of refugees, asylum seekers, and migrants from Turkey to EU Member States, restricts the right to seek asylum but does not offer a meaningful alternative for persons in need of protection. This Statement does not establish a meaningful legal route to the EU. Establishing legal routes for individuals seeking asylum can decrease irregular arrivals to the EU and prevent loss of lives at sea in a meaningful manner.

The only aspect of the Statement promoting legal pathways is the so-called 1:1 resettlement scheme. In the Statement, the Member States 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'. As of May 2023, 37,743 Syrians have been resettled under this 1:1 resettlement scheme ([Turkish PMM 2023](#)). Considering that Turkey hosts more than four million forcibly displaced people, including 3.4 million Syrians holding temporary protection status in Turkey ([UNHCR Syria Regional Response 2023](#)), the number of resettled persons under the EU-Turkey statement is insignificant.

The EU-Turkey Statement arrangements, especially the return and containment aspects, raise issues regarding compatibility with international refugee and human rights principles. Turkey is not a safe country for all refugees and asylum seekers ([Ovacik et al. 2022, ASILE Country Report Turkey](#)). Turkey's geographical limitation to the 1951 Refugee Convention, the shortcomings of the Turkish asylum system, and the overburden of Turkish capacity for hosting refugees make it difficult to assume that Turkey is a safe country for all asylum seekers and refugees ([Ovacik et al., 2022, ASILE Country Report Turkey](#)). This raises serious issues about the conformity of the returns under the Statement and the EU-Turkey Readmission Agreement with international law, especially since the Greek authorities accept Turkey as a safe third country. There is a risk of refoulement for those who are returned from Greece to Turkey under the EU-Turkey Statement arrangements ([ECRE Report 2021](#)).

Returns from Greece to Turkey under the EU-Turkey Statement remain problematic since Turkey reduced the time limit to appeal a deportation order from 15 days to 7 days in 2019. There are serious problems with access to asylum procedures ([Sanlier Yuksel, 2022, ASILE Country Report Turkey](#)), and access of detained migrants (including rejected asylum seekers) in Removal Centers to legal aid and courts is riddled with difficulties, which increases the chances of *refoulement* and other fundamental rights violations ([ECRE Report 2021](#); [Ineli-Ciger, Yigit, 2020 ASILE Turkey Country Fiche](#)).

The implementation of the EU-Turkey Statement is not transparent. The fact that the European Commission ceased to publish regular updates on the implementation of the Statement in 2017, and since then, only providing fragmented and brief information is a concern ([Ovacik et al., 2022, ASILE Country Report Turkey](#)). It is not clear how many persons are returned from Greece to Turkey under the Statement, the profile of the persons returned under the Statement arrangements if they applied for asylum in Greece, and so on.

The EU-Turkey Statement lacks any specific monitoring or supervision bodies or accountability mechanisms for the shortcomings or misconduct taking place during its implementation. The absence of such mechanisms hinders human rights violations to be detected and remedied.

Despite the real risk of serious human rights violations, since the EU-Turkey Statement is a soft law instrument that the EU denies authorship (*NF and Others v European Council, ECLI:EU:C:2018:705*), establishing accountability of the EU for violations of human rights arising from the EU-Turkey Statement is nearly impossible, at least under EU law, creating a legal vacuum.

The EU-Turkey Statement arrangements and EU-Turkey Readmission Agreement are not in line with the objectives of the UN Global Compact on Refugees, considering that the first objective of the Compact is to ease the pressures on the host states hosting large number of refugees. The Statement and the Readmission Agreement go against this because they increase pressure on Turkey by requiring it to prevent new arrivals to the EU and readmitting those who have transited through Turkey to reach the EU.

## **Key Finding #2: The EU-Turkey Funding Instruments partially align with the Global Compact on Refugees but need more transparency, sustainability and mobility**

The projects funded under FRIT, especially the Emergency Social Safety Net (ESSN)<sup>1</sup>, Project for Improving the Health Status of the Syrian Population under Temporary Protection<sup>2</sup> (SIHHAT) and Conditional Cash Transfer for Education (CCTE)<sup>3</sup>, have been and continue to be

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<sup>1</sup> Emergency Social Safety Net (ESSN) 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 Turkish Ministry of Family and Social Services, delivers cash assistance to vulnerable people under Temporary Protection / International Protection / Humanitarian Residence Permit in Turkey to cover their basic needs such as food, shelter, and clothing in dignity. See Kizilaycard (2023) <https://kizilaykart.org/>.

<sup>2</sup> Project for Improving the Health Status of the Syrian Population under Temporary Protection and Health Related Services offered by the Republic of Turkey (SIHHAT project) is implemented by the Turkish Ministry of Health and funded by the EU. Within the scope of this project Migrant Health Centres were established in cities most densely populated by Syrians. In these centres along with Turkish medical staff, Syrian doctors, nurses and translators are employed. <https://raisd-h2020.eu/project/sihhat-project/>

<sup>3</sup> Conditional cash transfer for education (CCTE) programme offers financial aid to families of Syrians students in return for their attendance to school and it supports school enrolment and attendance of refugee children through the provision of bi-monthly payments to refugee families, on condition that pupils attend school regularly. UNICEF, <https://www.unicef.org/turkiye/en/press-releases/conditional-cash-transfer-education-ccte-programme-syrians-and-other-refugee>.

instrumental in providing Syrian refugees in Turkey with essential support. These projects also contribute to the self-reliance of refugees and, to a certain extent, ease pressure on Turkey.<sup>4</sup> Therefore, they can be accepted as the only component of the EU-Turkey cooperation in the field of migration, which is in line with the Global Compact on Refugees and its objectives. However, our research ([Ovacik et al., 2022, ASILE Country Report Turkey](#)) found the following.

- There is an issue of **transparency** with the EU-Turkey funding instruments, especially the second phase of the FRiT; the methods adopted while selecting projects to be funded are not entirely clear. Moreover, there is also the absence of publicly available data necessary for the preparation, monitoring, and evaluation of the implementation of the EU-Turkey financial instruments because such data requests are regularly denied by Turkish authorities, as pointed out by the European Court of Auditors.<sup>5</sup>
- The **sustainability** of projects funded under FRiT is also questionable. Our research found that actions funded by the EU, especially those concerning non-capacity building, are conditioned upon EU funding; it is generally agreed that if EU funding is ceased, these projects are unlikely to continue.
- The FRiT projects aim to reduce the mobility of asylum seekers and refugees both within Turkey and from Turkey to the EU. Projects funded under the IPA and FRiT, which seek to enforce Turkey's border management and return capacity, can easily lead to violation of the human rights of migrants and refugees since Turkey does not have the will or capacity to provide effective protection for all migrants and refugees within its borders.

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<sup>4</sup> These projects need to observe the local labour market considerations in Turkey. For instance, Sanlier Yuksel, 2022, ASILE Country Report Turkey) p. 34 notes "Despite the optimistic views (Kirişçi, 2020) claiming that comprehensive projects to be made especially for the agricultural sector, where refugees work intensively, are valuable both for EU-TR trade and that it will be possible for refugees to access formal business resources, the newly implemented projects in agriculture may also have drawbacks. A civil society representative (TR8) mentioned that although one of the main challenges is the high rate of informality in agriculture, the projects aim to improve the resilience of Turkish citizens who are farmers or workers and refugees can prevent informality. Because the wages are very low, the conditions are hyper-precarious, and the amount of ESSN is very low, both Turkish citizens and refugees prefer formal employment. But the main problem is that agricultural labour is cyclical, seasonal and mobility is very high."

<sup>5</sup> 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. ECA – Special Report 27/2018 The Facility for Refugees in Turkey: helpful support, but improvements needed to deliver more value for money. European Court of Auditors, <<https://op.europa.eu/webpub/eca/special-reports/refugees-turkey-27-2018/en/>>.

## Policy Recommendations

- 1. The EU-Turkey arrangements should observe the following principles to avoid repeating the mistakes of the EU-Turkey Statement (Ineli-Ciger, Ulusoy 2021).** First, the EU-third country arrangements should not be in the form of soft law but rather international agreements, and to ensure accountability of the actors involved, the EU should own these future agreements and take responsibility for the agreed measures. Second, objective and independent monitoring, supervision, and accountability mechanisms should be introduced to safeguard the fundamental rights of all individuals who are subject to these arrangements. Third, readmission agreements, as in the case of Turkey, can easily be denounced, and persuading transit countries or countries of origin to take people back is not an easy task. Hence, placing 'return' at the centre of supranational migration and asylum laws and policies is not viable and makes refugees and asylum seekers susceptible to being used as bargaining chips in foreign affairs relations. Finally, containment policies that leave human beings in legal and actual limbo are not feasible to deal with forced migration instances. Thus, future EU third-country migration cooperation agreements should focus on addressing the root causes of flight and seek to promote meaningful legal pathways to asylum and protection instead of focusing on containment as the sole objective.
- 2. Projects funded by the EU, such as ESSN, SIHHAT, and CCTE, contribute to the self-reliance of refugees and ease the burden on Turkey; hence, these can be accepted as good practices that yield effective results in line with the Global Compact on Refugees.** However, the transparency and sustainability of these projects must be improved. Moreover, safeguards must be introduced to ensure that projects funded under the IPA and FRIT that seek to enforce Turkey's border management and return capacity do not violate the fundamental rights of refugees and migrants. An independent monitoring mechanism can contribute to make sure the activities funded by the EU and the Member States are in line with international refugee and human rights law.