

# An Examination of the Legal Issues Surrounding the Migration 'Deal' Between the European Union and Turkey



Edinburgh Peace and Justice Centre  
5 Upper Bow  
Edinburgh EH1 2JN

[www.peaceandjustice.org.uk](http://www.peaceandjustice.org.uk)

4 October 2016

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## Glossary

**“Migrant”**: A person who moves from one country to another to live and usually work, either temporarily or permanently.<sup>1</sup>

**“Regular Migrant”**: A foreign national whose migration status complies with the requirements of domestic immigration legislation and rules.<sup>2</sup>

**“Irregular migrant”**: A foreign national whose migration status does not comply with the requirements of domestic immigration legislation and rules.<sup>3</sup>

**“Refugee”**: A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unstable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."<sup>4</sup>

**“Asylum Seeker”**: A person who has left his or her country of origin and formally applied for asylum under the 1951 Convention Relating to the Status of Refugees in another country but whose application has not yet been concluded. Will remain an asylum seeker for so long as the application or an appeal against its refusal is still pending.<sup>5</sup>

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<sup>1</sup> International Organisation for Migration, *Key Migrant Terms*, 2016, at <https://www.iom.int/key-migration-terms>.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Text of the 1951 Convention Relating to the Status of Refugees, 1951, at <http://www.unhcr.org/uk/3b66c2aa10>.

<sup>5</sup> Refugee Council, *Who's Who*, 2016, at [http://www.refugeecouncil.org.uk/policy\\_research/the\\_truth\\_about\\_asylum/the\\_facts\\_about\\_asylum](http://www.refugeecouncil.org.uk/policy_research/the_truth_about_asylum/the_facts_about_asylum).

## Summary

On 18 March 2016 the European Union (EU) and Turkey signed an agreement to end the irregular migration flows from Turkey to islands off the coast of Greece. This paper aims to reveal the legality of this agreement under the current EU and international legislative frameworks. Moreover, the positions and supporting argumentation of both governmental and non-governmental organisations will be examined to disclose the legality or otherwise of this state arrangement. Consequently, this paper will draw two principal conclusions:

1. The EU-Turkey agreement cannot at this moment in time be considered legal under international law. This is due to the security situation in Turkey which impacts the health and rights of the individuals concerned. Thus, Turkey cannot be afforded the designation of a 'Safe third Country'.
2. The EU and its member states should explore alternative solutions such as a common European Asylum Policy, and a focus on integrating refugees/migrants into European society instead of returning 'irregular' migrants to Turkey.

## Foreword

The Edinburgh Peace and Justice Centre (P&J) is an independent civil society organisation which was established in 1980. The aim of the centre is to promote and raise public awareness of issues relating to non-violence, human rights, peacebuilding, conflict resolution and ecological sustainability. The EP&JC is particularly concerned about the nature and motivation behind this agreement and the humanitarian situation in countries throughout the Middle East notably in Syria. The rise in refugees from Syria resulting from the ongoing conflict there has caused widespread socio-economic difficulties throughout the EU and responses to the refugee crisis have been inadequate at best.

These concerns and the continued humanitarian crisis unfolding in Syria and its neighbouring countries, has motivated EP&JC to examine possible human rights violations and work to raise further public awareness of the ongoing situation. In our bi-monthly publication *Peace and Justice News* the EP&JC has highlighted the urgent need to address the causes of the conflicts, to end the flows of arms to the region, an end to foreign intervention, vigorous efforts at diplomatic solutions that include all parties and the protection of internally displaced persons and refugees. There should be alternative and more ethical solutions to preventing the refugee 'crisis' other than simply returning the individuals to Turkey.

This paper will set analyse the agreement between the EU and Turkey and call for the United Kingdom (UK) government to take a fair and proportionate share of refugees from Syria and other war-torn countries. It has been compiled by EP&JC volunteers.

# 1.0 Background

## 1.1 Introduction

The EU-Turkey Statement was signed on 18 March 2016 in response to the unprecedented numbers of refugees and migrants arriving in Europe from routes through the Western Balkans and the Mediterranean.<sup>6</sup> The purpose of the agreement is to stem the flow of irregular migration and return irregular migrants from Greece back to Turkey in a 1:1 swap, whereby for every irregular migrant returned to Turkey the EU accepts a Syrian refugee from Turkey. In 2015 a total of 1, 015,078 individuals entered the EU by migratory sea routes. This is in comparison to 216, 054 individuals arriving by sea in 2014. A total of 224, 033 individuals have entered the EU by sea from January to June 2016. The largest contingent of individuals arriving by sea are Syrian nationals at 38 per cent, with Afghani and Iraqi citizens making up 20 per cent and 12 per cent of the total number.<sup>7</sup> There are currently 2,728,986 registered Syrian refugees in Turkey. As of 3 August 2016, 160,510 refugees and migrants have arrived in Greece from Turkey by sea.

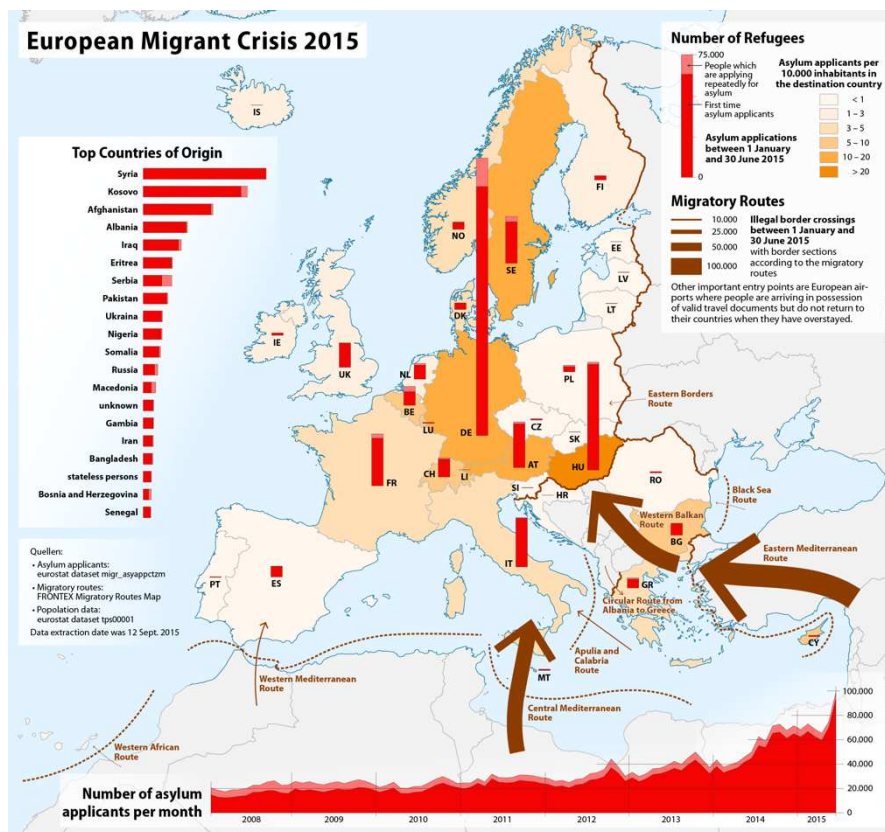


Figure 1: Routes and Countries of Origin of refugees from 1 January to 30 June 2015 [Eurostat Data]

<sup>6</sup> The European Council, *EU-Turkey Statement 18 March 2016*, 2016, at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

<sup>7</sup> UNHCR, *Refugees/Migrants Emergency Response Mediterranean*, 2016, at <http://data.unhcr.org/mediterranean/regional.php>.

The migratory routes from Turkey to Greece are particularly dangerous due to the materials used, such as unseaworthy boats, and the fact that individuals do not wear lifejackets. The strain on the Greek coast guard in attempting to properly oversee the safety of the individuals also impacts the precautionary safety measures. The United Nations High Commissioner for Refugees (UNHCR) has stated that “Increasing numbers of refugees take their chances aboard unseaworthy boats and dinghies in a desperate bid to reach Europe, with the vast majority of those attempting this dangerous crossing in need of international protection, fleeing war, violence and persecution in their country of origin.”<sup>8</sup>

According to the UNHCR, Europe should be doing more to protect the lives and rights of refugees and to “demonstrate moral and political leadership” in confronting a “tragedy of epic proportions.”<sup>9</sup> Such remarks demonstrate the severity and magnitude of the issue at hand, and how political leadership has failed to grasp the root source of the problem or provide effective and required humanitarian assistance.

The unprecedented number of asylum seekers and economic migrants in 2015 resulted in several EU countries failing to adequately respond to offer the reception and material aid that was required with particular pressures on Greece and Italy. Consequently, the emergency solutions that were put in place often led to the deterioration of reception standards and ongoing delays in the processing of and application time for the asylum requests. These emergency solutions have essentially provided evidence for the argument that the agreement is based upon unethical and possibly illegal grounds. Peter Sutherland, the UN Secretary General’s special representative for international migration and development, voiced concern over the legality of the agreement under international law. This is due to the possibility of Syrian migrants being returned to Turkey without first having their asylum applications considered, and the possibility of Syrian nationals being further returned from Turkey back to Syria.

## 2.0 The EU-Turkey Agreement in Detail

### 2.1 What does the Agreement entail?

The EU-Turkey cooperative agreement is a pivotal cornerstone of the EU’s efforts to effectively govern the migration/refugee crisis. The primary objective of the agreement is twofold. Firstly, it is intended to “break the business model of the smugglers” and secondly to reduce the incentives for migrants/refugees attempting to enter the EU through irregular migration.<sup>10</sup>

In order to achieve this the EU and Turkey have agreed on several key points which make up the ‘action points’ of the agreement: (reordered by relevance)

1. All new irregular migrants, whether persons not applying for asylum or asylum seekers whose applications have been declared inadmissible, crossing from

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<sup>8</sup> *Ibid.*

<sup>9</sup> UNHCR, *European leaders strongly urged to put human life, rights and dignity first in Mediterranean decision*, 2015, at <http://www.unhcr.org/uk/news/latest/2015/4/5538dd589/european-leaders-strongly-urged-human-life-rights-dignity-first-mediterranean.html>.

<sup>10</sup> European Commission, *Six Principles for further developing EU-Turkey Cooperation in tackling the Migration Crisis*, 2016, at [http://europa.eu/rapid/press-release\\_IP-16-830\\_en.htm](http://europa.eu/rapid/press-release_IP-16-830_en.htm).

Turkey to the Greek islands from 20 March 2016 will be returned to Turkey, in full accordance with EU and international law.

- II. For every Syrian returned to Turkey from the Greek islands, another Syrian will be resettled directly to the European Union from Turkey, taking into account the United Nations Vulnerability Criteria, whilst giving priority to those who have not previously entered or tried to enter the European Union irregularly.
- III. The European Union will, in close co-operation with Turkey, further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey. Once these resources are almost exhausted, the EU will provide up to €3 billion more by the end of 2018. The initial €3 billion is to assist Turkey in addressing the immediate humanitarian and development needs of refugees in Turkey and the impact this has on host communities. €1 billion will come from the EU budget and the remaining €2 billion is contributions from EU member states.
- IV. Fulfilment of the visa liberalisation agenda will be brought forward to the end of June 2016. This entails visa liberalisation for Turkish citizens who wish to travel in the Schengen area.
- V. Turkey's process of accession to the EU will be reenergised in various ways.
- VI. Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the European Union.<sup>11</sup>

This list is representative of the key underlying aims of the agreement and displays the renewed and perhaps strengthened cooperative relationship between the EU and Turkey.

EU representatives have affirmed the importance of the agreement. The European Council President has stated that the agreement “helped avoid a total breakdown of the bloc’s Schengen internal border system.”<sup>12</sup> Likewise, European Commission (EC) President Jean-Claude Juncker also voiced support of the agreement by declaring that he wishes to see “our asylum system to be the best in the world.”<sup>13</sup>

However, there is clearly a lack of political consensus to strive for a uniform and ‘European’ asylum system. The political sensitivity of accepting migrants is evident throughout the EU. The Hungarian Prime Minister described the arrival of asylum seekers as a ‘poison’ and went to say that his country did not need a single migrant. This opinion is shared by a number of other EU countries and the UK currently has an opt out along with Ireland and Denmark on EU asylum policies.

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<sup>11</sup> European Council, *EU-Turkey statement, 18 March 2016*, 2016, at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

<sup>12</sup> The Independent, *EU Council President Donald Tusk says the EU’s open border system could be about to collapse*, 12 November 2015, at <http://www.independent.co.uk/news/uk/politics/eu-council-president-donald-tusk-says-the-eu-s-open-border-system-could-be-about-to-collapse-a6731821.html>.

<sup>13</sup> European Commission, *Speech by President Jean-Claude Juncker at the European Parliament Plenary Session*, 2016, at [http://europa.eu/rapid/press-release\\_SPEECH-16-1381\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-16-1381_en.htm).

For the EU-Turkey agreement to comply with international law, the agreement affirms that migrants who arrive on the Greek islands will be ‘duly registered’. In addition, all asylum applications will be processed individually based on their merits by the Greek authorities and in accordance with the EU’s Asylum Procedure Directive.<sup>14</sup> This entails an individual interview for the applicants, an overall individual assessment, and possibly a right of appeal if necessary.<sup>15</sup> This also means that the EU considers the process not to be a blanket or automatic return of asylum seekers.

If the migrant is not applying for asylum, the application has been declared unfounded (rejected on its own merits) or the application has been declared inadmissible (not rejected on its merits but on the grounds that Turkey is the first country of asylum or a safe third country) then the applicant will be returned to Turkey.<sup>16</sup> The costs of such returns are estimated to be €280-300 million for the next six months from 20 March 2016. This cost will be covered by the EU.<sup>17</sup>

### 2.1.1 Is the Agreement Working?

In terms of deterring future irregular migration routes, the EC Second Report on progress made in implementation of the EU-Turkey Agreement affirmed that there has been a sharp decrease in the number of migrants entering the EU since the implementation of the agreement.<sup>18</sup> One month prior to the date of implementation of this agreement, approximately 1,740 migrants per day were crossing the Aegean Sea to the Greek islands. However, since the 1<sup>st</sup> May 2016 the average daily number of migrants attempting the same crossing fell to 49.<sup>19</sup> EC figures show that the number of lives lost while attempting the sea has fallen to seven from the 20 March to June 2016, in comparison to the 89 lives lost at sea in January 2016. European Commissioner Frans Timmermans has said that the agreement is delivering results by showing the migrants that this journey is not worth risking their lives for on smugglers boats.<sup>20</sup>

Since the EU-Turkey agreement took effect on 20 March 2016, 468 irregular migrants who are not applying for asylum have been returned to Turkey from Greece. There were also successes with the 1:1 resettlement programme that is central to the overall success of returning individuals back to Turkey. Five hundred and eleven Syrians have been resettled from Turkey to the EU. This number exceeded the returns from Greece to Turkey and is a substantial increase since the EC’s first report on the implementation of the EU-Turkey

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<sup>14</sup> *Supra* n.5.

<sup>15</sup> European Commission, *Implementing the EU-Turkey Statement – Questions and Answers*, 2016, at [http://europa.eu/rapid/press-release\\_MEMO-16-1664\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1664_en.htm).

<sup>16</sup> Steve Peers, *The Final EU/Turkey refugee deal: a legal assessment*, 2016, at <http://eulawanalysis.blogspot.co.uk/2016/03/the-final-euturkey-refugee-deal-legal.html>.

<sup>17</sup> Janis A. Emmanouilidis, *Elements of a complex but still not incomplete puzzle: an assessment of the EU(-Turkey) summit*, 21 March 2016, at [http://www.epc.eu/documents/uploads/pub\\_6417\\_post-summit\\_analysis\\_-\\_21\\_march\\_2016.pdf](http://www.epc.eu/documents/uploads/pub_6417_post-summit_analysis_-_21_march_2016.pdf).

<sup>18</sup> European Commission, *Second Report on the progress made in the implementation of the EU-Turkey Statement*, 2016, at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd\\_commission\\_report\\_on\\_progress\\_made\\_in\\_the\\_implementation\\_of\\_the\\_eu-turkey\\_agreement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf).

<sup>19</sup> European Commission, *Managing the Refugee Crisis: Commission reports on progress made in the implementation of the EU-Turkey Statement*, 2016, at [http://europa.eu/rapid/press-release\\_IP-16-2181\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2181_en.htm).

<sup>20</sup> *Supra* n.12.



agreement.<sup>21</sup> The supporting argumentation provided for by the EC is that this method of 1:1 resettlement is sending a clear message to Syrian refugees in Turkey that there is a legal and safe passage to the EU instead of irregular crossings.

## 2.1.2 Improvements in Facilities

The EU has also cited progress in the overall improvement of the facilities for refugees in Turkey. The EU has designated €150 million to improve the sanitary and overall living conditions at the Turkish facilities. This includes expenses for food, health care, accommodation and access to education. The large number of refugees and migrants arriving in Greece has coincided with the ongoing recession in Greece.<sup>22</sup> The economic recession that Greece has endured for the previous six years has resulted in austerity in return for financial assistance. This austerity impacts the capabilities and resources of governmental departments and administrations responsible for addressing the refugee crisis.

### 2.1.3. Current Issues with the Agreement

However, the failures of the agreement should also be noted. Attention has been placed on the facilities on the Greek islands used for reception, identification and processing of asylum seekers and migrants since the agreement was reached in March 2016. The standards and capacities of these facilities on the Greek islands are important for upholding human rights safeguards alongside ethical principles. Several NGOs have reported dire conditions in the facilities. Human Rights Watch noted the absence of an effective police force to protect persons from incidents of violence at the centres.<sup>23</sup> On the 13 May 2016 a fight between 200 men occurred without police presence at the Vahti facility on the island of Samos. Perhaps more concerning was the fact that this centre is a 250-bed facility which was in fact holding 945 persons that day.<sup>24</sup> Around 8,450 migrants are currently on the Greek islands: this surpasses the capacity threshold of 7,450 persons and has resulted in squalid conditions and increased challenges on the facilities to cope with individuals and vulnerable groups. An Amnesty International report stated that the facilities on the islands of Lesbos and Kos were inhumane. Problems included a lack of police, insufficient tents, food, and concerns over the hygiene conditions.<sup>25</sup>

The problem with this agreement also relates to the capacities of the Greek authorities. Before the EU-Turkey agreement Greece could process 1,500 applications per month for asylum. Comparing this to the 230,000 people who arrived in Greece in the first three months of 2016 puts the magnitude and overwhelming numbers of the challenge for the Greek authorities in context.<sup>26</sup>

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<sup>21</sup> European Commission, *EU-Turkey Statement: Progress Report June 2016*, 2016, at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160615/factsheet\\_implementation\\_of\\_the\\_eu-turkey\\_statement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160615/factsheet_implementation_of_the_eu-turkey_statement_en.pdf).

<sup>22</sup> *Supra* n.5.

<sup>23</sup> Human Rights Watch, *Greece: Refugee “Hotspots” Unsafe, Unsanitary*, 2016, at <https://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary>.

<sup>24</sup> *Ibid.*

<sup>25</sup> Amnesty International, *Greece: Chaos and squalid conditions face record number of refugees on Lesbos*, 2016, at <https://www.amnesty.org/en/latest/news/2015/08/chaos-and-squalid-conditions-face-record-number-of-refugees-on-lesvos/>.

<sup>26</sup> Silvia Colombo, *Slouching Towards Ankara: The EU-Turkey Migration Deal*, 29 April 2016, at [http://www.cfr.org/councilofcouncils/global\\_memos/p37825](http://www.cfr.org/councilofcouncils/global_memos/p37825).

Moreover, the intended aim of relocating persons from member states that hold large percentages of asylum seekers/migrants to other countries throughout the EU has also not been a success. The overall number of migrants and refugees that have been relocated from the EU has been met with dismay. In the European Commission's (EC) first report on the relocation and resettlement of persons on the 16 March 2016, the EC set an overall target to relocate 6,000 persons by the time the second report was compiled (15 June 2016).<sup>27</sup> However, only 1,145 persons had been relocated from Greece and Italy by the 12<sup>th</sup> April 2016. This is in contrast to the EU member States' commitment to relocate 160,000 people by September 2017.<sup>28</sup> Furthermore, and of relevance to the EU-Turkey agreement, the number of person to be resettled from Turkey to the EU is capped at a maximum of 72,000. This compares to 57,046 persons of concern already in Greece.<sup>29</sup>

#### 2.1.4. IGO and NGO Resistance

Several aid agencies have withdrawn their services out of a concern about the conditions and that rights abuses are not being prevented. The international medical humanitarian organisation Medecins Sans Frontieres (Doctors Without Borders), alongside UNHCR and Save the Children, has withdrawn members of staff from facilities located on Greek islands. This sign of protest is in response to what the UNHCR describe as a 'mass expulsion' of persons.<sup>30</sup> Moreover, the disturbing hygiene standards and inadequate facilities to accommodate and facilitate the processing and identification of the individuals has contributed to NGOs withdrawing their significant and much needed levels of support. Mercy Corps states that any deal that is centred on the blanket return of individuals violates international humanitarian law and undermines the EU's commitment to human rights. Consequently, Mercy Corps' position is that the EU should suspend plans to return migrants from Greece to Turkey while the legality and practicality of such plans are under review. As noted by the Refugee Council, refugees already live on the fringe of society with persons resorting to prostitution and other degrading means to earn a living. The squalor that refugees and asylum seekers currently live in is hampering their inclusion into society and their future economic opportunities.

Amnesty International has also highlighted several flaws with the EU-Turkey agreement. It has stated that Turkey has been forcibly been sending back refugees to Syria at a rate of 100 persons per day since January 2016. Testimonies from a number of Syrian citizens have confirmed the Amnesty report, with many Syrians being detained by the police and put on a bus back to the Syrian border. This includes young children without their parents and pregnant women. In addition, Amnesty has also stated that many Syrian refugees have been denied the opportunity to register in Turkey and sent back to Syria.<sup>31</sup> If Turkey is in fact returning Syrian refugees to Syria this would violate the principle of non-refoulement.

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<sup>27</sup> European Commission, *Relocation and Resettlement: EU Member states urgently need to deliver*, 16 March 2016, at [http://europa.eu/rapid/press-release\\_IP-16-829\\_en.htm](http://europa.eu/rapid/press-release_IP-16-829_en.htm).

<sup>28</sup> European Commission, *Relocation and Resettlement: EU Member States urgently need to deliver*, 12 April 2016, at [http://europa.eu/rapid/press-release\\_IP-16-1343\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1343_en.htm).

<sup>29</sup> The Guardian, *EU-Turkey deal to return refugees from Greece comes into force*, 20 March 2016, at <https://www.theguardian.com/world/2016/mar/18/refugees-will-be-sent-back-across-aegean-in-eu-turkey-deal>.

<sup>30</sup> The Guardian, *Refugee Crisis: key aid agencies refuse any role in 'mass expulsion'*, 23 March 2016, at <https://www.theguardian.com/world/2016/mar/23/refugee-crisis-aid-agencies-unhcr-refuse-role-mass-expulsion-greece-turkey>.

<sup>31</sup> Amnesty International, *Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal*, 2016, at <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

Medecins Sans Frontieres (MSF) maintains the position that the EU-Turkey agreement is wrong based on three grounds. Firstly, the EU-Turkey deal is an attack on the right to seek asylum. Secondly, the EU-Turkey deal is an unacceptable perversion of humanitarian aid, namely the practices of the Directorate-General for European Civil Protection and Humanitarian Aid Operations (ECHO) who provide rapid delivery of EU relief assistance through humanitarian aid and civil protection. Lastly, pushing solutions to the global displacement crisis onto other countries only worsens the humanitarian crisis.

MSF has indicated that that they wish to see the EU and its member states shift their policy orientation concerning asylum seekers, from ‘pushing them back to taking them in, and ‘from deterrence to a reception focused policy. Similarly, MSF also believes that the aid delivered by ECHO should not be part of a conditional political deal struck by the EU and Turkey and should in turn live up to the principles enshrined in the EU consensus on humanitarian aid. Finally, MSF states that externalizing the border control provokes a worse crisis for vulnerable individuals. Essentially, the humanitarian crisis is ‘pushed away’ from EU countries and the consequential scrutiny of the media. As a result, MSF has taken a stance against a deal which they consider immoral and inhumane and which they believe will cause death, suffering and loss of dignity for many people.

### **2.1.5. Efforts by the EU**

To assist the Greek authorities, the EC has enhanced its coordination and support. An EU coordinator is in place to monitor three teams in Brussels, Athens and Ankara for day-to-day reports, in coordination with Turkish and Greek authorities and alongside various other international organisation. The EU has also awarded 56 million Euros of emergency funding under the Asylum, Migration and Integration Fund for improvements in the Greek registration and processing methods. This involves additional, human resources, improved IT infrastructure and better access to interpreters. The EC has also provided 25 million Euros in emergency funding to the European Asylum Support Office (EAOS). This will enable the EAOS to further assist the Greek authorities to process asylum applications through the deployment of additional personnel from other EU member states. However, EAOS and Frontex (European External Border Agency) have issued multiple calls to EU member states for asylum officers, interpreters and judges. For example, EASO issued a call for an additional 20 asylum experts on the 13<sup>th</sup> June 2016. Thus far, pledges and actual support from other member states remains lower than the requested amount.

### **2.1.6. Future Problems**

On the 29 July 2016 EC President Jean Claude Juncker stated that there is a big risk of the EU-Turkey migrant deal ‘collapsing’ and went on to state that the Turkish President was repeatedly expressing a desire to scrap the deal.<sup>32</sup> This statement coincides with Turkey’s Foreign Minister demanding that the EU declares a specific date for the visa liberalisation. If not, he stated Turkey will ‘distance ourselves from the migrant readmission agreement’ with

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<sup>32</sup> Reuters, *EU’s Juncker sees ‘great risk’ to migrant deal with Turkey: paper*, 30 July 2016, at <http://www.reuters.com/article/us-eu-turkey-juncker-idUSKCN10A0GK?il=0>.

a general ultimatum to the EU to introduce visa-free travel by October 2016.<sup>33</sup> Concerns have been raised against the backdrop of the failed coup attempt in Turkey on the 15<sup>th</sup> July 2016.<sup>34</sup> The consequential rise in state instability and political rhetoric mooted the reintroduction of the death penalty has caused widespread concern over the legitimacy and future success of the EU-Turkey agreement.<sup>35</sup> Concerns have also been raised that the ‘crackdown’ on various democratic rights such as freedom of speech by the Turkish government following the attempted coup could exacerbate the risk of possible human rights infringements on refugees and migrants.<sup>36</sup> However, EU Heads of State have stated that the failed coup attempt does not directly impact the EU-Turkey agreement and both parties will continue to fulfil their respective obligations.<sup>37</sup>

Nonetheless there have been noticeable increases in the number of refugees entering Greece following the attempted coup in Turkey. The Governor of the Greek island of Aegean stated that there is a “constant and apparently increasing flow” to the Greek islands, which is reminiscent of the refugee influx prior to the deal.<sup>38</sup> Moreover, Turkish officials who were sent to Greece to monitor the implementation of the agreement have since been sent back to Turkey.

## 2.2 The Financial and Political Concessions for Turkey

Under the EU-Turkey agreement several fundamental ‘incentives’ were afforded to the Turkish State to secure cooperation. The Turkish Government agreed to accept the return of irregular migrants in return for a variety of political and financial concessions. These include financial grants from the EU totalling €6 billion, the opening of new chapters in Turkey’s EU membership accession process and visa liberalisation for Turkish citizens who wish to travel throughout the Schengen zone.<sup>39</sup>

As of 25 August 2016, the visa liberalisation condition that was included in the agreement had still not been implemented because of political disagreements between the EU and Turkey. Turkey states that it has almost fulfilled the criteria demanded by the EU for such liberalisation and that the EU should now enable Turkish citizens to travel freely throughout the Schengen zone. However, the European Union has repeatedly stated that Turkey has not met certain elements of the agreement and thus it cannot provide the visa liberalisation that Turkey desires. This stems from concerns over Turkey’s anti-terror legislation, which Turkish President Recep Tayyip Erdogan refuses to amend. Any such changes remain unlikely in light of the failed coup attempt and the recent string of terrorist activity, noticeably in Istanbul and Ankara. However, Turkey’s insistence on reenergising its

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<sup>33</sup> Reuters, *Give us EU visa freedom in October or abandon migrant deal, Turkey says*, 15 August 2016, at <http://www.reuters.com/article/us-europe-migrants-turkey-eu-idUSKCN10Q0JB>.

<sup>34</sup> Politico, *Post-Coup crackdown throws doubt on Turkey migration deal*, 20 July 2016, at <http://www.politico.eu/article/post-coup-crackdown-throws-doubt-on-turkey-eu-migration-deal-recep-tayyip-erdogan/>.

<sup>35</sup> EurActiv, *Turkey continues post-coup purge with over 7,000 arrests*, 19 July 2016, at <https://www.euractiv.com/section/global-europe/news/turkey-continues-post-coup-purge-with-over-7000-arrests/>.

<sup>36</sup> Time, *Turkey’s President is using the coup attempt to crack down on the media*, 29 July 2016, at <http://time.com/4429177/turkeys-president-is-using-the-coup-attempt-to-crack-down-on-the-media/>.

<sup>37</sup> *Supra* n.28.

<sup>38</sup> The Guardian, *Aegean islands alarm as refugee numbers rise after Turkey coup attempt*, 30 July 2016, at <https://www.theguardian.com/world/2016/jul/30/refugee-numbers-rise-greece-aegean-turkey-coup-attempt>

<sup>39</sup> *Supra* n.5.

accession talks has in part been successful. The EU has opened a new chapter in Turkey's EU membership talks, which covers budgetary contributions to the bloc.<sup>40</sup> Overall, such political disagreements have threatened to derail the agreement. Irrespective of the agreement in its current form, political disagreements would be to the detriment of the safety and conditions of asylum seekers/refugees because of the lack of political understanding of both sides.

## 3.0 The Legal Challenges of the EU-Turkey Agreement

### 3.1 The Legal Basis for the Agreement

The EC has reaffirmed on multiple occasions that the EU-Turkey agreement conforms with EU and international law. The legal basis for the agreement as communicated by the EU is the EU recast Asylum Procedure Directive (APD). This directive establishes common standards of safeguards and guarantees access to a fair and efficient asylum procedure. In accordance with APD it is said that Syrians who are applying for international protection can be expelled from Greece under Article 33 (1) and (2)(b). This is because Turkey is regarded as the first country of asylum for Syrians pursuant to Article 35 (b). Other persons who may also be declared inadmissible by the Greek authorities can be expelled from Greece in accordance with Article 33 (1) and (2)(c). This is because Turkey being is regarded as a safe third country under the wording of Article 38.<sup>41</sup>

### 3.2 Legality Concerns: Protection and Legal Safeguards for Refugees

Several legality concerns have been raised with regard to the EU-Turkey agreement. One important factor that must be considered is the collective expulsion of individuals which is prohibited under Article 19 EU Charter of Fundamental rights. This prohibition is also found in the European Convention on Human Rights (ECHR) and judgements of the European Court of Human Rights (ECtHR). The ECtHR has stated that when a State has taken responsibility for irregular migrants and asylum seekers, by providing protection or safety measures the ECHR will apply.<sup>42</sup> The EU issued a directive in 2008 that detailed common standards and procedures in member states for the return of illegal third country nationals.<sup>43</sup> Following this, it was confirmed that decisions regarding these third country nationals should be decided on a case-by-case basis and based on more than the illegal entry of the individual. Thus, individuals should be afforded opportunities for their claims to be considered or at the very least opportunities to make asylum claims. The EU has recognised the problematic issues of expelling individuals by ensuring that every case will be addressed individually to comply with international law. However, it should be noted that the EU also allows for 'special circumstances' that will negate the need to examine the substance of the obligation.

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<sup>40</sup> European Council, *Accession Conference with Turkey: Talks opened on Chapter 33 – Financial and Budgetary provisions*, 2016, at <http://www.consilium.europa.eu/en/press/press-releases/2016/06/30-turkey-accession-conference/>.

<sup>41</sup> State Watch, *The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016*, 2016, at <http://www.statewatch.org/news/2016/apr/eu-coe-parl-assembly-refugee-crisis-resolution.pdf>.

<sup>42</sup> Massimo Merlino, Joanna Parkin, *Fundamental and Human Rights Framework: Protecting Irregular Migrants in the EU*, December 2010, at [http://migration.etuc.org/en/docs\\_en/3%20Fundamental%20and%20Human%20Rights%20Framework\\_%20Protecting%20Irregular%20Migrants%20in%20the%20EU.pdf](http://migration.etuc.org/en/docs_en/3%20Fundamental%20and%20Human%20Rights%20Framework_%20Protecting%20Irregular%20Migrants%20in%20the%20EU.pdf).

<sup>43</sup> Directive 2008/115/EC.

A second legal issue with this agreement relates to the concept of ‘first country of asylum’ under EU law. To assess whether a third country (in this case Turkey) constitutes a first country of asylum requires a case-by-case examination. This assessment encompasses a determination of the conditions the person will be returned to as well as safety reassurances. Importantly, there must also be safeguards to prevent a breach of non-refoulement. The principle of non-refoulement means that refugees or asylum seekers shall not be forcibly returned to a country where they are liable to be subjected to persecution.<sup>44</sup>

Another legal issue posed by the EU-Turkey agreement is whether Turkey constitutes a safe third country for refugees. In accordance with APD Article 38 (1) a country is considered to be a safe third country if it fulfils certain criteria. These include:

- Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- There is no risk of serious harm as defined in the Geneva Convention.
- The principle of non-refoulement as set out in the Geneva Convention is respected;
- The prohibition on removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
- The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

Turkey has ratified the 1951 Convention Relating to the Status of Refugees. However, it has retained a geographical limitation that exempts it from extending the Convention to include non-European refugees. Under Turkish legislation, the Law on Foreigners and International Protection grants ‘conditional refugee’ status to individuals who satisfy the requirements outlined in the 1951 Refugee Convention. Additionally, Turkey offers ‘subsidiary protection’ for individuals who are at risk of generalized violence, torture or capital punishment. Thus, it is unclear whether refugees or asylum seekers who are not Syrian nationals have the access required under law to an asylum procedure while in Turkey. Meanwhile, Turkey’s asylum system is not fully operational, and it is overwhelmed by the sheer number of applicants. As Syrian nationals are not European nationals, they too cannot request refugee status in Turkey under the 1951 Refugee Convention. It should be noted that both ‘conditional’ refugees and individuals who receive ‘subsidiary protection’ have temporary status in Turkey without the prospect of long-term integration.<sup>45</sup> Their rights under the Law on Foreigners and International Protection must amount to protection under the Geneva Convention in order for Turkey not to be violating international law.

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<sup>44</sup> Article 33, Convention Relating to the Status of Refugees 1951.

<sup>45</sup> UNHCR, *Legal Considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016, at [https://www.google.co.uk/?client=safari&channel=mac\\_bm&gws\\_rd=cr&ei=vCKJV9D3C-CogAaTvLw4#channel=mac\\_bm&q=turkey ‘conditional+refugee’+status+to+individuals+who+satisfy+the+requirements+outlined+in+the+1951+Refugee+Convention](https://www.google.co.uk/?client=safari&channel=mac_bm&gws_rd=cr&ei=vCKJV9D3C-CogAaTvLw4#channel=mac_bm&q=turkey%20%27conditional+refugee%27+status+to+individuals+who+satisfy+the+requirements+outlined+in+the+1951+Refugee+Convention).

### 3.2.1 Case Study: Askale & Düziçi Deportation Centres

Recent events that took place in the small Turkish town of Askale which hosts the Ezrurum Deportation Centre for irregular migrants have raised serious questions about Turkey being regarded as a safe third country. Local judicial authorities have reported unlawful malpractice by the centre's staff, such as individuals' asylum applications being denied without thorough and fair examination, minors being kept in isolated cells and actions by the Centre staff that equate to inhumane treatment.<sup>46</sup> Amnesty International reported that upon two occasions individuals were not afforded the right to consult a lawyer at the Centre. Not only is this contrary to Turkish national law on foreigners, it also violates the basic principles of judicial procedure under international law.

Similar concerns have been raised about the conditions and legal safeguards at the Düziçi camp in southern Turkey. Syrian nationals have stated that they have had no access to lawyers or proper medical care. Moreover, several Syrian nationals stated that they have been arbitrarily detained for prolonged period of times without proper recourse and at the time of the interview were living in squalid conditions.<sup>47</sup>

### 3.2.2 Ethical Considerations

Although the EU and the participating States have reiterated that the agreement is legal, questions remain over the ethical and moral basis of the EU-Turkey agreement. Although aspects of the agreement could be considered legal, that does not make them ethical.

The principal idea of resettlement is to uphold humanitarian values and offer safe refuge to individuals in need. This agreement is viewed by many as a 'trade' of individuals with each party demanding some form of 'pay off' in return. If the agreement is strictly applied, individuals seeking international protection or economic opportunities will be forced to take more dangerous routes of migration to enter the EU. This concern also relates to the EU's legal duty to individuals seeking international protection and to uphold the rule of law on its own territory. Thus, the agreement itself could be considered unethical due to international human rights violations that challenge the democratic principles of the EU by trading the health and lives of individuals.

MSF is currently reviewing their partnerships and collaborations with all EU member states, including financial and operational assistance provided by the EU because of the EU not adhering to its moral and legal obligations. The organisation has raised concern over the precedent that may be set by this agreement's authorisation of states deterring refugees without a major legal challenge, trading large quantities of money to opt out of legal obligations and the idea that displaced people can be a bargaining chip for political negotiations and deals.

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<sup>46</sup> Orcun Ulusoy, *Turkey as a safe third country*, 2016, at <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third>.

<sup>47</sup> The Guardian, *Syrians returned to Turkey under EU deal 'have had no access to lawyers'*, 2016, at <https://www.theguardian.com/world/2016/may/16/syrians-returned-to-turkey-after-eu-deal-complain-of-treatment>.

Marc Pierini who, served as the EU's ambassador to Turkey from 2006-2011, also expressed unease over Turkey returning refugees and asylum seekers to Syria. He believed that the agreement 'tramples' on the EU's own rules and mentioned the lack of legislative guarantees under Turkish law for non-Syrians not to be pushed back to their countries of origin if they are in danger.<sup>48</sup>

### 3.3 EU Meeting the Legal Safeguards for Migrants Claiming Asylum

Article 22 (1) APD states that applicants shall be given the opportunity to consult in an effective manner a legal adviser or other counselor. Article 23 (2) goes on to state 'Such person must have access to the applicant for the purpose of consultation, including in closed areas such as detention facilities.' Moreover, under Greek and international law all individuals including irregular migrants and asylum seekers must be informed, in a language they understand, of the reason for their detention and of the rights afforded to them including the right to challenge the detention and access to free legal aid.<sup>49</sup>

Human Rights Watch visited the Greek islands of Lesbos and Chios in April 2016. It reported that the individuals in the camp had no access to legal aid. Wenzel Michalski, the German director of Human Rights Watch stated that many asylum seekers in Greek detention centres have had no access to free legal aid in their own languages. It also reported that many of the detainees on the Greek island of Chios were not aware of the possibility of challenging their detention and had no effective access to lawyers. Other reports documented by Amnesty International also describe arbitrary detention and no access to legal assistance. Amnesty has also expressed concerns over the time period and capacities of the Greek authorities to register asylum applications. They state that not enough time is spent on applications and view the process as a 'rubberstamp' for sending individuals back to Turkey.<sup>50</sup> Human Rights Watch has also said that 'safe' should mean not just protection from war or persecution but should also include the right to work, health care and education.<sup>51</sup> Based on the accounts of several cases of refugees and asylum seekers, in Turkey these resources are not being offered.

### 3.4 EU Meeting Protection Obligations for Children and Vulnerable Adults

A major cause for concern related to the refugee crisis is the number of unaccompanied minor asylum seekers in the EU. In 2015 there were 88,300 asylum seekers who were considered to be unaccompanied minors. Ninety-one per cent of the minors were males, with half aged between 16 and 17.<sup>52</sup> Meanwhile, Europol has reported that 10,000 unaccompanied minors seeking asylum have gone missing in the EU.<sup>53</sup> On 26 July 2016 the House of Lords

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<sup>48</sup> Marc Pierini, *The EU-Turkey deal needs a reset*, February 2016, at <http://carnegieeurope.eu/strategieurope/?fa=62783>.

<sup>49</sup> International Committee of the Red Cross, ICRC policy paper on immigration detention, 2009, at <https://www.icrc.org/en/download/file/21937/icrc-policy-paper-migration-detention.pdf>.

<sup>50</sup> Human Rights Watch, *Greece: Asylum Seekers Locked Up*, 2016, at <https://www.hrw.org/news/2016/04/14/greece-asylum-seekers-locked>.

<sup>51</sup> Human Rights Watch, *The EU-Turkey Deal on Migration and Refugees*, 2016, at <https://www.hrw.org/news/2016/03/03/qa-eu-turkey-deal-migration-and-refugees>.

<sup>52</sup> Eurostat, *Asylum applicants considered to be unaccompanied minors*, 2 May 2016, at <http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/>.

<sup>53</sup> The Guardian, *10,000 refugee children are missing, says Europol*, 2016, at <https://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees>.



EU Committee issued a report on the efforts of the UK and EU to address the issues surrounding unaccompanied minors in the EU. The report stated that the EU is ‘systematically failing unaccompanied child refugees’ with the UK and other EU member States avoiding taking responsibility to help and care for the children.<sup>54</sup> In May 2010 the EC published an Action Plan for Unaccompanied Minors from 2010-2014. The plan set out certain actions that should be implemented, such as prevention of unsafe migration and trafficking by increasing protection capacities in third countries, reception and procedural guarantees in the EU and ‘finding’ durable solutions. The EC 2015 Agenda on Migration stated that ‘The Commission will develop a comprehensive strategy to follow up on the Action Plan on Unaccompanied Minors (2010-2014) to cover missing and unaccompanied children.’<sup>55</sup> However, as of 5 August 2016 the Action Plan has not been renewed. Margaret Tuite, the EC Coordinator for the Rights of the Child, stated that this delay was due to the EC focusing on creating a ‘holistic approach’ to all children in migration. The House of Lords Report considers the ideas and priorities of the 2010-2014 plan to be the most beneficial option for the EU and member States regardless of it expiring two years ago and urges the EU and member States to implement these measures.<sup>56</sup>

Human Rights Watch reported that the camps on the islands of Lesbos and Chios held people with special needs, women and young children with no access to healthcare or proper sanitation. Moreover, the authorities have made no effort to separate children from unrelated adults or take into account safety concerns for women. This coincides with the absence of showers accessible for persons in wheelchairs and only one designated toilet for persons with disabilities in each section of the camp.<sup>57</sup>

Furthermore, Human Rights Watch was denied access to the Moira camp on Lesbos by the Greek Government. This camp holds 3,100 individuals, meaning it is 1,000 over capacity. Amnesty International gained access to the camp in April 2016 and stated that the camp was holding many individuals with disabilities, pregnant woman and young children with health complications resulting from an attack in Syria. Despite this, only three doctors are readily available for a combined population of 3,100 individuals.<sup>58</sup>

### 3.5 Court Challenges

On 20 May 2016 an independent tribunal on the Greek island of Lesbos overturned a deportation order against three asylum seekers. The tribunal’s committee concluded that: “the temporary protection which could be offered by Turkey to the applicant, as a Syrian citizen, does not offer him rights equivalent to those required by the Geneva Convention”. This decision would appear to contradict the opinion of the EC, which has on multiple occasions reaffirmed its opinion that Turkey is a safe third country. Thus, the tribunal’s decision essentially undermines legal and practical implementation of the EU-Turkey agreement.

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<sup>54</sup> House of Lords European Union Committee, *Children in crisis: unaccompanied migrant children in the EU*, 2016, at <http://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/34/34.pdf>.

<sup>55</sup> European Commission, *A European Agenda on Migration*, 2015, at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf).

<sup>56</sup> *Supra* n.53.

<sup>57</sup> Human Rights Watch, *Greece: Asylum Seekers Locked Up*, 2016, at <https://www.hrw.org/news/2016/04/14/greece-asylum-seekers-locked>.

<sup>58</sup> Human Rights Watch, *EU/Greece First Turkey Deportations Riddled with Abuse*, 2016, at <https://www.hrw.org/news/2016/04/19/eu/greece-first-turkey-deportations-riddled-abuse>.

In addition, three asylum seekers have also lodged a legal challenge against the EU-Turkey agreement at the Court of Justice of the European Union (CJEU) in Luxembourg. Two of the complainants are from Pakistan and one is from Afghanistan. Their argument reveals some of the possible illegalities of the agreement. Rights including the right to dignity, the right to asylum, and the right to be protected from expulsion to a place where there is a real risk of inhuman or degrading treatment have all been voiced by the claimants. All of these rights are protected under the European Charter of Fundamental Rights and various other international legal instruments. Moreover, the claimants also argue that the agreement struck between the EU and Turkey breaches the principle of non-refoulement.

Such judgements from the tribunal and the pending judgement by the CJEU, which may declare the agreement illegal, have cast doubts over the legality and moral/ethical justification for the deportation of individuals back to Turkey. The main legal route that refugees and asylum seekers would likely utilise to challenge the agreement would be through the Greek courts. The Greek courts would then likely refer this question regarding asylum law to the CJEU. Alternatively, if the claimants have exhausted domestic legal remedies in Greece or cannot effectively gain redress in the Greek legal system, complaints could be addressed to the European Court of Human Rights in light of a potential breach of the European Convention of Human Rights. Proceedings at the European Court of Human Rights usually last a minimum of three years, with many cases lasting longer depending on the circumstances.

## **4.0 Solutions**

The text above has highlighted some of the legal and ethical concerns inherent to the EU-Turkey agreement. Such ethical concerns are important because some EU practices may not be illegal but are clearly unethical. In this context, it is important to note that there are a number of other plausible solutions to address the issues from increased migration instead of returning migrants or asylum seekers to Turkey. These strategies focus on long-term measures. So far these longer-term solutions have not been fully implemented in EU member States. This has led to rising discontent at the levels of migration into the EU.

One of the first, and perhaps most pragmatic, solutions is a continued effort to integrate refugees and migrants in all EU countries. This would involve improving the conditions for the refugees in the host member States by supporting local communities and not overly relying on voluntary organizations. At the same time, local community members who do wish to support refugees and asylum seekers in practical and material terms and to foster greater integration should be encouraged and empowered to do so.<sup>59</sup>

### **4.1 The Implementation of a Common EU Resettlement Framework**

In order to alleviate the burden on member States that are currently hosting many refugees and migrants, the EU proposed the creation of an EU Resettlement Framework on 13 July 2016. This proposal is in conjunction with the creation of a common European asylum policy which will be discussed in section 4.2.

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<sup>59</sup> UNHCR, *A New Beginning Refugee Integration in Europe*, 2013, at <http://www.unhcr.org/protection/operations/52403d389/new-beginning-refugee-integration-europe.html>.

The resettlement framework envisages EU funding to support a structured framework while incorporating a common approach and national procedures. This would diverge from the current ad hoc national resettlement approaches that can be overwhelmed and lack the necessary capacities. The EU's proposal primarily revolves around creation of common EU rules. Examples such as the admission of third country nationals through resettlement and EU procedures governing all stages of the resettlement process provide an insight into what could possibly be implemented in coming years.

Member States however, will still hold the final decision on how many people will be resettled each year. This could undermine the whole framework in light of the political sensitivity of resettling refugees/migrants and an undercurrent of resentment in certain countries towards foreign nationals. Nonetheless, the EU states that increased coordinating efforts will result in one sole entity to improve and manage international resettlement efforts.

In September 2015 two European Council decisions stated that EU member states would relocate 160,000 persons from Italy and Greece (and other relevant EU member States if necessary) by September 2017. However, as of 13 July 2016 only 3,056 individuals had been relocated. Similarly, the EU set a target in 2015 to relocate 22,054 individuals from Middle Eastern countries mainly Jordan, Lebanon and Turkey. Yet, only 8,268 individuals had been resettled by 11 July 2016, with only 16 EU member States taking part.

## **4.2 The UK Role in EU Migration Policy**

The UK Government can choose to 'opt out' of many EU rules and decisions concerning asylum and migration matters. For example, the UK can participate in the EU resettlement framework if it chooses to do so. However, the UK government has demonstrated strong resistance to multiple EU proposals such as dispersing refugees throughout the EU and the creation of asylum quotas. Because of the UK's impending withdrawal from the EU, it is difficult to predict the UK's future position on migration and asylum matters. It is clear that level of migration into the EU will likely continue for years to come. Consequently, irrespective of the UK being in the EU or a member of the European Economic Area, it will have to play an active role in the EU's migration policies to protect its interests and ensure the fulfilment of international obligations.

Following the increased pressure on EU border states such as Greece and Italy the EU has proposed 'scrapping' the Dublin regulation or creating an alternative. This regulation entails that claims for asylum must be processed in the first country where the person claiming asylum enters. Thus, Britain can theoretically send registered refugees back to the first country of asylum which is usually a border country. As a result, the EU is attempting to alleviate this burden from member states such as Greece and Italy in order to create a fairer and more proportionate system. The UK is a strong supporter of the Dublin regulation in part due to its geography being distant from entry points of the EU and the possibility of sending back asylum seekers/migrants to the first country of entry. In light of the UK's withdrawal from the EU, it would have to renegotiate its position and participation in the Dublin regulation.

The Refugee Council has stated that the Dublin regulation is not fit for purpose and inherently unfair for Europe's border nations. Likewise, the implementation of the Dublin

regulation has seemingly been undermined by Germany's approach to register all Syrian nationals in Germany and not return them to their first point of entry. Therefore, the EU's proposals seem necessary for a fairer and more manageable asylum policy.

The UK government has accepted 1000 refugees from Syria under the vulnerable person's resettlement programme (VPR) which encompasses the whole of the UK. The programme prioritises the resettlement of victims of torture and sexual violence who originate from Syria. The programme also entails five years of humanitarian protection status in the UK with permission to work and social benefits. government has also pledged to accept an additional 20,000 Syrian refugees by 2020 and take in more unaccompanied children from continental Europe. The original House of Lords report stated that 3000 unaccompanied children should be resettled in the UK. However, the House of Commons voted against the proposal. Although, the proposal was rejected Lord Dubbs tabled a new amendment to the original proposal to satisfy the financial concerns of local councils and amending the original number of 3000 to a 'specified number' in agreement with local councils. In May 2016 the UK government changed their policy to allow 3000 children into the UK following the amendment in the Dubbs proposal. In summary, when compared to France who will accept 24,000 refugees by 2017 and Germany who accepted 964,574 migrants and refugees in 2015 alone, the UK's intake means that the UK is failing to meet the urgent need to address the large numbers of people seeking protection

### **4.3 Common European Asylum Policy**

On a more political level the EU should adopt a common European Asylum Policy. If implemented in a manner which meets the obligations of member States under international law, this would safeguard the rights of refugees and asylum seekers. The system would set out certain minimum standards and procedures for the processing and assessment of asylum applications. However, in practice this proposal is currently very politically sensitive. A rise in far-right anti-migrant parties combined with border fences being erected in Hungary and Bulgaria is problematic for a uniform and coherent EU system.

As of 13 July 2016 the EU had finalised a preliminary proposal for a European common asylum system. This entails replacing the Asylum Procedure Directive with an EU Regulation that would establish a harmonised common EU procedure for addressing migratory pressures. The aim of this regulation is to discourage secondary movements and ensure procedural safeguards for asylum seekers.

The proposal includes three main changes including a fair and efficient common EU procedure, harmonising the levels of protection and standards for asylum seekers and harmonising reception standards throughout the EU.

#### **Fair and Efficient Common EU procedure**

1. The asylum procedure will be simplified, clarified and shortened.
2. Common guarantees for asylum seekers such as legal assistance and personal interviews will be upheld.
3. Implementing stricter rules to combat abuse of the asylum procedure.

4. The rules on what constitutes a ‘safe third country’ will be harmonised which means replacing member states designations with EU level designations or lists.

### **Harmonised Protection of Standards and Rights**

1. Types of protection and duration of residence permits will be harmonised and member States will be obliged to take into consideration guidance provided by the European Agency for Asylum on the internal situation of the country of origin.
2. Sanctioning secondary movements by asylum seekers so that the five-year period required for permanent residency will be restarted if they move.
3. Protection will only be granted for as long as it’s needed so a status review on the country of origin will be established.
4. Integration measures will be strengthened with the rights and social assistance afforded to asylum seekers being clarified or made conditional on integration incentives.

### **Dignified and harmonised reception conditions throughout the EU**

1. The implementation of reception mechanism will allow greater access to the labour market
2. Guarantees for asylum seekers with special needs or unaccompanied minors, with a guardian appointed within five days of the application being made.
3. Overall reassurance that member states apply standards and indicators on reception conditions that have been developed by the European Asylum Support Office.<sup>60</sup>

This proposal would grant asylum seekers swifter access to employment opportunities as well as social assistance. It may also remedy the problems associated with establishing a ‘safe third country’. However, if this proposal was to be an exclusive EU competence or decided on an EU level it may override the previous decisions made by national authorities such as the decision of the Greek tribunal.

## **4.4 The Creation of Permanent and Legal European Channels of Migration**

An alternative to the issues of refugees and migrants attempting hazardous routes of migration would be the creation of permanent and legal European channels of migration. This would offer a credible alternative to the irregular migration routes. In doing so the risks of the irregular migration routes would be decreased and a more moral and long-lasting alternative could be pursued. This would hopefully prevent or to an extent decrease the numbers of migrants making dangerous journeys across the sea. Possible recommendations that could contribute to a permanent and legal channel of migration were expressed by the Council of Europe’s Committee on Migration, Refugees and Displaced Persons to the EU. This included:

1. Encourage its member States to increase resettlement quotas for persons in need of international protection and adopt a common approach to humanitarian visas; explore further possibilities for protected entries and migration routes enabling migrants to reach Europe in a regular manner.

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<sup>60</sup> European Commission, *Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy*, 2016, at [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm).

2. Strengthen Regional Protection Programmes and ensure their sustainability through sufficient funding; support neighbouring countries in improving their asylum and protection systems through mobility partnerships, and make further co-operation on migration and border control dependent on a sufficient level of protection for asylum seekers in these countries.
3. Strengthen Regional Protection Programmes and ensure their sustainability through sufficient funding; support neighbouring countries in improving their asylum and protection systems through mobility partnerships, and make further co-operation on migration and border control dependent on a sufficient level of protection for asylum seekers in these countries
4. Ensure that Frontex makes the protection of fundamental rights a priority of its joint operations, and in particular seeks the ability – which is still lacking in the recently adopted regulation – to apply the rules (on search and rescue, disembarkation and non-refoulement) to migrant boats within the territorial waters of third States which clearly cannot meet their international obligations regarding search and rescue at sea or uphold the rights of irregular migrants, asylum seekers and refugees

These measures could result in a more manageable and safer system of assessing and processing migrants and asylum seekers alongside safeguarding their basic human rights. From a security perspective the collection of biometric data and searches could prevent possible security risks and enable more efficient and legally sound returns in the future.

The creation of a legal and permanent route of migration would be beneficial in not only deterring the unsafe routes but also impacting the smuggling business, which in part relies upon the illegality of entering EU borders.<sup>61</sup> Human trafficking has become an increasingly lucrative business with Europol (EU Law Enforcement Agency) stating that human traffickers made \$2-4 billion dollars in 2015. This is due to migrants paying traffickers between \$3,000 and \$6,000 to facilitate their journey to the EU.

## **5.0 Recommendations**

In the immediate term there is an urgent need to work within the confines of the current agreement to achieve the best possible outcomes for refugees. In this context, we offer several recommendations to some of the key players.

### **5.1 Recommendations to the European Union**

1. The recommendations to the EU revolve around assisting and facilitating the Greek and Turkish authorities throughout the implementation and oversight of the EU-Turkey agreement. The EC has stated that 4,000 people from Frontex (EU external borders agency), European Asylum Support Office personnel will be required to support Greece and their asylum capacities.

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<sup>61</sup> *Supra n.19.*

2. Moreover, the EU should increase the numbers of personnel who can facilitate the access to emergency funding for the Greek authorities, improving the levels of coordination between the respective actors alongside addressing the clear administrative deficiencies in the Greek asylum system.
3. The Commission should coordinate and organise support for Greece from other EU member states and the relevant EU Agencies.
4. Provide the necessary funding to the Greek government through additional funds in the Asylum Migration and Integration Fund.
5. Ensure the necessary legal safeguards are fulfilled by the Greek and Turkish governments especially upon the backdrop of the coup attempt in Turkey.

## **5.2 Recommendation to the Greek Government**

These are contingent on adequate resources being available for the Greek government.

1. Rapidly improve the asylum system to speed up the process and improve transparency.
2. Improve the ‘hotspot centres’ so that they can register refugees and asylum seekers in a dignified and timely manner. As has been demonstrated the centres are currently overpopulated which results in an increase in unsanitary conditions and the overuse of other facilities not designed to cope with such a large number of people. Such upgrades can also take place in the administrative sections of the Greek authorities which is in essence overwhelmed and underequipped for the number of people it has to assess and process.

## **5.3 Recommendations to other European Union Member States**

These are contingent on adequate resources being available to EU MS

1. Assist Greece and the EU by providing financial and human resource capacity, as well as the necessary personnel for the organisations such as Frontex etc.
2. Accept refugees in the voluntary relocation scheme with improved integration techniques and social/financial assistance.
3. Increase oversight of the Turkish authorities in their adherence to international law and renewed pressure on the EU to explore alternative solutions to the migration crisis.

## **5.4 Recommendation to the Turkish Government**

These are contingent on adequate resources being available to the Turkish government

1. Ensure basic human rights are afforded to all individuals regardless of their country of origin.
2. Provide the same legal status to both Syrian and non-Syrian returnees from Greece.
3. Drastically improve the sanitary conditions in the centers and camps hosting refugees and asylum seekers.
4. Renew efforts to integrate individual into Turkish society by providing a platform for education and employment.
5. Turkey has mooted offering citizenship to Syrian refugees. This would be beneficial for social inclusion and legal/healthcare improvements.
6. Increase the number of work permits given to Syrian refugees to improve their living conditions.

## **5.5 Recommendation to the United Kingdom Government**

These are contingent on adequate resources being available to the UK government

1. Increase financial and technical aid to Greece to assist in the implementation of the agreement.
2. Accept a greater number of refugees from affected regions and refugees who have already reached Europe under the vulnerable protection scheme.
3. Improve integration mechanisms for refugees to improve the provision of social assistance and their living conditions.

## **6.0 Conclusion**

This policy brief on the EU-Turkey agreement has aimed to explore the legality of the EU-Turkey agreement. It first acknowledges the unprecedented circumstances in which it has taken place and then examines the key legal elements of the agreement and opinions of the various actors involved. Two key factors have raised legality issues concerning the agreement: Turkey being considered as a safe third country and a first country of asylum. These have received attention from various legal practitioners, rights groups and governmental authorities including the European Commission.

Given the scale and prolonged levels of migration that are anticipated, there has to be a collective response at EU level to address the shortcomings of the current administrative and logistical capacities to cope with the numbers of refugees and migrants. The EU-Turkey agreements intention is to prevent irregular migrant routes from continuing, in the hope that the regular routes of migration will provide a safer and regulated alternative.



However, in summary the evidence cited in this paper demonstrates that Turkey does not in fact fulfil certain elements of the Asylum Procedure Directive required to be considered a safe third country. Therefore, the European Commission, Council and member states should reconsider the designations of safe country of origin and a safe third country. The conformity of this agreement to both International and European law has been questioned on multiple occasions because of the internal situation of Turkey and the deficiencies in the Turkish administrative and judicial system to afford protection to these individuals. Instances of returning Syrian nationals to Syria and the conditions in the deportation camps alongside the severe lack of rights afforded to the individuals in question results in the conclusion that Turkey cannot be considered as a safe third country and therefore refugees and asylum seekers should not be returned there.

The EU's approach of offering incentives to the Turkish state in return for their cooperation is in effect bargaining with the rights of individuals who are fleeing conflicts and persecution. Ultimately, this approach will not prevent irregular routes of migration and more importantly safeguard the rights of the individuals involved. Therefore, reconsideration of the entire agreement is urgently required.

*This paper was prepared for the Edinburgh Peace and Justice Centre by Andrew Williamson.*