



LOOSE ENDS OF A DEAL

Turkey and the European Union Signed a “Refugee Deal” to Curb Migration into Europe. But Unfulfilled Provisions of the Deal Are Leading to Problematic EU–Turkey Relations

By Pınar Dost

The Syrian civil war, which began seven years ago, has had an ongoing deep and tragic impact on Syrians. Half a million lost their lives and 11.5 million were displaced. Of those displaced, more than six million became internal refugees and over 5.6 million fled to neighboring countries. Sharing a 911-km border with Syria, Turkey became the country most affected by the migratory movement of Syrian refugees. For the first four years of the war, Turkey handled the crisis on its own without much international support and assistance. Today, it is much harder to do that. Turkey has become the world’s largest refugee-hosting nation and a permanent home to more than 3.5 million Syrian refugees living there, in comparison to 986,000 in Lebanon and 66,000 refugees in Jordan.

In 2015, the Syrian refugee crisis reached a grim milestone. The suffering of Syrian refugees taking the world’s deadliest migration route through the Mediterranean Sea drew global attention to their plight. The harrowing image of the corpse of Aylan Kurdi washing up on Turkey’s Aegean shores became the symbol of the suffering and despair of Syrian refugees. But more importantly, 2015 marked the beginning of the refugee crisis in Europe. More than a million Syrian refugees reached European shores primarily via the Turkey–Greece sea route and dispersed all over the continent. This development brought Turkey and the European Union (EU) closer on cooperating to stem the influx of refugees from the south.

It was against this backdrop that on November 29, 2015, the EU and Turkey negotiated a deal to stop the migration flow into Europe. Through the “refugee deal,” Turkey sought to share the burden of hosting millions of refugees but also leveraged the deal to extract concessions from the EU, as well as revive its waning relations with Europe. According to the EU–Turkey statement of March

▷ Migrants who will be returned to Turkey demonstrate inside the Moria registration centre on the Greek island of Lesbos, April 5, 2016.
Giorgos Moutafis/Reuters

18, 2016, both parties welcomed the ongoing work to upgrade of the Customs Union, which governs trade with Turkey, and per Ankara's request, the EU agreed to accelerate fulfilment of the visa liberalization roadmap, that is visa-free travel for Turkish citizens in the Schengen area, an area of the EU without passport controls between citizens of different EU member countries. The statement also sought a resolution to the issue of its accession to the EU.

Yet, many of these provisions were never fulfilled. It became clear that while Turkey was able to uphold its end of the deal—sharply reducing illegal migration to Greece through Turkey—the EU was far from meeting its promises, apart from meeting the financial deadlines, resulting in Turkey's loss of confidence in the EU.

Before the Migrant Deal

Turkey's response to the influx of refugees from Syria began in April 2011 with the arrival of 252 Syrians at Turkey's southern Hatay province. As of June 13, 2018, the precise number of registered Syrians in Turkey stood at 3,586,679, of whom 216,024 live in temporary protection centers and 3,370,655 live in cities across Turkey. This is the largest number of Syrian refugees in any country, and it is expected to grow as an average of two thousand refugees are registered daily.

From 2011 to 2014, Turkey's response to the crisis was focused on providing humanitarian assistance and allowing an open-door policy with Syria. Refugees were welcomed in temporary protection centers—refugee camps—built in cities along the Syrian–Turkish border. Turkey's protection centers, which were only meant to be temporary, received wide praise for the quality of assistance and services provided to refugees. However, as the conflict in Syria intensified in 2013, with the emergence of and the involvement of other actors, it became apparent that peace in Syria would remain distant. The trajectory of the war as well as the increasing number of refugees in Turkey—1.6 million in December 2014—was decisive in forcing Ankara to create a new legal system for Syrian refugees.

The Law on Foreigners and International Protection, passed in April 2013, created the legal ground for the “temporary protection” status granted to all Syrian refugees through a special regulation accepted in October 2014. This is a legal status provided to Syrians, stateless persons, and Palestinians from Syria, allowing them to resettle in another country rather than be registered as refugees in Turkey. (Turkey is party to the 1951 Refugee Convention, but as the country maintains that refugee status is only granted to people from European descent, Syrians in Turkey cannot be granted regular “refugee” status, that is international protection.) Under the temporary protection, refugees have access to the same health and education services as Turkish citizens and additional monetary assistance provided by local and international NGOs.

In January 2016, refugees under temporary protection also gained access to the labor market. However, there are only a small number of refugees who work legally. Part of the reason for this falls on refugees themselves, who do not want to be deprived of the monthly cash transfer provided to the most vulnerable refugees under the EU's humanitarian cash-transfer program, the Emergency Social Safety Net, and on the other hand on employers, who prefer cheap labor. Another challenge for integrating Syrians into the formal labor market is their low education and skill levels as well as the language barrier.

In addition to the temporary protection, 52,000 Syrians have been granted Turkish citizenship. These were all exceptional cases as most Syrians do not really fit the criteria qualifying for citizenship. In these cases, level of education and professional skills (such as professionals in the health and education sectors) were the decisive factors in granting citizenship. Moreover, there has been important progress on the child school enrollment rates: from 2014 to 2018 the percentage of enrolled children increased from 30 percent to 62 percent. The schooling rate at the primary school level is 98 percent. One of the main reasons for the low school enrollment rate is the difference in length of mandatory education in Turkey and Syria. Another main reason remains the children's willingness to work to contribute to the family's budget.

However, hosting a large number of refugees comes at a price. The main challenge ahead for improving Syrians' living conditions and migration management in Turkey has been easing the economic and financial burden on municipalities. Municipalities' main budget, funded by the central government, is mainly calculated by the number of Turkish citizens living within the boundaries of the municipality. Yet, refugees are not included in these numbers as they are not Turkish citizens. As the population of some municipalities has significantly gone up, the costs of providing services has exponentially increased. International aid cannot be directly contributed to municipalities either because of the centralized nature of statehood in Turkey.

Despite these difficulties, many municipalities have shown incredible resilience in serving their refugee populations. Even so, absorbing that many refugees sometimes creates social tensions in host communities. The anti-refugee sentiment and incidents are more pronounced in metropolises such as Istanbul, Ankara, and Izmir where refugees are seen as culturally different and as competing for low-wage jobs, especially within the informal economy. A common false belief among host communities that Syrians receive preferential access to public services and assistance creates further social tensions. However, without a harmonization or integration policy, what has been achieved in Turkey is a success story.

The next step for Turkey is implementing a harmonization policy. This seems necessary as the possibility of Syrians returning home is dim. The good news is that under

the chairmanship of the minister of interior, a Migration Policies Board was set up in 2017. Under the authority of Turkey's Directorate General of Migration Management, a Migration Harmonization Policy and Action Plan has been prepared with the participation of different stakeholders. The document has been approved by the Migration Policies Board and now just requires the political will to be put into action. It is expected to be operational before the end of the year. Starting from 2015, part of these efforts was financed through the EU–Turkey deal on irregular migration, a deal that has brought together two resentful old friends.

EU–Turkey Join Hands

In 2015, more than a million migrants and refugees began crossing into Europe, ushering in the “refugee crisis” for Europe. Some European governments harshly treated refugees at their borders, restricting protection and preventing migrants from entering or staying on their territories. Germany was a big exception as it welcomed over a million refugees and received the highest number of new asylum applications in Europe in 2015—more than 476,000.

According to the UN Refugee Agency (UNHCR), in 2015, over 800,000 refugees and migrants came via the Aegean Sea from Turkey into Greece, accounting for 80 percent of the people arriving irregularly in Europe by sea that year. It was in response to this massive influx that the EU—in crisis—approached Turkey to limit and control refugee flows from Turkey into the EU via Greece.

The 2015 EU–Turkey Joint Action Plan and the 2016 EU–Turkey Statement established the framework of cooperation between the EU and Turkey on migration. The main purpose of the deal was to prevent the loss of lives and to dismantle human trafficking networks (according to the International Organization for Migration, in 2015 alone, more than eight hundred died in the Aegean crossing from Turkey to Greece), but the more glaring reason for the deal was to prevent refugees from reaching Europe. According to the joint action plan and the deal, it was agreed that in exchange for Turkey's cooperation with the EU on curbing illegal migration to Europe by returning migrants reaching Greece illegally and taking back all irregular migrants intercepted in Turkish waters, the EU agreed to support Turkey with two tranches of 3 billion euros through projects aiming to address the urgent needs of refugees and host communities in Turkey.

Based on a 1:1 formula, for each Syrian returned to Turkey, another Syrian living in Turkey would be resettled into Europe and the number of resettlement in the EU was limited to 72,000. Moreover, under the Voluntary Humanitarian Admission Scheme, the EU member states agreed to accept a number of qualified refugees that entered Turkey prior to November 29, 2015. EU officials also expressed their will-

ingness to restart negotiations on Turkey's membership to the EU by opening new negotiation chapters and upgrading the Customs Union agreement as well as lifting visa requirements for Turkish citizens in the Schengen zone by June 2016 provided that the requirements of an earlier 2013 agreement called the Visa Roadmap were met by Turkey. It was per Ankara's request that the visa liberalization clause—allowing visa-free travel of Turkish citizens in the EU—was included in the deal.

It is important to note that the migrant crisis started for Turkey in 2011, and by the time the deal was sealed, Turkey was already hosting 2.5 million refugees and had spent \$10 billion toward settling them and providing humanitarian assistance. Only in 2015, when faced with millions of migrants from Syria reaching Europe along the Aegean shore between Turkey and Greece, did EU officials decide to ask for Turkey's assistance in preventing irregular migration flows.

The deal ignited controversy because it contradicted EU laws and the UN 1951 Refugee Convention. Signatories of the convention cannot expel asylum seekers without examining their claims individually. Under this rule, only migrants who have not applied for asylum or whose applications have not been accepted could be returned to Turkey. Because of some incidents of migrants returned to Turkey in groups, there was criticism that asylum applications in Europe were not evaluated thoroughly.

There were also concerns over mass returns as the deal presumes that Turkey is a "safe third country" from which asylum claimants and refugees may apply for international protection under the Refugee Convention. Some international organizations and NGOs criticized the EU for the deal and have expressed concerns regarding the lack of international protection and procedural safeguards for asylum claimants and refugees in Turkey. Turkey—not being a member of the EU—is not bound by EU legislation or directives, which offer procedural protections for third-country nationals including asylum claimants and refugees.

The EU's acceptance of adding clauses related to visa liberalization and Turkey's EU accession into the migrant deal was also criticized within the EU for giving Turkey leverage over it, but also for being "unethical" and in contravention of the EU's values and principles. Some argued that the accession process should be kept separate from the deal because it would further undermine the legitimacy of enlargement, or the process by which countries join the EU. The enlargement process has three stages: prospect of membership, candidate for membership, and formal membership negotiations. A country can only join the EU if it meets and/or adopts necessary reforms to meet all the political, economic, and legal membership criteria. In the viewpoint of the EU the deal was concluded with a pragmatic objective of limiting as much as possible the refugees' arrival into the EU from Turkey for many reasons, including appeasing the electorate of European member states.

Regarding Turkey's objectives, it is clear that Ankara's first motivation was to secure some assistance from the EU. Not only was the EU's financial contribution necessary but EU countries would also take more refugees from Turkey. The deal also created an opportunity for Ankara to reenergize EU–Turkey relations by enabling extensive negotiations between Turkey and EU leaders, as well as heads of member countries independent from accession talks.

An Unequally Implemented Deal

The deal was successful vis-à-vis its primary objectives of limiting refugee flows from Turkey to Greece and preventing the loss of lives. Turkey succeeded in closing the Aegean Sea route—the number of migrants illegally crossing the Aegean dropped from an average of ten thousand per day in 2015 to below one hundred in 2018. In 2015 alone, the Turkish Coast Guard Command saved the lives of 90,198 illegal migrants—the majority of whom were Syrians trying to cross the Aegean from Turkey to Greece, while around eight hundred migrants lost their lives. In 2017, thirty-two people drowned in the Aegean Sea. Besides the decrease in fatalities, the smuggling networks were largely dismantled.

Regarding providing aid to Turkey, the EU initially delivered 2.1 billion euros out of the initial 3 billion euros and the remaining part will be paid in 2021 once the last project is completed. At the end of June 2018, the second tranche of three billion euros was approved and its implementation will last until 2025. Turkish authorities asked that these funds be directly transferred to them to ensure more effective use. A small portion of this funding is going directly into the coffers of the Ministries of National Education and Health while the biggest part is allocated through international organizations under contracted projects. While the EU's financial assistance is important, it is worth underlining that even if the total 6 billion euros had already been made available to Turkey, this would only cover 20 percent of what Turkey has spent so far on Syrians living in Turkey.

EU countries were required to admit Syrians on a voluntary basis provided that irregular migration had been reduced significantly and continuously. Although migration has declined, this part of the deal has not been achieved. To date, only around 15,000 Syrians from Turkey have been resettled into EU member countries since March 2016. It is not clear how many more will be resettled given the voluntary nature of the deal. Besides Syrians, as of June 4, 2018, 1,629 illegal migrants have been readmitted by Turkey.

Therefore, the main objectives of the deal—saving lives and limiting illegal migration from Turkey to Europe—have been successfully attained. Turkey is also getting the promised financial assistance. And even though EU–Turkey relations went

through a significant period of tensions especially following the July 15 coup attempt in Turkey and during electoral campaigns in Turkey and Europe, these difficulties never affected the deal. However, the EU's commitments to accelerate the visa liberalization process, restart accession negotiations, and upgrade the Customs Union agreement have not been fulfilled and have unfortunately become entangled with the larger politics of EU–Turkey relations.

Pending Issues

Some of the EU's unfulfilled promises lie in areas such as the Customs Union agreement, energy, foreign policy and counterterrorism, and visa liberalization, some of which are also part of the migrant deal.

Visa liberalization

The lifting of visa requirements for Turkish citizens going to EU countries depends on Turkey delivering on its part of the agreement that says it will readmit all migrants who illegally cross to Europe from Turkey as well as implement the 2013 “Visa Roadmap.” The roadmap dictates that Turkey make legislative and administrative reforms to establish a secure environment for visa-free travel such as document security, migration and border management, public order and security, and rights for refugees.

It is worth mentioning that among EU candidate countries for membership, Turkey is the only country to not have received visa liberalization. Ukraine and Georgia, as part of the EU's Eastern Partnership, were both given visa-free travel in 2017, even though they are not candidate countries. However, as a candidate to the EU, Turkey was provided some visa liberalization privileges in October 2015.

Turkey has already fulfilled sixty-five out of seventy-two Visa Roadmap benchmarks. One of the main areas in which progress is expected on the Visa Roadmap includes the revision of “the legal framework as regards to organized crime and terrorism, as well as its interpretation by the courts and by security forces and law enforcement agencies, so as to ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice.” Turkey presented a position paper to the EU including measures that the country is ready to take in order to fulfill the remaining criteria: revising anti-terror legislation with a view toward leaving freedom of speech and expression out of its scope, revising data protection laws, and renewing its anticorruption strategy. The terrorism law has been criticized by the EU for being vague and used to suppress opposition. Yet, the EU opposition to the terrorism law is also related to the number of asylum seekers from Turkey in Europe for political reasons. It is obvious that asylum requests have increased after the coup attempt but these numbers are now stabilizing. The EU always has the right

to suspend visa liberalization if the number of asylum seekers from Turkey increases after liberalization.

Other requirements include signing an operational agreement with Europol, engaging in cooperation with EU member states in the field of judicial affairs, making a transition to biometric passports for Turkish citizens, and effectively implementing the Turkey–EU readmission agreement. Moreover, the roadmap requires that Turkey issue biometric passports in compliance with International Civil Aviation Organization (ICAO) and EU standards. According to the roadmap, in a first phase, biometric passports with fingerprints and photos were issued in line with ICAO standards and in a second phase, as of October 2016, Turkish authorities started issuing permanent biometric passports with chips, fully in line with EU standards. However, if visa liberalization is granted tomorrow, only 199,000 Turks, who have the necessary passports, will have access to visa-free travel. There are obviously other benchmarks to be fulfilled by Turkey as well and there is still some progress to be made. It should be noted that from the viewpoint of Turkey, visa liberalization constitutes another major element of the March 18 deal and Turkish authorities are hopeful about its fulfillment.

Customs Union Agreement Update

The Customs Union Agreement, originally concluded in 1995 between Turkey and the European Union, greatly helped the development of Turkey's economy over the past two decades. Trade between the EU and Turkey dramatically increased from \$28 billion in 1995 to approximately \$159 billion in 2017, making Turkey the EU's fifth-largest trading partner and the EU, Turkey's largest. However, the agreement needs to be updated. The absence of any provision in the Customs Union encouraging third parties to also negotiate with Turkey each time the EU negotiates a free trade agreement with a third party creates significant inequality in terms of market access and a great risk for trade diversions. Including areas such as agriculture, public procurements, and services in the Customs Union agreement would help Turkey align itself with EU regulatory standards and stimulate further growth on both sides.

The expansion and modernization of the Customs Union has been frequently proposed as a way to overcome the impasse facing membership talks. However, this would face much opposition by some member states and the European Parliament unless conditions related to human rights and the rule of law are included in negotiations. On June 24, presidential and parliamentary elections were held in Turkey. There is a strong hope in the country for termination of the emergency rule and release of detained journalists. Any advance in these areas would help to revive negotiations on the Customs Union.

Negotiating EU–Turkey Relations Through the Deal

To give a bit of background on the contentious EU–Turkey accession relationship: in 1963 Turkey and the European Economic Community (ECC, the precursor to the EU) signed the Ankara Agreement, an association agreement which would become the initial framework for possible Turkish acceptance into the ECC-EU.

In 2005, Turkey and the EU began official accession negotiations. From the thirty-five chapters which formed the 2005 *acquis communautaire*, sixteen chapters, to date, have been addressed and only one completed or closed. However, negotiations between Turkey and the EU never determined a deadline for accession. Also, a mechanism for the possible suspension of negotiations in case of a “serious and persistent breach” of basic democratic principles was included in the negotiation framework. As such, Turkey’s and the EU’s accession negotiations were from the onset deeply problematic. First the EU blocked some chapters until Turkey opened its ports and airports to vehicles originating from the Republic of Cyprus. Then during Nicolas Sarkozy’s presidency—because of France’s opposition to Turkey’s membership—France and Cyprus blocked the opening of five more chapters in the accession process. In comparison, Croatia, which also started accession negotiations in 2005, became an official EU Member State in 2013.

Recently, the EU published its Western Balkan Strategy, with a tentative accession year of 2025 for Western Balkan countries to the EU. However, Turkey was yet again rebuffed in this Western Balkan Strategy as EU leaders did not include Turkey in the strategy for long-term accession to the EU.

The EU has been critical of Turkish internal political developments. After the failed coup attempt in Turkey in July 2016, the EU–Turkey relationship seriously deteriorated. The ongoing state of emergency in Turkey as well as the purge of hundreds of thousands of people accused of links to the Fetullah Gulen Terror Organization (FETO), thought to be behind the coup attempt, were severely criticized by various EU organs and leaders. Also, constitutional amendments passed in a referendum in April 2017 in Turkey were criticized by the EU. Turkey was disappointed by the reluctance of the EU to condemn the coup and support Turkey as well as by the unwillingness of some EU countries to extradite FETO-linked runaways seeking asylum in their countries.

Additionally, during the April 2017 referendum campaigns, Germany and the Netherlands did not allow Turkish MPs to hold pro-government rallies in their countries. All these issues created a war of words and great tension between Turkey and many EU countries, and severely damaged popular support in Europe for Turkey’s EU accession. These disagreements led the EU Parliament to recommend a suspension of accession negotiations with Turkey if the Turkish constitutional amendments

were implemented unchanged. Eventually, accession negotiations came to a virtual freeze at the end of 2016 with the EU Council's decision not to open any new negotiation chapters with Turkey until until Ankara lifted its emergency rule, which it eventually did on July 18, 2018.

In the past two years, differing diplomatic goals on the part of Turkey and the EU have de-prioritized the issue of Turkish accession for both parties. Despite these negative developments, the 2018 Varna Summit was important in reminding both Turkish and EU leaders that the accession process was only frozen and could be restarted if both Turkey and the EU agreed to do so in the future.

Dependent Partners

If we were to write the history of these past seven years, we would place Turkey at the top of a short list of countries that have contributed the most to the resolution of the Syrian refugee crisis. The EU–Turkey migrant deal that came into existence to mitigate the crisis is a pragmatic deal for which each side had different expectations and objectives.

But the deal will remain active so long as it brings gains to both parties. The deal itself will not remain part of the long-term bilateral relationship but the issues of accessions, visa liberalization, and the Customs Union, included in the deal, are important long-term issues. Therefore, we need to analyze the deal in the context of its long-term implications. On the one hand, from the viewpoint of the EU, the deal gives too much leverage to Turkey: Turkish government officials occasionally refer to the deal to complain about unfulfilled EU promises and to intimidate EU countries with the threat that Turkey will not respect the agreement.

On the other hand, as an end to the Syrian civil war is in sight, there may be a termination of the EU–Turkey migrant deal. If so, the EU would no longer have any incentive to move forward on visa liberalization and Customs Union agreements with Turkey unless the Turkish government were to take steps to improve its human rights record and ensure the rule of law. As such, the deal is fragile and may be considered more harmful than useful to EU–Turkey accession negotiations.

However, despite all tensions and turbulences in EU–Turkey relations over the past few years, Turkey and the EU need each other and will have to find ways to work together. The post-June 24 election period in Turkey could create opportunities to reset and heal bilateral relations as well as improve the state of the Syrian refugees in Turkey. Apart from some financial contribution to Turkey's efforts to host 3.5 million refugees on its soil, the migrant deal has not brought much to Turkey. Its greatest contribution has been in helping to save the lives of refugees trying to reach Europe via the dangerous sea route across the Aegean Sea.