

## **2016 EU-Turkey agreement**

“I was holding my wife’s hand, but my children slipped through my hands. It was dark and everyone was screaming”. I should have died with them”, is the answer of Abdullah Kurdi, the father of the 2-year-old Alan Kurdi who put the world in deep grief after his tiny lifeless body washed up on the Turkish beach in September 2015 (Khan, 2015).

Since the outbreak of the Syrian civil war in 2011, almost seven million Syrians, just like Abdullah Kurdi and his family, have fled their country, causing one of the biggest refugee exoduses in recent history.

Besides the devastating consequences that the resulting refugee crisis continues to pose to the Syrian people, it has also unleashed a plethora of significant political and financial challenges on neighbouring countries and political entities.

In this paper I will take a closer look at the Syrian refugee crisis and its implications for the EU’s foreign policy. Moreover, I will seek to provide a critical analysis of the most prominent EU response to the refugee crisis, being the 2016 EU-Turkey deal.

The remainder of this paper is structured as follows: the first part will provide context by discussing the outbreak and the consequences of the Syrian civil war which has been the root cause for the refugee crisis. The second part will analyse the roles of Turkey and the European Union (EU) in this crisis and the resulting 2016 agreement. The third part describes the most important outcomes and consequences of the agreement. Finally, the last part will provide certain policy recommendations.

### **Background**

Even before the start of the actual conflicts in Syria, many citizens were rightly complaining about the state of their country and their freedom. In 2011, the unemployment rate of Syria was almost 15 percent, which was well above the global average of 8 percent and meant an increase of almost 50 percent compared to 2010. Furthermore, according to a report by Freedom house, Syria scored very low in terms of political rights and civil freedom, only being outscored by countries that were ruled by merciless dictators with strong influences from radical Islamic or Leninist-Marxist ideologies such as North-Korea, Turkmenistan, Uzbekistan, Burma & Sudan (Freedom house, 2011).

As a consequence of these deteriorating living conditions and the anti-government protests under the Arab spring in Libya, Egypt and Yemen, a pro-democracy protest erupted in the south of Syria in the city of Deraa. In an attempt to repress this demonstration, the government used deadly force which caused the eruption of nationwide protests demanding the resignation of president al-Assad.

As the protests intensified, violence escalated rapidly which ultimately caused the country to tumble into a civil war between Pro and anti al-Assad Syrians (BBC, 2022).

Additionally, there are two factors that made the conflict even worse. First of all, many foreign powers decided to intervene which caused a series of proxy wars between most notably the US and Russia, and Iran and Saudi Arabia (Gerges, 2013).

In this conflict Russia and Iran supported the Syrian government, while Western powers, Turkey and several Gulf States support the opposition. Furthermore, the countries unstable and fragile state proved to be a fertile soil for terrorist groups such as ISIS and Hezbollah to thrive.



The consequences for the Syrian people have been unparalleled; as of June 2021, the Syrian Observatory for Human Rights (SOHR) has documented almost 500.000 deaths. At least 150.000 of them are believed to be civilians. Since 2011, More than half of Syria's pre-war population of 22 million have fled their homes. Some 6.9 million are internally displaced, with more than two million living in tented camps with limited access to basic services. Another 6.8 million are refugees or asylum-seekers abroad. Neighbouring countries including Turkey, which are taking in almost 90% of the refugees, are struggling to deal with one of the largest refugee exoduses in recent years.

### The role of the EU and Turkey in this crisis and their 2016 agreement

Turkey, which borders Syria to its south-east, has been one of the most important destinations for the Syrians that fled the country. Additionally, Turkey shares a border with Greece and Bulgaria to its north-west, meaning that it is a direct neighbour of the European Union.

As a result of these geographical features and the many Syrian refugees in Turkey, many Syrians entered Europe through Turkish land or waters.

In total, almost 1 million refugees entered the EU in 2015. Apart from Syria the majority of the refugees come from Afghanistan and Iraq, and approximately 3500 of them died during their horrible journey to freedom. The sharp increase in new arrivals dominated the news, heated public debate and polarised the public opinion. While many member states showed solidarity and support, a number of populist parties and movements across Europe sent strong anti-migrant messages and plead to further their own national agendas rather than concentrating on the refugees.

In 2016, many refugees continued trying to reach European soil irregularly. Which led to the EU pressuring Turkey to prevent refugees from departing from their coastlines in an attempt to reach the EU.

These talks finally led to the EU-Turkey statement which was introduced on March 18th 2016, and implemented 2 days later. The agreement was released as a temporary measure intended to stop irregular migration to Europe (European Council, 2016).

The deal agreed on three key points, being;

- That Turkey would take any measures necessary to stop people from travelling irregularly from Turkey to the Greek islands.
- Anyone who arrived on the islands irregularly from Turkey could be returned there.
- For every Syrian returned from the islands, EU Member States would accept one Syrian refugee who had waited inside Turkey.

In exchange, Turkey would receive €6 billion to improve the humanitarian situation faced by refugees in the country, and Turkish nationals would be granted visa-free travel to Europe (European Council, 2016).

The message behind the deal was clear; Irregular migrants would be returned to Turkey, while those that were patiently waiting would have a chance to enter the EU. Thus, in a sense it was also a statement to discourage irregular traveling and showing that being patient could be rewarded.

Besides the previously discussed key points, a few other terms, predominantly aimed to increase the overall cooperation between the EU and Turkey were also implemented under the deal, such as:

- Closer cooperation between turkey and the EU with respect to the ongoing work of upgrading the Customs Union

- Re-energising the Turkish accession process to the EU, which was, as we all know suspended again a few years later (European Council, 2016).

## Outcomes & consequences

While there are many ways to assess the agreement, the overall conclusion is that it has not been a very successful one. Despite the fact that the deal did contribute to a significant reduction in the number of refugees trying to reach Europe, the price for those that did make it to the EU has been unbearable. Furthermore, the number of irregular refugees that have been sent back to Turkey under the agreement is neglectable, as only around two-thousand people have been returned since its implementation.

The main reason for the low returns is due to the fact that in the majority of the cases, Greek courts have ruled that Turkey is not safe enough to return refugees to. Additionally, the Covid-19 pandemic has proven to be another obstacle as Turkey refused to receive refugees out of fear to further spread the virus (International rescue committee, 2022).

Furthermore, besides the fact that the deal has not been very successful in resettling refugees, there is also debate on the legality of the agreement, which led to three asylum-seekers challenging the agreement before the European Court of Justice (CJEU) in 2016. The court ruled however that the deal was published in the form of a statement and was concluded between EU Member States and Turkey. The court therefore lacks jurisdiction to rule on the legality of the deal, because it was not a measure adopted by any EU institution. As a consequence of the CJEU ruling, the deal as such cannot be challenged by European legal mechanisms. However, the implementation of it is made up of actions by EU Member States, and can therefore be legally challenged (Danisi, 2017).

Finally, the agreement has also been accused of violating international and EU refugee law. While the 1951 Refugee Convention and its 1967 Protocol are the key international legal frameworks for refugee protection, the EU's minimum procedural guarantees during asylum procedures are anchored in the EU Asylum Procedure Directive (APD) 2013/32/EU. Quintessentially, this means that international asylum law applies to all refugees, while refugees entering the EU are also subject to EU asylum law. However, when returning refugees, also Turkey (as a non-EU member) must meet relevant standards. From a theoretical perspective this is the case as Turkey has a set of refugee laws in place. De facto however, there is beyond reasonable doubt that Turkey is far from meeting those standards.

Turkey did ratify both the 1951 convention and the 1967 protocol but with the geographical limitation into force, meaning that only people from a European origin qualify for the full refugee status. People without EU origins are offered a conditional status instead (meaning they can only reside on a temporary basis, until they are resettled in a third country), and people that fail to meet any of the two refugee statuses are granted subsidiary protection which basically mirrors the protection status given under the EU qualification directive.

Despite the fact that the geographical limitation is still in place, Turkey adopted a comprehensive law on Foreigners and International protection (the so-called LFIP), which strengthens Turkey's obligations towards all people in need of international protection (AIDA, 2022).

Nevertheless, many NGO's have accused Turkey of not doing enough to protect the asylum seekers and not being a safe enough country for especially for the non-European asylum seekers

(Intersos, 2021).

This situation was even worsened in June 2021 by a Greek Joint Ministerial Decision (JMD) which designated Turkey as a 'safe third country' for people from Afghanistan, Bangladesh, Pakistan, Somalia and Syria.

Based on this new policy, asylum applications of people from these five nationalities will not be examined based on their individual circumstances and the risks they face in their country of origin. Instead, they are presumed to be safe in Turkey, and only if Turkey is proven not to be safe, their applications are considered admissible, meaning that Greece will have to examine them separately

(International rescue committee, 2022).

## Policy recommendations

### Responsibility- and burden sharing

Based on the outline and implications of the 2016 agreement, it appeared as if the EU wanted to avoid responsibility by essentially paying Turkey 6 billion euros to keep irregular refugees away from its external borders. The current policy of externalization puts far too much pressure on the EU's relation with Turkey and the member states that form the external border (most notably Greece). Moving forward, the EU should take its responsibility and find a solution to the refugee crisis that is rooted in solidarity and protects the refugees. New policies should emphasize on burden-sharing between all 27 member states rather than letting certain countries suffer disproportionately. The mobilization of the EU and its member states in response to the arrival of refugees from Ukraine in the past month shows that Europe has the capacity to welcome refugees in a coordinated, fair, and humane way.

### Stop legal limbo

Due to the massive pressure on the Greek asylum application administration and the poor communication between the EU and Turkey, many people are stranded in camps with horrible living conditions. It should be prioritized to provide these people with the ability to move more freely and to apply for basic needs such as legal documents or even work permits so that the refugees can start rebuilding their future whilst awaiting permanent (re)settlement.

### Revision of the Joint Ministerial Decision

Approximately half of the roughly 12.500 decisions of admissibility under the JMD were found inadmissible, meaning that over 6.000 of all Syrian applicants are not examined based on their individual circumstances and the risks they face in their country of origin.

Instead, they are presumed to be safe in Turkey, while in reality they are far from safe there.

### Closer cooperation with the UNHCR

The United Nations High Commissioner for Refugees, which has been one of the most prominent actors in the field of refugees, has great experience when it comes to refugees. So, from the start, they should have been actively consulted and included in the discussing and implementation of the EU-Turkey deal. But instead, both parties did not actively include the UNHCR. Shortly after the implementation of the deal, the UNHCR even distanced itself from the deal because it expressed concerns regarding some of the details of the plan. Nevertheless, the UNHCR has maintained a presence to carry out protection monitoring to ensure that refugee and human rights standards are upheld, and to provide information on the rights and procedures to seek asylum.

In future attempts it would be fruitful for all parties involved to include the UNHCR and take their advice as they do not only have experience, but also the right tools to assist in refugee challenges.

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