



Brussels, 16.3.2016
COM(2016) 166 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL**

**NEXT OPERATIONAL STEPS IN EU-TURKEY COOPERATION IN THE FIELD
OF MIGRATION**

1. INTRODUCTION

On 7 March 2016, the Heads of State or Government of the European Union and the Prime Minister of Turkey discussed EU-Turkey relations and the progress made in the implementation of the Joint Action Plan.¹

It was agreed that bold moves were needed to close down people smuggling routes, to break the business model of the smugglers, to protect our external borders and to end the migration crisis in Europe. The need to break the link between getting in a boat and staying in Europe was emphasised.

The NATO operation in the Aegean Sea, one of the tasks of which will be to identify potential smuggling activity and notify the Turkish authorities in real time, is an important element in these efforts. Cooperation between the NATO operation and Frontex will be crucial in stemming the flow of irregular migrants.

To decrease the irregular flow of migrants from Turkey to the EU, the leaders warmly welcomed the additional proposals made by Turkey and agreed to work with Turkey on the basis of a set of six principles. The President of the European Council was requested to take forward these proposals and work out the details with Turkey before the March European Council. This Communication sets out how the six principles should be taken forward, delivering on the full potential for EU-Turkey cooperation while respecting European and international law.

Together with joint European solutions and the comprehensive implementation of the European Migration Agenda, cooperation between EU and Turkey is key for an effective response to the refugee and migrant challenge.

These joint efforts to deal with refugees are part of our global engagement with Turkey as candidate country and as strategic partner.

2. SIX PRINCIPLES FOR FURTHER DEVELOPING EU-TURKEY COOPERATION IN TACKLING THE MIGRATION CRISIS

2.1 Returning all new irregular migrants crossing from Turkey into the Greek islands

The return of all new irregular migrants and asylum seekers from Greece to Turkey is an essential component in breaking the pattern of refugees and migrants paying smugglers and risking their lives. It is self-evident that the arrangements for such returns, both of those in need of international protection, and those who are not, can only be carried out in line with the refugee protection safeguards that have been put in place in international and EU law. Moreover, given the extent of flows currently between Turkey and Greece, such arrangements should be considered as a temporary and extraordinary measure which is necessary to end the human suffering and restore public order and which needs to be supported with the relevant operational framework.

Recently progress has been made in the readmission of irregular migrants and asylum seekers not in need of international protection to Turkey under the bilateral Readmission Agreement between Greece and Turkey². New arrangements on returns should build on this progress, with all parties working together to facilitate swift and effective returns.

¹ Statement of the Heads of State or Government (Brussels, 7 March 2016).

Legal safeguards for returning persons in need of international protection to Turkey

The return to Turkey of all irregular migrants and asylum seekers newly arriving in Greece must be carried out in respect of European and international law. It is a fundamental requirement flowing from the European Convention on Human Rights and the Charter of Fundamental Rights that every case needs to be treated individually. In that regard, the Asylum Procedures Directive lays down the particular legal and procedural parameters to be respected. There is therefore no question of applying a "blanket" return policy, as this would run contrary to these legal requirements.

The Directive recognises that in certain circumstances an expedited procedure can apply whereby there is no need to examine the substance of an application. Instead, in these cases asylum applications can be considered inadmissible, in particular where it can be expected that another country would carry out the examination or provide sufficient protection. This would arise, for example, if a person has been already recognised as a refugee or would otherwise enjoy sufficient protection in a "first country of asylum", or if a person has come to the EU from a "safe third country", where – even though the person has not received protection – the third country can nevertheless guarantee effective access to protection³.

In accordance with the provisions of the Asylum Procedures Directive, a number of safeguards need to be respected. Having first been duly registered and identified in line with EU rules, a person that has lodged an asylum claim in Greece should be given a personal interview when the responsible authority considers that the individual falls into one of these categories of inadmissibility. This allows a screening to occur to identify whether there are particular circumstances that arise. There is also a right of appeal against the inadmissibility decision⁴. In the case of the "first country of asylum", in addition to having been recognised as a refugee, this can also apply when the person enjoys "sufficient protection". In the case of the "safe third country", the Directive defines conditions both in terms of the conditions in the third country concerned, and in respect of the person concerned. Before returning a person in need of international protection Member States need to be satisfied that the third country will respect a set of standards concerning fundamental rights, non-discrimination, and respect for international law.

It appears that to apply these provisions changes would be required to both Greek and Turkish domestic legislation. In the case of Greece, this applies to the status of Turkey as a "safe third country" and will entail a number of detailed procedural rules in areas like appeal procedures. In the case of Turkey, this applies in areas like the renewal of temporary protection status for Syrians who had left Turkey, access to effective asylum procedures for all persons in need of international protection, as committed to by Turkey in the Joint EU-Turkey Action Plan, and ensuring that protection equivalent to the Geneva Convention is afforded to non-Syrians, notably those returned.

Once the inadmissibility of an asylum claim has been established, or the claim is determined to be unfounded, a person can be returned under the applicable readmission agreement. The

² From 1 June 2016, this will be succeeded by the EU-Turkey Readmission Agreement, following the entry into force of the provisions on readmission of third country nationals of this agreement Provided the decision advancing their entry into force is adopted by the Joint Readmission Committee and approved by Turkish parliament before that date.

³ Provisions on "first country of asylum" are set out in Article 35 of the Asylum Procedures Directive, and provisions on "safe third country" in Article 38.

⁴ See Article 46 of the Asylum Procedures Directive. An appeal will automatically allow an applicant to remain in the territory in a situation where the decision is based on the existence of a "safe third country", while in the case of an appeal against a decision based on a "first country of asylum" it is sufficient that the court has the power to rule whether the applicant may remain in the territory.

principle of non-refoulement should be respected by Turkey in all cases, in line with its existing international obligations.

Provided these safeguards are respected by Greece and Turkey, this scheme will be in accordance with European and international law.

Practical aspects

In line with international and European law requirements (in particular as regards the individual assessment of applications for international protection), fast-track operational arrangements between Greece and Turkey can be put in place, more suited to the large scale return of migrants. Steps have been taken to achieve this goal, with a joint Greek-Turkish declaration on readmission issued on 8 March. For example, the principle of using a delegated readmission officer with a view to accelerating readmission procedures of irregular migrants was agreed. The number of such liaison officers will need to be increased; Greece and Turkey have not yet reached an agreement on this increased number.

To implement such returns, the EU will support Greece to put in place the necessary infrastructure. In particular, the hotspots in the islands in Greece will need to be adapted – with the current focus on registration and screening before swift transfer to the mainland replaced by the objective of implementing returns to Turkey. For instance, the infrastructure in the hotspots would need to be reconfigured to accommodate the readmission and asylum offices and to deal adequately with vulnerable groups.

Another important element would be a substantial increase in reception capacity in the islands. This could include separate facilities for irregular migrants and those undergoing the longer procedure of an asylum request, and would require sufficient detention capacity to be put in place for individuals who present a risk of absconding.

Until now, relatively few of those arriving in Greece have applied for asylum. Faced with the prospect of a rapid return as a person not in need for international protection, the number of asylum claims is likely to rise. The first requirement would therefore be to put in place accelerated asylum procedures for all stages of the procedure, from the initial interview to a possible appeal. The capacity of the Greek Asylum Service should be increased to enable expedited readmission to Turkey as well as rapid acceptance of asylum applications. Appeal Committees should also be able to rule on a high number of appeals within a short period of time. In this regard, the European Asylum Support Office (EASO) should also be called upon to support the Greek authorities in quickly and effectively processing applications and returns, if necessary through an additional and targeted call for assistance from the Member States.

Finally, arrangements would need to be made for large-scale transport from the islands to Turkey.

All these steps imply costs and a first estimate calculated on the basis of 2,000 irregular arrivals per day, support from the EU budget would be needed at the level of around €20 million a month.

2.2 To resettle, for every Syrian readmitted by Turkey from the Greek islands, another Syrian from Turkey to the EU, within the framework of the existing commitments

The scheme linking the numbers of Syrians readmitted to Turkey from the Greek islands and the number of Syrians resettled from Turkey to the Member States aims to replace, quickly, irregular flows of migrants travelling in dangerous conditions across the Aegean by an orderly and legal resettlement process.

The 1:1 resettlement scheme that aims to deliver this change will require a sound logistical framework and sufficient resettlement pledges in order to function.

The 1:1 scheme will function if Member States make a sufficient number of resettlement pledges. In this connection, the Statement of the Heads of State or Government of 7 March 2016 specifies that the 1:1 scheme should function "*within the framework of the existing commitments*".

A European Resettlement Scheme is already in place, which is the natural first source of existing resettlements commitments to be linked to the returns of all new irregular migrants and asylum seekers from Greek islands to Turkey. There are some 18,000⁵ places left available, though part will be taken up by resettlements from Jordan and Lebanon.

Were a further need for resettlement to arise under the 1:1 scheme, the necessary steps could be taken to transfer some of the commitments under the existing relocation decisions, notably all or part of the currently unallocated 54,000 places, to the 1:1 scheme⁶. This would be in line with the Commission's existing policy of considering that resettlement and humanitarian admission are equivalent to relocation, as all are concrete expressions of solidarity with other Member States or third countries experiencing a mass influx of migrants.⁷

The 1:1 scheme is expected to reduce quickly the number of irregular crossings in the Aegean Sea. Its effectiveness will depend upon the full implementation of the steps set out in the Communication. The EU and Turkey should agree on a weekly joint monitoring mechanism to review the progress made under the scheme. Any necessary adjustments to the scheme should be identified in this process.

Admissions under the Voluntary Humanitarian Admission Scheme⁸ with Turkey will be activated once the irregular crossings between Turkey and the EU have come to end, or at least have been very substantially reduced. It will allow for rapid and efficient admission from Turkey of persons in need of protection displaced by the conflict in Syria. The Commission expects that once irregular flows from Turkey to the EU have come to end, the number of Member States willing to participate in the scheme will increase.

If these efforts would succeed, the Voluntary Humanitarian Admission Scheme could be enlarged also to Jordan and Lebanon.

⁵ Report on Relocation and Resettlement, COM (2016) XXX, 16 March 2016.

⁶ This would require an amendment of the Council Decision to allocate the 54,000 outstanding places within the 160,000 total. The budgetary consequences also need to be addressed as there is a difference between the funds made available for each relocation place (€6,500) and those allocated for each resettlement place (€10,000).

⁷ Resettlement from Turkey by Member States under bilateral resettlement schemes should be included the total of resettlements by the EU conducted under the 1:1 scheme.

⁸ Commission Recommendation of 15.12.2015 for a voluntary humanitarian admission scheme with Turkey, C(2015) 9490.

The logistical framework that underpins the Voluntary Humanitarian Admission Scheme with Turkey proposed by the Commission in December 2015 could be used more generally for the purposes of the 1:1 resettlement scheme. The Voluntary Humanitarian Admission Scheme relies on the globally acknowledged expertise of the United Nations High Commissioner for Refugees (UNHCR) in facilitating different forms of admission of persons in need of international protection from third countries to which they have been displaced, to States willing to admit them. The experience and expertise of EASO and the International Organisation for Migration (IOM) should also be called upon. For the same reasons as in the case of the Voluntary Humanitarian Admission Scheme, the 1:1 scheme should apply to Syrians registered by the Turkish authorities prior to 29 November 2015.

The standardised operating procedures agreed in the framework of the Voluntary Humanitarian Admission Scheme can be used for the more general purposes of the 1:1 scheme. They deal in particular with the selection of candidates and respect all applicable international humanitarian law rules. For the purposes of the 1:1 scheme, these procedures should be complemented by a mechanism that creates a disincentive for persons to cross the Aegean Sea. Priority for resettlement should be given to those Syrians who remained in Turkey since they are eligible for temporary protection.

A process to link the numbers readmitted from the Greek islands to Turkey and those leaving Turkey to be resettled in the EU is required. A week-by-week approach, in which the EU looks back at the total number of Syrians effectively readmitted by Turkey over the past 7 days and immediately launches the procedure for the same number to be resettled to the EU, could be envisaged.

New routes to the EU may develop if the 1:1 scheme is successful. Turkey should commit to taking any necessary measures to prevent new sea or land routes for irregular migration opening up from Turkey towards the EU. If such a new route nevertheless emerges, commitments and principles on returns and on resettlements should apply between the relevant Member State and Turkey.

2.3 To accelerate the implementation of the visa liberalisation roadmap with a view to lifting the visa requires for Turkish citizens by the end of June 2016

The conditions to lift visa requirements are set out in a 2013 roadmap, detailing 72 requirements to be met by Turkey in the areas of document security, migration management, public order and security, fundamental rights, and the readmission of irregular migrants. The Commission has been charting Turkey's progress on these points and the most recent report was able to mark intensified efforts and a new level of commitment and engagement⁹. 35 of the 72 requirements have now been fulfilled.

To accelerate implementation of the roadmap with a target of lifting the visa requirements by the end of June will require even further efforts from Turkish authorities in adoption and implementation of the legal and administrative measures needed to fulfil all the requirements of the Visa Liberalisation Roadmap. The package of 9 legislative proposals under discussion will have to be adopted by Turkey in good time on the basis of an understanding reached with the EU. The applicable benchmarks will not be amended.

⁹ Second report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap (COM (2016) 140, 4 March 2016).

On the understanding that Turkey takes the necessary measures to fulfil the remaining requirements, the Commission will make a legislative proposal to lift the visa requirements for Turkish citizens at the end of April 2016.

2.4 To speed up the disbursement of the Facility for Refugees in Turkey

The Facility for Refugees in Turkey covers both immediate humanitarian needs, and more ongoing development needs. On the humanitarian side, a €40 million contract was signed with the World Food Programme on 4 March, to cover food assistance via an e-card scheme which will help to reach 735,000 Syrian refugees. Fifteen other projects are being negotiated with partners, for a total of €50 million. With these projects, a total of €90 million will be contracted by mid-April 2016. This allocation will quickly expand the provision of humanitarian assistance in Turkey, including food, non-food items, health, water and sanitation and protection.

A decision was also taken to allocate €55 million from the Facility to the EU Regional Trust Fund in response to the Syria crisis to urgently support development-orientated project in particular in the field of education, in line with the conclusions of the first Facility Steering Committee of 17 February. This translated into signature on 4 March of a regional contract with UNICEF, of which €38 million will allow an additional 110,000 Syrian children in Turkey to go to school during the current academic year.

At the same time, projects are now under way through the EU Regional Trust Fund in response to the Syria crisis totalling almost €140 million. Relevant actions worth € 76 million have already been selected and identified, and could be signed by the end of April 2016, following endorsement by the next board meeting of the Trust Fund of 22 March. Further actions worth €64 million are currently being elaborating for possible contracting by July 2016. Further transfers from the Facility to the Trust Fund will be made in light of needs to cover the project pipeline. In addition, projects for refugees in areas including education, human resources and environmental infrastructure are also being developed by the Commission under the Trust Fund, using the €164.5 million transferred from the Instrument for Pre-Accession (IPA) programme at the end of 2015.

The next step towards bringing further projects on stream will build on the finalisation of the comprehensive needs analysis, currently conducted by the Commission in close cooperation with Turkey. The Turkish government finally submitted its contribution on 4 March. On this basis, the needs assessment should be finalised by mid-April. In parallel, technical consultations with the Turkish authorities are currently taking place in Ankara to allow for the early identification and programming, by the Commission, of urgent and mature projects in all fields covered by the Facility. Without the pro-active engagement of the Turkish authorities, no progress will be possible. Contacts are also on-going with International Financial Institutions (IFIs) and other agencies as potential implementing partners. The Commission will draw on the expertise of its established partners from the UN, IFIs, International Organisations, Member States and NGO community for actions relating to their specific expertise. This should allow for the holding of the second Steering Committee of the Facility in April.

On the resource side, the Commission received the respective contribution certificates from Germany and Finland. All Member States are encouraged to swiftly make available their national contributions so as to allow for a swift, stepwise roll-out of the Facility to address the needs of the refugee population in Turkey, in support of Turkey's own efforts.

2.5 To prepare for the decisions on the opening of the new chapters in the accession negotiations as soon as possible, building on the October 2015 European Council conclusions

The state of play in the European Union's accession negotiations was set out in the enlargement package of November 2015.

Since then, Chapter 17 (Economic and Monetary Union) was opened at an Inter-Governmental conference on 14 December 2015. In this context, important reforms will be discussed. The chapter covers, for instance, rules requiring the independence of central banks, prohibits the direct financing of the public sector by central banks and prohibits privileged access of the public sector to financial institutions.

In addition, preparations are now under way to progress towards the opening of five chapters: Chapter 15 (energy), Chapter 23 (judiciary and fundamental rights), Chapter 24 (justice, freedom and security), Chapter 26 (education and culture) and Chapter 31 (foreign, security and defence policy).

This is in line with the European Council conclusions of October 2015, which called for negotiations "to be re-energized with a view to achieving progress in the negotiations in accordance with the negotiating framework and the relevant Council conclusions".

The Commission aims to finalise all related preparatory documents in the spring with a view to submitting them to Council, without prejudice to Member States positions and the negotiating framework.

Work is well advanced in the area of energy (Chapter 15) and fruitful technical consultations were held in Ankara on 1-3 March. An updated screening report will be delivered by the Commission in April. In coherence with the approach for other candidate countries, it is anticipated that this will recommend setting opening benchmark(s).

In the key areas of the judiciary and fundamental rights, and justice, freedom and security (Chapters 23 and 24), technical consultations are now being organised following the receipt of written submissions from Turkey. These chapters cover a range of critical issues including fundamental rights such as freedom of speech, judiciary, anti-corruption policy, migration and asylum, visa rules, border management, police cooperation, and the fight against organised crime and against terrorism. The EU expects Turkey to respect the highest standards when it comes to democracy, rule of law, respect of fundamental freedoms, including freedom of expression. In terms of opening benchmarks in these essential areas, candidate countries are generally asked to prepare comprehensive Action Plans with precise timelines for alignment of laws and for providing the necessary budget. The updated screening reports for these chapters could be issued by the Commission in May.

On education and culture (Chapter 26), Turkey is finalising its updated negotiating position. The Commission will be able to update the Draft Common Position and table it to the Council in April.

The chapter on foreign, security and defence policy (Chapter 31) has already been examined in detail and the European External Action Service is finalising an update screening report which will be ready in April.

2.6 Cooperation to improve humanitarian conditions inside Syria

Turkey is part of the International Coalition against Daesh and a member of the International Syria Support Group (ISSG). In this capacity, it plays a key role in the joint efforts to solve the Syrian crisis. In this context, the EU and Turkey should also enhance their cooperation for delivering humanitarian aid to Syrian population. The situation of the refugees stranded at the Turkish border, notably in the corridor between Aleppo and the Turkey-Syria border deserves special attention.

As already stated by the European Council, the EU is ready to work with Turkey to improve humanitarian conditions inside Syria which would allow refugees to live in areas which will be more safe. To be successful, it is fundamental that the commitments made by the ISSG in Munich on 11-12 February are swiftly implemented in full by all parties.

The Commission is already providing and will continue to provide, substantial aid inside Syria. Since the beginning of the crisis, the Commission's humanitarian aid for Syria amounts to €468 million. For 2015, this figure stands at €160 million.

Today, 50 projects are currently in place, totalling over €200 million. This includes humanitarian, development and stabilisation assistance. A substantial share of humanitarian assistance projects operate cross-border from Turkey - for 2015, this amounted to €43.2 million, 27% of the total budget devoted to of Syria. These projects rely heavily on local cooperation with the Turkish authorities.

Cross-border actions from Turkey, Jordan, Lebanon and Iraq will continue to be a major part of actions of humanitarian assistance in 2016. €15 million will be contracted in March 2016, with some €70 million further funding planned to be contracted by early May, following a recent call to humanitarian partners.

3. Conclusion

The arrangements for the return of all new irregular migrants and asylum seekers crossing the Aegean Sea from Turkey to Greece operating together with the 1:1 resettlement scheme will be a temporary and extraordinary measure, and should begin as soon as possible. The aim is to replace the current mass irregular flows of migrants by a controlled and legal process. The objective is also to break the pattern of refugees and migrants paying smugglers and risking their lives.

This Communication sets out a framework that will ensure that the process is carried out in accordance with international and European law, which excludes the application of a "blanket" return policy. It also indicates the steps, legislative and logistical, that need to be taken as a matter of urgency for the process to be launched.

This new phase in EU-Turkey cooperation to tackle the migration crisis will require concerted efforts from Greece and Turkey, supported by the Commission, EU agencies and partner

organisations. It will also require the support of Member States, both in terms of the provision of personnel and the willingness to make pledges for resettlement.

Accordingly, whilst some important steps are still needed, the means both legal and practical exist to initiate the new arrangements as a matter of urgency.