Sailing in the Dark – 300 with a mission – Visa, Terror and The Aegean Refugee Agreement

ESI Newsletter – 19 March 2016

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Dear friends,

The EU-Turkey agreement on the refugee crisis in the Aegean entered into force two months ago. Legally it is no more than a non-binding "statement", but its strength derives from a clear and powerful objective:

> "In order to *break the business model* of the smugglers and to *offer migrants an alternative to putting their lives at risk*, the EU and Turkey today decided to end the irregular migration from Turkey to the EU."

In 2015 more than 500,000 people arrived from Turkey on the Greek island of Lesbos – close to the total number of irregular crossings into the whole EU in five years (2009-2013). In 2015 more than 800,000 people crossed the Aegean.

In autumn 2015 ESI argued that the right plan might lead "within six weeks to a dramatic fall in the number of crossings." After the Aegean agreement entered into force it took only two weeks for the number of daily crossings to fall from more than 1,100 a day in March to one tenth that number in April. And while 805 people died in the Aegean in 2015 (IOM), following the entry into force of the agreement the number of people who drowned fell sharply:

Deaths in the eastern Mediterranean 2016

Month	Deaths
January	275
February	46
March	45
April	10

In short: so far the agreement is delivering more than expected. And yet, there are dark clouds on the horizon, reasons to fear that in the next weeks, even before the end of the Dutch EU presidency bad management, bad faith, negligence and recklessness might sink this ship. The question today is: what can be done to prevent this?
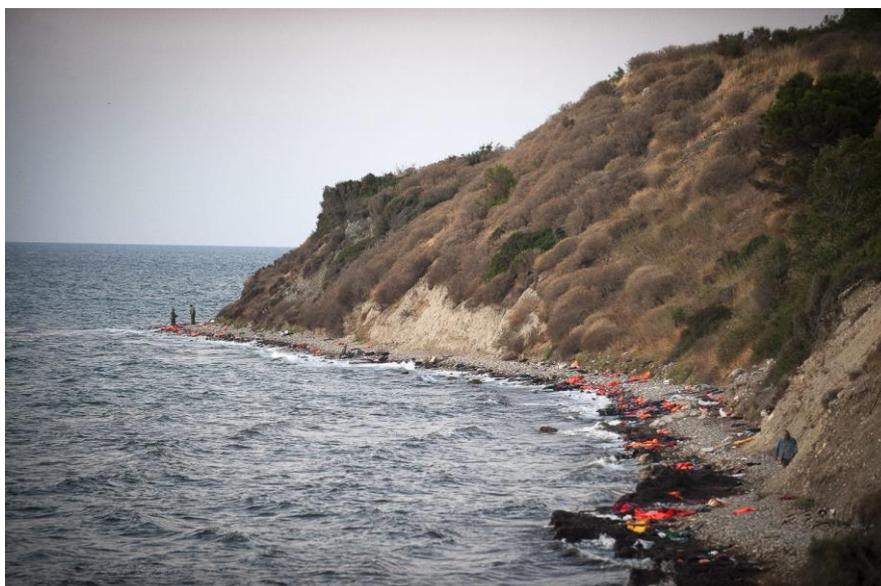
Lesbos

Bad management in the Aegean

A few numbers reveal how the Aegean agreement is currently failing: the number of people who have been stuck on the Greek islands since 20 March; the capacities to accommodate these people on these islands; the number of those returned to Turkey; and the (unknown) number of asylum applications that have been decided.

The total number of people on the Greek islands (Lesbos, Chios, Samos, Leros, Kos, Rhodes, Kalymnos) on 17 May was **8,511**. According to UNHCR the capacities to accommodate them are as follows:

> Lesbos: 3,500 places for 4,207 people
> Chios: 1,100 places for 2,276 people

Eight weeks after the agreement entered into force there were three Greek asylum case workers for 2,276 people on Chios and none at all for 500 people on Leros. And yet, the European Asylum Support Office (EASO) argues that there is no need for more asylum case workers from the EU as the mission *would not be able to absorb them.*

This is not the only indication of terrible mismanagement. Another is a striking lack of transparency about what is happening on the islands. Journalists spend many days on Lesbos or on Chios and struggle to get basic information, such as the number of asylum cases decided or the number of Greek case workers deployed. Regular reporting by the European Commission leaves out some of the most important information (how many cases have been resolved? How many Greek case workers are deployed?). A new ESI report – Navigating the Aegean – What the EU ought to know, and say, about refugees and the Greek islands (4 May 2016) – notes:

> "The information that is needed to assess the implementation of the EU-Turkey agreement is straightforward and should be presented in a weekly update. The fact that this does not exist yet is troubling. It raises the possibility that European institutions do not have this information. It suggests that the EU support mission to Greece resembles a vessel sailing in the dark, without instruments, without a captain, which might hit a rock at any moment."

Meanwhile the number of people sent back to Turkey under the agreement in the past two months has been lower (**386**) than the number readmitted to Turkey in the first two weeks of March (**398**), when there was no agreement. So far *not a single person* who submitted an asylum claim in Greece after 20 March has been returned to Turkey.

These problems were predictable even before the Aegean Agreement entered into force. The tiny Greek Asylum Service of less than 300 people, created as recently as 2011 in the middle of an economic crisis, has been struggling to cope ever since. Its shortcomings have been described in numerous reports by the European Migration Network (Annual policy report on immigration and asylum in Greece, 2014), the European Commission (Assessment of the implementation of the Greek Action Plan on Asylum and Migration management, 2014), UNHCR (Greece as a country of asylum, 2015), AIDA (Country report Greece, 2015) and again, recently, the European Commission (Progress report on the implementation of the hotspot approach in Greece, 2016). These reports describe an asylum service in disarray:

> "The practice of the months-long detention of asylum seekers, in fact under inhuman and degrading conditions has continued in 2014, in many cases instigated by the Asylum

Service, despite the fact that under the current legal framework the detention of asylum seekers is an exceptional step." (2014)

"Many reports from international organisations and NGOs, as well as ECtHR judgments, had regularly pointed out that Greece detains irregular migrants in inadequate facilities or in police stations for the full length of their detention period and highlighted the inhumane detention conditions of irregular migrants in Greece, due to the absence of medical, psychological and legal assistance." (2014)

"In May 2015, asylum seekers, mostly Syrians, waiting for months to lodge asylum applications either queuing in front of the Regional Asylum Office of Attica or unsuccessfully trying to book an appointment via Skype, protested against the delays in the registration and processing of asylum applications outside the Regional Asylum Office closing down the main avenue in front of it. A few days later, on 25 May 2015, the Asylum Service announced that until further notice, the Regional Asylum Office of Attica, due to staff shortage, is only capable to register and process applications already scheduled via Skype. As a result asylum seekers could not have their applications registered in Athens for a while, remaining at risk of detention and deportation." (2015)

On 10 February 2016 the European Commission issued a recommendation to the Hellenic Republic where it pointed out the reasons it had launched infringement proceedings:

"…inter alia, insufficient access to the asylum procedure, insufficient reception capacity and poor reception conditions, including in detention facilities, failure to fingerprint irregular migrants and asylum applicants, the lack of appropriate treatment of unaccompanied minors, and the lack of adequate legal assistance for appeals."

And yet, Commission president Jean-Claude Juncker continues to refer to the implementation of the Aegean agreement as mainly a burden for the Greek Asylum Service: "This is a Herculean task facing us, *especially Greece is facing a Herculean task.*" But evoking ancient heroes, even Hercules, will not help without better management. To pretend that this agreement can be implemented by Greece alone, with support from the European Commission as currently organised, puts everything achieved so far at risk again.
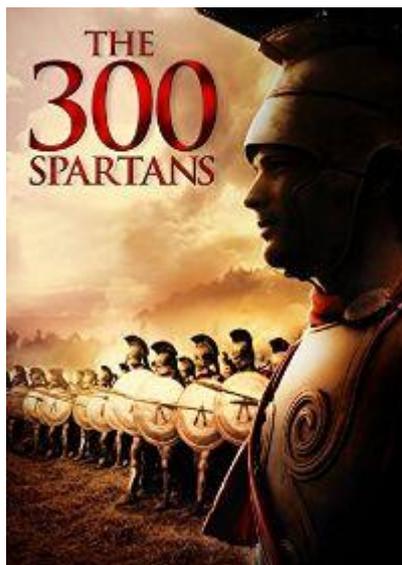
A mission of 300 can do a lot – if organised well

A credible asylum mission

An alternative approach would start from the recogition that it is unwise and unfair to expect Greece to carry the main burden faced with a continental challenge. While Greece would indeed suffer the most if the Aegean agreement collapsed, and thousands of migrants started arriving in Lesbos again, the EU has as big a stake in the agreement.

Since mid-March ESI has [proposed to deploy an EU Asylum Support Mission](#). The best would be for Alexis Tsipras, the Greek prime minister, to invite the European Commission to reorganise its support to meet the following concrete commitments:

– To set up a joint asylum support mission of the EU and Greece, implementing Greek legislation; this would be a pilot effort for future EU asylum operations in states with large numbers of asylum applications.

– A double-headed mission leadership, with one senior Greek official and one former/current head of an EU member state asylum office. These two would manage a coherent operation, with Greek and EU case workers in mixed teams for both first and second instance decisions. The Greek asylum service would second case workers to this mission, as would member states.

– A mission strength of 300 asylum case workers, plus interpreters and administrative support, deployed on the islands. These 300 should aim to resolve 6,000 asylum claims in twenty working days (one claim a day per case worker). By the middle of July all claims on the islands should be decided. Every person who is granted protection should be relocated directly to EU member states.

– Once all claims on the islands are resolved, the mission should relocate to the Greek mainland and help Greece decide asylum applications and relocate refugees to the rest of Europe. It should recommend how to change the current relocation decision to be certain to reach a relocation target of at least 30,000 people from the mainland by the end of 2016.

The Aegean agreement between the EU and Turkey states (Point one):

> "Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey."

It is crucial that the EU demonstrates that it means it, and organises itself for this to happen. This would be a huge help for Greece. It would be a very important success for the European Commission. It would also be a crucial step towards a credible European asylum policy. As Robert Schuman put it: "Europe will not be built all at once, or according to a single plan. It will be built through concrete achievements." Today, the road to a credible EU policy on asylum passes through Lesbos.

ESI on EU Asylum Support Mission

Carnegie Europe: "The Refugee Policy the EU Needs Today" (15 April 2016)

Dutch TV, "Alleen Syrische vluchtelingen teruggestuurd naar Turkije" ("Only Syrian refugees sent back to Turkey"), interview in English (16 April 2016)

ESI workshop and public event with Madeleine Albright in Vienna (18 April 2016)

De Volkskrant, "Architect EU-Turkijedeal: Rutte moet daadkracht tonen, anders faalt Europa" ("Architect of EU-Turkey Deal: Rutte must show decisiveness, otherwise Europe fails") (18 April 2016)

Deutschlandfunk, "Massengrab Mittelmeer – Fluchtrouten, Schlepper und die EU" ("Mass grave Mediterranean – Flight routes, People smugglers and the EU") (20 April 2016)

Gerald Knaus Oslo refugee presentation – "On the Edge" – 22 April

ZDF, "Asyl-Chaos: 'Griechenland überfordert'" ("Asylum Chaos: 'Greece is overstretched'") (26 April 2016)

ORF, "Gespräch über den EU-Türkei-Deal" ("Interview on the EU-Turkey deal") (11 May 2016)

Bad faith in Europe

Inadequate implementation of the agreement's provision concerning asylum and readmission on the Greek islands is not the only shortcoming, however. There is also the fact that everyone seems to have forgotten about point 4 of the EU-Turkey agreement:

> "Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, a Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme."

As the numbers of crossings continue to fall, the moment has arrived to prepare for this scheme. But is anybody doing so?

Since 20 March only 177 Syrians have been resettled from Turkey. With such low numbers the promise that the EU is going to offer asylum seekers "an alternative to putting their lives at risk" rings hollow.

For serious resettlement to happen EU member states must find a quick way to resettle Syrian refugees from Turkey, leaving out unnecessary intermediaries. The current "fast track Standard operating procedures," adopted at the end of April, are neither fast nor appropriate.

Negligence in Turkey

On 20 April the European Commission noted in its report on the implementation of the agreement that

> "In addition to the legislative changes, Turkey has, by letter of 12 April 2016, provided assurances that all returned Syrians will be granted temporary protection upon return. Discussions are advancing on providing assurances for non-Syrians."

Since then, a second such letter has been sent. And yet, words on paper are not enough.

Since 20 March only 389 migrants have been returned from Greece to Turkey. And yet, instead of these readmissions being carefully monitored so as to dispel doubts about Turkey as a safe third country and safe country of asylum, the lack of transparency, lacking follow up and overall absence of accountability has undermined not just the rights of those returned, but also prospects for the whole agreement. For its implementation it is vital that international law is upheld on both sides of the Aegean; that refugees' rights are respected and that their circumstances are adequate.

Shortly after the first migrants were returned to Turkey on 4 April, press reports emerged that 13 non-Syrians had been sent back who had not been given the opportunity to apply for asylum in Greece. More than a month later, there has been no official confirmation or rebuttal of this claim.

On 16 May, the Guardian migration correspondent Patrick Kingsley reported that twelve Syrians returned to Turkey under the agreement had been detained in a remote camp for weeks without access to legal aid, proper living conditions or special medical care.

> "'You can't imagine how bad a situation we are in right now,' said one Syrian mother detained with her children, who now wants to return to Syria because she sees no alternative. 'My children and I are suffering, the food is not edible. I'm forcing my children to eat because I don't have any money to buy anything, but they refuse because there are bugs in it.' The detainees have also been denied access to lawyers and specialised medical care, she alleged." (The Guardian)

This shakes the foundation of the EU-Turkey agreement, even if it may seem awkward for the EU – where similar conditions exist in some countries – to complain. It is a matter of vital interest that it raises this: without Turkey treating those who are returned in accordance with its own and international law, readmission will not take place. And if readmission does not happen, the visa liberalization deal is at risk. This direct link between these two conditions also points towards a way out: for the EU, Turkey guaranteeing the rights of those who are returned and ensuring full transparency should be declared the most important condition for visa liberalization to happen at the end of June.

This problem can be addressed with the right focus. A well-organized EU Asylum Support Mission should ensure that migrants on the islands are informed of their rights and that procedures are handled seriously, setting a standard of best practice for all member states. At the same time the EU and Turkey need to ensure that outside officials – ideally a joint inspection team of Turkish, EU and UNHCR officials – have full access to detention facilities on both sides of the Aegean to monitor conditions; and to follow up on what happens to every single individual returned to Turkey under the agreement.

Needed: a robust strategy for human rights in accession states

Lifting visa and a red line human rights mechanism

On 4 May 2016 the European Commission stepped forward with a proposal on EU-Turkey relations:

> "The European Commission is today proposing to the European Parliament and Council of the European Union to lift the visa requirements for the citizens of Turkey ... *Turkey has made impressive progress, particularly in recent weeks, on meeting the benchmarks of its visa liberalisation roadmap. There is still work to be done as a matter of urgency but if Turkey sustains the progress made, they can meet the remaining benchmarks.*"

The same day the European Parliament decided that it was not putting the Commission proposal to lift visa on its agenda, announcing that:

> "On visa liberalisation with Turkey, however, Parliament's position is unchanged ... all applicant countries for visa-free travel will be *treated equally and this means a proposal only once all benchmarks have been fulfilled.*"

This provoked a strong reaction from Turkish president Erdogan on 6 June:

> "We will go our way; you go yours. The EU is telling us to change our law on combatting terrorism. [They] are allowing terrorists to raise tents and then [they] come with requirements." (Refering to a tent raised by PKK supporters near the Council building in the centre of Brussels)

Within days, positions had hardened further, and it looked as if this had become the issue to sink the Aegean agreement between the EU and Turkey. This, however, would be both reckless and ineffective behaviour.

It is important to understand the history of EU-Turkey talks on visa liberalisation. The EU has long wanted to conclude a readmission agreement with Turkey. Negotiations on such an agreement started already in 2002, but were not concluded until January 2011, largely due to Turkish doubts.

A short history of the link between visa liberalization and readmission

2002	EU and Turkey start negotiating a readmission agreement
2009/10	Visa free travel for Albania, Bosnia, Macedonia, Montenegro, Serbia
Jan 2011	EU and Turkey conclude negotiations for the readmission agreement
Feb 2011	European Commission proposes to EU member-states to start visa liberalisation dialogue with Turkey; EU member states refuse to even mention the possibility of visa liberalisation in their conclusions
Feb 2011	Turkish foreign minister Davutoglu tweets: "Turkey is not a second-class country. We want equal treatment like every civilised nation."

The readmission remains unsigned. Then the EU changes its mind

June 2012	EU member states invite Commission to launch visa dialogue
Dec 2012	European Commission shows Turkey roadmap with 72 conditions Turkey refuses to sign readmission agreement on this basis
Jan 2013	Home Affairs Commissioner Cecilia Malmstrom explains to Ahmet Davutoglu that the EU roadmap

"... is a Commission document, endorsed by the Council, representing our position for conducting the Dialogue and **obviously I am not requesting Turkey to endorse or to approve it.** The Dialogue we propose offers the appropriate framework to clarify and to address all relevant concerns expressed by both sides." (letter here: Cutting the Visa Knot).

May 2013	The process remains stuck; Turkey has serious doubts about the roadmap. ESI publishes the report Cutting the Visa Knot and recommends the following steps:

"Turkey needs to remind the EU that the visa dialogue is not part of the accession process. Instead, **it is a negotiation between equals. Both sides want something**: the EU wants a readmission agreement and help in addressing illegal migration from Turkey; Turkey wants visa-free travel. **Turkey should state publicly at the outset that it will not accept everything in the roadmap** ... Turkey should set a realistic deadline. By the end of 2015, at the latest, Turkish travellers should enjoy visa-free travel. If in this period there is no vote, or if the vote is negative, Turkey will notify the EU that the readmission agreement will cease to be in force. This is a legitimate option under the negotiated text of the agreement."

In December 2013 the EU and Turkey sign the readmission agreement and simultaneously launch a visa liberalisation process. The EU formally hands over its roadmap with 72 benchmarks. Prime Minister Erdogan declares that "in three to three-and-a-half years, visa-free travel to Europe will start."Turkish diplomats tell journalists that Turkey will cancel the readmission agreement if it does not receive visa-free travel by then. Malmstrom explains:

"We have started **two initiatives in parallel** which will boost the relations between Turkey and the European Union and bring benefits for their citizens … We understand [the Turkish concerns] with sympathy. We will try to find solutions to these."

Fast forward to 2016:

Turkey wants from the EU:	Visa liberalisation by June 2016
EU wants from Turkey:	EU readmission agreement fully in force June 2016
	Turkey to take back everyone from Greece
	Turkey to meet all 72 visa roadmap criteria
Turkey offers:	EU readmission agreement fully in force June 2016 YES
	Turkey to take back everyone from Greece YES
	Meeting 72 visa roadmap criteria NO

European Commission assessment of 72 criteria

	October 2014	March 2016	May 2016
Fulfilled/almost fulfilled	**22**	**37**	**66**
Partially fulfilled	**23**	**23**	**3**
Not fulfilled	**27**	**12**	**3**

The possible consequences of not offering visa liberalisation in June including the – perhaps fatally – undermining the legally non-binding EU-Turkey statement. This allows Turkey to walk away from other demanding parts of the Aegean agreement. Without visa liberalisation, readmission is at risk.

At the same time ordinary Turks will not be able to travel easily. However, over 2 million Turks with special/green passports – state officials and their families – will continue to travel visa free to most EU countries.

In fact, for the EU the 72 roadmap criteria are not legal criteria, but political. After all, the EU offers visa free travel to many countries with human rights problems. This explains why the following countries' citizens do not need a visa to travel to the Schengen area: Brazil, Brunei, Guatemala, Honduras, Malaysia, Mexico, Nicaragua, Panama, Paraguay, Salvador, Seychelles, Singapore, Venezuela:

El Salvador, where the government invokes anti-terrorism laws to prosecute alleged gang members: "On August 11, El Salvador Attorney General Luis Martinez announced capture orders had been issued for approximately 300 alleged gang members on charges of 'terrorist acts' ... El Salvador's own legal definition of terrorism is vague and applicable to varying contexts. The law defines a terrorist act as 'evidence of intent to provoke states of alarm, fear or terror in the population, place in imminent danger or affect the life or physical or mental integrity of people.'"

Brazil, which adopted a very broad anti-terror law in early 2016, which defines the "promotion of and preparation for terrorism" as follows: "In addition, whoever promotes, creates, takes part in, or provides assistance to, in person or through an intermediary, a terrorist organization will be punished upon conviction with five to eight years in prison and a fine. "

> **Malaysia**, which unveiled a new anti-terror law in 2015: "The bill reintroduces indefinite detention without trial – something the prime minister had repealed in 2012. Human Rights Watch called the move 'a giant step backwards for human rights'."

And yet, the European Parliament is right to ask for a strong mechanism to respond to consistent human rights violations in an accession country. It feels that denying visa liberalisation may be the last arrow in its quiver to get Turkey to change, even if it is the wrong instrument, hits the wrong target and puts at risk a vital EU interest.

What could it do instead? One option would be for the European Parliament and the Commission to agree on a human rights red line mechanism for all accession countries: the Commission develops criteria – solid, strong, intuitively understandable, strict and fair – for core human rights, such as freedom of speech and of the media; or anti-terror legislation and their use. The Commission will propose a methodology how to define red lines on these fundamental rights issues in all candidates; and how to assess whether these red lines are crossed, doing so every year in the annual progress report.

This is important precisely because the human rights problem in Turkey today is far too serious to be addressed by changing one definition or one law. The Turkish anti-terror law is in fact a symptom, not a cause, of human rights violations in what remains a national security state. The current anti-terror law, first adopted in 1991, and amended many times since, states the following in article 1:

> "Terrorism is any kind of act done by one or more persons belonging to an organization with **the aim of changing the characteristics of the Republic as specified in the Constitution**, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health byuse of force and violence and through pressure, terror, intimidation, oppression or threat."

This leaves huge discretion to prosecutors and judges to judge when "any kind of act" threatens the "political, legal, social, secular, economic system" involving "pressure or threats". But the root of this problem lies in the Turkish constitution which states:

> "**no protection shall be accorded to an activity contrary to** Turkish national interests, Turkish existence and the principle of its indivisibility with its State and territory, historical and moral values of Turkishness; the nationalism, principles, reforms and civilizationism of Atatürk ..."

If an accession country crosses red lines on fundamental rights two years in a row the Council and Parliament should send a strong signal. Such a signal could be to stop all disbursement of pre-accession funds for a year. In this way the EU does not shoot itself in the foot, risking a vital agreement and hurting ordinary Turkish citizens; but recognises that it needs to take a stronger stance on human rights issues in accession countries in the future.

ESI on Visa Liberalisation and human rights

NOS, Nieuwsuur, "EU moet toegeven op visumvrij reizen voor Turkije" ("EU must give visa-free travel to Turkey") (11 May 2016)

Tagesschau, Julian Heißler, "Die EU sollte sich nicht auf Erdogan fixieren" ("The EU should not focus on Erdogan") (11 May 2016)

ZDF, "heute+" – interview with Gerald Knaus on Turkish anti-terror law and visa ("today+") (12 May 2016)

German TV Phoenix, "Streit um Visafreiheit – Kippt der Türkei-Deal?" ("Dispute on visa-free travel – Is the Turkey deal failing?") (17 May 2016)

Needed: a Timmermans Plan for implementation

A Timmermans Plan

2015 saw the emergence of a Merkel-Samsom Plan, which led to the EU-Turkey agreement b in March 2016. What is needed today is an implementation plan. Here the European Commission should take a lead and address the following concerns:

 – The Commission and Greece should urgently set up a credible EU Asylum Support Mission and aim to resolve all asylum claims on the islands by the end of July at the latest; and then help with asylum claims on the mainland.

 – A coalition of willing states – led by Germany and the Netherlands – should prepare for serious resettlement of Syrian refugees from Turkey in 2016.

 – A mechanism ensuring full transparency for what happens to everyone taken back from Greece to Turkey should be a key condition for visa freedom by the end of June 2016. Without this the whole EU-Turkey agreement risks failing. Once this condition is met, the visa requirement should be lifted in June as agreed.

– The Commission and parliament should develop a robust red line human rights mechanism for all accession countries, which – if violated two years in a row – can lead to suspension of all IPA funding for a year.

In the next few days ESI will present these ideas in many fora, meeting policy makers and making presentations in The Hague, Vienna, Lesbos, Athens, Berlin, Paris and Rome. As always we look forward to your feedback.

Many best wishes,

Gerald Knaus

Background facts – EU-Turkey Aegean agreement

Daily Arrivals from Turkey in 2016

Date	Greek islands
Daily average January	1,932
Daily average February	1,904
Daily average 1-20 March	1,148
Daily average 21-31 March	333
Daily average 1-30 April	114

Transfers from Greece to Turkey with deal

Date	Transfers
4 April	202
8 April	123
26 April	49
27 April	12
Total since 20 March	**386**

Transfers from Greece to Turkey without deal

Date	Transfers
2 March	308
11 March	90
Total before 20 March	**398**

Migrants and asylum seekers on Greek islands (17 May)

Island	Number
Lesbos	4,207
Chios	2,276
Samos	1,084
Leros	522
Kos	351
Rhodes	64
Kalymnos	7
Combined	**8,511**