

Nine Reasons for an EU Visa Liberalisation Process with Turkey

Discussion paper

20 June 2012

1. To control the main entry point for illegal migration into the EU

The EU needs Turkey's help in resolving the illegal migration problem at its Eastern Mediterranean border. The Turkish-Greek land border is the main gateway to Europe for migrants who are entering the EU illegally. In March 2012, Austrian Interior Minister Johanna Mikl-Leitner described this border "as open as a barn door."¹ In 2010, 47,700 irregular migrants were detected having crossed from Turkey into Greece.² They accounted for 77% of all detected illegal border crossings into the EU (disregarding circular migration of Albanians to Greece). In 2011, the number of irregular migrants caught at the Greek-Turkish border rose to 55,000. Most of the irregular migrants were nationals of Afghanistan, Bangladesh and Pakistan.

Table: Detections of illegal border crossings into the EU³

	2008	2009	2010	2011
Greek-Turkish land border	14,480	8,782	47,706	54,974
Greek sea borders (mostly with Turkey)	31,729	28,841	6,175	625
Greek-Albanian land border (circular migration of Albanians)	38,573	37,898	33,704	11,743
Total detections at all EU external border	159,092	104,599	104,049	140,980
Share of detections at the Greek-Turkish land and sea borders (disregarding circular migration from Albania to Greece)	38%	56%	77%	43%

As senior officials at Frontex told ESI, countries rarely invest many resources in exit controls, except "the former Soviet Union and communist Albania."⁴ Turkish officials note that they do catch tens of thousands of third-country nationals trying to cross into Greece every year. However, to help the EU, much closer cooperation and many more resources and efforts are needed. For more than a decade, the EU has tried to enlist Turkey's help in tackling this problem, but it has never offered Turkey any concrete incentives.

In the latest EU action plan on "migratory pressures" from April 2012, "preventing illegal immigration via the Greek-Turkish border" is one of seven priorities.⁵ Again, however, there was no discussion of why Turkey should or would make such an effort given that Turkey does not consider itself being treated fairly by the EU. Recently Turkey has made this link clearer, declaring that it would step up efforts to reduce the number of migrants who transit Turkey on the way to the EU if it were offered a visa liberalisation process.⁶

2. To bring EU visa policy in line with EU court decisions

In recent years, the European Court of Justice and national courts in Germany and the Netherlands have found that the Schengen visa requirement for Turkish citizens violates EU legal commitments stemming from the 1963 Association Agreement with Turkey and a 1970 Additional Protocol. This agreement, which, with its later additions, constitutes one of the most detailed and far-reaching sets of legal commitments that the EU has with any third country, accords comprehensive rights to Turkish citizens in many different areas, including that of visa-free travel.

EU courts have ruled that various groups of Turkish nationals - service providers, businesspeople establishing themselves in the EU - have the right to enter EU countries without a visa if the relevant provisions in these countries allowed this when the Additional Protocol entered into force in those countries.⁷

This process continues. During next year, the European Court of Justice is expected to make a potentially ground-breaking ruling. In the Demirkan case,⁸ it might conclude that Turkish tourists - i.e. any Turkish citizen visiting the EU - have the right to enter without a visa all those member states that did not require Turkish nationals to have a visa for short-stay visits when the Additional Protocol became applicable for them. This concerns 11 EU states. Due to court rulings, Denmark, Germany and the UK already have visa policies for Turks that are different from those of other EU countries, despite Visa Regulation 539/2001 that creates a uniform EU visa policy and where Turkey is on the “black list”.

If the EU carries out a credible and fair visa liberalisation process with Turkey, member states might be saved from an embarrassing situation in which courts could force them to amend their visa policies for Turkish nationals.

3. To improve the human rights situation in Turkey and enhance EU leverage

During the period from 2008 to 2011, each year between 6,400 and 7,100 Turkish nationals filed asylum claims in the EU. In 10 to 13 percent of the cases that were decided annually, Turkish nationals were granted asylum (refugee status or subsidiary protection⁹) at first instance.

While this rate is not very high, it is not insignificant. The following table shows the recognition rates for countries that have been granted visa-free travel following a liberalisation process (Albania, Bosnia, Macedonia, Montenegro, Serbia) or are currently undertaking such a process (Kosovo, Moldova, Ukraine). Their rates are lower; Turkey comes out on top.

Table: Asylum recognition rates (refugee status and subsidiary protection) at first instance in the EU in 2011¹⁰

Citizens of	Asylum granted (percentage of decided cases)	Decided cases in which asylum was granted	Decided cases
Turkey	10%	550	5,580
Albania	9%	185	2,005
Kosovo	4%	445	10,335
Ukraine	4%	35	795
Moldova	3%	15	455
Serbia	2%	165	11,280
Bosnia and Herzegovina	1%	25	1,935
Macedonia	1%	30	4,490
Montenegro	0%	0	345
Total (all countries in the world)	21%	50,435	237,835

(Albania's relatively high rate is a result of blood feuds in the country. Albanians who are under threat to be killed in a vendetta can receive asylum in the EU.)

Elevated recognition rates can indicate human rights problems in a country, and there are such problems in Turkey. As part of the visa liberalisation process, Turkey will have to tackle them. One of the four blocks into which each visa liberalisation roadmap/action plan is divided deals with fundamental rights. It mentions effective protection against discrimination as a requirement. Implementation of it will benefit Turkey's minorities. It should also measurably reduce the number of successful asylum claims by Turkish nationals in the EU.

EU member states are certain to monitor the asylum recognition rate in the EU as a yardstick for the state of human rights in Turkey. A sensible goal for Turkey would be to bring the recognition rate down to the levels of the Western Balkan and Eastern European states listed in the table on p. 3.

From Serbia's visa liberalisation roadmap:¹¹

BLOCK 4: External Relations and fundamental rights

Freedom of movement of Serbian nationals

Serbia should:

- *ensure that freedom of movement of Serbian citizens is not subject to unjustified restrictions, including measures of a discriminatory nature, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.*

Conditions and procedures for the issue of identity documents

Serbia should:

- *ensure full and effective access to travel and identity documents for all Serbian citizens including women, children, people with disabilities, people belonging to minorities and other vulnerable groups;*
- *ensure full and effective access to identity documents for IDPs and refugees.*

Citizens' rights including protection of minorities

Serbia should:

- *adopt and enforce legislation to ensure effective protection against discrimination;*
- *specify conditions and circumstances for acquisition of Serbian citizenship;*
- *ensure investigation of ethnically motivated incidents by law enforcement officers in the area of freedom of movement, including cases targeting members of minorities;*
- *ensure that constitutional provisions on protection of minorities are observed;*
- *implement relevant policies regarding minorities, including Roma.*

4. To increase the EU's and Turkey's security

A visa liberalisation process will require Turkey to implement a series of reforms that will enhance the EU's, as well as Turkey's, own security. These include increased efforts to fight organised crime, including heroin smuggling and trafficking in human beings; increased efforts to fight corruption; close cooperation with EU bodies such as Frontex, Europol and Eurojust and with law enforcement agencies and judicial authorities in EU member states; modernisation of border crossing points and the establishment of integrated border management; and the introduction of secure biometric passports and secure civil registry systems.

Some of these reforms will be demanding for Turkey, but are also in its own interest, such as integrated border management (IBM). IBM will require major institutional reforms that have been on the agenda since 2003. It will require a demilitarisation of border management and lead to new roles for the military, the police and the gendarmerie, all of which are currently active at Turkey's borders.

5. To improve Turkey's asylum system

Currently Turkey provides little assistance to asylum seekers. It has ratified the 1951 UN Geneva Convention relating to the Status of Refugees, but it maintains a "geographical limitation". This means that Turkey grants asylum only to citizens of countries that are members of the Council of Europe. Non-European asylum seekers - thus almost all asylum seekers in Turkey - are interviewed by UNHCR and resettled to third countries if they qualify for asylum. Resettlement can take years. As of January 2012, there were 14,465 recognised refugees and 10,964 asylum seekers in Turkey, according to UNHCR. Most were Iranians, Iraqis and Afghans.¹²

While they are waiting for the interview or resettlement, asylum seekers and refugees are required to obtain, against a fee, a residence permit from the police, which is valid for six months and must then be renewed. Without it, their children are not allowed to attend school. The police assign them to live in one of 52 towns (Istanbul, Ankara and Izmir do not belong to them). In terms of finding housing and making ends meet, asylum seekers are on their own. They usually work illegally in low-skill or manual jobs, and are often exploited.

The only institution that provides some humanitarian assistance to asylum seekers is the Social Services Directorate, which is connected to the Deputy Governor of their town of residence. However, the assistance is small and unsystematic. Asylum seekers can receive medical care, but they have to apply to the foreigners' department of the provincial police, which will direct him to the Social Services Directorate, which in turn sends the asylum seeker to a hospital.

Between 2008 and 2010, a law on asylum was drafted that will address many of the problems. According to UNHCR, this draft law, which was drawn up with UNHCR's assistance, is "in compliance with basic international standards, principles of non-discrimination and *non-refoulement*,¹³ and a rights-based approach enabling asylum applicants to have access to medical services, education and social assistance".¹⁴ It will also give asylum seekers the right to work. However, the draft law has not been yet adopted by the parliament.

This will have to happen as part of a visa liberalisation process. Countries participating in such a process have had to implement the 1951 Geneva Convention and its 1967 Protocol as well as the EU legal framework and standards in the area of asylum law, which include accommodation, assistance, medical care and education for asylum seekers. They also had to provide an adequate infrastructure (such as modern reception centres) and strengthen the bodies and institutions dealing with asylum procedures and the reception of asylum seekers.

6. To help Greece meet human rights standards and fulfil its Schengen obligations

The EU needs Turkey's cooperation to improve the situation for asylum seekers and migrants in Greece, and to help the country meet its obligations as a member of the border-free Schengen space. Greece has not been able to cope with the masses of migrants arriving in Greece. They are sent to overcrowded detention centres that do not meet "minimal human rights standards," according to Human Rights Watch.¹⁵ After a few days to a few months, they are let go with an order stating that they have to leave Greece within four weeks. Those who do not succeed to leave Greece again face great difficulties to make a living. They also aggravate Greece's domestic immigration problem.

The European Court of Human Rights identified as characteristics of these centres "overcrowding, dirt, lack of space, lack of ventilation, little or no possibility of taking a walk, no place to relax, insufficient mattresses, dirty mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care. Many of the people interviewed also complained of insults, particularly racist insults, proffered by staff and the use of physical violence by guards."¹⁶ It found that these conditions violated Article 3 of the European Human Rights Convention, which bans torture and inhuman and degrading treatment.

The court was dealing with the case of a citizen of Afghanistan who had applied for asylum in Belgium, but was sent back to submit his application in Greece as Greece had been the EU country of first entry. In January 2011, the European Court for Human Rights ruled that his asylum application had not been seriously examined in Greece, that he did not have access to an effective remedy and that he risked expulsion to Afghanistan. It also found that he was detained under inhuman and degrading conditions. Although the EU Dublin Regulation allows EU member states to send asylum seekers to the country of first entry for assessment of their claim, the court ruled that Belgium, the accused in the case, violated its human rights obligations by sending the claimant to Greece.¹⁷ Following this judgment, most EU member states suspended transfers of asylum seekers to Greece.

EU governments insist that Greece fix its asylum system and improve its capability to deal with the migrants. Some also demand that Greece prevents irregular migrants from crossing the EU's external border. (Former French President Nicolas Sarkozy even threatened to pull out of Schengen if Greece did not begin to guard its border with Turkey.¹⁸) New proposals to reform the Schengen rules envisage the introduction of temporary internal border controls in cases of "serious deficiencies related to the external border controls" if these constitute "serious threats to public policy or internal security".¹⁹

The EU and Greece together with Turkey's cooperation could stem the flow of illegal migrants reaching Greece. This would give Greece breathing space to improve its asylum system with the EU's help, to set up a functioning system to deal with the migrants in a dignified way, and to improve its border management system.

7. To help Bulgaria and Romania to join Schengen

The EU needs Turkey to enlarge Schengen. If Bulgaria and Romania join Schengen, one of the fears is that Greece will become an even more attractive destination for irregular migrants since the migrants will not face any border controls on their way to other EU countries. They will go from Greece to Bulgaria and then travel north without being controlled at a border.

An additional concern is that smugglers and irregular migrants might also target the Turkish-Bulgarian land border to get migrants into the EU.

A drop in the number of irregular migrants who reach the EU via Turkey would help Bulgaria's and Romania's cause to join Schengen.

8. To restore momentum to EU-Turkey relations

The denial of a visa liberalisation process has been a source of intense frustration for Turkish officials and citizens. They do not understand why the EU has conducted such a process with Western Balkan countries and is carrying it out with Moldova and Ukraine – but not with Turkey, which is negotiating accession to the EU. Its launch would initiate new important reforms in Turkey and help both sides to get through the difficult period of the Cypriot EU Presidency, during which Turkey does not want to have contacts with the EU (however, it will have contacts with the European Commission). The new dynamic that would develop might also re-energise the flagging accession process.

9. To reap benefits related to tourism, trade and business

Thanks to the customs union, Turkish goods can circulate freely in the EU. Turkish people, who make and sell them, cannot. This hampers trade and business relations. Visa-free travel would intensify both. There is also a new middle class in Turkey that is keen to travel to Europe. Visa-free travel would make this easy for them, from which EU tourism industries would benefit.

ESI is grateful to the Stiftung Mercator for supporting [ESI's work on a visa liberalisation process for Turkey](#).

¹ Reuters (news agency), Germany, Austria warn Greece to tighten border controls, 8 March 2012, at <http://uk.reuters.com/article/2012/03/08/uk-eu-schengen-idUKBRE82718W20120308>.

² According to Frontex, more or less all illegal border crossings into the EU are detected. ESI interview with Frontex official in Brussels, 11 May 2012.

³ Almost all figures are from Frontex (Frontex, "Press Pack May 2011," p. 9, at http://www.frontex.europa.eu/assets/Media_centre/Frontex_Press_Pack.pdf). The total of all detections in 2011 is from the Frontex Annual Risk Analysis 2012, April 2012, p. 14, at http://www.frontex.europa.eu/assets/Attachment_Featured/Annual_Risk_Analysis_2012.pdf. Since Frontex does not give figures for Greece's borders in 2011, but only for the EU's Eastern Mediterranean Border as a whole, which includes Greece, Bulgaria and Cyprus, we used figures from the Hellenic Police for 2011 (whose data for earlier years is largely the same as Frontex'), at http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=12080&Itemid=429&lang=.

⁴ ESI interviews at the Frontex headquarters in Warsaw, 27 January 2012.

5 Note from the Presidency to the Council/Mixed Committee, Subject: EU Action on Migratory Pressures -
A Strategic Response, Council document 8714/1/12, 23 April 2012.

6 Minister of EU Affairs Egemen Bagis said so in April 2012. HTEkonomi, 'Vize Kolaylığı Değil, Vize
Muafiyeti İstiyoruz', 8 April 2012, at [http://ekonomi.haberturk.com/turizm/haber/732159-vize-kolayligi-
degil-muafiyet-istiyoruz-](http://ekonomi.haberturk.com/turizm/haber/732159-vize-kolayligi-degil-muafiyet-istiyoruz-).

7 The Additional Protocol entered into force on 1 January 1973 or on the date of accession of the EU country
in question this date was later.

8 Reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany)
lodged on 11 May 2011 - Leyla Ecem Demirkan v Federal Republic of Germany, Case C-221/11, at
[http://curia.europa.eu/juris/document/document.jsf?text=&docid=112578&pageIndex=0&doclang=EN&m
ode=req&dir=&occ=first&part=1&cid=2892529](http://curia.europa.eu/juris/document/document.jsf?text=&docid=112578&pageIndex=0&doclang=EN&m
ode=req&dir=&occ=first&part=1&cid=2892529).

9 **Refugee status** is the highest form of international protection. Under EU asylum legislation, which is based
on the 1951 UN Geneva Convention relating to the Status of Refugees and its 1967 Protocol, EU member
states are committed to offering asylum, also called refugee status, to third-country nationals that have "a
well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or
membership of a particular social group" in their home country. **Subsidiary protection** is accorded to
people who do not meet the UN definition of refugee, but nonetheless face "risks of serious harm" at home.
The relevant EU Directive defines "serious harm" as "(a) death penalty or execution; or (b) torture or
inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and
individual threat to a civilian's life or person by reason of indiscriminate violence in situations of
international or internal armed conflict." (Both quotes from Council Directive 2004/83/EC of 29 April 2004
on minimum standards for the qualification and status of third country nationals or stateless persons as
refugees or as persons who otherwise need international protection and the content of the protection
granted, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.)

10 Eurostat database, Asylum and new asylum applicants by citizenship, age and sex, Annual aggregated date
(rounded), online data code : [migr_asyappctza], and Eurostat database, First instance decisions on
applications by citizenship, age and sex, Annual aggregated date (rounded), online data code:
[migr_asydcfst].

11 Serbia's roadmap can be found at [http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-
%20Roadmap%20Serbia.pdf](http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Serbia.pdf).

12 UNHCR website on Turkey, at <http://www.unhcr.org/pages/49e48e0fa7f.html>.

13 Non-refoulement is a principle of international law that forbids the return of a people to places, usually
their home country, where their lives or freedoms could be threatened.

14 UNHCR website on Turkey, at <http://www.unhcr.org/pages/49e48e0fa7f.html>.

15 Human Rights Watch, The EU's Dirty Hands , Frontex Involvement in Ill-Treatment of Migrant Detainees
in Greece, 21 September 2011, at
http://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf.

16 European Court of Human Rights, Judgment in the case of M.S.S. v. Belgium and Greece, application no.
30696/09, Strasbourg, 21 January 2011, paragraph 162, at
<http://www.bailii.org/eu/cases/ECHR/2011/108.html>.

17 European Court of Human Rights, Judgment in the case of M.S.S. v. Belgium and Greece, application no.
30696/09, Strasbourg, 21 January 2011, at <http://www.bailii.org/eu/cases/ECHR/2011/108.html>.

18 Le Journal du Dimanche, "Interview: Sarkozy : 'Je sens monter la vague,'" 7 April 2012, at
[http://www.lejdd.fr/Election-presidentielle-2012/Actualite/Nicolas-Sarkozy-Je-sens-monter-la-vague-
500907/](http://www.lejdd.fr/Election-presidentielle-2012/Actualite/Nicolas-Sarkozy-Je-sens-monter-la-vague-500907/).

19 See European Commission, Proposal for a Regulation of the European Parliament and the Council
amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary
reintroduction of border control at internal borders in exceptional circumstances, COM(2011) 560 final,
Brussels, 16 September 2011, at [http://eur-
lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0560:FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0560:FIN:EN:PDF), and Council of the EU,
Press Release, 3172nd Council meeting Justice and Home Affairs, Brussels, 7 and 8 June 2012, at
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/130761.pdf.