



Our Plan for the Aegean¹

Gerald Knaus, 2020

“... perpetual warnings without a plan for improving things are a short-term media temptation for those in power, but no more ... Warnings do not make our world better, actionable suggestions on how to improve it and how to prevent and avoid crises do.”

Thomas de Maizière, former German Federal Minister of the Interior²

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¹ Excerpt: Gerald Knaus „Welche Grenzen brauchen wir“, September 2020. More: www.grenzen.eu

² Thomas de Maizière, *Governing: Inside Politics* (Herder 2019), p. 71.

In autumn 2015, something extraordinary happened. Never before had so many people arrived irregularly in small boats to the European Union. The background was the biggest refugee crisis in the world since the 1970s, caused by the war that broke out in Syria in 2011. Initially, Syrians fled to neighbouring countries. Turkey thus became the country with the most refugees in the world.

Registered Syrian Refugees outside Syria³

Year	Refugees
2012	346,388
2013	2,336,190
2014	3,705,228
2015	4,566,999
2016	4,820,620
2017	5,479,277
2018	5,666,824
2019	5,555,942

In 2013, there were 50,000 asylum applications from Syrians in the European Union. The following year there were 122,000. But it was not until 2015 that the situation in the eastern Mediterranean got out of control. In the first eight months of the year, 238,000 refugees arrived in Greece by sea. In October, 212,000 crossed the Aegean. All those who reached Lesbos, Chios and other islands were brought to Athens by ferry and then moved on, through North Macedonia and Serbia to Hungary and Croatia, and finally to Austria, Germany and Sweden.

On September 29, 2015, the Bavarian government noted that 169,400 refugees had arrived in one month. At this rate, 1.8 million would reach Germany in a year. A UNHCR Regional Coordinator stated in September, "I don't see it stopping ... maybe this is the tip of the iceberg."

⁴More people arrived irregularly in Greece in 2015 than had entered Europe irregularly from Africa altogether since World War II. The only comparable exodus across the Mediterranean since World War II was the flight of the French *Pieds-noirs* from Algeria at the end of the Algerian war of independence.

And then it was suddenly over. On a Sunday evening, 6 March 2016, Turkish Prime Minister Ahmet Davutoğlu made a proposal for cooperation to the Dutch Prime Minister and the German Chancellor at the Turkish Embassy in Brussels. This led to a joint declaration on March 18. Legally, this EU-Turkey Statement was no more than a press release, but its impact was enormous.

³ UNHCR, "Situation Syria Regional Refugee Response," accessed July 9, 2020, <https://data2.unhcr.org/en/situations/syria>.

⁴ <https://www.theguardian.com/world/2015/sep/25/eu-refugee-crisis-tip-of-iceberg-unhcr>.



Breakthrough: Sunday evening, 6 March 2016: Ahmet Davutoglu presented Aegean plan in the office of Selim Yenel, Turkish ambassador to the EU, in Brussels.

In the twelve months before, one million people had reached the Greek islands. In the twelve months after, 26,000 did.

Greece: Irregular arrivals by sea⁵

	2014	2015	2016	2017	2018	2019
January	955	1,694	67,415	1,393	1,633	1,851
February	1,001	2,873	57,066	1,089	1,256	1,486
March	1,501	7,874	26,971	1,526	2,441	1,904
April	1,257	13,556	3,650	1,156	3,032	1,856
May	1,703	17,889	1,721	2,110	2,916	2,651
June	3,198	31,318	1,554	2,012	2,439	3,122
July	3,927	54,899	1,920	2,249	2,545	5,008
August	6,742	107,843	3,447	3,584	3,197	7,712
September	7,454	147,123	3,080	4,886	3,960	10,551
October	7,432	211,663	2,970	4,134	4,073	8,996
November	3,812	151,249	1,991	3,215	2,075	8,426
December	2,056	108,742	1,665	2,364	2,927	6,163
Total	41,038	856,723	173,450	29,718	32,494	59,726

⁵ "Mediterranean Situation, Greece," UNHCR, accessed July 15, 2020, <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

The number of people who drowned in the Aegean Sea also fell immediately, from 1,152 in the year before the declaration to 81 in the year after.

Fatalities in the Eastern Mediterranean ⁶

	2014	2015	2016	2017	2018	2019
January	12	0	275	1	0	2
February	0	9	46	1	1	1
March	9	8	45	11	19	11
April	0	14	10	24	0	5
May	0	0	0	0	16	18
June	0	6	0	0	10	19
July	25	24	7	8	50	1
August	0	29	3	0	10	0
September	0	190	27	1	12	9
October	0	220	2	0	38	5
November	4	98	14	15	11	0
December	9	205	5	1	7	0
Total	59	803	434	62	174	71

Much about the declaration was extraordinary. The EU mobilised the largest humanitarian aid in its history for refugees in a third country, six billion euros for Syrian refugees in Turkey. The Turkish Prime Minister, Ahmet Davutoğlu, expected to resettle hundreds of thousands of Syrian refugees from Turkey, following pledges also from the German Chancellor. After many decades, Turkish citizens would be allowed to travel to the EU without a visa for the first time since the military coup in 1980, should Turkey fulfil further conditions:

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

The EU ... will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey ... Once these resources are about to be used to the full, and provided the above commitments are met, the EU will mobilise additional funding for the Facility of an additional 3 billion euro up to the end of 2018.

The fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met.“

In return, Turkey promised to take measures "to prevent new sea or land routes for illegal migration opening from Turkey to the EU". Most importantly, the Turks promised to take back

⁶ "Missing Migrants Project.

anyone who reached the Greek islands from 20 March 2016. Greek authorities, in line with existing EU asylum law, would decide who could be sent back. The statement reaffirmed existing European law:

“All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement ... 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. “

On the day of the agreement, 18 March, Angela Merkel declared in Brussels that the agreement would help "above all the people concerned, the refugees". The aid in Turkey would "combat the causes of flight". Merkel reiterated that she expected setbacks because "there are major logistical challenges ... we have made a step forward, a very important step on the way to finding a sustainable solution to the issue, and not just a sham..." That was the hope in March 2016.⁷

But how had this declaration come about? What happened in Greece and Turkey in the four years that followed? Why did the agreement fail at the end of February 2020? And: What does this experience mean for the future of Europe's borders?

"Merkel is to blame" and other illusions

„Weil, so schließt er messerscharf, nicht sein kann, was nicht sein darf.“⁸

Christian Morgenstern

There are two myths in the discussion about border controls that seem to contradict each other. The first is that borders cannot be controlled in the face of great "migration pressure". To believe this, one must suppress any thought of Heinrich Rothmund, Erich Honecker, the Australian navy or the Israeli army.⁹ The second myth is that closing borders is above all a question of will, and that in the autumn of 2015 the EU, and Germany in particular, made communication mistakes that could easily have been corrected. Refugees should have been stopped at the German border by mid-September at the latest and sent back to Greece, Hungary or Austria. If Germany had made it clear in 2015 that refugees were not welcome, then they would not have come. Economist Paul Collier of Oxford University explained this in an interview in January 2016:

"Die Welt": You mean Angela Merkel is to blame for the refugee crisis in Europe?

⁷ "Meeting of the EU Heads of State or Government with Turkey," European Council, March 18, 2016, <https://newsroom.consilium.europa.eu/events/20160318-meeting-of-the-eu-heads-of-state-or-government-with-turkey-18-march-2016>.

⁸ "Because, he concludes razor-sharp, what may not be cannot be."

⁹ Heinrich Rothmund was the head of the Swiss Foreigners Police at the time of Nazi Germany. More on him: [Swiss tragedy – borders and refoulement](#). Erich Honecker was responsible in the GDR leadership for "Operation Rose" in August 1961, which led to the partition of Berlin and its infamous wall.

Collier: Who else? Until last year, refugees were not a big issue for Europe. To this day I still don't understand why Mrs. Merkel acted the way she did. She has saddled Germany and Europe with a huge problem that can no longer be solved so easily. Germany obviously likes itself in the saviour role. But it doesn't border on any of the crisis or war countries. All these people who are coming to you have made their way from safe third countries. Germany has not saved a single Syrian from death. On the contrary, despite the best of intentions, Germany has more deaths on its conscience."¹⁰

In 2017, Paul Collier further added to these accusations in a book he wrote with another scholar. German failure, Collier argued, had "permanently weakened the European Union ... Its mechanisms and provisions were repeatedly ignored by the head of government of a powerful member state."¹¹ The alternative was obvious to Collier: "If Germany had sent the refugees back to Austria and Hungary, the crush would have subsided. Neither country was as tempting as Germany."¹² Then there would have been a domino effect, and the people who, after all, only wanted to go to Germany would not have come. Collier was not alone with this "Merkel is to blame for the crisis" theory. Viktor Orbán has also been claiming since the autumn of 2015 that the German chancellor has "brought down" the EU's Dublin system. It is time to take a closer look.

The Dublin Treaty was signed in 1990 and incorporated into EU law in subsequent years as a regulation (now Dublin III). This regulation should prevent protection seekers from wandering through Europe without any one country feeling responsible for them. It stipulates that protection seekers are only entitled to asylum in one country, usually the one where they first arrive (though there are exceptions, for example in the case of family reunification). In autumn 2015, this place of first arrival was generally either Greece or Hungary, and later Croatia, as well.

How did the system actually work? Let's start with Greece and a number: 76. That was the *total number of* asylum seekers transferred to Greece from all other EU countries under the Dublin Regulation in *seven* years.

The reason for this were decisions by the two European courts in Strasbourg (the European Court of Human Rights or ECtHR) and Luxembourg (the European Court of Justice or ECJ), which in 2011 prohibited Dublin transfers to Greece because of unacceptable asylum procedures and conditions there.¹³ It was therefore legally impossible in autumn 2015 for Germany to send refugees back to Greece under the Dublin Regulation. Little changed in this regard in recent years. In 2017, 1 person was transferred to Greece, in 2018 18 people and in 2019 33 people from across the rest of the EU.

¹⁰ Holger Zschäpitz, "Migration researcher: 'Is Merkel to blame for refugee crisis? Who else?', *Die Welt*, 29 January 2016, <https://www.welt.de/wirtschaft/article151603912/Ist-Merkel-schuld-an-Fluechtlingskrise-Wer-sonst.html>.

¹¹ Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (Oxford University Press, 2017), 133.

¹² Betts and Collier, *Refuge*, 121.

¹³ M.S. S. v. BELGIUM AND GREECE, No. 30696/09 (European Court of Human Rights 21 January 2011); Joined Cases C-411/10 and C-493/10 (European Court of Justice 21 December 2011).

Dublin: Transfers TO Greece from the rest of the EU ¹⁴

	Inquiries	Transfers
2013	13	0
2014	49	2
2015	135	16
2016	5,797	6
2017	2,134	1
2018	9,218	18
2019	13,438	33
Total	30,784	76

Then why not sending asylum seekers back to Hungary, as Paul Collier suggested? Because there were no Dublin transfers from *anywhere* in the EU to Hungary in 2015 and 2016 either.¹⁵ In a decision in June 2015, the Administrative Court in the German town of Lüneburg stated that there were "considerable doubts as to whether the applicants' deportation to Hungary ... can be carried out". The court's explanation was clear: "According to press reports of 23 June 2015, the Hungarian government suspended the readmission of refugees under the Dublin procedure with effect from Tuesday, 23 June 2015. The boat was full, according to the Hungarian government spokesman."¹⁶

For practical reasons alone, it would have been absurd in autumn 2015 for the German Asylum Agency (Federal Office for Migration and Refugees or BAMF) to have tried to initiate hundreds of thousands of Dublin transfers. In any case, German institutions would first have had to check which other country was responsible for the asylum application. German authorities would not have been allowed to carry out transfers to Hungary or Greece because of applicable law. And if a transfer had not taken place within six months, Germany would have been responsible for the asylum procedure in any case again under the Dublin Regulation.

The German authorities therefore decided in summer 2015 to abandon these pointless procedures. However, a tweet on 24 August 2015, in which the Federal Office for Migration and Refugees declared that "Dublin procedures for Syrian nationals are, at this point, largely not pursued by us in practice", was misunderstood by many, including Paul Collier, as a revolutionary innovation. In fact, nothing changed in either the law or the practice. On 31 August 2015, Angela Merkel stated that it was "not the case that we can now deviate from Dublin III; because we have no other legal basis".¹⁷ The European Court of Justice later confirmed that Dublin was in force even during the 2015 crisis.¹⁸ Germany abided by this. The

¹⁴ "Asylum Service Statistical data - Dublin Regulation III Procedures," Hellenic Republic, Ministry of Migration Policy, March 4, 2020, http://asylo.gov.gr/en/wp-content/uploads/2020/03/Dublin-stats_February20EN.pdf.

¹⁵ "Systemic flaws: court stops refugee's deportation to Hungary," Pro Asyl, January 21, 2015, <https://www.proasyl.de/news/systemische-maengel-gericht-stoppt-abschiebung-von-fluechtling-nach-ungarn/>.

¹⁶ A.B. and C.B. v. Federal Republic of Germany (Lüneburg Administrative Court 26 June 2015).

¹⁷ "Summer Press Conference by Chancellor Merkel," German Government, August 31, 2015, <https://www.bundesregierung.de/breg-de/aktuelles/pressekonferenzen/sommerpressekonferenz-von-bundeschkanzlerin-merkel-848300>.

¹⁸ Stephan Detjen and Maximilian Steinbeis, *Die Zauberlehrlinge: Der Streit um die Flüchtlingspolitik und der Mythos vom Rechtsbruch* (Klett-Cotta, 2019), 146.

legal situation was clear: Article 17 of the Dublin Regulation gives member countries the right to conduct asylum procedures for which another country may be responsible. This so-called “sovereignty clause” permits any member state to take responsibility for examining an application, on a discretionary basis and had been applied throughout Europe for many years, including in the case of potential transfers to Greece. This explains why Sweden, despite its geographical location, has for years processed so many more asylum applications than Greece. In autumn 2015 there was therefore no breach of European law and no self-empowerment on the part of the German chancellor.¹⁹

In fact, the government acted in solidarity: unlike other EU countries, German authorities did not try to treat asylum seekers in such a manner that they would quickly move on to another EU country. Thus, the German policy was not only no contribution to the demise of the Dublin system, as Collier suggested, but “a contribution to its rescue.”²⁰ The myth that the German government triggered the refugee crisis by opening its border “without consulting European partners” and then refusing to close it again nevertheless persists. In Collier’s analysis, Germany, which in those years offered protection to more than half of all refugees in the European Union, was painted as the gravedigger of the European asylum system. At the same time Hungary, which violated European standards and made Dublin transfers impossible, presented itself as the defender of the rule of law.

But could Germany not have turned asylum seekers away as irregular migrants at its border with Austria in autumn 2015? This debate was also ongoing in Berlin as early as autumn 2015. On 15 October 2015, German Interior Ministry officials wrote an internal paper on the “possibility of turning back protection seekers at German borders”. In it, they warned of the following consequences:

- “Political resistance on the part of Austria, other member states (if action is not coordinated) and also the European Commission is to be expected.
- Difficult situation to accommodate people in the border area,
- Public acts, e.g. sit-in blockades on traffic routes, hunger strikes, overrunning of police forces,
- Significant impact on cross-border traffic,
- Bypassing border crossing points via the ‘green border’ – the generally open border between Austria and Germany (rejection would only be possible directly at the border line, which is hardly feasible).”²¹

So how would Germany have prevented “circumventions across the green border” in autumn 2015? Israel built a fence on its border with Egypt. Spain equipped its fences around the enclave of Melilla with barbed wire. Something similar would have been unthinkable in the middle of the Schengen area on the German-Austrian border in 2015, however.

Here, too, the ingenious communicator Viktor Orbán pulled off a magic trick as far as the perception of those weeks was concerned. At a press conference in Brussels on September 3, Orbán reproachfully declared that “other European politicians” were unable to bring “the situation” under control while he was “protecting” the Schengen borders. Orbán thus distracted the world from the fact that *he* was the prime minister of the country through whose border

¹⁹ Detjen and Steinbeis, 64.

²⁰ Detjen and Steinbeis, 146.

²¹ Bundesministerium des Inneren, “Möglichkeit einer Zurückweisung von Schutzsuchenden an deutschen Grenzen”, 15 October 2015, 4.

hundreds of thousands irregularly entered the Schengen area between June and October 2015. The refugees stuck at Budapest's overcrowded Keleti train station in early September 2015 had already crossed Hungary's and the EU's external Schengen border. By then, Orbán was already trying hard to stop irregular migration. As early as June 2015, the Hungarian government had decided to build a border fence on the border with Serbia. On September 15, the construction of the 4-meter-high and 175-kilometer-long fence was completed. Nevertheless, refugees continued to enter Hungary, now via Croatia.²² It was not until mid-October, when a border fence also closed the 348-kilometre-long Croatian-Hungarian border, that the number of people crossing the border into Hungary plummeted.²³

Hungarian Prime Minister Viktor Orbán declared in November 2015 that it would be child's play to close the German border at any time. In an interview with the Swiss weekly *Weltwoche*, he claimed: "If the Germans said tomorrow morning: 'We're full, it's over', the flood would subside immediately. It's as simple as that, *a single sentence from Angela Merkel*."²⁴ But the idea that it would have been possible in the fall of 2015 to prevent thousands a day from "bypassing the green border" into Bavaria, without a German fence and the unwillingness to engage in unlawful brutality, contradicts the experiences Orbán himself had on his border in the months before. In fact, even Orbán's fence in autumn 2015 did not stop one asylum seeker heading north. From October onwards it merely diverted them to Slovenia.

In autumn 2015, there existed neither a fence nor the willingness to build one at the German-Austrian border. There were also no attempts to push asylum seekers to Poland or France. On September 19, 2015, Interior Minister Thomas de Maizière stated in an interview, when asked about the possibility of rejections at the German border: "If we had acted differently, just as many refugees would have come - only later." He decided against rejections at the border: "No refugee would have accepted a simple rejection and made their way back to Syria or Afghanistan. They would have tried to break through at the border and/or cross the green border instead."^{25,26}

What it would actually have taken to stop migration at the German border in the fall of 2015 is hinted at in a key scene in Robin Alexander's book *Die Getriebenen (Those under Pressure)*. On September 13, 2015, a discussion took place in the situation centre of the Interior Ministry about *how* asylum seekers could have been stopped at the border: Minister "de Maizière turns specifically to [the president of the Federal Police] Romann: What happens when 500 refugees with children in their arms run up to the Federal Police officers? The top federal police officer seems caught off guard. That, he finally replies, is for the police leaders on the ground to decide."²⁷

²² Daniel Nolan, "Hungary Orders 100-Mile Serbia Border Fence to Keep Out Migrants," *The Telegraph*, June 7, 2015, World section, <https://www.telegraph.co.uk/news/worldnews/europe/hungary/11680840/Hungary-orders-100-mile-Serbia-border-fence-to-keep-out-migrants.html>.

²³ Brad Sylvester, "FACT CHECK: Did Hungary reduce illegal immigration by 99 percent with a border wall?", Check Your Fact, October 28, 2018, <http://checkyourfact.com/2018/10/28/fact-check-hungary-99-percent-border-wall/>.

²⁴ Roger Köppel, "Viktor Orbán: 'One word from Merkel, and the asylum flood is stopped'," *Weltwoche*, November 12, 2015, <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-interview-with-swiss-weekly-weltwoche>.

²⁵ Michael Sauga and Ralf Neukirch, "SPIEGEL Conversation: 'Ich habe eine Vision,'" *Der Spiegel*, September 19, 2015, <http://www.spiegel.de/spiegel/print/d-138749218.html>.

²⁶ Thomas de Maizière, *Regieren: Innenansichten der Politik* (Herder, 2019), 78.

²⁷ Alexander, *Die Getriebenen*, 23 f.

Should police officers on the ground in autumn 2015 have been left to decide whether to use tear gas against Syrian refugees in Passau and Freilassing?²⁸ Nikola Gruevski, the then prime minister of North Macedonia, did just that in August 2015 on the border with Greece. His government declared a state of emergency and erected barbed wire and border barriers. The police used stun grenades, batons, rubber bullets and tear gas, detaining thousands without supplies in no-man's land on the Greek border. Governments and public opinion across Europe condemned this violence against refugees. Two days later, the migrants crossed the border of North Macedonia again.

A similarly brutal approach was neither legally nor politically an option for the German government. In the general debate in the German Bundestag on 9 September 2015, speakers from all four parliamentary groups welcomed the fact that Germany had taken in refugees. Thomas Oppermann (SPD) declared: "20,000 refugees in one weekend! I think Munich has handled this situation brilliantly ... This willingness to help is one of the most valuable virtues, one of the most valuable resources of our society ... We can do it."²⁹ On 10 September, Stefan Weil, Minister President of Lower Saxony, made a statement with the same message: "It's about whether we close ourselves off, whether we tolerate hatred against and rejection of minorities, or whether we defend our free, democratic, cosmopolitan society ... Lower Saxony is presenting itself as compassionate, humane and cosmopolitan these days!" This is how almost all the minister presidents of the Länder spoke in autumn 2015. Neither the German government nor the German people were willing to break German law and make refugees move on by treating them badly. Most agreed with the Chancellor's statement: "Everyone who enters Europe has the right to be treated like a human being."

In order to classify the German debate on border closures, it is also helpful to look at the French-Italian border, where border controls were set up from the end of 2015. These controls were introduced right after terrorist attacks in Paris on the evening of 13 November 2015, in which 130 people had been killed. On the very same day, border controls were reintroduced at France's external borders. EU law allows this in the event of a serious threat to public order. France has since extended the controls again and again, with unexpected results.

France's national border with Italy stretches over 515 kilometres. There had been no systematic border controls here since 1997. Instead, there was a treaty with Italy (Treaty of Chambéry) on the readmission of apprehended irregular migrants. This treaty allows for the informal readmission of apprehended migrants. If foreigners are discovered by the French police entering the country illegally, they are taken to the nearest police station. The police take their fingerprints, and if the migrants do not apply for asylum, they can be immediately deported with Italy's consent. But what has actually happened since 2015? The number of asylum seekers in France has increased every year since border controls were introduced, reaching a record in 2019, with almost twice as many asylum applications as in 2015!

After the reintroduction of border controls, irregular migrants were initially apprehended on a regular basis. In 2017, the police chief of the Alpes-Maritimes border district proudly spoke of some 50,000 people having been sent back to Italy. This was soon followed by accusations, and later rulings by the administrative court in Nice, that these migrants were not always given the legally required opportunity to apply for asylum. Those who did apply for asylum could not

²⁸ Two border crossings between Austria and Germany in Bavaria.

²⁹ "General Debate, 9 September, 2015," Thomas Oppermann, MP, 9 September 2015, <https://www.thomasoppermann.de/2015/09/09/generaldebatte-9-september-2015/>.

simply be sent back to Italy, even under the Treaty of Chambéry.³⁰ The vice-governor of the Alpes-Maritimes department described the checks as "symbolic measures" from the start.³¹ In April 2018, border officials told two French politicians that those they sent back to Italy "come back a few days later ... there's no end to it, it's futile." Those turned away at the border try again. No one returns to Nigeria or Mali.³²

*Asylum applications double despite border controls in France*³³

	Applications
2015	76,165
2016	84,270
2017	99,330
2018	137,665
2019	151,070

While in France it quickly became clear how limited the effect of such border controls was, and later many police officers were quietly withdrawn after 2015, the debate in Germany about whether or not asylum seekers should have been turned away at the border flared up again and again. In his 2017 book *Die Getriebenen*, Robin Alexander describes a debate in the German Interior Ministry on September 13, 2015, arguing that on that Sunday, everything had been prepared for the rejection of asylum seekers at the German-Austrian border. However, after lengthy discussion, eight words were deleted from an already prepared operational order that would have allowed for rejections at the border "even in the case of an asylum request." At that moment, Alexander said, no one had been found "who wanted to take responsibility for the closure".³⁴

In June 2018, Berlin experienced a political crisis once again over the very same issue: refoulement at the German-Austrian border. The dispute between Chancellor Merkel and Interior Minister Seehofer started over a sentence in a new Interior Ministry master plan on migration: "In the future, it is also intended to turn back asylum seekers, in case they have already applied for asylum in another EU member state or are registered as asylum seekers there." At first glance, this sounded plausible to many. The chancellor nevertheless insisted on first clarifying *how* this could be implemented. After two weeks of political drama, Chancellor Merkel and Interior Minister Seehofer finally agreed on three points on 2 July 2018: first, they wanted a border regime at the German-Austrian border "that ensures that we *prevent* asylum

³⁰ "48,870 interpellations de migrants en 2017 dans les Alpes-Maritimes," *20 Minutes*, January 17, 2018, <https://www.20minutes.fr/societe/2203643-20180117-alpes-maritimes-48870-interpellations-migrants-2017-annee-precedent>.

³¹ "A la frontière franco-italienne, des contrôles se mettent en place progressivement," *Le Point*, November 13, 2015, https://www.lepoint.fr/societe/a-la-frontiere-franco-italienne-des-contrôles-se-mettent-en-place-progressivement-13-11-2015-1981423_23.php.

³² Maïté Darnault, "A Menton, la police aux frontières sous inspection parlementaire," *Libération*, April 1, 2018, France section, https://www.liberation.fr/france/2018/04/01/a-menton-la-police-aux-frontieres-sous-inspection-parlementaire_1640389.

³³ "Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)," Eurostat, accessed July 9, 2020, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.

³⁴ Robin Alexander, *Die Getriebenen - Merkel und die Flüchtlingspolitik: Report aus dem Innern der Macht* (Settlers, 2017), 26.

seekers whose asylum procedures are the responsibility of other EU states from *entering the country*." Secondly, Seehofer said, transit centres would be set up so that "asylum seekers are turned back directly to the countries responsible. For this, we don't want to act in an uncoordinated way, but conclude administrative agreements with the countries concerned." The third point was the most important: "In cases where countries [responsible for these asylum seekers] refuse administrative agreements on direct returns, returns at the German-Austrian border will take place on the *basis of an agreement* with the Republic of Austria."³⁵ In other words, the German government wanted to do with Austria in 2018 what France had been trying to do with Italy since 2015, and what Paul Collier and other critics had already recommended to it as a possible solution in 2015.

But what happened then? As long as the German chancellor and her interior minister disagreed in Berlin, Austria's government, Chancellor Sebastian Kurz and his interior minister Herbert Kickl of the right-wing populist Freedom Party (FPÖ), supported the idea of refoulement at the German border. On June 22, Sebastian Kurz said in an interview with *Bild*: "Intensifying controls at internal EU borders in the short term can trigger a domino effect that deters illegal migration."³⁶ In fact, this was a bluff. The Austrian government was never willing to accept *any* asylum seeker independently of Dublin rules from Germany.

On June 27, Chancellor Kurz declared that Dublin rules were clear: migrants had to be returned to the country where they had been fingerprinted first, "usually Greece and Italy."³⁷ On July 3, he stated categorically: "There will be no treaty at Austria's expense." And after a visit by German Interior Minister Seehofer to Vienna on July 5, the possibility of collectively turning back all refugees at the German border with Austria was taken off the table completely.³⁸

It soon became clear to most German politicians, already in the autumn of 2015, that it is not enough to know what one does *not* want to do. Thus, Angela Merkel promised again and again that she wanted to restore control over irregular migration. At the CDU party conference in Karlsruhe in December 2015, she declared: "That's why we want to and *will noticeably reduce the number of refugees*, because that's in everyone's interest."³⁹ But when asked how it would bring this about, the German government failed to provide a convincing answer until March 2016.

Meaningless death, helpless Europe

It was a Wednesday morning, September 2, 2015, when a Turkish photographer saw the dead body lying on the beach in Bodrum. The world quickly learned about his story. Three-year-old Alan Kurdi, his five-year-old brother and their parents had set out to reach the Greek island of

³⁵ "CDU and CSU: Agreement to Better Order, Control and Prevent Secondary Migration," Christian Democratic Union of Germany, 2 July, 2018, <https://www.cdu.de/ordnung-steuerung-und-verhinderung-der-sekundaermigration>.

³⁶ "Kurz Defends Seehofer," *BILD*, 22 June, 2018, <https://www.bild.de/politik/inland/kurz-sebastian/kurz-verteidigt-seehofer-56089104.bild.html>.

³⁷ "Warning Signals from Vienna - Will Kurz Decide Asylum Dispute Between Merkel and Seehofer?", *BILD*, June 29, 2018, <https://www.bild.de/politik/ausland/fluechtlingskrise/asyl-streit-hinter-wem-steht-eigentlich-sebastian-kurz-56158952.bild.html>.

³⁸ "SPD zum Asylkompromiss der Union: Geschlossene Lager werden von uns nicht akzeptiert," *Süddeutsche Zeitung*, 3 July, 2018, <https://www.sueddeutsche.de/politik/spd-zum-asylkompromiss-der-union-geschlossene-lager-werden-von-uns-nicht-akzeptiert-1.4038204>.

³⁹ "Minutes of the 28th Party Congress of the CDU of Germany," 14 December, 2015, 24 - 44, https://www.kas.de/c/document_library/get_file?uuid=51820aaa-2f21-e948-9544-ffbf29dc9499&groupId=252038

Kos in an overloaded boat. Shortly after departure, the boat capsized. After his rescue, Alan's father described how his sons drowned before his eyes: "I tried to hold on to the capsized boat for more than an hour. My sons were still alive then. My first son died in the waves, I had to let go of him to save the other." But Alan also died, as did his mother.⁴⁰

The story of the Kurdi family reminded the world of the Syrian catastrophe. Alan's family had initially fled to Turkey. His aunt in Canada tried in vain to bring in her relatives regularly. Canada had granted protection to only 2,500 Syrians in the previous three years.⁴¹ After Alan's death, the Ottawa government promised to bring 10,000 Syrians to Canada in the midst of an election campaign. Opposition leader Justin Trudeau called for the number to be increased to 25,000 and won the election. In London, the government also agreed to take in 20,000 Syrians after Alan's death. In Canberra, Australia, Prime Minister Tony Abbott promised 12,000 additional Syrian resettlements. US president Obama also announced his intention to take in 10,000 Syrians. Rarely has one photograph changed the lives of so many so quickly. However, promises by Canada, Australia, the UK and the US to take in more than 60,000 Syrians did not result in fewer people making their way to the EU.

Alan's father appealed to the world after the tragedy: "Please help the people crossing the sea. *Don't let them make this journey anymore. Don't let them die.*" In September 2015 alone, 190 people drowned in the Aegean Sea. Even after Alan Kurdi's death, hundreds of thousands tried to reach Greece's islands from Turkey. 99.9 percent of them survived, but 0.1 percent drowned. Those who wanted to prevent these deaths had to ensure that fewer people made the journey from Turkey to Greece. But how was this to be achieved?

In mid-September 2015, the Brussels think tank CEPS published a report proposing to end deaths in the Mediterranean by lifting the visa requirement for asylum seekers.⁴² In this case, Alan Kurdi's family would have arrived safely in the EU by plane. However, the CEPS report did not suggest *how* EU interior ministers could be persuaded to lift visa requirements for tens of millions of refugees in third countries at the height of a historic refugee crisis. When the visa requirement *was* lifted for Albania in 2010, the simple process of changing the EU regulation on the matter took six and a half months. This was preceded by years of negotiations to address concerns in all EU states. EU talks with Turkey on visa liberalisation have been going on for many years without a breakthrough. Today there is no country in Africa and - apart from Israel and the United Arab Emirates - no country in the Middle East whose citizens can enter the EU without a visa. The idea that the necessary majority of EU interior ministers could have been found to lift all visa requirements for asylum seekers from Syria, Iraq or Afghanistan in autumn 2015 was completely unrealistic.

In autumn 2015, the Australian option that would have consisted of denying any prospect of asylum in the EU and deterring anyone who tried to come anyway by imposing inhumane reception conditions, also looked unrealistic. On 4 September, Prime Minister Tony Abbott said that the "very sad" death of Alan Kurdi had shown that the EU finally needed a strict policy to

⁴⁰ "Toter Flüchtlingsjunge: Die traurige Geschichte des Aylan Kurdi," *Frankfurter Allgemeine Zeitung*, September 3, 2015, <https://www.faz.net/1.3783344>.

⁴¹ "The Syrian Community in Australia," *id the population experts* (blog), September 10, 2015, <https://blog.id.com.au/2015/population/demographic-trends/the-syrian-community-in-australia/>.

⁴² Elspeth Guild et al, "The 2015 Refugee Crisis in the European Union", CEPS, September 2015, 6, https://www.ceps.eu/wp-content/uploads/2015/09/CEPS%20PB332%20Refugee%20Crisis%20in%20EU_0.pdf.

deter asylum seekers from boarding unsafe boats.⁴³ However, Greece, like every other EU country, was legally obliged to take in refugees who reached its waters. Locking up asylum seekers for years, as in Nauru and Manus, was contrary to European law. Moreover, more people arrived on the Greek islands *every day* in September 2015 than *were* ever detained in *total* by Australia in Nauru and Manus. An Australian solution would therefore have meant turning the whole of Greece into one big Nauru, where arrivals everywhere would be so badly treated that they would have preferred to stay in Turkey. No Greek government would ever have agreed to such a plan.

However, there were others in the EU who could well imagine a different policy. One of them was Viktor Orbán. On September 5, at a meeting of his party near Lake Balaton, Orbán explained who he blamed for Alan's death: his parents. Because, Orbán argued, Alan's family had been safe in Turkey. The goal of European policy must be to ensure by all means that no one leaves Turkey. This is not only possible, he suggested, it is also easy. However, Europe would have to change fundamentally in order to achieve this. Because, Orbán explained, "Europeans ... have an idea of what it means to be a good person ... freedom of movement, universal human rights and so on. Now the disastrous consequences are becoming apparent."

Orbán countered the European sense of helplessness with radical determination. Although his border fence was of no significance for dealing with the refugee crisis in the EU, as a political symbol it was worth every forint. With the fence under construction, Orbán called on Austria and Germany on 3 September 2015 to close their borders. The message: he had a plan, they didn't. On 4 September Orbán told Hungarian journalists after a meeting in Brussels:

"We agreed that Europe's external borders - part of which consists of the border between Hungary and Serbia - must be protected at all costs, and all countries - including Hungary - must respect the obligations imposed on them by EU rules. Then, I asked all my partners if they could give me a better suggestion than building a physical border fence ... They said they didn't like the fence but had no better ideas themselves. I thanked them."

Orbán's accusation against the German government in early 2016 was that it refused to adopt the Australian strategy of deterring refugees already in the Balkans. Orbán proposed such measures as early as the beginning of January 2016. His idea was to "build the next line of defence along Greece's northern border".⁴⁴ He met with Slovenia's Prime Minister Miro Cerar, who then wrote a letter to European institutions with the proposal to prevent migrants from crossing the Greek-Macedonian border, far from Slovenia's external border.⁴⁵

⁴³ Matthew Knott, "Drowned Syrian Toddler: Tony Abbott Says 'Tragic' Picture a Reminder of Need to Stop Boats," *The Sydney Morning Herald*, September 4, 2015, section Federal, <https://www.smh.com.au/politics/federal/drowned-syrian-toddler-tony-abbott-says-tragic-picture-a-reminder-of-need-to-stop-boats-20150904-gjev5.html>.

⁴⁴ "EU Should Erect New Greek Frontier to Stop Migrants, Hungarian PM Says," *Reuters*, 8 January, 2016, <https://uk.reuters.com/article/uk-europe-migrants-hungary-greece-idUKKBN0UM0OG20160108>.

⁴⁵ Duncan Robinson, "EU Considers Ringfencing Greece to Stop Flow of Migrants," January 22, 2016, <https://www.ft.com/content/c40504cc-c12b-11e5-9fdb-87b8d15baec2>.



Orban and Kurz: the proposal to “close” Balkan route through pushbacks

Berlin thought little of ‘solving’ the Greek problem with a fence and violence on the Macedonian border. But Orbán found other allies. Austria now played a key role in implementing this plan to ‘close’ the Balkan route. In early February, Sebastian Kurz, then the Austrian foreign minister, travelled to Skopje. There, he said North Macedonia “must be capable of completely stopping the entry of migrants at its border ... Austria decided today that it will help, not only with personnel, police and military, but also with the necessary equipment.” Austria would send police officers to the Macedonian-Greek border, as would Croatia, Serbia, Slovakia, Hungary and others, he said. On 24 February, the interior ministers of Austria, Slovenia and Croatia met with those of the six Western Balkan countries in Vienna.⁴⁶ In February 2016, up to 3,000 refugees were still arriving daily along the railway line from Idomeni in Greece to North Macedonia. From 21 February, the Macedonians only allowed Syrians and Iraqis across the border. In early March, EU Council president Donald Tusk toured all the countries along the Balkan route and pushed for stricter border controls. On the evening of 7 March, Slovenia’s prime minister announced that “Slovenia will strictly implement the Schengen Code and only allow people to enter who can show valid documents.”⁴⁷ Cerar did not mention that the Schengen Code allows the entry of people without valid documents *who are seeking asylum*. The Serbian government announced that it would “follow the decisions of the

⁴⁶ “Be Ready to Halt Migrant Flow, Austria Tells Macedonia,” *Reuters*, 12 February, 2016, <https://www.reuters.com/article/us-europe-migrants-macedonia-idUSKCN0VL16V>. “Declaration: Managing Migration Together,” Federal Ministry of the Interior, 24 February, 2016, https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussendungen/2016/Westbalkankonferenz_Draft_Declaration_Letztfassung.pdf.

⁴⁷ “Consistent application of Schengen rules,” Government of the Republic of Slovenia, March 21, 2016, https://web.archive.org/web/20160321172812/http://www.vlada.si/en/media_room/newsletter/slovenia_weekly/?tx_ukomnewsletter_pi1%5Bnewsletter%5D=73&cHash=cf2649a215063133aea8fa0e324873a6.

European Union."⁴⁸ North Macedonia followed suit the next morning. A police official told Reuters news agency, "We have completely closed the border."⁴⁹

Now the number of people moving through the Balkans towards central Europe fell. However, people continued to arrive in Greece, a historic record number in the early winter weeks of 2016. Those people were now stuck in Greece, with thousands at the Idomeni border crossing. Croatia's interior minister summed up the strategy: from now on, "the border of Europe is at the Greek-Macedonian border." Others would have to find a solution for the actual EU external border, the one between Greece and Turkey.

The agreement with Turkey

There was already an alternative idea to the closure of the Balkan route by force in autumn 2015, one which was neither at the expense of an EU member state like Greece nor at the expense of a neighbour [like later at the expense of Bosnia and Herzegovina]. An alternative policy, which did not suspend refugee law and embrace pushbacks. An alternative which, instead of deterrence through poor treatment in Europe, relied on generous financial aid to improve the situation of millions of refugees in neighbouring states: a diplomatically difficult possible cooperation with Turkey.

On 17 September 2015, presenting an alternative to Viktor Orban's *Nauru-in-Greece strategy*, I emailed an eight-page ESI report, "Why No One Needs to Drown in the Aegean," to 35,000 recipients. This proposed an agreement between Turkey and Germany. It was to reduce the number of crossings in the Aegean by ensuring that all those who were safe in Turkey would be returned after a swift procedure. At the same time, the conditions for refugees and asylum seekers in Turkey were to be improved in such a way that repatriations would be lawful and in accordance with European asylum law and the Convention on Human Rights. Germany should commit to accepting 500,000 Syrian refugees *directly from Turkey* over the next twelve months in order to stop the dangerous irregular migration across the Aegean Sea.

The situation in autumn 2015 seemed absurd to me and my colleagues: every Syrian refugee who reached Germany was granted protection status there, but first had to undertake a life-threatening journey across the sea. Therefore, we wrote on September 17:

"This proposal would take Germany's readiness to welcome hundreds of thousands of refugees and redirect it into an orderly process where refugees no longer have to take their lives into their hands in order to claim asylum ... If this agreement could be put in place quickly, before the seas get even rougher and the cold season closes in on the Balkans, it could save untold lives."⁵⁰

Why 500,000? We estimated in September that, in the next six months alone, at least that many people would come to Germany without an agreement (it was actually about that many). On

⁴⁸ "Slovenia and Croatia Ban Transit of Refugees to Other European Countries," *The Guardian*, March 9, 2016, World news section, <http://www.theguardian.com/world/2016/mar/09/slovenia-and-croatia-ban-the-transit-of-refugees>.

⁴⁹ "Macedonia Closes Border to Illegal Migrants: Police Official," *Reuters*, March 9, 2016, <https://www.reuters.com/article/us-europe-migrants-macedonia-idUSKCN0WB0Z0>.

⁵⁰ European Stability Initiative, "Why people don't need to drown in the Aegean - A policy proposal", 17 September 2015, 2, <https://www.esiweb.org/publications/why-people-dont-need-drown-aegean-policy-proposal>.

this, Vice-Chancellor Sigmar Gabriel said on 8 September: "I think we could certainly cope with an order of magnitude of half a million for a few years ... maybe more."⁵¹ At the same time, it was necessary to restore control. Otherwise, we argued, it was foreseeable that the mood in Germany could also tip, as it did in Sweden in December 2015:

"As a quid pro quo, it is also essential that Turkey agrees to take back all the refugees that reach Greece, from the moment the deal is signed ... If Syrian refugees have a safe and realistic option for claiming asylum in the EU in Turkey, and if they face certain return back to Turkey if they cross illegally, the incentive to risk their lives on the Aegean will disappear."⁵²

For "legal channels" to lead to fewer deaths, resettlement had to be combined with other measures. It was necessary to ensure three things at *the same time*: the reception of refugees from Turkey; the ability to carry out rapid asylum procedures in Greece to determine who could be sent back; and the willingness of Turkey to provide protection to those who were to be sent back and needed it.

On 18 September 2015, the *Frankfurter Allgemeine Zeitung* reported on our proposal.⁵³ Other media followed: *Die Zeit*⁵⁴, *Neue Zürcher Zeitung*⁵⁵, the Dutch *NRC Handelsblad*⁵⁶ ("Merkel must help Turkey now"). Two weeks later, we followed up with a second report: *The Merkel Plan*. On 5 October 2015, the *Süddeutsche Zeitung*'s correspondent in Brussels wrote: "The key points of the European offer are based on ideas from experts at the European Stability Initiative."⁵⁷ On the same day, the Swedish ambassador from Ankara wrote me, "Congratulations, it seems that the Germans have adopted your proposal in principle." And on 7 October, the German chancellor told "Anne Will" that she "has a plan." Germany, she said, had to come to an agreement with Turkey: "That means more money for Turkey, which has a lot of costs because of the refugees. It means we will take in a certain number of refugees."⁵⁸

This sounded encouraging. Yet it was still months before any breakthrough came.

In Ankara, leaders did not trust the EU. In Brussels, leaders did not trust Turkey. EU officials talked about money, but it wasn't clear from which pot it might come. There was talk about visa liberalisation, but at the same time Turkish diplomats learned that many in the EU were not at all serious about such an offer. There was abstract talk of more resettlement, but Brussels

⁵¹ "Gabriel hält 500.000 Flüchtlinge pro Jahr für verkraftbar," *Der Spiegel*, September 8, 2015, Politics section, <https://www.spiegel.de/politik/deutschland/fluechtlinge-gabriel-haelt-500-000-pro-jahr-fuer-verkraftbar-a-1051862.html>.

⁵² European Stability Initiative, 2.

⁵³ Michael Martens, "Migrationspolitik der Türkei: Auf dem Meer gibt es keine Mauern," *Frankfurter Allgemeine Zeitung*, September 18, 2015, <https://www.faz.net/1.3807208>.

⁵⁴ Andrea Böhm, "Flüchtlinge: Zäune, Paragrafen, Drohungen - nützt alles nichts", *Die Zeit*, 21 September 2015, <https://www.zeit.de/politik/2015-09/fluechtlinge-syrien-libanon-tuerkei-deutschland/komplettansicht>.

⁵⁵ Niklaus Nuspliger, "Im Meer stösst der Grenzschutz an Grenzen", *Neue Zürcher Zeitung*, 22 September 2015, <https://www.nzz.ch/international/europa/im-meer-stoesst-der-grenzschutz-an-grenzen-1.18616932>.

⁵⁶ Marloes de Koning, "Merkel moet nu Turken helpen," *NRC*, September 24, 2015, <https://www.nrc.nl/nieuws/2015/09/24/merkel-moet-nu-turken-helpen-1540766-a822337>.

⁵⁷ Thomas Kirchner and Robert Roßmann (Brussels/Berlin), "EU will Flüchtlingspakt, Erdoğan zögert", *Süddeutsche Zeitung*, 5 October 2015, <https://www.sueddeutsche.de/politik/bruessel-eu-verhandelt-mit-erdoan-ueber-fluechtlingspakt-1.2677683>.

⁵⁸ "Merkel bei 'Anne Will': 'Ich habe einen Plan,'" *Tagesschau*, October 8, 2015, accessed July 29, 2020, <https://www.tagesschau.de/inland/merkel-anne-will-103.html>.

expected to take in a few thousand refugees at most, the same number that came to Greece every single day in autumn 2015. Turkey was to commit to take back arrivals "who were not entitled to protection", Brussels said, but there was no mention of a deadline or cut-off date.

Why should Turkey, which for years had been unable to agree with the EU on a readmission agreement, now agree to take back thousands or tens of thousands of refugees when it had already taken in more Syrians than the entire EU? Although Turkey had a readmission agreement with Greece since 2001, it took back exactly 8 (!) people from Greece in 2015.



Presenting the ESI proposal at the German embassy in Ankara, 2 November 2015

On 2 November 2015, I presented our proposal at the invitation of the German ambassador in Ankara. On 5 November, to diplomats at the Foreign Office in Berlin. Shortly afterwards, an article appeared in *Der Spiegel* by Foreign Minister Frank-Walter Steinmeier and Vice-Chancellor Sigmar Gabriel: if Turkey was willing, they wrote, to take back refugees coming to Greece, "then - in return - Germany should take in quotas of Syrian refugees in the future as part of a European effort."⁵⁹

I began to meet regularly with the Turkish ambassadors in Berlin and Brussels to promote these ideas. To win over the Turkish government to our plan, we developed detailed proposals on an almost weekly basis: how and when the lifting of visa requirements for Turks could be expected in the event of an agreement, what rapid resettlement of refugees would have to look like. In November 2015, we proposed a Merkel Plan 2.0:

1. Germany and a coalition of the willing - Austria, Sweden, the Netherlands, France and others - accept large contingents of Syrian refugees from Turkey. The process of identifying refugee families will begin on 1 January 2016. This will be done quickly and in close cooperation with the Turkish

⁵⁹ Sigmar Gabriel and Frank-Walter Steinmeier, "Flüchtlingspolitik: Wir müssen mehr ordnen und steuern", *Spiegel Online*, 20 November 2015, <http://www.spiegel.de/politik/deutschland/fluechtlinge-sigmar-gabriel-und-steinmeier-fordern-neustart-a-1063855.html>.

authorities. The regular UNHCR process would take far too long to have an impact.

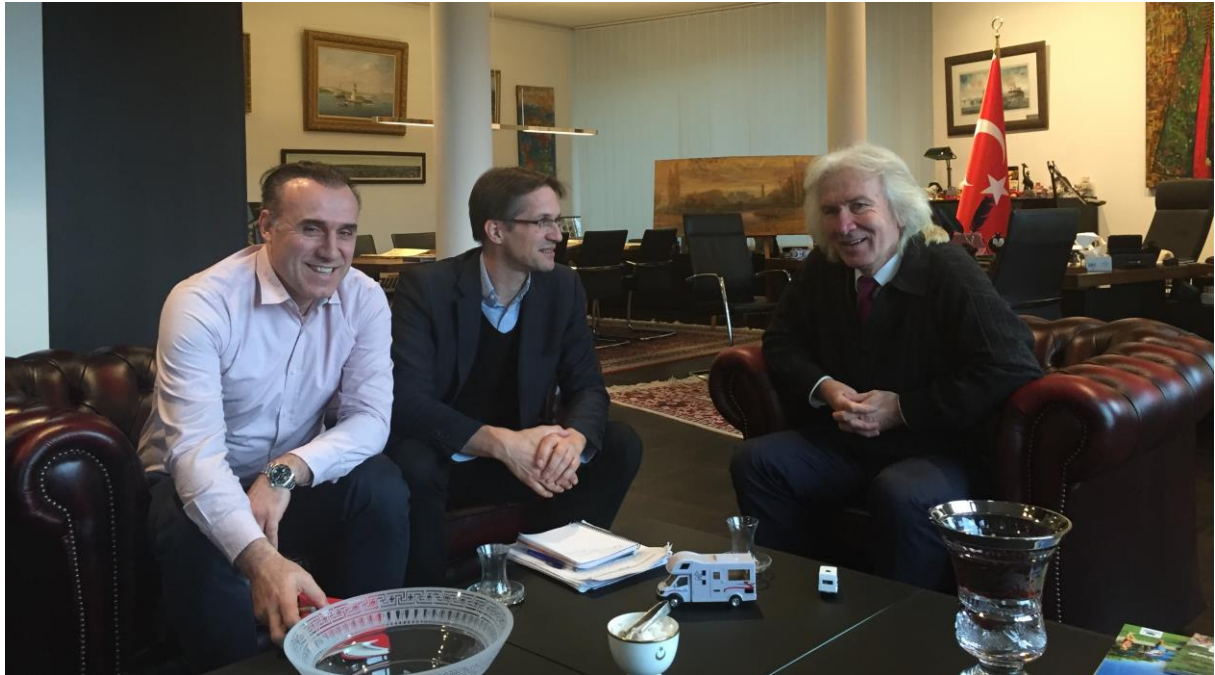
2. Turkey agrees to take back all refugees, including asylum seekers, who reach the Greek islands from that date. Turkey and Greece, with the support of others, begin preparations for this.
3. The Turkish asylum authority proves that asylum seekers can receive international protection in Turkey regardless of their nationality. Turkey fast-tracks all legislation to allow recognised refugees and asylum seekers access to all the rights provided for in Turkey's 2013 Law on Foreigners and International Protection.
4. In return, the European Commission will immediately begin to lift the visa requirement for Turkey. This will take a few months. The Commission should make a concrete promise to Turkish citizens: "If Turkey fully implements the existing readmission agreement with Greece, agrees to readmit all new arrivals as of 1 January 2016, and implements a number of other priority conditions from the visa liberalisation roadmap by March 2016, Turkish citizens will be able to travel to the EU without a visa as of 1 April 2016."
5. The EU and Turkey immediately conduct a joint needs assessment to provide assistance to the Syrian refugees in Turkey, with a focus on ensuring education for all school-age children (currently 500,000 out of 700,000 Syrian school-age children do not go to school). They identify the number of teachers needed, where they can be found, which buildings to use for classes, which equipment and textbooks are necessary, and how much all of this will cost. EU assistance will be visible to the Turkish public. In parallel, Turkey will propose a gradual opening of the labour market to Syrians who enjoy protection in Turkey.⁶⁰



One of many meetings 2015 and 2016 with Selim Yenel, Turkish EU ambassador, in Brussels

⁶⁰ Gerald Knaus, November 29, 2015, www.esiweb.org/rumeliobserver/2015/11/29/the-devil-is-in-the-detail-eu-turkey-refugee-summit-in-november-2015/.

Then two things happened by coincidence. In the Merkel Plan of early October 2015, we had warned of future tensions between Turkey and Russia as another reason for Ankara to reach an agreement with Germany. On 24 November 2015, the Turkish military shot down a Russian fighter jet that had entered Turkish airspace. Relations deteriorated dramatically. Sanctions and a ban on imports of Turkish goods to Russia followed. The government in Ankara recommended that all travel to Russia be avoided. Russian politicians threatened Turkey. Never had our warning of Ankara's isolation seemed more credible. Turkish diplomats, hoping for improvements in relations with the EU, now managed to convince Prime Minister Ahmet Davutoğlu of our ideas.



One of many meetings 2015 – 2016 with Turkish ambassador to Germany, Avni Karsioğlu

A second coincidence became a turning point: In early December, our proposal received the support of Diederik Samsom, the leader of the Dutch Labour Party. The long-time Greenpeace activist had nearly led his party to an election victory in 2012 and then formed a coalition government with Prime Minister Mark Rutte's Liberal Party. In late 2015, Samsom travelled to Turkey to prepare for the Dutch EU presidency and to discuss possible solutions. The Dutch *NRC Handelsblad* wrote about his trip, "Samsom realized during a visit to Izmir in December that Turkey's border guards would never win the cat-and-mouse game with the refugees. On the plane back to the Netherlands, Samsom read Gerald Knaus's plan." Back in The Hague, Samsom immediately proposed to his coalition partner Mark Rutte to make our plan the basis of the strategy of the Dutch EU presidency starting in January 2016. Rutte agreed.⁶¹

⁶¹ Marc Peeperkorn, "Zo drukte Rutte zijn stempel op de EU-Turkije-deal", *de Volkskrant*, 16 April 2016, <https://www.volkskrant.nl/gs-bb088668>.



With Diederik Samsom at the Parliament in The Hague (February 2016)

In January 2016, Samsom went public. He said he expected a "group of EU countries to decide this spring on an agreement with Turkey on a legal migration route for a few hundred thousand refugees a year, in exchange for the direct readmission of all those entering via Greece." Samsom talked about 250,000 refugee resettlements a year. Our proposal of a cut-off date for repatriations to Turkey was now also accepted. Samsom spoke to Social Democrats in other countries' governments and to the Vice-President of the European Commission, his Dutch compatriot Frans Timmermans. He told me on the phone that Sigmar Gabriel promised him that Germany would be prepared to take in 300,000 people from Turkey, if this would lead to the restoration of control. We then met in his office in the Dutch parliament in early February and discussed practical ways to resettle the first 100,000 Syrian refugees from Turkey. At meetings in The Hague, I saw that people in the ministries were already working on details to implement such plans. In Ankara, too, people noticed that the EU was now getting serious about making an attractive offer. This changed the mood.

On 26 February I travelled to Ankara and gave a presentation on our plan at the Swedish ambassador's residence to international diplomats, met the German EU ambassador and presented our plan at the Turkish Foreign Ministry and to Turkish officials. My message to everyone was that Turkey should take the initiative. The reactions were encouraging. On 28 February, Diederik Samsom wrote me that the Dutch government wanted to increase the pressure to start resettlement from Turkey in the run-up to the next EU summit. Turkish negotiators had suggested that the resettlement of refugees from Turkey had to happen *at the same time* as refugees were being returned from Greece: "All wheels had to turn at the same time."⁶²

⁶²

Peeperkorn.

Then, on Sunday evening, 6 March, in the office of the Turkish ambassador in Brussels, Turkish Prime Minister Ahmet Davutoğlu presented our Merkel and then Samsom plan to the German chancellor and the Dutch prime minister as his proposal. Turkey was ready to take back anyone who reached the Greek islands after a cut-off date. Davutoğlu promised to treat people in Turkey in line with Turkey's new 2013 asylum law, which had been praised by UNHCR and the EU. Who would be sent back from the islands should be decided by Greek asylum authorities in line with Greek, European and international law. In exchange, the EU should pledge visa liberalization for Turkish travellers already by summer 2016 and mobilize six billion euros in support for refugees in Turkey over the next four years. Moreover, Davutoğlu called for a humanitarian resettlement program of over one hundred thousand refugees from Turkey to the EU. However, this figure was not put in writing.

When Rutte and Merkel met the EU leaders the next day, some spoke of a "sell-out." Others warned of millions of Turks entering the country visa-free. Rutte and Merkel asked, "What is the alternative?" No one had any. Thus, on 18 March, the EU agreed to accept Davutoğlu's offer. Our eight-page paper of mid-September 2015 had become a four-page press declaration by the EU and Turkey.⁶³

European Nauru

What happened next? The number of people making the crossing from Turkey dropped immediately: In May, June and July 2016, an average of fewer than 1800 people a month arrived on the islands. Thus, 150 Greek and European asylum officers would have been sufficient at the time to make all first-instance decisions on the asylum claims of those arriving within a month.

The disbursement of European aid to refugees in Turkey, which had stalled until then, was now being addressed in earnest. The first transfer took place on 18 March 2016. The total amount of refugee aid allocated exceeded 2.2 billion euros already by mid-October 2016.⁶⁴

Nevertheless, my colleagues and I remained concerned. We knew how many of the structures necessary for implementation of this declaration had to be created first and how little concrete preparation there had been, not only in the European Commission and in Athens, but also in Berlin. On 21 March 2016, I wrote in my blog: "No deal would have been the worst outcome for everyone ... But a good plan, poorly implemented, is little better ... We can be confident only once the first 50,000 Syrian refugees have left Turkey on planes to Europe; and once we see a credible administration in place in Greece to deal with asylum requests and readmission in line with the principles agreed last week. ... What is worrying is that bad planning of the implementation of the agreement ensures that chaos will continue for far longer than necessary."⁶⁵ A chaos, that was to continue for the next years.

⁶³ European Council, "EU-Turkey Statement, 18 March 2016", 18 March 2016, <https://www.consilium.europa.eu/de/press/press-releases/2016/03/18/eu-turkey-statement/>. Often referred to as the "EU-Turkey Agreement", "Refugee Deal" or "Refugee Pact". Legally, however, it is a "declaration", because no new law was created, but existing law was reaffirmed.

⁶⁴ "Juncker to EU leaders: refugee facility for Turkey well on track", Representation of the European Commission in Germany, 17 October 2016, https://ec.europa.eu/germany/news/juncker-eu-staats-und-regierungschefs-fl%C3%BCchtlingsfazilit%C3%A4t-f%C3%BCr-t%C3%BCrkei-auf-gutem-weg_de.

⁶⁵ Gerald Knaus, "It is all implementation, stupid.", *Rumeli Observer* (blog), 21 March, 2016, <http://www.esiweb.org/rumeliobserver/2016/03/21/it-is-all-implementation-stupid/>.

The Greek authorities and the European Commission did not develop a plan for the resources needed to implement the settlement on the islands, nor a strategy for the efficient organisation of asylum procedures. It was no surprise to anyone that asylum procedures in Greece would be difficult. A new asylum agency had emerged only in 2011, but by 2015, it was already in permanent crisis, despite its charismatic head, Maria Stavropoulou, who had returned to Athens from the UNHCR. Although only 13,000 people applied for asylum in Greece in 2015, the asylum agency was already overwhelmed. Applicants on the mainland could not apply in person, but only try to get appointments via Skype. Appeals commissions provided for by Greek law were not working at all. I first met Maria Stavropoulou in Athens in February 2016, when I discussed our plan with Greek officials, media and politicians. She handed me an essay she had just published on the future of the European asylum system. In it, she wrote that it was impossible to reduce migration at maritime borders without violating human rights. Her main argument was that national asylum authorities were overburdened and conducting asylum procedures in line with EU law and standards was burdensome. She wrote: "Quality requirements mean that caseworkers can reasonably be expected to issue no more than a few dozen decisions a month ... Greece's Asylum Service can currently process at most 1,500 applications a month." If more people apply, the asylum service was bound to collapse.⁶⁶

Stavropoulou's scepticism was understandable, because at that time 2,000 people were still arriving on the islands *every day*. However, she also wrote in that essay that the best would be for the EU to fly a larger number of refugees directly out of Turkey, and then to enforce a readmission agreement with Turkey, as that country was "in principle safe for millions of refugees". I then tried to convince Stavropoulou of our proposal: that everything depended on whether it would be possible to reduce the number of new arrivals from tens of thousands a month to a few thousand, after a cut-off date. That other European asylum authorities should support the Greek authorities on the islands with personnel. Ideally, this would be within the framework of a European asylum mission, as a pilot project and first step towards a future European asylum system, a nucleus of close cooperation between, for example, the German, Dutch, and Greek asylum authorities.

Was this idea, that there could be fast asylum procedures in Greece, an illusion? In fact, two months after March 20, there were only three staff members of the Greek asylum authority for more than 2,000 asylum seekers on the island of Chios, and in autumn 2016, the Greek commissions responsible for appeal procedures made fewer than 40 decisions a month. Without fast and fair appeal procedures, returns were impossible. This was obvious.

Already in May 2016, there were more asylum seekers on the islands than could be accommodated: In Chios, there were 2276 people for 1100 places. Thus, it was foreseeable how the implementation of the EU-Turkey statement would develop without a strong commitment on the part of the European Union and the Greek government: Instead of quick procedures, asylum seekers might be stuck on the islands for months, waiting for decisions on their asylum applications.

Nevertheless, the impression that the problem on the islands was primarily a problem of resources was misleading. At the end of May 2018, there were 16,800 asylum seekers on the five Aegean islands of Lesbos, Chios, Samos, Leros and Kos. There were 7,800 reception

⁶⁶ Maria Stavropoulou, "Refugee protection in Europe: time for a major overhaul?", *Forced Migration Review*, January 2016, <https://www.fmreview.org/destination-europe/stavropoulou>.

places. 9,000 people were therefore living in dismal conditions, without adequate accommodation, in clear contravention of Greek and European law.

This situation worsened every month, although the number of arrivals to Greece had fallen dramatically since March 2016, to an average of only 2,500 people per month. At the same time, only 2,000 asylum applications were being decided on the islands each month. When the McKinsey consultancy handed over a report - marked as *strictly internal* - to the Greek and European authorities in April 2017, this problem had already been identified but remained without solution. Every month, the number of people on the islands then grew by 500. Catastrophic conditions were the result of this never-corrected discrepancy between the number of arrivals and the number of decisions taken. In April 2017, according to the McKinsey report, 200 asylum officers were making 2000 decisions a month on the islands. Why didn't the European Commission mobilize member states or the public to increase the number of decisions? The inability to make 2500 decisions a month was astounding. There was no shortage of money. By May 2018, 1.1 billion euros of EU aid had already been disbursed in Greece. By mid-2020, a total of 2.9 billion euros had been mobilized for Greece. There was in fact no shortage of personnel. On the islands, even in May 2018, there were a total of 83 asylum interviewers and 92 interpreters, organized and paid by EASO, the European Asylum Support Office, an EU agency based in Malta. In addition, there were 100 staff from the Greek asylum authority. What did these more than 180 asylum officers do?

The failure of procedures on the islands is remarkable the closer one looks. Take a four-page internal document from the European Commission's director-general in charge of implementing the EU-Turkey declaration in Greece, Martin Verwey, dated 29 May 2018. This "Migration Crisis Information Sheet" appeared 26 months after the EU-Turkey declaration, presenting "facts, relevant to returns from Greece to Turkey" It showed *what* asylum decisions were made on the islands.

Included among the 2,000 decisions per month were 200 decisions concerning those who had family elsewhere in the EU and thus the right to be transferred to their family without asylum procedures in Greece due to the EU's family reunification policy. A further 1,100 decisions concerned vulnerable applicants who were also transferred to mainland Greece without substantive examination of their asylum claim. *Substantive* asylum decisions requiring decisions were thus taken on the islands at a rate of only 700 per month. This is an inexplicably low figure: why did more than 180 EASO and Greek asylum officials take an average of only 700 substantive decisions per month?



Migration Crisis Information Sheet
29 May 2018

Data relevant to returns from Greece to Turkey (as of 28/05)	
Number of migrants present at the islands	
Total number of migrants present at the islands	16,800 (1229)
Total number of arrivals for the week 21 May- 27 May 2018	420
Arrivals to the Greek Islands	
Average daily number of arrivals to Greece (21/3/2016 – 28/05/2018)	82
Average daily number of arrivals to Greece: May 2018 (as of 28/05/2018)	97
Apprehensions at GR-TR Land Border (as of 28/05)	
Total number of persons apprehended for illegal entry (since 14 June 2017)	11,286 (1303)
Persons apprehended for illegal entry - May 2018 (as of 28/05)	1,280
Returns to Turkey from the Greek Islands under the EU-TR statement	
Total number of migrants returned to Turkey from the Greek Islands under the EU-TR statement (since 21/03/2016), of which:	1,627 (-)
(a): Number of Syrians returned from the islands (including 8 stateless from Syria)	292 (-)
(b): Number of migrants returned from the islands having received a negative second instance admissibility decision	26 (-)
(c): Number of migrants returned from the islands having received a negative second instance eligibility decision	574 (-)
(d): Number of migrants returned from the islands having received a negative first instance eligibility decision	32 (-)
Other returns	
Total number of migrants returned to Turkey under the Greece-Turkey bilateral readmission protocol (since 21/3/2016)	601 (-)
Total number of assisted voluntary returns from the islands (as of 22/05/2018)	2,609 (111)
Asylum processes at the islands (20/3/2016 – 27/05/2018)	
Number of recorded expressions of intention to apply for asylum (as of 27/05/2018)	63,965
Asylum Applications	49,634 (1774)

Equally striking was the inefficiency of the 13 Greek appeal committees. Out of 300 asylum seekers that the Greek authorities could have returned to Turkey each month following first instance decisions, 250 exercised their right to appeal. However, the appeals committees responsible for this took only 120 decisions a month in 2018. This number was 200 by the time of the 2017 McKinsey report. Of these 120 decisions a month, an average of 100 were that returns to Turkey were possible. In the end, an average of 60 people a month were sent back to Turkey in the first 26 months after the settlement. 60 out of 2500, who had arrived per month, or 2,5 percent. There were far fewer returns in absolute numbers after 18 March 2018 than in the three months before the EU-Turkey deal. This was so, even though until May 2018, most of the asylum seekers on the islands were Syrians who would have been granted protection status in Turkey, where millions of Syrians had been living for years.

This administrative failure contributed to the misery in the camps on the islands. If decisions had been made more quickly, then more people could have been brought to the mainland more quickly as well. Why did this not happen? I was in Greece regularly at the time and kept asking politicians in Athens and on the islands this question. Once I invited Manolis Vournous, the non-party mayor of the islands of Chios, to Hamburg to visit the initial reception centre there and discuss a plan for Chios. Vournous sensed that no one in Athens and Brussels was interested in the growing humanitarian crisis on his island. It slowly became obvious: what was happening on the islands, the bad conditions in the reception centres, was deliberate. The Syriza government in Athens had recognised that repatriations to Turkey and quick asylum decisions were unpopular and were criticised by NGOS and its own parliamentarians; and no one felt responsible for the fact that slow procedures meant that more and more people were stuck in reception centres that were far too small. At the same time, like all other EU governments,

Syriza regarded the EU-Turkey declaration as having no alternative. Thus, deterrence through inhumane conditions with very few returns seemed the lesser evil. Despite the largest UNHCR mission in an EU member state in the EU's entire history, despite generous European aid, despite low numbers of arrivals, in this way, Lesbos and Chios turned every month more and more into a European Nauru and Manus. Moreover, the Greek government in Athens soon lost interest in the issue. As long as there were not too many asylum seekers, it seemed easiest to detain people for a few months and to eventually bring almost everyone to the Greek mainland.

Public criticism had no effect. Neither did regular media reports about the conditions in the camps. Neither the speed of final asylum decisions on the islands nor reception conditions changed in the four years after March 2016. By May 2020, a total of only 2140 people had been returned from the islands to Turkey in four years. The probability of repatriation for those who arrived on the islands was now even lower than 1.5 percent.⁶⁷

*Repatriations from the Greek islands to Turkey*⁶⁸

	2016	2017	2018	2019	2020	Total
January	—	64	47	19	53	183
February	—	34	23	13	63	133
March	—	45	29	5	23	102
April	386	150	18	10	0	564
May	55	87	29	14	0	183
June	27	48	20	18	0	113
July	0	60	23	7	0	90
August	16	18	17	15	0	66
September	94	29	48	7	0	178
October	139	57	17	36	0	249
November	31	75	40	25	0	171
December	53	16	11	26	0	206
Total	801	683	322	195	139	2 140

⁶⁷ "National Situational Picture Regarding the Islands at Eastern Aegean Sea Archives," General Secretariat for Information and Communication, accessed July 15, 2020, <https://infocrisis.gov.gr/category/latest-info/national-situational-picture-regarding-the-islands-at-eastern-aegean-sea/?lang=en>.

⁶⁸ "Returns from Greece to Turkey," UNHCR, 6 October 2017, <https://data2.unhcr.org/en/documents/download/60306>; "Returns from Greece to Turkey," UNHCR, 28 February 2018, <https://data2.unhcr.org/en/documents/download/62508>; "Returns from Greece to Turkey," UNHCR, 31 March 2019, <https://data2.unhcr.org/en/documents/download/68670>; "Returns from Greece to Turkey," UNHCR, 31 March 2020, <https://data2.unhcr.org/en/documents/download/75075>; "National Situational Picture Regarding the Islands at Eastern Aegean Sea Archives," General Secretariat for Information and Communication, accessed 15 July 2020, <https://infocrisis.gov.gr/category/latest-info/national-situational-picture-regarding-the-islands-at-eastern-aegean-sea/?lang=en> from 1 April to 7 July 2020.

Probability of repatriation (by the end of 2019) ⁶⁹

Nationality	Arrival	Return	Percent
Syria	46,010	367	0,8
Afghanistan	44,707	126	0,3
Iraq	18,910	112	0,6
Pakistan	14,659	732	5

With sharply falling arrival figures, it would still have been easy to create humane reception conditions on the Greek islands in 2017. In the entire first half of 2017, only 9,000 people arrived in Greece across the sea in half a year, as many as had in October 2015 in one day. But there was a lack of organization, a lack of a plan, and ultimately a lack of interest. The EU-Turkey declaration became an orphan deal: even though all major Greek parties, in government and opposition, and all European governments stuck to it, no one felt responsible. Human rights organizations attacked the agreement, not noticing that the bad conditions on the islands were not the result of the declaration, but in fact the alternative to its implementation. They were betting that without an agreement with Turkey, conditions for refugees in Greece would improve. I feared the opposite. The Germany association Pro Asyl like many others, called for the declaration to be suspended. I asked during many public discussions and during visits to the Pro Asyl office in Frankfurt, what concrete effect this was supposed to have. Without an agreement, the Greek government would certainly not close the camps on the islands, as served as a deterrent. Without generous European aid for Turkey, the situation of millions of Syrians there would deteriorate. For whom would the end of the declaration be an improvement *from a human rights perspective*? Something else surprised me: for years, international NGOs had been advocating "legal pathways" for refugees into the EU, but hardly any were now advocating to implement the humanitarian resettlements from Turkey promised in the EU-Turkey statement.

Some critics claimed it was absurd to expect refugees and asylum seekers to be safe in Turkey. Yet millions of refugees *have* been living in Turkey for many years, and hundreds of thousands of Syrian children attend Turkish schools. Turkey has a long tradition of granting asylum seekers - including Afghans - residency while the UNHCR conducted asylum procedures and organized resettlement. The aim should be to improve the Turkish system through incentives and support, for the benefit of those in need of protection.

I have since often heard the argument that it was hopelessly naïve to expect that there could be fair and speedy asylum procedures in Greece. If that were true, then the Refugee Convention would have no future anywhere in the world. Had the Greek asylum authority, the German BAMF and asylum authorities in the Netherlands (IND) or France (OFPRA) invited by Athens, been drawing up a plan for joint work on the Greek-Turkish external border, to develop common guiding principles and procedures, it would of course have been possible to make credible asylum decisions on a few thousand asylum applications a month within a few weeks. The fact that the organisation of rapid asylum decisions was not made a European priority - and, as I had to recognise in countless sobering meetings, it was indeed no priority - was the greatest failure of recent years. If in 2020 the Refugee Convention comes to a tragic end in the Aegean, it will be because of these failures.

⁶⁹ "Detections of illegal border-crossings statistics," Frontex, 3 April, 2019, <https://frontex.europa.eu/along-eu-borders/migratory-map/>; "Returns from Greece to Turkey," UNHCR, 31 December, 2019, <https://data2.unhcr.org/en/documents/download/73295>.

Advocacy and research – in pictures



[March 2012 Ankara - Arguing for visa liberalisation](#) – with Giuliano Amato and Otto Schily



[March 2016 with Commissioner Avramopoulos](#). Explaining ESI proposal in Athens Hilton



March 2016 - Making case for EU-Turkey statement - Greek migration minister Mouzalas



March 2016 – discussing the ESI proposal in Athens



7 March 2016, Presentation in Austrian Ministry of Interior, Vienna



May 2016, Lesbos



September 2016, Reception centre in old airport in Athens



With the Mayor of Chios in Hamburg City Hall (with Wolfgang Schmidt)



July 2017, Vial reception centre, Chios



February 2018, with ESI's Alexandra Stiglmayer and Dutch case workers in asylum centre in Ter Apel, Netherlands



Inside Moria, December 2018



Discussion with Robin Alexander, author of Die Getriebenen (Tobias Rapp, Der Spiegel)

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