

ESI newsletter 4/2016
17 March 2016

How the Merkel Plan could fail – and why this would be terrible for human rights

Dear friends,

In recent days ESI continued to make the case for **the Merkel-Samsom plan** as a response to the current refugee crisis across Europe, from **Athens** to **Vienna**, from **Rome** to **Istanbul**.

Perhaps the most important recent presentation took place on 26 February in **Ankara**. There, we argued why the success of the Merkel-Samsom plan was also in the interest of Turkey. In February 2016 some Turkish analysts, including **Kemal Kirisci**, a leading expert on asylum, refugees and Turkey-EU relations, backed these ideas (Kirisci published a **paper on this for the European Policy Center**).

Refugee crisis – 26 Feb 2016

Where are we?
(Gerald Knaus, Tepav, Ankara)



TRIANGLE of commitments

COALITION: Resettle refugees directly from Turkey



EU: visa free
billions for refugees

GREECE: Send back those
who arrive after day X

TURKEY: - Safe Third Country
- Take people back

Slides – **ESI Ankara presentation** – February 2016

Two weeks later, in the evening of 6 March 2016 in the Turkish Embassy in Brussels, **Turkish prime minister Ahmet Davutoglu presented** a proposal to Angela Merkel and Mark Rutte. Turkey offered to take back everyone who reached Greece, asked for accelerated visa liberalisation in return, and insisted on resettlement of Syrian refugees from Turkey to the EU.

The next day, 7 March, some EU leaders were wondering where these new Turkish ideas came from. In fact, the **Merkel Plan** had been known for many months to Turkish diplomats and had been widely **discussed in Turkish media**. All the relevant **ESI reports had been translated into Turkish**.

Turkey's interests I	Step 3: Commission to launch process to lift visa requirement – visa free possible by summer
<p style="text-align: center;">Get help from European states with Syrian refugees (principle of resettlement)</p> <p style="text-align: center;">NOT remain major transit country for third country nationals</p> <p style="text-align: center;">Keep easy access for tourists from around the world</p> <p style="text-align: center;">Obtain visa free travel for Turkish citizens</p>	<p style="text-align: center;">Key conditions:</p> <p style="text-align: center;">Readmission with Greece Remain safe third country</p>

Slides – **ESI Ankara presentation** – February 2016

Now, on the eve of another decisive EU-Turkey meeting this week, the European Commission published a **communication** which "warmly welcomed the additional proposals made by Turkey." It set out core principles, including on readmission:

"The return of all irregular migrants and asylum seekers from Greece to Turkey is an essential component in breaking the pattern of refugees and migrants paying smugglers and risking their lives. It is self-evident that the arrangements for such returns ... can only be carried out in line with the refugee protection safeguards that have been put in place in international and EU law."

The Commission stressed, with arguments similar to those made by ESI in October 2015 ("**Turkey as a Safe Third Country for Greece**"), that there is "no question of applying a 'blanket' return policy, as this would run contrary to these legal requirements." Many human rights organisations had rightly warned that this would be illegal, but wrongly assumed that this was foreseen. As **Nils Muiznieks, Council of Europe commissioner for human rights, put it this week:**

"International law does not call into question a country's right, in principle, to repatriate people who do not need international protection. But it does prohibit actions that are incompatible with states' obligations under those conventions."

The Commission also proposed to resettle Syrians from Turkey in order to

"replace, quickly, irregular flows of migrants travelling in dangerous conditions across the Aegean by an orderly and legal resettlement process."

The Commission added that:

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

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

If there is a deal, what can go wrong? – A lot

Assume for a moment that the EU and Turkey agree on such a plan this week in Brussels; would this constitute a breakthrough? On paper, certainly. However, major problems remain concerning two key components of this plan: readmission and resettlement.

First, readmission. Even if Turkey agrees to accept the rapid return of those crossing from Turkey into Greece, the single biggest practical problem remains one which the EU was familiar with for a long time, but did not address yet seriously: the state of the Greek asylum system.

It is crucial to stress, again and again, that any readmission must happen in accordance with EU and international law on the rights of refugees. As Kenneth Roth from Human Rights Watch put it, each claim should be "given careful consideration."

The problem with this is that this is in fact a meaningless commitment unless it is accompanied by a dramatic strengthening of the ability of the Greek Asylum Service to implement it. In a recent paper ([published by Forced Migration Review](#)) in January 2016 Maria Stavropoulou, its director, wrote that:

"case workers can reasonably be expected to issue no more than a few dozen decisions a month ... in a situation, however, where thousands of people arrive every day in a country ... these requirements are simply impossible to meet. For instance, the Greek Asylum Service can currently process at most 1,500 applications a month if it wishes to respect all of these requirements – which is less than half of the average daily inflow of refugees on the Greek islands at the time of writing this article."

Some human rights organisations argued that the impossibility of conducting a full review of all individual applications makes any deal with Turkey impossible. In fact, the situation for individual asylum seekers in Greece *is even worse if there is no deal at all*.

The current dramatic shortage of resources means that for all practical purposes the right to an individual review of asylum applications *has already vanished* for the vast majority of those who arrive in Greece today. In the three winter months (December-February 2016), some 230,000 people arrived in Greece from Turkey. At a rate of processing 1,500 applications a month, such a number would take more than twelve years to process – twelve years during which, given current EU legislation (Dublin) and the EU's new emphasis on closing the Balkan route to keep all asylum seekers trapped in Greece, all of these potential asylum seekers would remain there, their future uncertain, almost certainly under bad conditions. And this is just for three months' intake.

Some in the EU speculate openly that such a humanitarian crisis might then act as a deterrence and stop the flow into the European Union. There are also some who hope that eventually Greece might be forced to go back to the closed detention facilities for illegal migrants it had before the current government closed them in 2015. This is what [conditions were like in Greece in 2014](#), before the current wave of arrivals, when Greece hosted comparatively very few people:

"Migrants and asylum-seekers detained in Greece are being forced to endure deplorable conditions, often with devastating effects on their health, according to a report from aid agency Médecins Sans Frontières (MSF). Doctors who have attended internment camps, police stations and coastguard facilities around the country described 'a living hell' for thousands of immigrants denied fresh air, natural light and basic sanitation. In one detention

camp in Komotini, not far from the Turkish border, medics saw human excrement seeping through cracked pipes between the building's floors. 'I did not think that such conditions were possible on European soil,' said Marietta Provopoulou, who spent more than a decade working in Africa before returning to Athens to head MSF in Greece. 'The main complaint of migrants is that they are not being treated like human beings, that they are being subjected to a living hell,' she told the Guardian. 'And they are right.'" (Guardian)

This is an idea that is hard to beat for cynicism: while promising to send "humanitarian aid" to Greece, it relies on conditions there becoming worse than they are in the countries where refugees are at present (if they would be better the strategy would make no sense).

It is also not a new idea. It is familiar from the (infinitely smaller) refugee settlement in Calais that France and the UK have struggled to close for years. It is the Nauru strategy of the Australian government, which pays a small island nation to keep those who reach Australia under harsh conditions (media are not allowed to report on) in order to deter future arrivals. This "Greece as a giant Calais/European Nauru" is the default option if there is no deal with Turkey.

In other words: the real human rights challenge today is not to prevent a good European system from being abused, but having a functioning system at all; it is to reflect whether a deal with Turkey (which gives the EU an incentive to help Turkey improve conditions for millions of refugees) or no deal (which gives the EU an incentive to see conditions in Greece for refugees become sufficiently bad as to deter others) is better for rights. It is above all about building a system to replace chaos, and to do so in a matter of weeks.

So what is to be done most urgently? Two issues stand out:

First, the EU and Greek authorities should focus on building up the administrative capacity for determining asylum cases and readmission in accordance with applicable European law. As recently as 24 February the executive director of the European Asylum Support Office, **Jose Carreira**, stated that "supporting the EU Relocation Scheme is the key priority for EASO operations in Greece." And as late as 10 March, he told EU interior ministers about the need for more personnel to be sent to Greece to work on relocation.

The EU relocation scheme has seen less than 100 people relocated from Greece to the EU per month since last autumn. It should be suspended without further delay. Greece currently has some 260 employees in its Asylum Service. As ESI learned in Athens recently, one quarter of them work on relocation, busy with a program that at best resettles a few hundred people a month. This is, in fact, an irresponsible waste of scarce administrative resources.

The European Commission should put all of its energy into devising ways how Greece can be helped by integrating asylum case workers from other EU member states into its system without delay. If the Turkey deal is to work this is a precondition. It may require changes in Greek legislation. It is vastly more important for reasserting the rule of law (including the promise of review of asylum applications) and controlling movements in the Aegean than building up a European Border service, which would make no difference to either the erosion of the right to asylum or to the number of refugees crossing the Aegean.

Finding ways to help frontline states in such situations would in any case be a very important precedent for the EU. EU member states should second – rapidly and in significant numbers – asylum case workers, interpreters and other necessary personnel to Greece.

Second, EU countries accepting resettlement of refugees directly from Turkey should announce this now. Yes, the current draft deal foresees resettlement of Syrian refugees from Turkey, but the way it does so is insufficient. There are two different proposals how resettlement might work:

- The "1:1 resettlement scheme" links the number of Syrians returned to Turkey and the number of Syrians resettled from Turkey
- A Voluntary Humanitarian Admission Scheme to be implemented in a second phase by a coalition of willing states.

However, without the humanitarian admission scheme, the 1:1 scheme makes no sense. The 1:1 scheme is a clumsy attempt to preserve some sense of a "European" solution; but this comes at a high price and risks backfiring if this is not clearly recognised now. A voluntary resettlement exercise is not an add-on to the Merkel-Samsom Plan – it is at its heart, essential for its success for a number of reasons.

First, in order to send a strong signal to Syrian refugees not to cross the Aegean, they need to believe that there is a credible alternative. Under the 1:1 scheme alone, this is not the case. Note that the short-term goal of the 1:1 scheme is to reduce numbers crossing to zero. The moment this is achieved, *there would be no further resettlement under this scheme*.

Since the EU and Turkey clearly plan to initiate a process that actually works, the signal this sends to Syrian refugees is that – in a few weeks, if things go according to plan – there will be no need for further resettlement. Paradoxically, the more the plan fails and the more Syrians continue to reach Greece, the more (other) Syrians have a chance to get to Europe. From the perspective of Syrian refugees, the 1:1 scheme works by failing.

It only makes sense if it is clear from the outset when and how the voluntary resettlement effort will begin. This should be announced publicly, as a matter of urgency. It is even more important to see the first Syrians board planes for European states, as soon as possible. This moment, when fewer people arrive at the Slovenian Schengen border, is the moment to announce this.

A quick start to the voluntary resettlement is also vital in order to help Greece. The more people can be persuaded that it makes sense to wait, the less pressure there is on Greek (and other EU) asylum case workers. It is the promise of a substantial, unprecedented voluntary resettlement alone which makes the Merkel-Samsom plan a moral deal, and a step forward for global refugee policy.

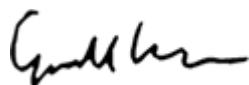
Angela Merkel and other German and Dutch leaders have talked about voluntary resettlement for many months. But the current policy of delaying the announcement of any details about voluntary resettlement "until irregular crossings between Turkey and the EU have come to an end" is incoherent and almost certain to doom any agreement.

Not having a deal this week with Turkey would be a disaster, for Greece above all, but also for those in the EU who oppose the Balkan fence solution. It would be very bad for Turkey (which would be left without serious EU support). It would be terrible for the refugees, who would remain subject to a European experiment that involves deterrence on a huge scale, Nauru-style, through the mistreatment of refugees in an EU member state. For Europe, it would be a shameful failure. The EU has lost too much time over fake solutions since last summer. It has wasted hours in meaningless conferences, has devised plans which were never going to make any difference, and has failed to pay sufficient attention to crucial details.

Having a deal, however, is only a step forward if there is also serious thinking without illusions about its implementation – including setting up the right administrative structures to make it work. In EU institutions and in human rights organisations, the debate continues to be dominated by lawyers, arguing how to best preserve rights that have become meaningless without administrative resources to implement and enforce them. Too many politicians talk about "messages" and communication, ignoring the obvious reality that in the end it is actions, not words, that could convince desperate people.

The choice before the EU is whether its actions – not words on paper – will strengthen or destroy the European commitment to human rights and the Refugee Convention. The EU needs a deal with Turkey. But agreeing a deal with Turkey this week is not the end of the process of finding a solution. It is the start of a process to make a solution work. Unless European leaders are aware of this, this summit too will end up as another footnote in a sad story of illusions.

Best wishes,



Gerald Knaus

Further presentations of Merkel-Samsom plan

- Ankara – [ESI-Tepav presentation](#) (26 February 2016) – Why the Merkel-Samsom Plan is good for Turkey
- Vienna – [ESI at public debate on the refugee crisis at Kreisky Forum](#) (14 March 2016) – with audio
- Vienna – [ESI at public debate on the refugee crisis at Burgtheater](#) (13 March 2016) – with video
- Berlin – [Interview in Die Welt "Das ist kein schmutziger Deal"](#) ("This is no dirty deal") (16 March)
- Vienna – [Interview in Der Falter "Wir nannten es einfach Merkel Plan"](#) ("We simply called it Merkel Plan") March 2016
- New York – [Council on Foreign Relations – Why the German-Turkish Migrant Plan Can Work](#) (16 March)
- Brussels – [Interview on Belgian public television](#)
- Deutschlandfunk, Martin Zagatta, ["Ohne Griechenland kann man die Krise nicht lösen"](#) - interview with Gerald Knaus - ("The crisis can't be solved without Greece") (7 March 2016)



Debate on refugees in the Vienna Burgtheater

ESI newsletters and papers

- ESI newsletter: **Idomeni proposal – Bosnia and the first circle of hell – Upcoming events on refugees** (11 March 2016)
- ESI newsletter: **Refugee crisis – a breakthrough is possible** (19 February 2016)
- Rumeli Observer: **Drucker’s lesson – Why the EU relocation scheme from Greece should be abandoned** (11 February 2016)
- ESI newsletter: **A race of plans – Samsom versus Orban – Five steps – Montenegro exodus** (8 February 2016)
- Rumeli Observer: **Why Amnesty is wrong on the Merkel-Samsom Plan** (29 January 2016)
- Rumeli Observer: **The Merkel-Samsom Plan – a short history** (28 January 2016)
- Rumeli Observer: **Interview with Diederich Samsom, leader of the Dutch Labour party, on his plan** (28 January 2016)



Vienna debate on refugees – Austria, Greece and Turkey