# Turkey's Prospective EU Membership from a Migration Perspective: Two Steps Forward, One Step Back?

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The Istanbul Policy Center (IPC)-Sabancı University-Stiftung Mercator Initiative organised a workshop[1] entitled "Turkey's Migration Policy from 2002 to 2012: An Assessment of the AKP's Reforms" on 16 February 2013 at IPC's Karaköy Office. The workshop was supported by IPC-Mercator's fellowship programme[2] and took place as a part of Mercator-IPC Fellow Seçil Paçacı Elitok's research project on the "Role of Migration in EU/German-Turkish Relations". Turkey's geographical location and the sizeable number of people of Turkish descent living in Western Europe make migration a critical issue in Turkey's EU membership negotiations. In the early 2000s, the European Commission greeted Turkey's legal and institutional reforms with enthusiasm. However, later reports (except the latest one in 2013) painted a less favourable picture and deemed the harmonisation of Turkey's migration policy with the EU law as "poor" and "limited". Critics argue that

the Commission's assessment has almost exclusively focused on issues related to the prevention of illegal migration while successful reforms touching upon other areas of migration policy have been neglected. Throughout the workshop, Turkey's migration policy reforms over the last decade were assessed from various perspectives. Bringing together political decision makers, academics, scholars and actors from civil society, the workshop started a debate on the reasons behind and the effects of the transformation in Turkey's migration policy, and offered new formulas to resolve remaining challenges. This workshop inspired us to edit a special issue that is not only a collection of presented papers during the workshop but also includes other related contributions on the theme. Before this collected volume had been published, *Turkish Policy Quarterly* devoted a special section to the workshop and published selected articles.[3] Taking into account the broadness of Turkey's harmonisation with the EU in the fields of justice, freedom and security, this present volume is an attempt to address the main

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aspects of the matter so as to trigger further academic debates.

Since the workshop in February 2013, several migration-related incidents have taken place that have shaped and are going to shape Turkish migration policy. The turning point was the adoption of the law on foreigners and international protection (April 2013) by Turkey's parliament. The draft version of the law built on the discussions in the workshop, and participants shared their expectations from this new legal and institutional framework.

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Another crucial incident that we witnessed during the preparation phase of this special issue is the signature of the Readmission Agreement and the Protocol on the initiation of the Visa Liberalisation Dialogue, on 16 December 2013 between Turkey and the EU. The agreement aims to regulate illegal migration flows between Turkey and the

EU and gradually ensure visa-free travel for Turkish citizens in the EU member states that are part of the Schengen Area. According to the agreement, illegal migrants transiting through Turkey to reach EU destinations and are caught in the EU member states will be repatriated to their home countries after temporary stays in Turkey. In return, visa restrictions for Turkish citizens will be lifted in three years. The incomplete negotiations over the Readmission Agreement were a major deadlock in the EU-Turkey relations. The agreement could not been completed due to Turkey's understandable concerns, the lack of clarity on Turkey's benefits and Turkey's unwillingness to step back from its claim of the right for the free movement of people as guaranteed in previous agreements.

During these debates, the European Court of Justice's (ECJ) recent verdict on the Demirkan case (denial of visitor's visa by Germany) further deepened the crisis of confidence between Turkey and the EU. The ECJ decided that Turkish nationals are required to obtain visas for EU countries if they enter as service receivers (family visit in Demirkan case), in contradiction to the Soysal case (international transport between Turkey and Germany) in which Europe became visa-free for Turks providing services. With reference to the Demirkan case, critics argue that the ECJ's ruling is

political. The legal framework, namely the Ankara Agreement (1963) and Additional Protocol (1970), which are the foundations of EU-Turkey association, gives rights to Turkish citizens to freely move in Europe. If the rights of Turkish citizens given by these agreements are taken back through national legislations, the standstill principle will be validated. In the actual functioning of the legal framework, rulings of ECJ are in contradiction with the *pacta sund servanda* principle and worsen the existing situation. Turkey rightly questions ratifying an agreement that would put extra burden on its shoulders in return for an already existing legal right. Additionally, the nature of the agreement is not promising in equally sharing the financial and technical burden.

The Syrian refugee crisis continues to be the most important challenge for Turkey. Turkey's enormous efforts to keep its non-refoulement/open-door/ protection principles in managing the crisis have been universally appreciated. However, the sustainability of Turkey's approach has begun to be questioned lately due to the following concerns.[4] First of all, especially after the Reyhanlı incident (the bombings in Hatay in 2013), anti-migrant sentiments have increased among the inhabitants of the region. These attitudes became even

stronger and spread to the other regions where non-registered Syrians were located. These anti-Syrian perceptions reflect the security risks and socio-psychological aspects of the problem. The EU's reluctance to support Turkey in such a crisis has led to further frustration with respect to the burden sharing-debate.[5] Taking into account the fact that the volume of Syrian refugees is expected to reach one million in 2014, Turkey is challenged to develop a policy that can balance security concerns and humanitarian needs. Turkey is expected to put the Syrians who are the victims of a civil war in the centre (asylum is seen as a human right and not as a favour), while at the same time it needs to look after its security interests. Turkey's refugee policy has been subject to criticism and found to be naive due its religion-oriented hospitality aspects. The vulnerability of non-registered Syrians to the informal labor market is also highly debated.

Despite all these challenges and criticisms, Turkey has retained its active role as one of the key actors in global migration management. In addition to its leadership of the Budapest Process and the Silk Roads Partnership for Migration, Turkey will undertake the 2014-15 presidency of the Global Forum on Migration and Development (GFMD). The GFMD presidency will further strengthen Turkey's global role in

the field of migration and development through this international platform at which Turkey can share its experiences.

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While we were preparing this special issue on the role of migration on Turkey's EU membership, the Commission's 2013 Progress Report was released. Even if democratisation, judicial reforms and the Gezi protests dominated this year's report, there were certain positive and negative points regarding Chapter 24 (Justice, Freedom and Security (JFS)). 2013 marked a year in which performance of Turkey in the field of JFS was evaluated by the Commission as "good progress" for the first time, even if the overall alignment was considered to be at an early stage. Thanks to the adoption of the Law on Foreigners and International Protection, significant progress was noted in harmonising Turkey's legal and institutional framework with the EU and international standards. Additionally, the establishment of General Directorate of Migration Management (GDMM) was perceived as a shift away from a

security-oriented approach.[6] In addition, one can see the reduction (by 33%) in the number of third country nationals detected while entering the EU illegally via Turkey. Even if there is a decrease in the flow of transit migrants, Turkey continues to be an important destination country as the 7% increase in the number of irregular migrants and issued residence permits indicated. The high proportion of irregular migrants who entered Turkey through legal channels before they were detected at the EU border is remarkable. The management of the Syrian refugee crisis issue is perceived as a success on the one hand, and, on the other hand, as an unsustainable policy due to the problems on the ground. The question of non-registered Syrians who are not in the camps was also mentioned in addition to the increase in the number of asylum applications filed in Turkey. Growing concerns were underlined in the report on the potential increase in human trafficking as a consequence of the Syrian crisis. The processing of asylum applications has been criticised due to the long waiting periods, and the need to simplify the bureaucratic process has been mentioned. The capacity of Turkey to host irregular migrants has received criticism as well due to the incomplete removal centres as well as the lack of structured psycho-social services for irregular migrants.

The unsolved issues that remained were almost identical to the previous progress report in 2012, namely the readmission agreement (signed on 16 December 2013), geographical limitation, visa policy and border management. Even if the new law introduced new statuses such as conditional refugee or secondary refugee in order to give an end to confusions prior to the law, it has kept the geographical limitation in the asylum policy. The Commission perceives this as a drawback in Turkey's alignment with the EU where Turkey keeps its concerns about becoming a buffer zone between Europe and the Middle East as a result of lifting the limitation. Turkey's visa policy continued to be among the things that have fallen short in aligning with the EU due to lack of a unified visa system (discrimination among EU states) and disharmony with the EU's negative and positive list. This year the Commission also underlined the fact that Turkey's authorisation of national of certain countries to enter and stay in the country via an online electronic system does not exist in Schengen member states. With regard to border management, Turkey's progress was found to be poor due the lack of law on border security as well as a professional border security organisation. With respect to human trafficking, the non-adoption of a framework anti-trafficking law and the non-ratification of the Convention on Action against Trafficking in Human Beings were pointed out as shortfalls. The new Law on Foreigners and International Protection, if well implemented, is expected to bring two developments: residence permits to victims or those strongly suspected of being victims of trafficking and the establishment of Department for the Protection of Victims of Human Trafficking within the GDMM. The Commission also reported that efforts need to be stepped up as regards the prosecution and prevention of human trafficking and identification and protection of victims. With respect to judicial cooperation, data protection law is needed for further collaboration in combating organised crime.

This special issue is coincided with two important anniversaries, the 50th anniversary of the Ankara Agreement and the 52nd anniversary of the guest worker agreement between Turkey and Germany.[7]

In 2013, Turkey's long journey to full EU membership came to a deadlock after half a century. In 1959, Turkey applied for associate membership of the European Economic Community (EEC). An association agreement (the Ankara Agreement) was signed in 1963 between Turkey and the EEC with a long-term target of customs union. After

Turkey's failed membership application to the EEC, a 1995 agreement created a customs union. Turkey was recognised as a candidate country in 1999 at the Helsinki Council and in 2005 the European Council began accession negotiations with Turkey. Since 2005, 13 out of 33 negotiation chapters have been opened and one chapter, Chapter 25 (Science and Research), has been provisionally closed. Because Turkey is not fulfilling its obligation of a non-discriminatory implementation of the Additional Protocol regarding free movement of goods (due to the Cyprus issue), the EU decided that eight negotiation chapters could not be opened and no chapter could be provisionally closed. With respect to the EU's commitments in opening Chapter 22 on regional policy is going to play a crucial role in breaking the stalemate in EU-Turkish relations.

2013 also marked the 52nd anniversary of the start of Turkish emigration to Germany. One of the most conspicuous dimensions of these phenomena in 2013 is the reverse trends of remittances flows between Turkey and Germany.[8] For the first time in its history, the amount of remittances from Turkey to Germany accounted for 30% of the total incoming remittances to Germany. Moreover, the Central Bank of Turkey announced that remittance accounts

(migrants' savings) will be inactive starting from 2014 because the ratio of remittances to foreign exchange reserves has significantly dropped over the years (by 5.2% in 2013).

Germany continued to be one of the most crucial actors not only in the EU but also for Turkey's relations with the union.[9] Recent elections in Germany will shape the relations between two countries in a number of ways.[10] Finally, Turkey is hopeful from the Lithuanian EU Council presidency due to positive bilateral relations of past.

The issue of migration has been central to EU-Turkish relations and will be one of the most challenging issues to be managed in the negotiation processes. Thus, Chapter 24- Justice, Freedom and Security is and will be crucial for the future as well due to the political, social and economic complexities.

Against this background, this issue intends to shed light on the certain aspects of policies of migration in the case of Turkey and the role it plays in the EU-Turkish relations.

The first article in this special issue, "Renewed inter-institutional (im-)balance after the Lisbon Treaty? The external dimension of the EU's migration policy", is by Canan Ezel Tabur. Mapping out the legal and institutional framework

of EU migration policy after the Lisbon Treaty, she examines the renewed inter-institutional balance in the EU as it relates to the EU's policy towards its immediate neighbourhood and the candidate countries, including Turkey. With the entry into force of the Lisbon Treaty in December 2009, EU member states have committed themselves to the creation of "a common immigration policy". The author argues that despite the increasing "communitarisation" of EU migration policy over the past decade, the member states seek to control the impact of institutional constraints and support mechanisms by which they could exert national control over the EU policy-making process. In addition, the author critically assesses the external dimension in which the assertive responses of the member states to the purported migratory flows that have been associated with the EU's immediate neighbourhood, a subject particularly important to the older member states that have been subject to high levels of secondary migration movements within the EU. Tabur's contribution provides insights regarding the debate on the common migration policy of the EU with special reference to irregular migration and readmission agreements, the Schengen area, labour migration and mobility partnerships.

One of the most important aspects of the external dimension the EU's migration policy is visa policy. In her article "Visa Politics under JDP Rule with Respect to EU Visa Policies", Zeynep Özler analyses changes during the rule of the JDP government that have occurred in visa politics with regard to EU visa policies. The author takes note of the positive steps taken since 2002 while also drawing attention to the existing shortcomings. She argues that while Turkish nationals would like to enjoy visa-free travel rights despite stalling accession negotiations, some EU member states' strong resistance has created resentment in the Turkish public. She puts forward the argument that the JDP government's resort to a confrontational discourse with the EU and pragmatic moves towards a liberal visa policy with countries on the EU›s negative list signals a drift away from the EU agenda. In her article, she also touches upon Turkey's fragmented passport regime. Considering the immense potential of visa policy for the resolution of the current deadlock as well as for calling into question the credibility of EU's policy of conditionality, her contribution provides a thorough analysis of policy developments and empirical research, as well as offering recommendations to policymakers for future prospects.

Migration has recently been framed as a source of fear and instability for the nation-states in the west in a way that leads to the construction of "communities of fear". As regards multiculturalism, Ayhan Kaya's article "Multiculturalism: Culturalization of What is Social and Political" is critically engaged in the elaboration of the ideology of multiculturalism in the European context, which is currently constrained by securitisation and the stigmatisation of migration and Islam. The author claims that both securitisation and Islamophobia have recently been employed by neo-liberal states as a form of governmentality in order to control the masses in ethno-culturally and religiously diverse societies at the expense of deepening the already existing cleavages between majority societies and minorities with a Muslim background. Kaya's article also discusses the other side of the coin by referring to the revitalisation of the rhetoric of tolerance and multiculturalism by the Justice and Development Party rule in Turkey, the origins of which date back to the Ottoman times.

Although it is acknowledged as a serious crime and there is a sophisticated international legal process that addresses countering human trafficking, global efforts in preventing trafficking and protecting trafficked persons remain a great challenge. Taking up the issue, Meltem Ersan provides a holistic and comprehensive approach to the trafficking in human beings in "Addressing Cross-Cutting Issues in Policy-Making in Human Trafficking: Recommendations for Turkey". She argues that the phenomenon is connected to a number of cross-cutting issues, such as gender, labour, development and human security. With a special focus on Turkey, the author assesses current approaches in responding to challenges in line with cross-cutting issues, and defines the gaps to be considered in the efforts of prevention and protection. Additionally, she reflects on the Turkish government's recent reforms on migration management to respond to new migration dynamics. Taking into consideration the fact that human trafficking has emerged as one of the major trans-national phenomenon affecting Turkey, Ersan's arguments and policy recommendations are particularly important.

The Law on Foreigners and International Protection was adopted in April 2013 by the Turkish Grand National Assembly. The adoption of this new law reflects the aim to bring relevant Turkish legislation in line with EU standards. The preparation of the new law required the codification of most of the national laws on foreigners and the legal regulations on asylum and migration.

Esra Dardağan Kibar, critically analyses the impact of the Law on Foreigners and International Protection on the general statute of aliens in her paper entitled "An Overview and Discussion of the New Turkish Law on Foreigners and International Protection". She focuses on the provisions regulating the entry, the residence and the expulsion of foreigners, and she particularly discusses the impact of the public policy priorities on the new legislation by giving a systematic comparison between the provisions of the new law and the previous legal regulations. In this context, this article aims to evaluate the challenge of public policy priorities on the goal to bring the new legislation in line with EU standards.

Return migration is one of the most significant dimensions of migration management in the case of Turkey. Barbara Pusch and Julia Splitt in their article, "Return Migration from Germany to Turkey and Binding the *Almancı* to the "Homeland", focus on the return of Turkish citizens from Germany. After providing an overview of return migration with reference to notions of belonging and "homeland" from the Turkish perspective, the authors examine official Turkish state policies on return and integration policies. By doing so, Pusch and Splitt not only point to the changing nature

of these policies in general, but also look at rather new developments, such as the introduction of the *mavi kart* (blue kart) and the foundation of the *Yurtdışı Türkler ve Akraba Topluluklar Başkanlığı* (Presidency of Turks Abroad and Related Communities), for binding highly educated *Almancıs* to the homeland of their parents or grandparents. The authors argue that binding/bridging is an interesting subject for further research since it gives insights into the functioning of various "soft pillars" of Turkish foreign policy and the understanding of Turkishness.

As the Turkish state's position vis-à-vis the issue of international migration breaks away from the approach of "ignorance and neglect", new questions arise about the state policies on immigration and emigration which have been discussed in separation in the literature on migration for a long time. In the final article of this special issue, Ahmet İçduygu and Damla B. Aksel, in their article entitled "Turkish Migration Policies: A Critical Historical Retrospective", bring together these two domains in order to present a retrospective of the Turkish state's responses to the realities of immigration and emigration. They describe the migration patterns in Turkey by focusing on four decisive periods: a) the two-way immigration and emigration circulation in the early days of modern Turkey, b)

the migration boom of the 1960s, c) the emergence of new migration patterns in the 1980s and d) the new modes of migration governance since the 2000s. By looking into these patterns and the state responses to them, the authors analyse the diverging political rationalities of different epochs.

In the final article of this issue, Suna Gülfer Ihlamur-Öner touches upon a current debate on Syrian refugees in her article entitled "Turkey's Refugee Regime Stretched to the Limit? The Case of Iraqi and Syrian Refugee Flows". After a historical overview of Turkey's asylum regime since 1923, the author analyzes the response of Turkey to the Iraqi Kurdish refugee crisis in 1998 /1991 and Syrian refugee crisis since 2011. According to Ihlamur-Öner; in both crises Turkey created no-fly zones and safe havens for refugees outside of Turkish territory and inside the refugees' country of origin. She argues that these two cases are significant, as they reflect the complex shifting nature of the refugee crises and relief efforts in the post-Cold War era. In her article, the author questions the sustainability and limits of Turkey's policy towards the Syrian refugees and calls for a need for a change not only in Turkey's refugee policies but also in foreign policy vision.

Needless to say, there are many aspects such as irregular migration, asylum, deportation of foreigners, forced migration, etc. that we had no chance to touch upon in this issue but are critical for Turkish migration policy.

As the articles of this issue propose, Turkey's prospective migration policies will be influenced both by the EU's expectations and preferences and Turkey's political will and institutional capacity. We would like thank all of our contributors, as well as participants of our workshop, for their invaluable efforts and time. Without the support of journal's editorial board and referees, it would be impossible for us to complete this volume.

# Endnotes

1   The workshop report can be downloaded at http://ipc.sabanciuniv.edu/en/wp-content/uploads/2013/02/Workshop-Report.pdf [last visited 12 December 2013].

2   The Mercator – IPC Fellowship Program allows international scholars and civil society activists from especially, but not exclusively, Germany to work on academic and practical projects at the Istanbul Policy Center (IPC) on three thematic areas: EU/German-Turkish relations, climate change and education. See, http://ipc.sabanciuniv.edu/en/about_fellowship/#sthash.R05wbgNT.dpuf [last visited 12 December 2013].

3   The selected articles can be found at http://www.turkishpolicy.com/category/130/2013-1 [last visited 12 December 2013].

4   See USAK's related fieldwork on Syrian refugees, "Mayınlı Arazide Yürümenin Adı: Suriye'de Değişimi Zorlamak", *USAK Raporları*, No. 11-04, at http://www.usak.org.tr/usak_det.php?id=1&cat=817&h=#.UoYsiU05nIU [last visited 15 November 2013].

5   See Düvell's paper on Syrian refugee crisis for further debate on Turkey's transformation into a buffer zone, Franck Düvell, "Turkey, the Syrian Refugee Crisis and the Changing Dynamics of Transit Migration", *IE Med. Mediterranean Yearbook 2013,* at http://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/anuari/iemed-2013/Duvell%20Turkey%20Syrian%20Refugees%20EN.pdf [last visited 15 November 2013].

6   This position is highly controversial since the European approach to migration is very security oriented in which third country nationals and entries from non-EU countries are seen as threats.

7   It is also 90th anniversary of the population exchange between Turkey and Greece, which was not covered in this issue.

8   For further information see, Seçil Paçacı Elitok, "Remittance Flows Between Germany and Turkey: Reverse Trend?", *IPC-MERCATOR Policy Brief,* (August 2013), at http://ipc.sabanciuniv.edu/wp-content/uploads/2012/10/Remittance-Flows-Between-Germany-and-Turkey1.pdf [last visited 15 November 2013].

9   Seçil Paçacı Elitok, "Turkey's Negotiations on Migration:One-on-One or One-on-Twenty Seven?", *IPC-MERCATOR Policy Brief,* (March 2013), at http://ipc.sabanciuniv.edu/en/wp-content/uploads/2013/04/secilelitok_TR_EU_migration1.pdf [last visited 18 November 2013].

10  Ebru Turhan, "The 2013 German Federal Elections: Key Determinants and Implications for German- Turkish Relations", *IPC-MERCATOR Policy Brief,* (November 2013), at http://ipc.sabanciuniv.edu/wp-content/uploads/2013/11/2013-German-Federal-Election-Policy-Brief.pdf [last visited 15 November 2013].