

**BLOG POST** 17.03.2017

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# One year on: What lessons from the EU-Turkey 'deal'?

**Dr. Nicole Koenig** | Senior research fellow, Jacques Delors Institut – Berlin

**Marie Walter-Franke** | Associate research fellow, Jacques Delors Institut – Berlin



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*One year after sealing a migration 'deal' with the EU, Turkey threatens once again to cancel it. Tensions escalated when the Netherlands refused to receive Turkish ministers campaigning in favour of a controversial constitutional referendum on the establishment of a presidential system. The EU-Turkey 'deal' thus appears fragile, even though EU and national actors portray it as a success and blueprint for the EU's external migration cooperation. Is the 'deal' really a model and what lessons can be drawn after one year of implementation?*

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In 2015, the Aegean Sea became the main access route to Europe for refugees: over 850,000 people reached the Greek islands by boat, and an [estimated](#) 1,100 died in the attempt. While countries along the ‘Balkan route’ were sealing off their borders, the EU and Turkey agreed on a common approach to stop irregular border crossings and crack down on the thriving smuggling industry, while developing adequate solutions for refugees. A Joint Action Plan was adopted on 29 November 2015, followed by a common statement on 18 March 2016, known as the ‘EU-Turkey deal’. This so-called ‘deal’ marked a shift in the EU’s external migration policy towards comprehensive, mutually beneficial bilateral migration partnerships or compacts. As the EU seeks to extend this approach to a wide range of partners, it is important to look back and draw lessons.

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## 1 The pitfalls of soft law ‘deals’

The ‘EU-Turkey deal’ is not a legally binding agreement; it is a political statement issued by the European Council. Only some elements, notably those concerning the return of migrants, are based on binding readmission agreements. The deal thus became a blueprint for the EU’s migration compacts, political frameworks that can, but do not have to comprise legal agreements. In 2016, the EU signed similar migration Statements or Communiqués with other countries, notably Afghanistan and Mali. In theory, these soft law frameworks allow the EU to flexibly and rapidly bundle various policy instruments in line with its priorities.

However, such instruments bypass the checks and balances mechanisms built into the EU polity to safeguard EU law and fundamental rights. Although they create treaty-like obligations for both parties, they are not submitted to approval by the European Parliament. A February 2017 [judgment of the General Court](#) confirmed that a ‘statement’ is not subject to judicial review since it “was not adopted by an institution of the EU”. As a consequence, persons directly affected by such informal agreements cannot contest them in Luxembourg, even if there is no proper remedy at national level. The deal’s legal implications remain contested. A recent decision by the [European Ombudsman](#), for instance, challenged the argument that the deal’s political nature absolves the Commission from its responsibility to assess compliance with the EU’s fundamental rights.

The ‘soft law’ nature of these arrangements also makes them vulnerable and potentially impotent, as the example of the EU-Mali “joint communiqué” of December 2016 shows. The Dutch foreign minister who signed the agreement on behalf of the EU [celebrated](#) it as a “precise mechanism [...] with regard to the return of failed asylum seekers”. But a national outcry rapidly led the Malian government to deny that any legal commitment had been made, followed by the symbolic refusal to readmit two returnees from France.

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## 2 The limitations of issue linkage

The Turkey ‘deal’ is a precedent for the ‘tailor-made’ and ‘comprehensive’ incentive packages that the EU is offering to other countries of origin and transit. The core of the ‘deal’ is the 1:1 swapping mechanism: the EU committed to resettling one Syrian refugee from Turkey for each irregular migrant readmitted from the Greek islands. The deal also included incentives going beyond migration policy (see table 1). The EU promised €6bn in total and technical assistance to help support refugees hosted by Turkey. In exchange for its cooperation in halting irregular crossing and fighting smuggling and a commitment to better standards for refugees, Turkey negotiated an acceleration of the visa liberalisation dialogue, an upgrade of the Customs Union and a ‘re-energisation’ of the dragging accession talks.

**Table 1: The EU-Turkey ‘deal’ at a glance**

EU offer	Turkish offer
<ul style="list-style-type: none"><li>• 1 for 1: Resettlement of a Syrian refugee for each Syrian returned to Turkey</li><li>• Voluntary Humanitarian Admission Scheme</li><li>• Assistance for Syrian refugees in Turkey (€3 bn in 2016-17, another €3 bn in 2018)</li><li>• Technical and financial support for the prevention of irregular migration, human trafficking and smuggling</li><li>• Visa liberalization by June 2016 (conditional)</li><li>• Re-energization of EU accession talks</li><li>• Upgrade of the Customs Union</li><li>• Cooperation to create humanitarian safe zones in Syria</li></ul>	<ul style="list-style-type: none"><li>• Readmission of all migrants having irregularly crossed to the EU after 20 March 2016</li><li>• Cooperation in the prevention of irregular migration and the fight against smuggling and organized crime</li><li>• Access for persons under temporary protection to public services and labour market</li><li>• Adaptation of refugee law in line with international law</li><li>• Guarantee for migrant registration and issuance of documents</li></ul>

Source: European Council, [2016](#)

However, the Turkish case illustrates the limitations of this type of issue linkage. EU concessions in the field of visa liberalisation and enlargement are tied to conditions lying outside the framework of migration governance. The EU has repeatedly delayed the promise of visa liberalisation as seven out of the 72 benchmarks of the Visa Liberalisation Roadmap have not been met. The situation has become even more complicated since the failed coup attempt in July 2016, which has led to a repressive backlash by the Turkish government. Since then, the ‘carrots’ of accession and visa liberalisation have largely been put on ice, leading to equally frosty Turkish threats to withdraw from the agreement.

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## 3 The costs of mutual gains

Despite these limitations, the EU-Turkey ‘deal’ has arguably been a political win for both sides. The EU keeps stressing its effectiveness. In fact, the number of arrivals in Greece dropped by 98% between 2015 and 2016 while the number of registered deaths and missing persons in the Aegean Sea has decreased by [94%](#) (from 1,100 to 70 persons). The relative impact of the EU-Turkey deal has been [questioned](#) as it concurred with a prior downward trend in arrivals as well as the closure of the Western Balkans route, coverage of dire reception conditions in Greece, and the restoration of internal EU border checks. Nevertheless, European governments, under pressure by anti-immigrant and often Eurosceptic parties, could portray it as a concrete European success story that helped regain control over national borders.

For Turkey, the gains have been twofold. First, the government managed to cash in on migration cooperation. In response to Turkish pressure, the EU moved from an initial offer of €1bn in October 2015 to up to €6bn in the March 2016 deal, if commitments are met. This amount, to be disbursed within three years, is roughly equivalent to one fifth of the European Commission’s development budget for the whole of Africa for 2014-2020. Second, the deal boosted Turkey’s leverage over the EU. The diplomatic row surrounding the constitutional referendum illustrates how it can turn the EU’s issue linkage strategy around. The Dutch refusal to host electoral meetings did not only lead to accusations of ‘fascism’ and ‘nazism’, but also to threats of sanctions including the option of ‘reviewing’ the migrant deal, as Europe Minister Ömer Celik put it on 13 March 2017. The warning was linked to the EU’s unfulfilled promise of visa liberalisation. It is not the first warning and it is [questionable](#) whether Turkey will follow through, also in light of the EU’s substantial financial incentives. However, stakes are high as only a few additional arrivals in Greece could become the straw that breaks the camel’s back.

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## 4 The collateral damage

The primary victims of the ‘deal’ and the closing of the Balkans route are refugees stranded in Greece. The 1:1 swapping mechanism only applies to migrants that arrived on the Greek islands after March 2016. To ensure efficient return to Turkey, reception facilities on the islands were transformed into closed detention centres, in violation of the EU’s Reception Condition Directive. Nevertheless, the number of returns (1,487 in the first year) has been outpaced by new arrivals. The slow pace of returns was partly due to the fact that Greek appeal committees have rejected attempts to return Syrians to Turkey on the basis that it was not safe. A second reason was the backlog in the processing of asylum applications. Despite repeated calls for European asylum experts, shortfalls remained. As a result, Greece ended up moving 4,500 people to the mainland. In early 2017, [Amnesty International](#) estimated that at least 15,000 migrants were stuck on the Greek islands in dire conditions and with unclear prospects.

The 1:1 swapping mechanism promised ‘migrants an alternative to putting their lives at risk’. However, the pace of resettlement has been slow. Between April 2016 and March 2017, the EU resettled [3,656 Syrians](#) from Turkey. At this speed, it would take the EU over 13 years to live up to its initial promise of resettling 54,000 Syrians and thus roughly 2% of Turkey’s refugee population. These numbers cast doubt on the effectiveness of the Voluntary Humanitarian Admission Scheme that is yet to be launched. More broadly, they are illustrative of the member states’ reluctance to open legal avenues in return for third country cooperation on the prevention of irregular migration.

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## Conclusion

After one year of implementation of the EU-Turkey deal, the picture is mixed. The EU has attempted to balance its deterrent approach with legal avenues and financial support to improve conditions for refugees in Turkey. However, the deal is more balanced on paper than in practice. Some of the EU’s incentives, including the opening of legal avenues for migrants, turned out to be largely empty promises. Migrants stuck in transit are the deal’s main victims. Meanwhile, the gains for European governments are shaky as long as Turkey keeps threatening to cancel the deal.

Though Turkey is a very special case in many respects, at least three more general lessons can be drawn. First, comprehensive deals cannot and should not mean subordinating core EU foreign policy norms and aims to the short-term objective of migration control. Second, the EU has to get real about internal solidarity and burden-sharing, if only to shield itself from external blackmail attempts. Finally, the EU and its member states should promote win-win-win agreements that take migrant rights and legal alternatives to irregular migration much more seriously.