

BETWEEN EUROPEANIZATION AND TRANSACTIONALISM:
THE EU TURKEY STATEMENT AND ITS IMPACT ON EU-TURKEY
RELATIONS

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RELATIONS

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DECLARATION OF ORIGINALITY

I, Ozan Ertan Demircan, certify that

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ABSTRACT

Between Europeanization and Transactionalism:

The EU Turkey Statement and its Impact on EU-Turkey Relations

The main goal of this study is to understand the nature of the EU Turkey statement, how it regulates migratory as well as non-migratory areas of cooperation between the European Union and Turkey, and how the statement shapes overall EU-Turkey relations nowadays. One of the main reasons for the conclusion of the EU Turkey statement is the growing externalization as well as the increased securitization of the EU's migration policies. In this context, the thesis first will analyze the development of the European Union's migration policies and its tools. After this, the thesis will show that, unlike the EU, the most important reason for the conclusion of the EU Turkey statement for Turkey was not the country's evolving migration policy, but a rational strategy for migratory and non-migratory areas of cooperation, in the context of stalled accession negotiations. After this overview, the statement will be assessed and analyzed within the scope of its successes and failures. This thesis argues that the EU Turkey statement, while it was initially conceived as a migration tool, it has also accelerated a policy shift from a norms-based approach to a transactional one, increased the supremacy of inter-governmentalism over supranationalism in framing EU-Turkey relations, and de facto replaced existing cooperation frameworks between the EU and Turkey.

ÖZET

Avrupaizasyon ve İşlemcisellik arasında:

AB Türkiye Anlaşması ve AB-Türkiye İlişkilerine Etkisi

Bu çalışmanın temel amacı, AB Türkiye bildirisinin doğasını, Avrupa Birliği ile Türkiye arasındaki göçmen ve göçmen olmayan işbirliği alanlarını nasıl düzenlediğini ve bildirinin günümüzde genel AB-Türkiye ilişkilerini nasıl etkilediğini anlamaktır. AB Türkiye bildirisinin sonuçlandırılmasının ana nedenlerinden biri, AB'nin göç politikalarının artan güvenleştirmesinin yanı sıra artan dışsallaştırmadır. Bu bağlamda, bu tez, öncelikle, Avrupa Birliği'nin göç politikalarının ve araçlarının gelişimini analiz edecektir. Bundan sonra tez, AB'den farklı olarak ve duran katılım müzakereleri bağlamında, AB Türkiye bildirisinin Türkiye için sonuçlandırılmasının en önemli nedeninin, ülkenin gelişen göç politikası değil, göçmen ve göçmen olmayan işbirliği alanları konusunda rasyonel bir strateji olduğunu gösterilecektir. Bu genel bakıştan sonra, AB Türkiye bildirisinin başarıları ve başarısızlıkları kapsamında değerlendirilecek ve analiz edilecektir. Bu tez, AB Türkiye bildirisinin, başlangıçta bir göç politika aracı olarak tasarlanmasına rağmen, norm temelli bir yaklaşımdan işlemsel bir politikaya geçişi hızlandırdığını, hükümetlerarasıcılığın ulusüstücülüğe üstünlüğünü arttırdığını iddia ediyor ve, AB-Türkiye ilişkilerinin çerçevesinde ve fiili olarak AB ile Türkiye arasındaki mevcut işbirliği çerçevelerinin yerini aldı.

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LIST OF ABBREVIATIONS

In Alphabetical order

AKP	Adalet ve Kalkınma Partisi (Justice and Development Party)
CAMM	Common Agendas on Migration and Mobility
CEAS	Common European Asylum System
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CRSR	The Convention Relating to the Status of Refugees
DG NEAR	Directorate General Neighbourhood and Enlargement Negotiations
DGMM	General Directorate of Migration Management
EASO	European Asylum Support Office
EC	European Communities
ECHO	European Union Civil Protection and Humanitarian Aid
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles

ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EEC	European Economic Community
EMS	European Monetary System
ENP	European Neighbourhood Policy
EOP	Environment Operational Program
EPC	European Policy Centre
ESSN	Emergency Safety Social Net
EU	European Union
FRiT	Facility for Refugees in Turkey
GDPCA	General Directorate of Population and Citizenship Affairs
GIZ	Gesellschaft für Internationale Zusammenarbeit (Society for International Cooperation)
HRW	Human Rights Watch
IFRC	International Federation of Red Cross and Red Crescent Societies
IPA	Instrument for Pre-Accession
IR	International Relations

JAP	Joint Action Plan
JHA	Justice and Home Affairs
LFIP	Law on Foreigners and International Protection
MHP	Milliyetçi Hareket Partisi (Nationalist Movement Party)
MoF	Ministry of Finance of the Republic of Turkey
MoFSS	Ministry of Family and Social Services of the Republic of Turkey
MP	Mobility Partnership
MPC	Migration Policy Centre
NGO	Non-Governmental Organisation
PIKTES	Promoting Integration of Syrian Kids into the Turkish Education System
RCOP	Regional Competitiveness Operational Program
SEA	Single European Act
SIHHAT	Improving the health status of the Syrian population under temporary protection and related services provided by Turkish authorities
SIS	Schengen Information System
TCN	Third Country National
TFEU	Treaty on the Functioning of the European Union

TIP	Türkiye İşçi Partisi
TOBB	Union of Chambers and Commodity Exchanges of Turkey
TOP	Transport Operational Program
TRC	Turkish Red Crescent
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Program

CHAPTER 1

INTRODUCTION

According to a Turkish filmmaker, Turkey is suffering from a “silent infestation” (Karacasu, 2022). What sounds like a quiet invasion from the animal world that could be fought with pesticides, is in fact aimed at migrants, asylum-seekers and refugees in Turkey, and shows growing resentment of parts of the Turkish population against them.

It is about the total of currently 4,082,693 migrants, refugees and asylum seekers in Turkey (Catakli, as cited in Hürriyet, 2022). For the voluble Turkish columnist Yılmaz Özdil, this is less a silent infestation than a particularly loud one, from which Turkish population is suffering (as cited in Sözcü 2022, 1). For the leader of the Turkish Workers’ Party TIP (Türkiye İşçi Partisi), Erkan Baş, the Turkish Government has turned Turkey into a refugee depot against money (Hürriyet 2022, 1).

The politician refers to the EU Turkey Statement which will be analyzed and discussed in depth in this thesis. In March 2016, Turkey agreed to a plan worked out by several EU heads of state and government, to keep Syrian and other refugees in Turkey following what has become known as the European refugee crisis of 2015 (European Council, 2016). The European refugee crisis is understood as the sharp increase in the number of asylum seekers in several EU countries due to the entry and transit of up to two million refugees into the European Union in 2015 and 2016, the continuing migratory pressure on Europe and the overall societal impact of this refugee movement. “Refugees” or “displaced persons”, as well as “asylum seekers”, were not precisely distinguished from “migrants” in general usage during the crisis; the term included those affected by forced, voluntary or involuntary migration, not just those persecuted by the state.

Figures from the United Nations High Commissioner for Refugees (UNHCR) show that the European refugee crisis was in fact only a small part of a long-term global migration trend. The UN refugee agency registers worldwide people who are considered as a refugee according to the criteria of the Convention Relating to the Status of Refugees (CRSR) of 1951, also known as the Geneva Convention, as well as internally displaced persons, war refugees, people forced to flee as a result of environmental disasters, and stateless people. Of the 68.5 million people displaced worldwide by the end of 2017, only 25.4 million were registered as refugees; and only 2.643 million (10.4 percent) of them fled to or within Europe (UNHCR, 2020a).

In Europe, however, a need for action quickly arose (European Commission, 2015a). Turkey as a candidate country for EU membership, and the immediate neighbor of both Syria and the EU should ensure that the problem is being solved. The EU Turkey Statement, I mentioned earlier, is actually a press statement, not a legally binding agreement. Nevertheless, in addition to an introduction and concluding remarks, it contains nine commitments that both sides want to keep from now on - like in a bilateral agreement, with the addition that the Court of Justice of the European Union (CJEU) negated exactly this contractual and legally binding nature (Court of Justice of the European Union, 2017).

This leads to the research question: How does the EU Turkey Statement affect EU-Turkey relations, in light of Turkey's Europeanization efforts as well as increasingly transactional relations between the EU and Turkey?

Two interventions should be made to properly understand the research question. First, the EU Turkey Statement – although it is a migration tool – also contains non-migratory elements, such as promises on the customs union, a visa liberalization scheme, and an intensification of EU-Turkey relations as well as Turkey's accession

negotiations. Secondly, Turkey is not just a third country cooperating with the EU in that regard but remains a candidate country for EU membership at the same time. It follows that Turkey not only maintains relations with the EU as a third country, but also has to comply with the Copenhagen criteria as a candidate country. As a result, relations with accession candidate Turkey are already complex.

As already indicated in the title of this volume, the research question touches on two fundamentally different aspects of the EU integration process: Europeanization and Transactionalism. Before applying these two terms to EU-Turkey relations, it is important to first locate them within their theoretical definition and function.

Europeanization does not count as a separate IR theory, like realism or liberal intergovernmentalism. Rather, Europeanization can be understood as a way to organize different existing concepts related to the EU integration process (Alpan 2021, 108). As such, Alpan defines Europeanization as a dependent variable that needs to be explained using real IR theories. This relates to the integration of existing EU members as well as the incorporation of new members.

It should be mentioned here that the term Europeanization itself has undergone a transformation, and this may not yet have ended. An early definition comes from Ladrech (1994, 17) who explains Europeanization as „an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making“. Radaelli (2003, 30) relates to Europeanization as a “processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political

structures and public policies.“. Olsen (2002, 926), on the other hand, refers to a “changes in structures of meaning and people’s minds” in Europeanization. Lenschow (2006, 59-61) distinguishes between territorial and substantive aspects of Europeanization. The problem: the authors remain silent about how Europeanization is perceived in candidate and third countries, for example in Turkey.

While Europeanization initially primarily described the development of EU integration and placed the relationship between the EU and domestic levels in the foreground (e.g., Cowles et al. 2001, 3), further considerations and explanations regarding third countries came only from the 2000s onwards. The EU’s eastern expansion in 2004 led to scholars describing what they call a concept of "enlargement-led europeanization" (Moga 2010, 6). Furthermore, they referred more and more concretely to EU conditionality which theorizes, above all, a mechanism for EU member state candidates to converge with their membership criteria, and has been described as “reactive reinforcement” of the EU towards accession candidates and third countries (Schimmelfennig et al. 2002, 2). The term conditionality is commonly understood as creating incentives for compliance with democratic criteria through rewards and sanctions. These can be economic and financial benefits, but also embargoes, general or increased international recognition or delegitimization, as well as greater institutional integration. In the case of EU conditionality, this means a strategy to encourage reforms in candidate and potential candidate countries. EU conditionality happens in exchange to the countries' progress on the path to the EU accession.

Before the refugee deal, EU conditionality and democratic norms mattered more in EU-Turkey relations. However, a fine distinction must be made here, as can be clearly seen in the Turkish constitutional referendum of September 12, 2010. The result of the referendum was that, in fact, human rights and workers' rights were strengthened,

as well as stricter control of the military; the Turkish judicial system was also reformed (Allesandri 2010, 23). What looks from a European perspective as if Turkey wants to move closer to the EU is, on closer inspection, the result of internal Turkish power struggles between the AKP, which had been in power for eight years at the time, and its supporters on the one hand, and the Kemalist elites on the other.

If one analyzes Europeanization in light of EU-Turkey relations, it describes above all, a transformation process in relation to Turkey's convergence with the Copenhagen criteria and the *acquis* (Alpan 2021, 108). De-Europeanization means the reverse process, i.e. a loss of this same convergence (Aydın-Düzgit & Kaliber 2016, 5).

With regard to the Europeanization of Turkey, the focus of the scholarly debate is primarily focused on "normative aspects, of integration, identity constructions, and domestic conditions regarding candidate countries" (Alpan 2021, 110). The term "Europe", in this regard, had been used as an "identity marker" by Turkish politicians since the 18th century, including by the founder of the Turkish Republic, Mustafa Kemal (Alpan 2021, 114; see also Alpan, 2015).

Interestingly, this process stops with the official start of accession negotiations between the EU and Turkey in 2005 (Alpan 2021, 121). Support for the country's EU accession fell between December 2002 and May 2006 from 74 to 57 percent. Alpan describes this transformation as a "down-to-earth perception of the EU" in Turkey (Alpan 2021, 121). In the further course, this changed into a negative perception of Europe (Alpan 2021, 122), up to the point of "Europeanization as Denial", which brought sector-related cooperation such as migration and trade to the fore (Alpan 2021, 123-125). This raises the question of whether Europeanization is able to explain the adoption of the EU Turkey Statement.

On the contrary, as I will explain in this thesis, the EU Turkey Statement is rather the result of a growing transactionalist relationship between the two sides, which took over the Europeanization trend which prevailed earlier.

Transactionalism is an IR approach that refers to a norms-free cooperation between states or entities in the absence of "federal bodies or functional agencies" (Eilstrup-Sangiovanni 2006, 29-31) within the framework of their cooperation. The cooperation and integration consequently takes place on a "social level" and should prevent conflicts in this way (Eilstrup-Sangiovanni 2006, 29). In this context, Eilstrup-Sangiovanni (2016, 32) emphasizes the importance of building communities between states and their people, and points out that transactionalism provides no causal justification for how norm-free cooperation could lead to political integration. Bashirov and Yilmaz (2019, 11) relate the shift in Turkish foreign policy towards transactionalism primarily to the fact that this approach served President Erdogan to consolidate his power. On the other hand, the EU's policy towards Turkey shows that, despite Turkey's democratic backsliding, it has become an increasingly important partner for the EU (e.g. European Parliament 2017, 10). One of the major obstacles to transactionalism is that it fails to take into account the long-term effects of transactional international relations. The EU Turkey Statement, which has had a significant influence on EU-Turkey relations since 2016, is, in this regard, a good example of transactionalism in international relations.

This thesis argues that the EU Turkey statement, while it was initially conceived as a migration tool, has also accelerated a policy shift from a norms based approach to a transactional one, increased the supremacy of inter-governmentalism over supranationalism in framing EU-Turkey relations, and the statement is treated de-facto like an official framework in the EU-Turkey relations.

The literature on the EU Turkey Statement is abundant and focuses on evaluations of the promises made therein (e.g., Elitok, 2019; Reno, 2017), on the legal structure (Öztürk & Soykan, 2019), on a critical appraisal of the content (Fernández Arribas, 2016), as a case study for theoretical reflections on migration (e.g., Kaya, 2021), or the impact of the statement on human rights (e.g., Kaya, 2020). Saatçioğlu (2019) has identified an increasing functionalism in EU Turkey relations and linked this to the European refugee crisis. When it comes to the EU Turkey Statement, there is certainly no larger research gap; nevertheless, in this thesis an attempt has been made to complete the picture. Because here it is argued that the EU Turkey Statement goes further than rising functionalism in the EU Turkey relations. The statement has cemented an incipient paradigm shift and has a significantly higher status within the frameworks of cooperation between the EU and Turkey than the title of the document – “press release” – would suggest.

To conduct my research and illustrate the argument of this volume, I closely analyzed an abundance of existing primary documents that deal with the EU Turkey statement, in addition to the statement itself (European Council, 2016), such as the regular implementation reports (European Commission, 2016d, 2016e, 2016f, 2016g, 2016h, 2016i, 2016j), the Facility for Refugees in Turkey (European Commission, 2022), a facility results framework monitoring report (European Commission, 2021a) , a Strategic Mid-Term Evaluation of the Facility for Refugees in Turkey (European Commission, 2021b), as well as various press releases (European Commission, 2015a) and all relevant Turkey progress reports produced by the European Commission (European Commission 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011b, 2012, 2013, 2014, 2015b, 2016a, 2017, 2018, 2019a, 2020b, 2021e).

The first chapter will give an overview of the history of EU-Turkey relations, as well as necessary definitions regarding migration. The second chapter addresses how EU immigration policy is shaped by the EU integration process, and how this impacts the EU's cooperation with its neighbors and third countries; followed by a deeper look at the singular case of Turkey whose specificity stems mostly from its candidate status as well as Turkey's strategic importance with regards to migration due to its geographical situation. After analyzing the EU Turkey Statement (Chapter 4) as well as its successes and shortcomings (Chapter 5), this thesis will delve into the short term and longer impact on the overall EU-Turkey relations (Chapter 6), before suggesting policy recommendations to try and address the lack of coherence and consistency in the EU's approach and policy towards Turkey.

EU-Turkey relations are complex. The EU Turkey Statement has further complicated these relations. This thesis aims to contribute to deciphering some of these complexities, identify and describe problems, and possibly help to define more clearly the level-playing field between the EU and one of its key partners.

CHAPTER 2

EU-TURKEY RELATIONS BEFORE THE EU TURKEY STATEMENT AND DEFINITIONS OF FORMS OF MIGRATION

To understand and analyze how the EU Turkey Statement has impacted EU-Turkey relations, a look at the history of EU-Turkey relations is helpful and necessary. Turkey's relations with the West have intensified since the end of the Second World War and are by no means limited to the EU as an institution. Turkey became a Member of the United Nations in 1945, joined the Council of Europe in 1949, in 1952 NATO, and, in 1961, the OECD. Shortly after the entry into force of the Treaty of Rome, Turkey requested the European Community to create an association, with a view to obtain later full membership. Turkey is the second country, two years after Greece, to have signed an Association Agreement with the Community back in 1963.

2.1 History of EU-Turkey relations

Relations between Turkey and European Union, established in 1959 through Turkey's application to association status to the European Economic Community (e.g., Birand, 1978; Yılmaz, 2007) and formalized through the Ankara Agreement of 1963 (Hofmann, 2008), Turkey's application to the European Communities in 1987 (Yılmaz, 2007), a concluded Customs Union as of 1996, membership negotiations as of 2005 (e.g., Müftüler-Baç, 2008), and, most recently, the extensive and far-reaching so-called EU Turkey statement from 2016 which will be analyzed in depth in Chapter 4 (e.g., Kaya, 2020), are multi-faceted and complex, sometimes described as a "curious love affair" (Aydın-Düzgit & Tocci, 2015). Turkey is both a long-standing partner of the West and an old contender for EU membership. The manifold sheets of relations yield - and are

subject to - a huge interdependency, which make collaboration and policy coordination an obligation (Reiners & Turhan, 2021; Moravcsik, 1997).

The complexity of these relations is due to the fact that the partners, the contexts, as well as the content of the frameworks and negotiations have been subjected to the imperatives of exogenous and endogenous determinants, such as multilateral frameworks, external factors, and crises; as well as bilateral determinants like the accession process and sectoral cooperation (Reiners & Turhan 2021, 5-15). This has resulted in a continual shift in perspectives, justified by the consideration of various developments, but generating new demands and new frustrations, the successive shifts of which fuel numerous controversies and punctuate an interminable dialogue. This also resulted in the signing of different cooperation agreements and frameworks which have been added to each other, but which did not lead to a simplification of the relations quite the contrary.

The Association Agreement, signed on 12 September 1963 in Ankara, entered into force on 1st of December 1964 (European Communities, 1977). It includes two main objectives: the gradual establishment of a customs union, which was ultimately set up in 1995, and the preparation of Turkey's eventual accession to the Community (European Economic Community, 1964).

But the 1960s and 1970s were characterized by ideological radicalization and political polarization in Turkey. Both left- and right-wing extremist parties in Turkey did not consider Turkey's accession to the EEC to be beneficial; according to the Turkish Nationalist Movement Party (MHP), accession would give the Europeans the opportunity to interfere in the country's internal affairs (Yılmaz 2007, 55). At the same time, the question of integrating hundreds of thousands of Turkish guest workers in Central European countries initiated a debate about how an entire country could be

integrated into Europe with Turkey (İçduygu & Üstübcü 2014, 56). Here it is already becoming apparent that the relationship between the two does not result from an ideological conviction, but from hard interests. In this thesis, this fact is going to be analyzed in detail.

The political radicalization in Turkey in the 1970s, the simultaneous abolition of the dictatorships in three other Mediterranean countries and the Cyprus conflict in 1974 caused Turkey to fall behind when it came to questions about joining the EEC. A military coup in September 1980 sealed the momentary end of relations between the EEC and Turkey which only returned to normal six years later, mainly due to the country's economic liberalization under Prime Minister and later President Turgut Özal.

In April 1987, in the midst of the implementation of the internal market in the EC, the Turkish government submitted its application for full membership of the EC. In its assessment and reply to Turkey's accession plea published two years later, the European Commission stated that neither the EC nor Turkey were ready for such negotiations: Turkey was economically and politically underdeveloped, while the EC first had to complete the internal market before it could have a expansion. This case in European integration is taken up in more detail in Chapter 2 and critically approached in the context of the development of EU integration, particularly with regard to the EU's migration policies.

The 1990s were again marked by political radicalization in Turkey, especially by the advance of Islamist parties (Yılmaz 2007, 56). On the European side, the increasing integration (Phinnemore & İçener, 2016) has both advanced the continent economically and kept it in check through the idea of the “[e]ver [c]loser [u]nion” (Dinan, 2005) amid inner-European political conflicts. The European integration process began at the economic level, but also aimed at the level of the political system and specifically at

justice and home affairs, as well as at a common foreign and security policy, whereas EU experts seem to judge this integration more positively than historians (Gilbert 2008, 654). In 1968, the last internal customs duties within the EC countries were abolished and a common customs tariff was introduced for third countries. The integration level of the customs union was thus reached. Cooperation in the monetary area began in the 1970s. In 1972 a currency-band system was introduced, in 1979 the European Monetary System (EMS). A next important step was the Single European Act (SEA) signed in 1986, which strengthened the organs of the EC and expanded the competences of the EC and the goals of integration with regard to the creation of a European internal market by 1992. In 1985, the Schengen Agreement was signed to abolish border controls between member states, which came into force in 1995 (Dinan 2005, 69-87).

The Maastricht Treaty establishing the European Union was signed in 1992 and came into force in 1993 (Dinan 2005, 118). It raised European integration to a new level by expanding the economic community into a political union. To the strongest pillar of European integration, the three EC treaties, the Maastricht Treaty added two new pillars: the Common Foreign and Security Policy (CFSP), and cooperation in the fields of Justice and Home Affairs (JHA) (Phinnemore 2019, 36). With regard to the first pillar, the establishment of an economic and monetary union was declared the central goal. The Maastricht Treaty also declared the European internal market to be complete. After 1992, the deepening of European integration was promoted primarily by two further treaties: the Amsterdam Treaty of 1997, which strengthened pillars two and three, and introduced a social charter; and the Treaty of Nice in 2001, which was intended to make the European Union "fit" for the eastward expansion of the EU (Phinnemore 2019, 40). The next important step was taken on December 1, 2009 with

the entry into force of the Treaty of Lisbon, after the Treaty establishing a Constitution for Europe failed to come into force in 2005 (Church & Phinnemore 2019, 54).

From a scholarly perspective, the EU's democratic deficit associated with the unification process is viewed critically. This criticism is directed against the institutional structure of the EU, but also against the loss of political control at the level of the nation states that accompanies progressive integration. The integration path taken between 2010 and 2013 with the aim of combating the euro crisis, including the fiscal pact and the European Stability Mechanism, has further increased the democratic deficit. It is reinforced by the fact that these instruments and agreements are based on the intergovernmental method (cf. Graf Kielmannsegg 1996).

With the European Union and Turkey, two entities come together whose attitude as to whether they really fit together has been subject to constant change over time. The first President of the European Commission, Walter Hallstein, declared on the signing of the Ankara Agreement in 1963: “Turkey is a part of Europe. ... And one day the final step is to be taken: Turkey is to be a full member of the community.” (Hallstein, 1963: 1-3). In 2021, the European Commission states in its annual Turkey Report: “Under the current circumstances, the accession negotiations with Turkey have practically come to a standstill” (European Commission, 2021).

This stagnation and “running around in circles” in EU-Turkey relations (Narbone & Tocci, 2007) gave way to an “apparently divergent relationship” (Müftüler-Baç 2016, 17), in which mutual trust between the “key strategic partners” is eroding (EU Delegation to Turkey, 2020). The short phases of productive cooperation are increasingly giving way to phases of alienation (Reiners & Turhan 2021, 408). Turkey is increasingly perceived by the EU and its member states as an “unpredictable and unreliable partner” and a conflict-causing “hostile neighbor” (Arısan Eralp, 2018, 3)

that is gradually distancing itself from the Union's core norms and principles. For Turkey, on the other hand, due to the resurgence of "illiberalism as a driving force across Europe" (Önis & Kutlay, 2021, 503), the EU is increasingly seen as an enervated transformation power and an emerging geopolitical rival, for example when it comes to power and distribution struggles in Turkey's neighborhood, including Libya, Syria, and the eastern Mediterranean. This new dynamic is unfolding against the background of Turkey's comatose accession process, which together with the Association Agreement of 1963 formed the institutional basis of the bilateral dialogue for many years.

As past rounds of enlargement have shown, the EU exerts enormous power of attraction – since its creation the number of member states has grown from six to 27. Their political influence is greatest when a third country is not only striving for loose cooperation, but also wants to become a member of the community (Schimmelfennig & Sedelmeier, 2008). The far-reaching democratization of the Central and Eastern European states and parts of the Balkans would not have been so successful without the clear prospect of joining the EU.

And Turkey was, at least in the beginning, no exception to that. It was only the clear prospect of accession at the beginning of the 21st century that unleashed a dynamic of democratic reforms that the Turkish Republic has not experienced since the foundation of the Turkish Republic by Mustafa Kemal Atatürk. Numerous constitutional amendments were adopted, and several so-called EU harmonization packages with over 150 legislative amendments were passed between 1999 and the official start of accession negotiations in 2005 (e.g., Müftüler Baç, 2005, Phinnemore & İçener, 2016). Rule of law, democracy and the rights of civil society had been strengthened, human and minority rights expanded, the death penalty was abolished and the power of the military restricted. The democratic progress in Turkey was welcomed

by all EU member states. In what was then around 40 years of Turkish-European relations, something had happened for the first time that hardly anyone would have expected: a far-reaching change had begun in Turkey, which opened the door to the start of accession negotiations (Lippert 2005, 119-135).

However, the surprising announcement by the German government that it intended to hold new elections in autumn 2005 and the French and Dutch referendum which voted against a European constitution, sparked a debate about the future of the EU itself, and about Turkey's future status in relation to the EU. The two strongest supporters of Turkey's EU accession, the then federal German government under Chancellor Gerhard Schröder, and French President Chirac, were politically stricken, and it was uncertain whether their positive Turkey policy would continue from then on. In October 2004, for example, Turkish prime Minister Recep Tayyip Erdoğan had been voted "European of the Year" by the initiative Werkstatt Deutschland. The laudatio was held by Chancellor Schröder himself. After this, and because the population's trust in the red-green federal government was no longer recognizable, Schröder called for early elections in 2005 - and lost them to the CDU and Angela Merkel. Merkel, on the other hand, campaigned during the election campaign to stop the accession process with Turkey, and did so for the following years as well (e.g., Die Welt, 2011).

Chirac, in France, had a problem with public opinion, too (e.g., Yılmaz 2007, 304). Polls in France in May 2005 showed an above-average aversion to Turkey joining the EU. 70 percent opposed it in May 2005 (The Guardian, 2005). The background was a planned referendum on an EU constitution in the same month, which had not received a majority. However, 20 percent of those who were against the EU constitution gave a dislike of Turkey's EU membership as the reason – although the two issues of the EU constitution and Turkey's accession were not technically related at all. But it was no

use, Chirac had to act, and adapted his previously pro-Turkey policy to the new realities. It clearly shows how the EU-Turkey relations also depend on the respective domestic political constellations and debates within the member states; an indication that the EU Turkey Statement favors the norm-free and transactionalist approach of the mutual relationship and sidelines supranational institutions, as will be described in more detail in Chapters 5 and 6.

Thus, since the political realities in Europe had changed to the detriment of Turkey even before the start of accession negotiations on October 3, 2005, Turkey's suitability for accession was called into question. With the first annual assessment published after the start of the accession negotiations in November 2005, the European Commission already criticized the situation Turkey with regard to human rights, freedom of expression and the protection of minorities. In the spring of 2007, then-French presidential candidate Nicolas Sarkozy campaigned with promises to halt Turkey's accession process and replace it with negotiations for a different kind of privileged cooperation. Sarkozy won, and shortly thereafter, on June 24, 2007, the French government prevented the opening of the Economic and Monetary Policy enlargement chapter of the accession negotiations. In March 2010, during a state visit to Ankara, German Chancellor Angela Merkel spoke out against Turkey's EU accession and instead advocated a privileged partnership. Literally, she said: "We do not want Turkey's full membership. But we don't want to lose Turkey as an important country" (Die Welt, 2011).

Opposition to Turkish EU accession was greatest in France and Germany, with the boundary between conservative and social democratic parties and social classes. In fact, many observers have suggested that the European Union and Turkey are not coming together out of love but out of fear of full rupture, including the later

assassinated Turkish-Armenian journalist Hrant Dink or the former EU-Turkey Joint Parliamentary Committee Chair in the early 1990s Marc Galle (Yılmaz 2007, 294).

Interestingly, politicians justified Turkey's exclusion from Europe with historical and cultural as well as geographical reasons and considerations. There is talk of Turkey's "cultural incompatibility", of Europe as a "Christian club"; that it is not enough for Turkey to meet the Copenhagen criteria as long as it does not meet the "cultural criteria" described in more detail; or even that Turkey's accession to the EU would be tantamount to an "end of the EU" in which a sense of unity is at stake (Yılmaz 2007, pp. 296-7). In this context, the EU of a borderless Europe was repeatedly criticized, e.g., by French presidential candidate and later President Nicolas Sarkozy in 2007, and warned that borderless Europe could not end at the Turkish-Iraqi border, a concern seconded by then Bavarian Prime Minister and Chancellor candidate Edmund Stoiber. This reflects constructivist theory, such that the EU's relations with other actors are shaped by norms, values, and identity considerations (Manners & Whitman, 2003; Merand, 2006; Sedelmeier, 2005, as cited in Reiners & Turhan 2021, 65). According to that, EU-Turkey relations arise from a strategic, utility-driven EU foreign policy due to cultural differences with its bilateral partners.

Even some critics of this view recognize that there is a connection between Christian values and European identity (Menéndez 2005, 179-205), which shaped the common Western values and traditions (Menéndez 2005, 188), whereby Western values and traditions be shaped less by Christianity or religiosity in general, but by separation of powers between church and state, so that a non-Christian and non-Western country like Turkey can also complete this westernization, but not within one or two decades (Yılmaz 2007, 299).

This paradigm shift in the bonds between the EU and Turkey now focuses more on the possibilities and opportunities of alternative forms of cooperation beyond the accession perspective that has dominated the debate for decades moves (Reiners & Turhan 2021, 3). The coexistence of cumulative interdependence in the midst of an increasing discrepancy of normative and material preferences entailed a systematic reexamination of EU-Turkey relations (Reiners & Turhan 2021, 4), which in the end led to the merge of EU-Turkey relations with Turkey as both an accession candidate, and a third country, as will be analyzed in Chapters 2 and 3 and be the base for the thesis of this volume.

The so-called European refugee and migration crisis of 2015, as will be described in detail, offered the ultimate opportunity to do so. And so, the declaration made between the EU and Turkey after the joint summit on March 18, 2016, often described as the EU-Turkey refugee deal, gave Turkey a new incentive to work together with the EU to deal with irregular migration flows to Europe – incentivized among other things by promising to advance the accession process (European Council 2016, paragraph 8). But despite this vow, Turkey's accession process stalled de jure when the Council concluded in June 2018 that "Turkey has moved further away from the European Union and [...] no further chapters to open or close can be considered" (Council of the EU 2018, paragraph 35).

2.2 Migration and the so-called refugee crisis

Before embarking on the analysis of how EU migration policies influenced EU-Turkey relations and ultimately led to the EU Turkey Statement, it is important to know and distinguish some definitions of migration. Especially in the analysis of the EU Turkey Statement (Chapter 4), this distinction will be of high importance.

Migration is understood to be a short or long-term change of location of human beings (or animals). Migration that occurs across national borders is known as international migration. Migrating humans divert their dissatisfaction with the living conditions into the decision to migrate (Treibel 2011, 231). It is important to distinguish between flow and stock of migration, where flow describes the balance between immigration and emigration and stock describes the number of migrants in a given area or country at a given point in time.

Motives for a lasting change of location are the outlook of better opportunities, places of refuge or the search for safety for life and limb after flight or expulsion as a result of wars (cf. e.g., UNHCR, 2018; Treibel, 2011).

Due to the world wars of the 20th century, regional instability, globalization, the digital revolution and global warming, migration is becoming increasingly complex. However, migration is not a one-dimensional phenomenon; it is also subject to the responsibility of the politics of individual countries. For example, the introduction of visa requirements by Spain and Italy for citizens from North African countries in the early 1990s did not lead to a reduction in migration from these countries, as one might imagine; instead, irregular migration from Africa to southern Europe increased sharply (Castle & Miller 2014, 2).

This leads to another dimension: the different types of migration. Migrants leave their homes to improve their living conditions or for family reasons. They can usually return to their homes, but sometimes they also need humanitarian assistance (UNHCR, 2018).

Refugees, as the definition goes, cannot return to their home country without danger to life and limb. In some countries, they are only granted refugee status if they are fleeing individual persecution, e.g., because of their political opinion or membership

of an ethnic minority. If they flee from armed conflicts such as civil wars, they often only get temporary protection, for example in Turkey, but also in Switzerland (UNHCR, 2018).

The term refugee is legally defined internationally by the Geneva Refugee Convention of 1951. According to this, a refugee is a person who is “outside the country of which he is a national because of a well-founded fear of persecution because of his race, religion, nationality, membership of a particular social group or because of his political opinion”. Individuals falling under this definition are also referred to as “convention refugees” (UNHCR, 1951). According to the UNHCR (2018), more women and children than men are fleeing the world: in 2016, more than half of the refugees were under the age of 18. Often, however, women and children are initially left behind in relative safety in countries of first refuge. This is justified by the fact that there are many dangers lurking on the run that male family members are more likely to expect. Legal entry options through family reunification or resettlement help ensure that women and children can later enter the country safely and start a new life (UNHCR, 2018).

Asylum seekers are people who apply for asylum - i.e. for protection from persecution or violence. In other words, there are clear reasons why they cannot return to their country of origin and therefore need asylum elsewhere. No state may send people back to a country where they are at risk of persecution, torture or inhumane treatment. To ensure that all governments comply, the states have anchored this "refoulement ban" in international law. It applies not only to people already in the country, but already at the border (UNHCR, 2018). That is why states cannot simply turn away asylum seekers without checking their need for protection. Closing the

borders or setting an upper limit for those seeking protection could endanger life and limb and is therefore not permitted.

Most important for refugees is the right not to be returned to a state where they face persecution or other serious human rights violations. Hannah Arendt (1943) comes to our minds with her assertion of the “right to have rights” which is nothing short of the succinct revolution in human rights discourse.

Of course, refugees enjoy all human rights and thus do have further rights, such as expressing their opinions and moving freely, or accessing health care and education. Refugees are also allowed to work. If they are in need, they also have a right to social assistance. Refugees also have obligations and of course they must comply with the laws and regulations of the country of asylum. The Geneva Refugee Convention and international human rights treaties set out the minimum rights that refugees are entitled to. Which brings us back to Turkey and the so-called refugee crisis of 2015. The enormous stream of migrants to Europe in 2015 created an extraordinary pressure over many European countries. The initial reaction of the EU member was, strengthening border controls (Erdoğan, 2021). The effective abolition of border controls, for example in Germany in autumn 2015, and the increasing observational peril towards the Schengen policy drove EU member states and institutions to search for new solutions (Saatçioğlu, 2019). After the ineffectiveness of the common measures in producing the expected outcomes, the EU decided to develop further its on-going migration cooperation with Turkey.

The new paradigm in EU-Turkey relations comes in the midst of the so-called refugee crisis, as well as the stalled negotiation process. Turkey sees itself as a country of emigration and immigration (İçduygu & Aksel, 2013), but from the perspective of the

EU, Turkey has become increasingly important primarily as a transit country for migrants (European Commission, 2016).

And so, in EU-Turkey relations, important events coincide that were not previously bundled in any Turkish-European cooperation framework: the increasing international migration towards Europe; a growing fear and resentment in Europe towards these migrants; the fact that Turkey has become one of the main routes for migrants heading to Europe; and the planned integration process of Turkey into the EU.

With the Syrian crisis breaking out in 2011, Turkey has been confronted an unprecedented and continuously increasing migratory flows from Syria which has exceeded 3.6 million to date, out of a total of 4 million registered migrants in the country. Due to its geographical situation, and parallel to all other cooperation frameworks between the two sides, Turkey has all of a sudden become a natural “strategic partner” of the EU with regards to its border and migration management but also on other key issues such as security and counterterrorism (European Commission, n.d. a). At the same time, the EU itself is trying to hermetically seal off its borders amid ever-rising migration flows into Europe.

The refugee crisis, numerous fatalities in the Aegean Sea, and growing resentment against migrants and refugees in Europe, combined with ever-rising numbers of newly arriving refugees from Syria in Turkey, forced European and Turkish leaders to act. The EU and Turkey reconfirmed their commitment to break the business model of smugglers, and offer migrants an alternative to putting their lives at risk in their joint statement of 18 March 2016 (European Commission, 2016). While this deal has been decried by many due to this legally and questionable nature, it raises further questions due to its eminent transactional nature which conflicts or is even at odds with the norms based approach the EU has been promoting in its relations with Turkey based

on the accession negotiations framework (e.g., Saatçioğlu, 2019). Indeed, the public opinion largely concluded that the EU Turkey Statement was a financial means giving in Turkish President Erdoğan's blackmail to keep the refugees away from the European shores. In exchange, Turkey was given many promises including financial support and the opening of chapters related to its accession negotiations.

CHAPTER 3
THE EU INTEGRATION PROCESS
AND ITS IMPACT ON EU'S MIGRATION POLICY

The European integration process and the gradual completion of the internal market triggered a debate regarding EU's migration policies which is still ongoing today and faces two complementary positions: *borderless* Europe and *Fortress* Europe. Borderless Europe embraces a concept without borders and border controls, while Fortress Europe stands for sealing a group of participating states off from external threats, as critically appreciated by Geddes (2000). The design of the EU migration policies and EU border management aim at both laying the foundation for a borderless Europe, as well as boosting the so-called Fortress Europe (Wolff & Zapata-Barrero, 2011; Geddes, 2000; van Houtum & Pijpers 2007). This bears a certain dilemma: The member states of the European Union need immigration to tackle their demographics, as for example Germany is only able to reproduce two thirds of its own population without immigration (Federal German Ministry of Interior 2015, 28). And on the other hand, the continent faces a growing movement of xenophobia and debates about a European identity that made its way even up to the European Commission with a new post called "Promoting our European way of life" (European Commission, n.d. b).

3.1 The internal market

The Preamble of the Treaty of Rome of 1957, the founding treaty of the European Economic Community, provides for a borderless Europe through the establishment of an internal market and a Europe without internal borders (His Majesty The King of the Belgians et al., 1957). The Treaty of Rome of 1957 repeatedly mentions the goal of

removing borders and controls, for example in Article 3(c) which states that the activities of the Community shall include “the abolition as between Member States, of obstacles to freedom of movement for persons, services and capital”. When this concept was introduced 30 years later with the Single European Act as a core element of European integration, the internal borders fell bit by bit, with the aim of completely abolishing them in the future. Among other things, the goal of establishing the internal market as an “area without internal borders” by December 31, 1992 (Art. 14 EEC Treaty, now Art. 26 TFEU) was declared as the European path.

Borderless Europe consists of four fundamental freedoms, which, until now, form the basis of the internal market of the European Union: the free movement of goods, the free movement of people, the freedom to provide services, and the free movement of capital and payments. Its legal basis can be found in the Treaty on the Functioning of the European Union (TFEU). The Schengen agreements, the 1985 Schengen Convention and the 1990 Schengen Implementing Convention, were concluded to support the free movement of persons. The latter came into force in March 1995 and led to the complete abolition of internal border controls on people (European Commission, n.d. c).

The Schengen area designates the community of those states under which systematic border controls on persons no longer take place as a rule. The Schengen Borders Code (Regulation EU 2016/399) is a regulation of the European Union. It regulates border crossings at the internal and external borders of the Schengen area and replaces the national legislation. Borderless Europe stands for a community of states in the Schengen Area in which systematic border controls on persons no longer take place as a rule. At the same time, the Schengen Agreement provided rules for those entering the Schengen area from outside and harmonized these rules among the participating

states (European Commission, n.d. c). The Schengen Area encompasses all EU countries except for Bulgaria, Croatia, Cyprus, Ireland and Romania, and includes the non-EU member states Iceland, Norway, Switzerland and Liechtenstein. As the economic approach argues, the benefits of a borderless Europe are apparent, as immigration in general and particularly targeted immigration can help tackle the demographic deficit in Europe, caused by lower fertility rates and higher life expectation, affect economic growth, and thus can contribute to keeping the welfare state in the Schengen Area intact (Moses 2012, 603).

The creation of the European Single Market contributed to new economic dynamism in the EU in the 1990s, in what was at times a difficult global economic environment, including due to an economic crisis in Japan, the Asian crisis of 1997/98 and a recession in many Eastern European countries the collapse of the Eastern Bloc. The peripheral states of the EU benefited above average from the creation of the internal market. Economic growth in Ireland, the country that ratified the SEA as the last of back then twelve EC member states in 1987, increased from around 2.5 per cent before the creation of the single market to 9.5 per cent in the second half of the 1990s. Adjusted for inflation, per capita income rose from \$20,650 in 1988 to \$53,000 in 2007; it rose more in these 20 years than in the 40 years before (Sheehan, 2007).

However, the feature of an area without internal borders is problematic because under Schengen, the national borders as such have not disappeared, only the systematic control of cross-border traffic. Even the phrase “*area without internal border controls*” would not be entirely correct, as customs controls continue to be carried out within the Schengen area between EU Member States and non-EU Member States, for example between Germany as an EU-member and Switzerland as a non-member state. Instead of border controls, random controls within national territories were increased (Wolff &

Zapata-Barrero 2011, 118). Illegal immigration does not only mean people illegally crossing a border outside of official border controls; but also, for example, if a visa holder does not leave a country after his or her visa has expired, he or she becomes an illegal migrant.

In practice, yet, the concept of borderless Europe has never fully materialized, especially not for migrants coming from outside the Schengen Area. They must prove, for example in the labor market, sufficient means to support themselves, and are exposed to national bureaucracy and legal entanglement (Moses 2012, 602). Because of this, even the defenders of a borderless Europe admit that this concept is unrealistic or even utopic (Wolff & Zapata-Barrero 2011, 118).

3.2 Borderless Europe and fortress Europe

The free movement of people without controls was originally at the heart of the Schengen cooperation and should be one of the most important achievements of European integration. In recent years, however, one could observe how the good of control-free freedom of movement was on the brink. In 2011, several Schengen states called for easier reintroduction of controls at their shared borders. The main reason for this dispute was that Italy had given numerous refugees across the Mediterranean a residence permit for humanitarian reasons, which they then used to travel to France.

This leads to the political approach which focuses on Europe's rising xenophobia in the face of migration (Moses 2012, 604). As of the 1974 oil crisis, increasing unemployment and competition in the labor market meant that immigrants were increasingly perceived as rivals, and welfare services such as unemployment benefits as a European privilege. In this context, the term "Fortress Europe" has been increasingly used by representatives of right-wing populist, right-wing radical and right-

wing extremist parties and groups - in an explicitly affirmative way as a demand for the expansion of European border security measures (e.g., Moses, 2012).

On the other side, the term Fortress Europe has been used with critical intent to describe the EU's policy of sealing off its borders (Carr, 2016). The debate, however, about whether Europe should become "borderless" or a "fortress", which in both cases address the issue of the design of borders in the EU, remained an unresolved political problem (Wolff & Zapata-Barrero 2011, 117).

The principle of a fortress not only bears the risk of forming a “post-imperial empire” (Delanty 2006, pp.183), referring to the Roman limes which expanded as the Roman Empire did, or a “gated community” in Europe (van Houtum & Pijpers 2007, pp. 291), or as the introduction of a semi-permeable net that allows only qualified workers into the EU and denies entry to unwanted migrants. It becomes clear that, on the one hand, the expression fortress symbolizes the accusation that the EU trade policy is restricting free world trade through protective measures for the EU internal market. On the other hand, the designation serves as a symbol for the EU migration policy, which critics accuse of bearing a restrictive orientation with the goals of controlling and restricting immigration.

The latest developments show that the concept of fortress Europe prevails over an EU without borders. During the refugee crisis in Europe in 2015, the term was used by Austria's Interior Minister Johanna Mikl-Leitner, among others, to describe a stricter security system at the external borders of the European Union. In June 2018, the Prime Minister of the German State of Bavaria, Markus Söder, stated in a guest article for a newspaper: “The term 'Fortress Europe' used to have negative connotations. It changes. Citizens today want a secure Europe that protects their cultural identity. Europe must finally be able to better protect itself from the changes and turmoil in the world” (Die

Welt, 2018). The fact that both politicians are members of moderate conservative political parties shows that, this discourse gained traction even within the mainstream of the political spectrum in Europe.

The abolition of internal borders is inextricably linked with the need for repressive measures to control the external borders of the Schengen Area from alleged threats of immigration (Wolff & Zapata-Barrero, 2011). The introduction of the Schengen Information System (SIS), as well as the founding of the European Border and Coast Guard Agency, commonly known as Frontex, in Poland in 2004, shows that the political side of the debate, and in particular the one that warns of foreign infiltration, has prevailed in the medium term. Furthermore, the ideological merging of immigration with organized crime and terrorism criminalized immigrants which has been echoed and amplified by European media especially in the 1990s (Tsoukala, 2001).

3.3 Political strategies for curbing immigration

3.3.1 Migration as a security issue

The increasing securitization of the EU's migration policies further demonstrates the prevailing of the concept of fortress Europe. This process of labelling migration as a security risk is evident since the late 1970s and characterized by the Trevi group, an intergovernmental network, of national officials from ministries of justice and interior working on criminality and terrorism which first put migration in the same bracket as criminality and gave rise to a political obsession in which migration flows had been identified as newly emerging threats (Bunyan 1993, pp. 15-36). Even the United

Nations Security Council' Summit Declaration in 1992 acknowledged that threats to international peace and security could come from non-military sources (Rogers & Copeland 1993, 151). In this context, Sperling and Webber (2019, 223) describe a kind of agenda setting that defines migration, as part of securitization, as a security problem which ultimately leads to externalization. Accordingly, the increase in irregular migration is first identified and then defined as a security problem. Then follows the link between irregular migration and a threat to European identity. This is used to justify border closures or Frontex operations. Finally, externalization preemptively deals with the threat (Sperling & Webber 2019, 225). This logic means that migration is no longer analyzed and “solved” from a humanitarian perspective, but rather from a security perspective. This shows clearly how closely free movement and immigration/migration policy are intertwined.

After the fall of the Berlin Wall in 1989 and the subsequent end of the Cold War, the definition of security from the point of view of states changed. As the term previously described political or military intervention against another state, from the 1990s onwards migration was increasingly mentioned as a security risk, while political rhetoric on the continent increasingly named migration as a destabilizing factor for public order (e.g., Huysmans, 1998). However, immigration did not decline but continued to grow, for example due to family reunification between migrants in the back then European Community and their relatives in non-member states. The concept of Securitization is first reflected in the Maastricht treaty, mostly by establishing the new Justice and Home Affairs (JHA) pillar which extended the European Union's competence to asylum and immigration policy, as well as external border controls and “police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime” (European Parliament,

2021). Being a rather young field of EU integration, with the Amsterdam Treaty, JHA has received a significant upgrade (Uçarer 2016, 309). In addition, and with the possible expansion of the EU in mind, considerations began to transfer the JHA policy to the future external borders of the EU, whereupon member states began to include non-members and candidate countries in their border management programs (Uçarer 2016, 315). This also includes the fact that the internal borders can only fall if the external borders are considered secure, although it is criticized that Third Country Nationals (TCN) are not treated arbitrarily (Uçarer 2016, 318).

Geddes identifies the ironic truth that the SEA reinforces the exclusion of citizens of third countries, as well as the connection between free movement on the one side, and immigration and asylum on the other side (2000, Chapters 2 and 3). This again shows the evidence for the hypothesis: If the internal borders disappear, the external borders must be protected more strongly, or, as the EU itself puts it: „The abolition of internal border controls cannot come at the expense of security.“ (European Commission, n.d. k).

3.3.2 The inclusion of asylum, detention, and deportation within the EU *Acquis*

The abolition of internal borders had been executed by the introduction of the Third Pillar on Justice and Home Affairs in the Maastricht Treaty on European Union (1992), as well as the incorporation of the Schengen agreement in the *Acquis Communautaire* according to the Treaty of Amsterdam (1997), though asylum and migration policy have not been communautarized (cf. e.g. Geddes, 2000; Huysmans 2000, 758-760). The free movement of persons had been linked with measures of external border controls, asylum, and immigration as well as measures to prevent and combat crime (Huysmans 2000, 760). This step initially had no major impact because the most important issues

were still decided intergovernmental and according to the principle of unanimity (Geddes 2000, 127). However, the inclusion of such measures into the EU *Acquis* regarding illegal migration gives a leverage to the EU over candidate countries. From now on, it was rhetorically possible to actively link the safeguarding of economic prosperity with the threat of migration. As of 1997, the EU institutions as well as member states had started emphasizing justice and home affairs issues, such as combating organized crime, border control and migration management, in their accession dialogue with candidate countries (UNHCR, 2009).

The further introduction of new policy tools that mainly focused on migration and asylum management fuels this argument. The Dublin Regulation (European Communities, 1990) is a continuation of this logic. Introduced in the same year as the Amsterdam Treaty, the regulation was intended to ensure that every foreigner who applies for asylum in the territory of the contracting states is guaranteed the asylum procedure. On the other hand, it should be ensured that there is always exactly one contracting state responsible for examining the content of an asylum application. The European Dactyloscopy (EURODAC) system, which is a European automated system for comparing the fingerprints of asylum seekers, is used for the necessary exchange of information, and came into force on 15 January 2003 (see European Council, 2000).

On March 1, 2003, the Dublin II Regulation came into force as the successor regulation to the Dublin Convention. Since January 1, 2014, the Dublin III Regulation has been in effect. The group of states had been extended to other EU member states and, via additional agreements, to Iceland, Liechtenstein, Norway, and Switzerland. The Dublin Regulation has incited a transfer of asylum-processing responsibilities from Europe's north to its south and east, or, to its new external borders (cf. e.g. Huysmans 2000, pp. 760). But to keep the inner area safe, the outer area must not look too messy.

Çetin (2020, 539) explains that this security-based thinking leads to externalizing the admission procedure for irregular migrants and asylum-seekers so that they do not disturb internal peace. Addressing the problem of irregular migration as a security issue and not as a humanitarian protection issue with a rights-based approach allows the EU, as well as member states, to use the argument of protection from the consequences of irregular migration. Therefore, both the EU and its member states can use the tools of externalization policies while keeping irregular migrants out to protect themselves, as a means of collective securitization, whereby Externalization can be described as “the institutional forms and mechanisms through which the EU extends the perspective scope of EU rules to third countries” (Lavenex 2015, 3).

3.3.3 Externalization of migration policy

Hundreds of people have been dying outside Europe's borders every year for a long time. Most of them fled war, persecution, and misery. Many of them would have had a good chance of receiving protection status in the asylum procedure once they had arrived in Europe. Not only forces of nature nor smuggler organizations are responsible for the deaths on Europe's borders, but rather an asylum policy that forces those seeking protection to risk their lives to be able to receive protection.

Schengen, Dublin and all other measures to control and contain migration and immigration could neither prevent human tragedies nor extreme-right activism. The changing geopolitical context after the end of the Cold War and emerging conflicts in EU's neighborhood led to massive migration influxes directed toward Europe, which legitimized the already triggered tendency of securitizing migration as a threat. The terror attacks in the United States on 11 September 2001, accompanied by other attacks around the world, the Arab Spring uprisings as of 2010 and the emergence of the terror

organization ISIS, triggered a public discourse against migrants, and assured the restrictive migration policy on EU and member states' level.

At the same time, EU cooperation with third countries steadily progressed as of the late 1990s (Okayay, Lavenex & Aydın-Düzgit, 2020). After the legal framework for a common EU asylum policy was laid down in the Amsterdam Treaty, the European heads of state and government decided on the Tampere program, with which the previous asylum and refugee policy was to be replaced by a collective asylum system for the first time. The European Council summits in Laeken in 2001 and in Seville in 2002 proposed a final declaration based on external migration control (Boswell 2003, 636). The Laeken Declaration on the future of the European Union, for example, contains the passage that a common asylum and immigration policy should include a focus on readmission agreements with third countries.

The Seville Declaration places migration policy within the EU's external relations and includes a title on "Measures to combat illegal immigration". The aim was to prevent irregular migration or to prevent irregular migrants from entering the EU as far as possible. Above all, readmission agreements should serve as an instrument for this. With the Seville Declaration, the perverse logic was established for the first time that third countries risk their relations with the EU if they do not cooperate with the EU on migration issues (Pinos 2014, 140). The European Council of 2002 urged "that any future cooperation, association or equivalent agreement which the European Union [...] concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration" (p.10). This paved the way for a new form of EU-specific conditionality, namely cooperation on migration issues (e.g., Geddes, 2005). The Eurocentric approach of this policy quickly becomes clear when one realizes that, from the EU's point of view, it is always

advantageous for third countries to cooperate with the EU. In other words: the way the EU does it is also desirable for third countries and must be regularly approved by EU authorities.

The term externalization is mostly used to describe how the EU and individual countries effectively move countries outside their external borders there through deals, agreements and other measures. One can also speak of extraterritorial state actions to prevent migrants from entering legal jurisdictions (FitzGerald 2019, 160). Central strategies are border controls in the countries of transit and origin of refugees. These are both countries with accession prospects and countries without one.

While the safe third country and country of origin regime is a measure of immigration control, the EU also involves its neighbors directly in border security, creating a buffer zone. The idea behind this is to win over their neighbors to control and monitor their borders towards the EU according to EU standards. The neighboring countries should prevent illegal migrants or criminals from entering the EU via these third countries. This is a kind of business. However, a transaction includes a performance by both contracting parties. The respective *quid pro quo* looks different depending on the status of the neighboring country (FitzGerald 2019, 162).

The individual right to asylum for refugees is anchored in the Geneva Refugee Convention. However, the EU seems willing to sacrifice the protection of this right to its securitization of migration policy. What remains obvious to the critical eye; however, are the goals of the EU. When it comes to controlling its external borders, it concentrates primarily on containing migration movements, aggressively combating irregular migration, and expanding European migration policy to countries of origin and transit. A side effect that is not undesirable for countries using externalization is that

migrants and their challenges are made invisible if they do not even appear at the EU border (FitzGerald 2019, 255).

Particular attention should be paid to the Geneva Refugee Convention and the non-refoulement principle as one of its main components. The externalization of EU migration policies actively prevents migrants from being sent back to their country of origin, where they may face persecution. With the externalization of EU migration policies, this practice is transferred to both countries of origin and transit countries of migration; at least those that cooperate with the EU (FitzGerald 2019, 255).

The most important prerequisite for the externalization of EU migration policies is that the respective third country agrees to being subject to paternalistic treatment in terms of border control and migration management and ultimately agrees to enforce sovereign tasks of the EU member states on its own territory in the classic sense. This includes classic migration controls at borders, centers for receiving and, if necessary, deporting migrants who are not supposed to enter the EU, certain procedures for legalizing the deportation of migrants, as well as the requirement in the countries of origin for the readmission of migrants who have entered the country via the transit country the EU want (Karadağ 2019, n.p.). Conversely, economic cooperation and money transfers are being offered to those third countries which cooperate, underlining the transactional character of the Externalization of EU's migration policies (Geddes 2005, 798). The European Parliament formulated it in 2004, emphasizing „...the need for cooperation between third countries and the EU so as to ensure a comprehensive and balanced EU asylum and migration policy“. The word “balanced” stands against the impression that the imbalance between the EU and cooperating third countries is quite inherent. It is the EU that defines what regional challenges consist of. Third countries

cooperate but are cannot be called even in the decision-making process (Karadağ 2019, n.p.).

The designations of neighborhood policy, agreements and accession negotiations ultimately follow a strategy of giving the EU more legitimacy. Because the EU is constantly on the lookout for countries from which more people are migrating or where they often pass, states that are willing to accept encroachments on their state sovereignty for development aid are courted particularly hard.

The soft power of the EU is also evident here, whereby soft power can be defined as “the ability to influence others to achieve preferred outcomes through the cooperative means of agenda-setting, persuasion, and positive attraction” (Nye 2011, pp. 20-21). To exercise this soft power, some implementation tools and capacity building in the target countries are required. These are, among others, Special Immigration Liaison Officers, twinning programs, training for third countries' border guards as well as equipment and financial transfers (e.g., European Commission 2005, pp. 5-8).

One can speak of a regulatory extension of the EU *Acquis* (cf. Lavenex 2015, 837), whereby migration in the case of the EU is not an isolated case (Lavenex 2015, 836). Accordingly, externalization is an external form of EU integration, in other words: the EU integrates parts of countries that have not even joined the EU. Given the recurring debate, most recently initiated by the French President, about different zones of integration, this is an interesting perspective given that externalization is actually already doing just that. Drivers on the other side, i.e. in the non-member states, can be foreign policy strategies or sector-specific functional considerations (Lavenex 2015, 839). Finally, the author argues that this gives the cooperating states access to the committees and regulatory agencies involved in the development and implementation of

EU integration (Lavenex 2015, 850). An argument that should certainly be considered in a nuanced manner: in the case of the EU's externalization policy, as described in this chapter, it is less about allowing third countries to participate in EU policy and more about transferring it to third countries. The next chapter will explain how this fact affects migration policies in concrete terms.

3.4 Migration as an area of cooperation between the EU and third countries

3.4.1 Asymmetrical cooperation with third countries

To be able to efficiently control the EU's external borders, the EU has entered into various forms of cooperation with third countries, including numerous bilateral agreements between EU member states and third countries, such as sometimes described as "Remote Control" policies (Wolff & Zapata-Barrero 2011, 123), or as agreements which have turned Europe's neighbours into its new border guards (Akkerman, 2018). The externalization process of border management and asylum policies could take various forms like the ENP, Mobility Partnerships, integrated border management, or bilateral agreements.

The outsourcing of migration and border management to third countries raises the question of whether liberal states have the obligation stemming both from international law as well as from moral considerations to accept refugees and asylum-seekers, whereby liberal states are described as clubs with fixed access rights or as "modern equivalent of a feudal privilege" (Carens 1996, 169); or can be seen as entities with a moral obligation to correct world injustices such as poverty or human rights violations – e.g., via immigration (e.g., Wilcox, 2009). Carens emphasizes that due to

the signing of the Geneva Refugee Convention and the 1967 protocol, signatory states have a moral obligation to hear people who claim to be refugees and, if necessary, to grant them a residence permit (2003). This thesis, and in particular this chapter, show that in the context of migration, this moral obligation is being sourced out: to secondary regimes, and to functional and formally unpolitical institution – like Frontex.

Even Frontex is able to conclude its own so-called working arrangements, and has already done so in 20 cases (Frontex, 2022) and cooperation between Frontex and non-EU countries is described as an "integral part of the Frontex mandate" (Frontex, 2022a). The fact that cooperation secured through relationships by administrative authorities takes place, shows significant deficiencies in terms of rule of law, as well as the protection of democracy and human rights. Usually, neither the European nor the national parliaments are involved in the creation of such agreements or are being consulted. The argument that these are “technical relationships” that do not affect individuals seems anything but convincing. Instead, such agreements are sometimes far remote from the values for which the European Union stands but reflect more of an “imperial reflex” (Canlar, 2021). However, still, all 20 working agreements between Frontex and third countries are in place, including one between the EU and Turkey from 2012.

The EU particularly focused on externalization strategies in so-called regional dialogues and consultative processes like the Budapest Process and the Prague Process with the Eastern neighborhood, and the Khartoum and Rabat Process with the Southern neighbors (Trauner & Cassarino 2017, 395). This strategy gained even more importance following the Migration Crisis in 2015. The EU resorted to externalization partly due to the lack of solidarity among member states regarding the management of migratory

flows within the Schengen Area. The EU Turkey Statement of 2016 is seen as the most prominent example of this development (Trauner & Cassarino 2017, pp. 395-397).

Even though all EU member states signed and ratified the Geneva Convention including the additional protocol of 1967, the EU outsources its obligation to hear refugees and asylum-seekers before they arrive to EU's external borders. To this end, the EU has equipped itself with various policy and financial tools for externalization, which often incorporate a transactional nature. The European Neighborhood Policy (ENP) is an EU policy that was presented by the EU Commission on May 12, 2004 as a strategy paper with the aim of bringing the EU and its neighbors closer, to their mutual benefit and interest and help the EU support and foster stability, security and prosperity in its closest neighborhood with the strategic goal to establish a ring of stable, friendly states (Schumacher, Marchetti & Demmelhuber, 2017) around the EU.

At the same time, the ENP is conceived as an alternative to countries without prospects of accession as they should also be given incentives to modernize their governance, economy, and society through stronger ties to the EU. The ENP is described by the EU as a win-win-policy, and in its first communication in 2003, the European Commission even suggested that the concept of borderless Europe could be extended to those countries participating in the ENP (European Commission, n.d. a).

Since 2015, with the introduction of the revised ENP, migration plays a more prominent role in this policy as it is among the three key objectives of the cooperation framework between the EU and its neighbours. Even though the EU attempts to represent a comprehensive and balanced approach for managing migration in cooperation with its ENP partners, the partners themselves find this cooperation often unbalanced, unfair and asymmetrical as well as lop-sided in terms of the EU's focus on migration management as a utility factor of the ENP, and is less focused on values and

fairness (Barbé & Johansson-Nogués 2008, 89). The criticism, especially from ENP partner countries in Eastern Europe, goes so far that they implicitly accuse the EU of neglecting the external effects of this policy because of its preference for migration management or of subordinating this policy to the other goals of the ENP, underlining the asymmetric and transactional nature of such arrangements. Partner countries criticize the ENP border management as unfair because visa liberalization as part of the partnership is conditional on the signing of a readmission agreement (Barbé & Johansson-Nogués 2008, 90), whereby a readmission agreement is an international treaty between two countries that regulates the repatriation, i.e. the deportation or expulsion of illegal immigrants or rejected asylum seekers between two countries.

However, with the readmission agreements between the European Union and its neighbors, the ENP partner country commits to not only taking back its own migrants with no prospect of staying in the EU, but also to take in transit migrants who have entered the EU from other countries via the ENP partner country. Another element which reinforces the argument that ENP is asymmetrical at the expense of the ENP partner country is that, the ENP in general and particularly the European Return Fund do not provide enough resources to equally share this burden (Barbé & Johansson-Nogués 2008, pp. 90-91). However, according to a European Court of Auditors' Readmission Report, since 2008 around 500,000 people who have no chance of asylum or a residence permit in the EU have been expelled from the EU on the basis of Readmission Agreements (European Court of Auditors, 2021).

3.4.2 The special case of candidate countries

As part of the Accession Process, the EU is demanding since 1995 that the entire *Acquis* has to be adopted - this also includes migration legislation, the adoption of the Schengen

system, border controls and a visa policy that is consistent with EU principles. At the same time, the implementation of the *Acquis* becomes a tool for externalizing EU migration policies (Lavenex & Schimmelfennig, 2009), while candidate and potential candidate countries become a buffer zone for irregular migration. An example of this is Serbia, officially a candidate for accession since September 2012. When EU member Hungary sealed its borders against irregular migration in September 2015, thousands of migrants got stuck in Serbia, although they wanted to travel to more northern EU countries.

Turkey is a special case for the EU when it comes to migration management. First, because Turkey is located on several key migrant routes from Asia and Africa into Europe; second, because migration cooperation is regulated by more than the aforementioned instruments but also because it is a candidate country which entails its own obligations when it comes to migration management (Kirişci 2007, 2-5). Turkey was therefore included in a large number of migration policies in the sense of a harmonization process. In addition, joint consultative mechanisms and other cooperation groups were established between Brussels and Ankara (Kirişci 2007, 8-9). Here, too, the author refers to the fact that until then, Turkey had been known in the West primarily as a country of emigration, although at least targeted immigration to Turkey (as described in a previous chapter) was actually part of the reason of state; moreover, it became more and more apparent that Turkey could become a transit country for migration (Kirişci 2007, 11). Of particular note is the fact that refugees with official UNHCR refugee status could be resettled, while those who had been rejected could be deported (Kirişci 2007, 11). Reference is also made to the extremely long land and sea borders, a large part of which are no longer hermetically sealed off due to the fall of the Iron Curtain as was previously the case (Kirişci 2007, 17-19). All in all, it is

becoming apparent that the norms-based approach is not always sufficient to tempt a candidate country like Turkey to fully adopt the *Acquis*. Kirişci (2007, 45) argues that the Turkish government already feared in the early 2000s that full compliance with EU requirements would result in a buffer zone for illegal migrants from the EU, or a "dumping ground" for rejected asylum seekers. This argument should also be considered with nuance. On the one hand, the author is right when he describes the fears of the Turkish government at the time. These are the same fears expressed by other EU members on the bloc's periphery, such as Italy and Spain, when it comes to the unfair distribution of migrants. However, this shows that this is not an EU-Turkey-specific problem, but rather the planning, implementation, and monitoring of the EU's own migration policies. The problem lies in Brussels, not in Ankara.

Because of this, transactional elements of externalization of EU's migration policies conflicts with the norms-based approach on which the candidate countries' accession negotiation process is based. To give one example: To conclude a readmission agreement with Turkey, in exchange, the European Commission had promised Turkey to lift visa restrictions for Turkish citizens wishing to travel to the EU (European Union, 2014). Turkey should therefore be granted free travel access to the EU if, in return, Turkey restricted migration to the EU (Üstübcü, 2019). The effect of this is, raising the externalization of EU migration policies to a transactional level.

Another example is the instrument for pre-accession (IPA), under which the EU and its member states offer EU accession candidates funds to support their cohesion policies. Turkey, as a candidate country, also receives IPA funding. In a multi-annual indicative planning document for the years 2011 to 2013, the back-then Ministry of EU Affairs in Ankara states, among other things, for the continued receipt of IPA funds „[e]ffective integrated border management and prevention of illegal migration through

effective systems to manage asylum, illegal migration and borders; establishment and effective functioning of the integrated border management system and reduction of crossborder crimes, in particular focusing on trafficking and smuggling in human beings (Directorate for EU Affairs, 2011).

CHAPTER 4

THE CASE OF TURKEY

4.1 Turkish Migration policy and efforts to become an EU member candidate

With the official start of EU accession negotiations in 1999, a phase of revision of Turkish migration and asylum legislation began, and thus the opening of a path for further Europeanization with regards to Turkish Asylum and migration laws (Kaya 2021, 352). However, this path is covered with a dense web, consisting of domestic and external factors, a transactional network in which both sides, EU and Turkey, are embedded, and social and civil groups, which altogether are crucial when it comes to Turkey's progress towards the EU *Acquis* (Aydin & Kirişçi, 2013; Noutcheva & Aydin-Düzgit, 2012). However, it should be noted that pressure from the EU level on candidate countries does not always lead to reforms, but in contrast to some social groups are even skeptical about reforms (Aydin & Kirişçi 2013, 389).

It is, still, noteworthy to mention that, in Turkey there has never been an overarching European identity that has guided politics (Aktürk 2017, 347). The striving of Turkish governments towards Europe, especially that of president Erdoğan, has always been economically determined, never by an identity consonance based on a supranational European identity (Aktürk 2017, 350-352). In relation to the refugee pact, this means that the Turkish government had no interest in incorporating the European refugee crisis and acting out of solidarity with EU neighbors. In other words: Turkey was never interested in relieving Europe's migration problems, as will be shown in the following chapter.

However, the EU's imposed conditionality has been the main driving force behind the Europeanization, especially in the case of enlargements from 2004 and 2007

(Noutcheva & Aydin-Düzgit, 2012; Aydin & Kirişci, 2013). For a long time, however, the EU failed in limiting and controlling irregular migration movements at the Turkish border or within Turkey itself (cf. İçduygu & Kirişci, 2013).

4.1.1 Turkey's migration policy before the accession negotiation framework

Due to its geographical location and its relative stability, Turkey is a destination for refugees from neighboring countries such as Syria, Iraq, Afghanistan and Iran. The emigration of the late 19th century and early Republican period was sustained by reciprocity agreements with other countries (1913 and 1925 with Bulgaria and 1923 with Greece) and forced resettlements (as in the case of the Armenian mass deportations of 1915). The main concern during this period was the management of the immigrants (called *muhacir* in Turkish) entering the country rather than emigration.

For many decades, migration laws in Turkey were intended to strengthen Turkish national identity (Geddes 2016, 233). İçduygu & Aksel (2013) define different periods of Turkish migration management since 1913, i.e. ten years before the founding of the Turkish Republic. These include the Treaty of Constantinople between the Ottoman Empire and the Kingdom of Bulgaria, facilitating reciprocal optional change of populations (1913), the Armenian mass deportations (1915), the Treaty of Lausanne as well as the Foundation of the Turkish Republic and the (1923) and the Convention concerning the Exchange of Greek and Turkish Populations (1923), followed by Law 2510/1934 Settlement Act (1934).

The question of granting citizenship in Turkey has not only been discussed since the beginning of the republic, but even before that. İçduygu & Aksel. argue that the granting of citizenship in the late Ottoman Empire was not linked to the ethnicity of the person to be naturalized; an attempt to keep the Empire together and a show of

instrumentalization of the law of naturalization (2013, pp. 170-173). The topic is particularly important because in the historical context there were or still are many different ethnic groups in today's Turkey, and because the topic has been affected by the current refugee crisis and the partial naturalization of Syrian refugees in Turkey and the debates that have arisen as a result gaining new relevance in the political and social spectrum. Kadirbeyoğlu describes a pattern, from a willingness to grant Turks and Turkic groups abroad Turkish citizenship, including giving Turkish and Turkish-born citizens abroad or in the diaspora more support; towards a long-standing pragmatic policy when it came to the naturalization of other foreign citizens in Turkey (2007, 305). However, she warned early on that the pressure on Turkey could increase if immigration issues were given greater prominence in the political and social discourse (Kadirbeyoğlu, 305). A scenario that was terrifyingly fulfilled in 2022 in view of the sometimes racist moods against migrants in Turkey (see e.g., Karacasu, 2022, or Sözcü 2022, 1).

The Settlement Act of 1934 showcases how important nation-building was in the early years of the Turkish Republic (İçduygu & Aksel 2013, 171). The law refers to immigrants of Turkish origin, such as Uzbeks, Turkmens or Uighurs as “migrants” (“göçmen”) and all other immigrants as “guests” (“misafir”) or “foreigners” (“yabancı”; Kaya 2021, 10). Accordingly, immigrants of Turkish origin and culture were more easily classified as migrants or immigrants, while all others could be rejected more easily (Geddes 2016, 231). At the same time, people who had been defined as non-Turkish but who were Turkish citizens, were subjected to an assimilation process or felt forced to leave (Geddes 2016, 231). The result was a sharp decline in the proportion of the non-Muslim population and of minorities in Turkey, an assimilation regulation that was only revised in the late 2000s (İçduygu & Aksel 2013, 172). This policy was

targeting especially the Kurdish population of the young Republic of Turkey. Above all, the Settlement Act was instrumentalized to expel the ethnically non-Turkish population from their settlement areas and to settle ethnic Turks in precisely these areas (Faroqhi et al. 2008, 340). It is fitting that an inspectorate was founded in Tunceli in eastern Turkey in 1936, and the Kurdish language was banned throughout the country (Çağaptay 2006, 108-110).

In the 1950s, net immigration turned into an emigration movement, the prime example of which are Turks who went to Germany as guest workers (Çağaptay, 2006., see also Kadirbeyoğlu, 2007). In addition, there were the pogroms, especially against the population of Greek and Cypriot origin in 1955 and during the Cyprus crisis in 1963 and 1964 as well as after the Turkish military operation on the Mediterranean island in 1974. Also, the emigration of people of Jewish origin after the foundation of the State of Israel is one of them. The most important laws and milestones of Turkish migration laws of the period up to the late 1970s are Law 5682/1950 Passport Law, Law 5683/1950 related to Residence and Travels of Foreign Subjects (1950), United Nations Convention relating to the Status of Refugees (1951), Greek emigration from Turkey (1955), suitcase traders from USSR (late 1950s), Turkey-West Germany labor recruitment agreement (1961), the United Nations Protocol relating to the Status of Refugees (1967), the oil crisis and the halt of labor emigration to Europe (1973-1974).

Between 1961 and 1974, 800,000 Turks emigrated to Europe as guest workers, including 649,000 to Germany, 56,000 to France, 37,000 to Austria and 25,000 to the Netherlands. The Turkish diaspora in these countries sometimes formed large minorities over several generations and today forms a foreign policy bargaining chip for the Turkish government in foreign policy with the respective states (İçduygu & Aksel, 2013; Geddes, 2016). The Turkish guest workers in Europe were of great importance

for Turkey from the beginning, especially from an economic point of view. They often sent money back home, which is listed as remittances in the national accounts. From 1960 to 2013, the Turkish economy received around 75 billion US dollars in the form of remittances (İçduygu & Aksel, 2013) and reduced the chronic trade deficit by a third in the 1990s. At the beginning of the 2000s, remittances made up about 20 percent of the trade deficit, in 2004 it was only two percent.

The global oil crisis in 1973 also had an impact on Turkish emigration to Europe. It was part of the new state doctrine to bring trained Turkish guest workers back to Turkey or to tie them more closely to their home country in the diaspora. The Presidency of Religious Affairs (Diyanet) played a significant role in this and even sent its own imams to the sending countries from 1971 onwards.

But as early as the 1980s, Turkey evolved – in addition to its status as an emigration country – to becoming an immigration and transit country; and increasingly, alongside ethnic Turks, transit migrants, illegal migrant workers, asylum seekers and registered migrants came to Turkey (Kirişçi & İçduygu, 2009). After the end of the Cold War, Turkey imposed lax visa requirements for Turkic states and the Russian Federation to conduct business. Many women came from Slavic as well as Turkic countries, some of whom hired themselves out as sex workers. They were quickly branded as "Natashas" (Bertaux & Bozcali, 2013), who also upset the sexual segregation in Turkish society. The conservative Refah Party (RP) campaigned against "Natashas", non-alcoholic family tea gardens had "No Russians" signs (Bertaux and Bozcali 2013, 167; see also Bellér-Hann, 1995). There was an "Association for the struggle against Natasha" (Bellér-Hann 1995, 226-29). Alien sex work was seen as a danger to the institution of marriage (Bertaux & Bozcali, 2013), and foreign sex

workers disrupted and revealed the Turkish patriarchal gender norm (Bertaux and Bozcali 2013, 168).

Turkey faced immigrants who were neither Turkish nor Muslim. The Asylum Act of 1994 was intended to regulate this migration, which was new to Turkey, without specifying asylum and employment issues in more detail. Instead, refugees could be resettled as soon as their refugee status had been recognized (İçduygu & Aksel 2013, 132). In a further response to these developments, the newly elected AKP government amended the Turkish Citizen Act in 2003 (Bertaux & Bozcali, 2013). Article 5 stipulates that a foreign spouse can only apply for Turkish citizenship after three years after the marriage. But in fact, the law was primarily aimed at strengthening the institution of the family and was seen more as a link between security and citizenship in Turkey. And although the reform of the law was praised as a step towards Europeanization, the example shows once again that Turkish governments often only open themselves to Western ideals to pursue their own political goals (Bertaux and Bozcali 2013, 170).

Geddes notes that Turkey is moving from a period of post-hoc migration laws, described by a defined set of desired immigrants, to an a priori period of legislation designed to address unforeseen challenges in the areas of asylum and migration (2016, 232). Bringing national legislation up to EU standards, however, is not a smooth and linear process (Bertaux and Bozcali 2013, 233). Kirişçi (2007, 8) notes that Turkey implemented parts of the Schengen *Acquis* during the EU accession process, for example on visa or asylum policy. At the same time, however, this process has steadily slowed down and has sometimes even been thwarted by the foreign policy of the Turkish government (Kirişçi 2007, 8-9). The Europeanization of Turkey's migration legislation was not only the EU's values-based desire to bring the candidate country

closer to the EU *Acquis*, but happened in the wake of a multitude of crises (Kaya 2021, 17) and the domestic political desire of many EU members to keep as many refugees and migrants as possible from entering the EU.

4.1.2 Turkey's migration policy as an EU candidate country

The next period sees the official start of the EU accession negotiations as an influential element in Turkish migration legislation. After Turkey was granted its candidate status for EU accession in 1999, the accession process, which was formally opened in 2005, led to a period of enhanced cooperation between the EU and Turkey in many areas, including those with regards to migration.

The EU is regarded as the main anchor for the development of Turkish migration and refugee laws in this period, especially since the introduction of the Accession Negotiation Framework in 1999 (Kaya 2021, 352). One of the central demands within the framework of the Accession Negotiation Framework was that Turkey dissolve its geographical limitation of the Geneva Refugee Convention. For Turkey, this was a dangerous act in which it would find itself without geographical limitations and yet without full EU membership (Kirişçi 2012, 74). The great fear was that Turkey could become a siding for refugees who were unwanted in Europe (Geddes 2016, 233).

It is broadly accepted in the scholarly and public debate that the EU accession perspective and the subsequent pre-accession conditionality highly contributed to some alignment of Turkish asylum and migration control standards with the EU *Acquis* (e.g., Kaya 2021, 352). However, some important elements were not accepted by Turkey, notably to lift its geographical limitation to the refugee definition, which excludes refugees from outside Europe from obtaining a full asylum status (Bürgin & Aşıkoğlu, 2015).

Turkey undertook its most important domestic reforms with regards to migration and asylum policies to align them with the EU *Acquis* between 2002 and 2013, when the EU conditionality in Turkey was still relatively strong (Aydın-Düzgit & Tocci 2015). With the prospect of EU opening accession negotiations, Turkey notably adopted the 2003 National Program for the Adoption of the EU *Acquis* by which Turkey indicated it would align its visa policy with the Schengen *Acquis*. In practice this meant reversing the liberal visa policy traditionally implemented by Turkey and adopting the Schengen “negative list” of countries for which a visa is required. Turkey, back then motivated by the ultimate goal of EU membership, started to align its policy and by 2004, except for 6 countries, Turkey was close to full alignment and the accession perspective was thus initially the best leverage for the EU to impose its reforms in Turkey (Kirişci, 2006).

However, as of 2005, Turkey’s pace of reform starts slowing down in this area, as Turkey faces some obstacles on its road to EU membership, notably due to the acceptance of the divided Republic of Cyprus as a new EU Member State in 2004. By accepting this new Member State, the EU prevents Turkey from becoming a member of the EU as long as it refuses to recognize the Republic of Cyprus and subsequently refuses to comply with legal obligations stemming from the custom unions by not opening its harbors and airports to the Republic of Cyprus. As of 2005, Turkey started lifting some of the visa requirements for countries of the negative Schengen list. In November 2006, the European Union formally raised its concern over restrictions to the free movement of goods, including restrictions on means of transport to which Turkey had committed to through the signature of the Additional Protocol to the Ankara Agreement. In the absence of a solution to Turkey’s non-recognition of the Republic of Cyprus, the European Council decided on 14-15 December 2006 to suspend

negotiations on eight chapters relevant to Turkey's restrictions with regard to the Republic of Cyprus. In parallel, the European Parliament voiced its concerns regarding some deterioration back with regards to freedom of expression, protection of religious and minority rights as well as the independence of the judiciary in September 2006 (European Parliament, 2006). It also noted back then that “the recognition of all member states, including Cyprus, is a necessary component of the accession process” (European Parliament, 2006).

Turkey’s accession perspective became even more distant in 2007 and then in 2008 under the French Presidency of the EU when its back then French President, Nicolas Sarkozy, made repeatedly clear that Turkey would never join the EU. Despite the EU’s internal dynamics and some Member States’ increasing reluctance to welcome Turkey as a potential future member, Turkey pursued its accession efforts, albeit at a slower pace, as documented by the European Commission progress reports. In 2008, the Commission underlined that “the government expressed its commitment to the EU accession process and to political reforms. However, in January 2010, a new strategy for Turkey’s accession to the EU was prepared by the Turkish government with the aim of speeding up the accession negotiations. In 2011, the government reaffirmed its commitment to EU accession on several occasions, in particular through the establishment of an EU Ministry after the June elections (European Commission, 2011b).

As the prospect becomes increasingly remote, the pace of reforms steadily slows down as of 2012. The EU has to resort to a parallel track to continue its migration cooperation with Turkey and impose reforms. Without the accession perspective as the biggest leverage to impose EU led reforms on Turkey, the EU resorted to a parallel track to pursue its cooperation on border control and migration management with

Turkey. The positive agenda endorsed by the Council in December 2011 was launched in 2012 to support and to complement the accession negotiations through enhanced cooperation in a number of areas of common interest including visas, mobility and migration, trade, energy and counter terrorism (European Commission, 2012).

In parallel, Turkey froze its relations with Presidency of the Council of the EU during the second half of 2012 as it was held by the Republic of Cyprus and consequently decided not to attend any meetings chaired by the Cypriot Presidency of the EU. In reaction, the European Council expressed serious concerns with regard to Turkish threatening statements and called for full respect for the role of the Presidency of the Council.

4.2 Turkey as a key partner in EU's migration policy

The EU's parallel cooperation with Turkey on migration can be exemplified with Turkey signing a working agreement with Frontex in 2012 (Frontex, 2022). On 16 December 2013, the EU and Turkey eventually signed the Readmission Agreement after years of negotiations. The Commission also prepared a roadmap for visa liberalization in 2013 in line with the Council conclusions of 21 June 2012 inviting the Council to take steps towards visa liberalization as a gradual and long-term objective. However, the visa liberalization dialogue has been stalled as Turkey still needs to fulfil the remaining 6 out of 72 benchmarks. The Commission underlined the importance of migration cooperation for the overall EU-Turkey relations by mentioning its annual progress report that "signing the readmission agreement to allow for an effective start of the process and improved cooperation in this key area in EU-Turkey relations remains crucial" (European Commission, n.d. a).

In parallel, Turkey's own internal dynamics also contribute to the further slowing down of accession negotiations. Throughout all of 2012 and the first half of 2013, little or no progress was made on any open chapters of the EU *Acquis*, as formal accession talks between Turkey and the EU seemed to have reached a political and technical impasse. In early June 2013 public demonstrations in Turkey over the government's urbanistic projects of a park in Istanbul, famously known as the Gezi protests, and the government's harsh reaction triggered an immediate severe response from the EU institutions including a resolution from the European Parliament expressing its "deep concern at the disproportionate and excessive use of force by the Turkish police" (European Parliament, 2013). Ankara however pursued its crackdown on the demonstrators which pushed several EU member states to press for the postponement of the scheduled accession talks. While the EU eventually agreed to open a new chapter, it also postponed the resumption of the actual accession negotiations until October 2013 once the protests in Turkey stopped.

The Arab Spring, which began as of December 2010 as a series of protests, uprisings and later revolutions has not only affected the foreign policy balance across the region in Europe and the Middle East, but also had a significant impact on Turkish foreign policy and the Turkish approach to migration and asylum policy (İçduygu & Aksel, 2013). This is made particularly clear by a speech by the then Turkish Foreign Minister Ahmet Davutoğlu in 2011 to the ambassadors posted in Ankara: "The Middle East and the Balkans have not seen peace and prosperity since the collapse of the Ottoman Empire. People in these regions are waiting in great expectation from Turkey as the heir to the Ottoman Empire. Reunification between 2011 and 2023 with our brothers in those territories we have lost between 1911 and 1923, and thereby the establishment of a new Middle East would mean the rise of not only Turkey but also the

Middle East.” One can conclude from the excerpt from Davutoğlu's speech that Turkey initially perceived the Syrian civil war because of the Arab Spring. The war is meant to offer Turkey a chance in the Middle East to become the dominant player in the Middle East with the potential to shape the region's political order. This is how the “open door policy” towards Syrian refugees and a fundamentally humanitarian asylum policy came into being.

Another important driver of Turkey's response to the Arab Spring and the Syrian refugee crisis is Turkey's aspiration to become a soft power in the region (Kaya 2021, 361). Nye (2011, 20–21) defines soft power as “the ability to influence others to achieve preferred outcomes through the cooperative means of agenda setting, persuasion and positive attraction”. According to the same author (2004, 11), the three building blocks of culture, political values and a country's foreign policy are decisive for this. The creation of a visa-free environment can therefore also be seen as a soft power. In the second half of the 2000s, Turkey abolished visas with neighboring or regional countries such as Jordan, Lebanon, Syria and Saudi Arabia, sometimes even though these were on the EU's blacklist and thus subject to strict visa regulations. This liberal visa regime even triggered discussions about building a new visa-free Schengen-like area in the Middle East (Elitok & Straubhaar 2010, 7). Turkey had been motivated by intensified trade and thus economic gains in the region to de-Europeanize its visa regulations and foreign policy decision-making processes.

At the start of the Syrian migration in 2011, Turkey refused international aid for its humanitarian efforts to prove that it could handle matters politically and economically on its own (Kaya 2021, 361). On international platforms, the cost of the Syrian refugee flow has been used to demonstrate the strength of Turkey and its role as a model country in the Middle East, helping subordinate peoples. In 2012, Turkey

began soothingly asking for financial assistance and avoided portraying Syrian refugees as a threat or risk in domestic and international arenas, repeatedly calling them guests and brothers, who do so would one day return to their homeland. This approach continued until 2015, when the financial burden of Syrian refugees hit Turkey hard and the EU fell into the refugee crisis (Kaya 2021, 361). This ultimately led to a revision of Davutoğlu's doctrine towards a policy based on temporary protection, also known as the 2013 asylum law, as will be analyzed in detail in the following sub-chapter.

4.3 Turkey's law on foreigners and international protection (LFIP)

In October 2013, the European Commission issued its annual progress report on Turkey. The Commission's report seemed more positive than previous versions reaffirming Turkey's strategic importance to the EU. However, the European Commission underlined Turkey's lack of progress in several areas including its handling of the Gezi protests in May and June 2013, and the subsequent numerous violations of freedom of expression and media freedoms. The Commission again expressed concern over Turkey's continued refusal to recognize the Republic of Cyprus, and Turkey's position to ignore the Cyprus Presidency of the EU Council.

When it comes to the Turkish perspective regarding migration and its cooperation with third countries on this matter, the government in Ankara has come to think of migration increasingly as a foreign policy issue, and consequently foreign policy and migration concerns have become intertwined (Tolay 2012, 120). In the last two decades the Turkish government's approach to migration policies has evolved in parallel with the transformation observed in the foreign policy arena as well as a moving migration landscape surrounding Turkey.

Formally, the EU lacked a legal basis to declare Turkey a safe third country (Heck & Hess, 2017) and to be able to push back a large number of refugees, because of the geographical limitation to the 1951 Convention by Turkey under which only Europeans can be recognized as refugees. Accordingly, there was neither a law nor an asylum procedure regulating the handling of refugees who did not come from Europe.

The LFIP, which is considered to be inspired by the EU (Bürgin & Asikoglu, 2015), was therefore discussed for a long time as part of the EU accession negotiations between the EU and Turkey and came into force in 2014 against the backdrop of a growing number of refugees, especially from Syria (Geddes 2016, 234). This situation has led to a selective, improvised treatment of refugees by the Turkish authorities that varies according to their country of origin. Refugees from Syria are officially placed under "temporary protection" in Turkey according to the LFIP, a group-based status that can be terminated or restricted by resolution of the President's Office. People who do not come from Syria or from European countries, for example coming from Iraq or Afghanistan, can apply for international protection and receive "conditional refugee status". Both the "temporary" and the "conditional" protection status are designed as a temporary solution and do not open up any long-term prospects for refugees in Turkey.

Kirişçi (2012, 79) and Geddes (2016, 236) note that the LFIP, drafted in 2012, was not only the result of the Turkish government's socialization with the UNHCR and the ECtHR, but also the harmonization efforts of the Turkey reflects with the EU *Acquis*. In 2013, when the Turkish National Assembly passed a new migration law, various international organizations such as the UNHCR assessed the law as historically significant at the time. Bürgin and Asikoglu (2015) call Turkey's new LFIP „a case of EU influence“.

With the new migration law, the European concept of “safe third countries” found its way into Turkish legislation. A total of four points can be summarized that have changed with the introduction of the Migration Act. (1) The management of migration at state level and the creation of capacities for handling migration were for the first time legally regulated. (2) Specialized institutions have been created to deal with migration. (3) The EU Migration Act enables the EU to regard the humanitarian treatment of migrants and refugees in Turkey as fulfilled, irrespective of the form and implementation of human rights. (4) The EU can declare Turkey a safe third country. It was not until the new LFIP that the Action Plan of November 2015 and the EU-Turkey Declaration of March 2016 could be formulated and implemented. From the EU's point of view, with the introduction of the Migration Act, Turkey has become an ideal buffer zone for migration.

The LFIP is seen as an illustration of Europeanization in Turkey because Turkey fundamentally changed its course of immigration policy with the introduction of this law, close to European Union's demands (cf. Alpan, 2021). However, uncertainty about Turkey's accession prospects keeps officials from advising the government to rush these changes. In addition, there is a deep-seated concern that Turkey could become a buffer zone or a sort-of dumping ground for the EU's illegal migrants and rejected asylum seekers. However, the pressure for political reform is unmistakable. For example, the government has completely overhauled its work permit laws and regulations. The new law was a notable change in legislation related to irregular migration and its outcomes.

The European Union has actively and passively tried to influence the legislative process and the implementation of the law (see e.g., Kaya, 2021). In numerous annual reports by the European Commission on the EU candidate Turkey (2007, 2008), for example, criticism of the “high number of illegal migrants” and demands to combat this

illegal migration can be found. Often, only "limited progress" and the need for "increased efforts" are noted on this issue. With the development of an EU Acquis in the area of migration, Turkish migration management became increasingly intertwined with its accession process.

In fact, the EU has been putting increasing pressure on neighboring countries on the issue of immigration, the stronger the reservations against migrants within its own borders have become (Üstübcü, 2018). This created a situation in which migrants in countries such as Morocco or Turkey are not only exposed to growing political and public pressure, but also slip more quickly and frequently into illegality due to legal regulations. After being registered in Turkey, migrants must stay in the province defined for them; those who leave their province face penalties up to and including extradition; nevertheless, a majority the migrants interviewed in a survey bei Üstübcü report that the security forces are tolerant towards migrants (Üstübcü 2018, 135-136).

Many migrants, especially migrants who have arrived irregularly, have to pay dearly for health services. It is reported that even Syrian refugees, who, as refugees with temporary protection status, are actually allowed to visit doctors free of charge in Turkey, have problems with access to free medical care (Üstübcü 2018, 159).

When Turkey passed the Migration Act in 2013, the rhetoric in the reports of the European Commission changed. The 2014 Progress Report speaks of "significant progress" (Turkey Progress Report, 2014). The IOM, with financial support from Sweden, also helped Turkey with the formulation of the law . The UNHCR staff worked with Turkish officials to develop the text of the law, although the organisation's role is actually to keep a critical eye when assessing states' development and implementation of their respective migration laws.

However, the Turkish government has not always taken a compatible position on the harmonization efforts of the EU pre-accession phase. For example, travel restrictions have been relaxed and visa requirements have been lifted for travelers mainly from nearby countries such as Azerbaijan, Jordan, Lebanon, Libya, Russia, Syria and Ukraine, as well as various distant countries such as Brazil, Tanzania and Guatemala, Venezuela, Colombia, Andorra and Paraguay. Interestingly, many of these new visa regimes run counter to the EU *Acquis* and are paradoxical to Turkey's EU membership agenda.

4.4 The European refugee crisis of 2015

The refugee crisis in Europe is not only seen as a turning point in European migration policy, but is also the reason for negotiations with Turkey and the emergence of the EU Turkey Statement (Agustín & Jørgensen, 2019). The European refugee crisis is understood as the sharp increase in the number of asylum seekers in the EU countries due to the entry and transit of one to two million refugees to the European Union in 2015 and 2016, the ongoing migratory pressure on Europe and the overall social impact of this refugee movement. Migration research had been predicting the increase for decades, citing population growth, economic inequality, low incomes, structural unemployment and protracted regional conflicts as contributing factors. In addition to the civil war in Syria, the special causes of the flight to Central Europe include the advances and attacks by the Taliban in Afghanistan and the terrorist organization Islamic State in Iraq and Syria, humanitarian supply crises in Syria's neighboring countries, armed conflicts and a humanitarian crisis in Somalia and in Sudan, South Sudan, Eritrea, Nigeria, the war in Ukraine since 2014, and poverty and unemployment in many Western Balkan countries (Luft 2017, 26-37).

The number of asylum seekers who had entered Europe in 2014 was already 627,000, almost doubling to over 1.3 million in 2015 and again reaching 1.26 million in 2016, a significant proportion of whom had already entered the country in 2015 but were recorded belatedly. The majority of arrivals had been observed of coming via the so-called West-Balkan route (Figure 1).

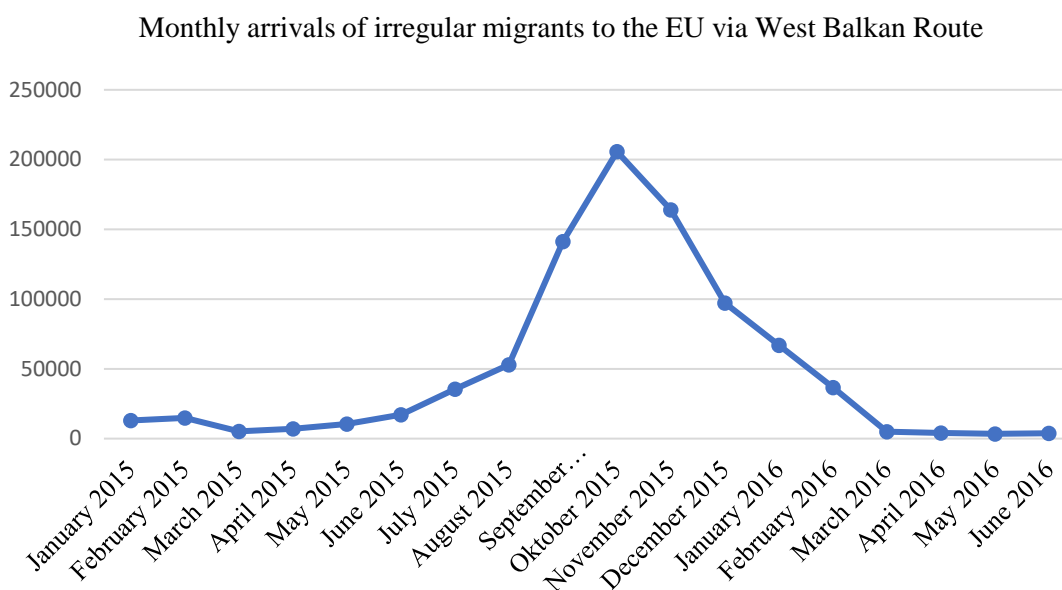


Fig. 1 (Source: Frontex)

Not only serious war crimes and repeated violations of human rights have forced people in Syria to flee. According to the UNHCR, 12.2 million people, half of the population, needed help to survive in 2015. Also because in 2015 many states did not keep their promises for the transfer of aid funds, only 41 percent of the UNHCR aid plans for the year could be financed (Luft 2017, 26-29). Germany, for example, halved its commitment for 2014 (Luft 2017, 29). Food rations in the refugee camps of Lebanon and Jordan have been severely reduced due to underfunding or unfulfilled financial commitments (Luft 2017, 29).

In this respect, it can be said that the actions of many states not involved in the conflicts indirectly contributed to people being displaced and leaving the country,

especially in Syria, in the time before the EU Turkey Statement (Hoesch 2018, 1-5). In addition, the Syrian government announced in the same year that it would be conscripted into the Syrian armed forces and made it possible to buy out military service. In addition, the issuing of passports has been made easier. Thus, opponents of the government and draft evaders were able to escape the civil war (Hoesch 2018, 29). The events revealed various shortcomings in the EU's asylum system: during the crisis, some EU states disregarded central agreements from the 1985 Schengen Agreement and the 1990 Dublin Convention and refused to distribute the refugees (Luft 2017, 7).

Even before the crisis, southern EU member states such as Italy and Greece allowed unregistered refugees to travel to Central Europe while other member states in the north had blocked a fair distribution formula until 2015. The Dublin III regulation of 2013, which came into force in 2015, only regulates the responsibility for asylum procedures, not the Europe-wide distribution of asylum seekers. Due to the high number of arrivals of refugees, most of whom wanted to apply for asylum in other countries, and a lack of reception capacity, the responsible border states only registered some of them in the summer of 2015 and mostly let them continue their journey without any registration. Other EU countries along the Western Balkan route then suspended border controls. The mandatory return transfers also only took place to a limited extent. The Dublin rules proved unenforceable in this situation.

On September 13, 2015, Germany introduced temporary controls at the border with Austria to register refugees upon entry. Federal Minister of the Interior Thomas de Maizière called urgent "security reasons" for "an orderly procedure" to come back to when entering the country. The EU Commission legitimized the measure for an initial period of ten days but warned of a domino effect. Shortly thereafter, Austria, Slovakia and the Netherlands also announced temporary border controls.

This called into question the practicability of the EU treaties, the EU's integrative power and intra-European solidarity. The asylum policy of the European Union, European migration policy and the respective national immigration and refugee policy, as well as the Islam in Europe, became the subject of heated political debates. At member state level, the crisis led to a consolidation of the far-right sentiments, including national-conservative as well as Islamophobic forces.

Heads of state and government of the EU were forced to act under the pressure of very high numbers of refugees who came to Turkey from Greece via Turkey in 2015 – without a uniform asylum policy. The negotiations on the EU Turkey Statement clearly show the transactional character of the non-binding agreement: The EU was concerned with keeping the number of refugees in check, which was hardly possible due to the abandonment of EU migration regulations by individual EU member states. As a result, the rules had to be exported, so to speak: to Turkey, where the LFIP provided all the necessary conditions for accepting a large number of migrants. On the other hand, Turkey was concerned with advancing the accession process despite a deteriorating domestic political situation in the country.

To persuade the Turkish government to cooperate more closely in securing the EU's external borders, Chancellor Merkel, during her visit to Istanbul in mid-October 2015, promised visa liberalization for Turkish citizens, more money for refugee camps and a new dynamic in Turkey's accession negotiations with the European Union. Later in October 2015, a joint action plan was adopted at a special summit of heads of state and government of the EU and other affected states (European Commission, 2015). In November 2015, the German federal government assigned Turkey a key role in overcoming the refugee crisis. In mid-October 2015, Chancellor Angela Merkel offered Turkey the prospect of easier travel for Turkey's citizens, more money for refugee

camps and a new dynamic in Turkey's accession negotiations with the European Union to improve cooperation in securing EU's external borders. Turkey demanded from the EU a repatriation agreement and visa-free travel for the Schengen area as of July 2016.

On November 30, 2015, representatives of the European Union and Turkey agreed on an Action Plan to limit Immigration via Turkey (European Council, 2015). According to the "deal", the EU should take one Syrian refugee from Turkey in return for every person from the civil war country who made it to one of the Greek Aegean islands. In exchange, the EU promised six billion Euro. The agreement was criticized in circles of experts in international law and human rights, including the UN High Commissioner for Refugees (UNHCR, 2016) and scholars (Gatti & Ott, 2016).

The delay in reforming EU asylum legislation, combined with the sharp increase in the number of refugees in autumn 2015, led to negotiations with Turkey on increased cooperation on this topic. In the wake of the influx of refugees in autumn 2015, the EU Turkey Statement was drawn up in a hasty manner, before the member states could agree on a new EU package. It combines migration goals, such as reducing the number of refugees crossing the Aegean, with turbocharged accession negotiations and another political and economic benefit for Turkey. Even if EU regulations play a major role in the EU Turkey Statement, the statement is a sign of how intergovernmentalism is becoming more important than Europeanization.

Even before the EU Turkey Statement was published, two points had become clear: first, that Turkey would play a key role in overcoming the European refugee crisis; and secondly, that Turkey would not only invoke European solidarity, but would demand something in return. Thus, even before the EU Turkey Statement had been drafted, it was clear to everyone involved that Turkey will become a very special case in

EU's foreign relations, and that the EU Turkey Statement would be of a transactional nature.

CHAPTER 5

THE EU TURKEY STATEMENT

The EU Turkey Statement refers to a press release that the European Council published on March 18, 2016 (European Council, 2016), which now extensively shapes Turkish and European migration and asylum legislation (Kaya 2021a, 17). It is notable that the Statement has never been part of any legislative act in any of the European Union's member states' national Parliaments. On the basis of the EU-Turkey summit on March 7 and 8, 2016, and the expanded proposals made by Turkey there, the European Council unanimously voted for an EU-Turkey declaration on March 18, 2016 in Brussels (European Commission, 2016a).

A further discussion and evaluation of the statement will be done in the next chapter, while this chapter presents the main elements of the statement (see Appendix A). This chapter examines the specific nature of the EU Turkey Statement and how the EU Turkey Statement accelerated the shift in relations between the two sides from a norms-based approach to a transactional approach. For this purpose, the legal status of the statement, including the status of Turkey as a safe third country, is analyzed in detail. The financing facilities FRiT and IPA are also being examined. The primary source is the EU Turkey Statement itself, but also the country reports from the European Commission, the detailed listing of all FRiT projects, and reports from the European Court of Auditors.

5.1 The transactional character of the EU Turkey statement

The EU Turkey Statement consists of nine elements. Readmission, individual regulation, border controls, voluntary humanitarian admission program, visa

liberalization for Turkey, facility for refugees in Turkey, modernization of the customs union, revitalization of the EU accession process of Turkey and improvement of the humanitarian conditions in Syria in cooperation of the parties are the elements of the declaration, explained in this section (cf. European Council, 2016).

In detail, the following was agreed: All new “irregular migrants” who arrive on the Greek islands after March 20, 2016 and who do not apply for asylum or whose application is rejected as unfounded or inadmissible, will be returned to Turkey at the expense of the European Union. The provisions of international law and EU law should be fully complied with during deportation (European Council 2016, 1st paragraph). Once the migrants have been registered, their asylum applications are processed on a case-by-case basis; any kind of collective expulsion is contractually excluded.

Individuals applying for asylum in Greece are treated on a case-by-case basis in accordance with the requirements of EU and international law and the principle of non-refoulement (European Council 2016, 1st paragraph). There will be one-on-one interviews, individual assessments and rights of appeal. There will be no lump-sum or automatic repatriation of asylum seekers. EU asylum law allows member states, under certain clearly defined circumstances, to declare an application inadmissible and to reject the application without checking the content. There are two possible legal options for the inadmissibility of asylum applications with regard to Turkey: if the person has already been recognized as a refugee in this state or otherwise enjoys adequate protection there; or, if the person has not yet received protection in the third country, but the third country can guarantee the remitted person effective access to protection (Marx, 2016). The EU Turkey Statement assumes that Turkey can be regarded as a safe third country (Marx, 2016). However, there is wide consensus among scholars as well as experts on international and a wide spectrum of media and societies in Europe that

Turkey should not be considered a safe third country, given the geographical exclusion of the Geneva Convention.

For every Syrian who is returned to Turkey from the Greek islands, another Syrian refugee is to be resettled from Turkey to the EU according to the 1:1 resettlement rule. On July 20, 2015, several EU countries had already committed themselves to the resettlement of international asylum seekers. The remaining 18,000 places were to be made available for the resettlement of migrants from Turkey. Further needs are to be met with a similar voluntary agreement for up to 54,000 additional people. According to the European Commission, only asylum seekers that will be „protected in accordance with the relevant international standards and in respect of the principle of non-refoulement“ would be returned to Turkey (European Commission, 2016a).

Turkey will take all necessary measures to prevent new sea or land routes for illegal migration from Turkey to the EU. After the uncontrolled border crossings between Turkey and the EU have been prevented or significantly reduced, the voluntary admission of Syrian refugees should be activated (European Council 2016, number 4). Further, the two sides concluded to comply with the visa liberalization schedule in view of the lifting of the visa requirement for Turkish citizens by the end of June 2016 (European Council 2016, number 5). In close cooperation with Turkey, the EU will accelerate the disbursement of the three billion Euro already allocated in the Action Plan of November 30, 2015 under the Facility for Refugees in Turkey. The facility funds are intended to finance specific projects for refugees, in particular projects in the areas of health, education, infrastructure, food supply and other costs of living. Once that money is fully spent, another three billion euros will flow in by the end of 2018. The EU and Turkey, furthermore, welcome the ongoing preparations to modernize the customs union. The accession process will be revived with the opening of Chapter 33

(Finance and Budgetary Provisions) during the Dutch Presidency of the EU Council. The necessary preparatory work for the opening of further chapters should be accelerated. The EU and Turkey are working together to improve humanitarian conditions in Syria, particularly in certain zones near the Turkish border, so that local people and refugees can live in safer zones. The voluntary admission of asylum seekers on humanitarian grounds draws on the UNHCR's expertise in promoting various forms of international protection in states willing to accept third-country nationals they fled war and persecution in their countries of origin. The experience and expertise of the European Asylum Support Office (EASO) and the International Organization for Migration (IOM) should also be used. However, according to its own statements, the UNHCR is not a contractual partner in the EU-Turkey Agreement and in particular does not want to participate in the deportations of refugees to Turkey.

5.2 The EU Turkey statement's legal and moral character

The declaration of March 18, 2016 touches on questions of European law, international law and migration law (cf. Marx, 2016). Many lawyers, politicians and NGOs are concerned with the question of whether this is a mere non-binding political declaration or a legally binding international treaty. The willingness of the parties to be legally binding is essential for the delimitation, i.e. to what extent the European Council and Turkey wanted to be legally bound independent from the EU Turkey Statement (Herdegen, 2015). While the first paragraph of the EU Turkey Statement declares, for example, that EU law and international law are fully respected in the case of returns, there is a wide agreement, especially among NGOs and a large part of the scientific literature, that the EU Turkey Statement violates international law principles (cf. e.g.,

Marx, 2016; Gatti, 2016). However, the legal literature is mixed with the opinion that the EU Turkey Statement is legal and a “step in the right direction” (Thym, 2016).

5.2.1 The EU Turkey statement in light of European and international law principles

To start with, it can be concluded that the better arguments speak in favor of the existence of a willingness to be a legally binding agreement and that the EU-Turkey declaration can therefore be classified as an international treaty (Rohländer 2017, 86). This is supported above all by the fact that the declaration has a new, different legal character compared to the cooperative measures taken previously. In particular, the 1:1 compensation mechanism and the assumption of payments by the EU in return for the readmission of all "irregular" migrants create mutual obligations and can only function with a reliable, legally bound partner (Rohländer 2017, 86). However, Article 218(6)(a)(v) TFEU actually requires the approval of the EU Parliament for agreements in areas that relate to the ordinary legislative procedure. Since this procedure is intended under Article 78(2)(g) TFEU for measures relating to cooperation with third countries to control the influx of people seeking protection, any kind of readmission agreement can only be concluded with the participation of the EU Parliament (Gatti & Ott, 2016). For this reason, the executive adoption of the EU Turkey Statement, which was concluded without parliamentary participation, violates the institutional balance between the European Council and the EU Parliament. It can be suspected that ambiguous formulations within the statement were intentionally used to conceal a legally binding effect and to circumvent the procedure under Art. 218 TFEU (Gatti & Ott 2016, 83).

About the compatibility of the EU Turkey statement with the primary law of the EU, there are doubts regarding the EU's Charter of Fundamental Rights (CFR), in

particular Art. 4 and 19 CFR. According to Art. 6 (1) TEU in conjunction with Art. 51 (1) CFR, the bodies of the EU are bound by the CFR when concluding an international treaty. The ECJ – like the ECtHR – has already set clear limits to the transfer in the Dublin procedure. It is incompatible with the CFR if there are systemic deficiencies in the asylum procedure in the country of transfer that represent serious and factually confirmed reasons for the assumption that the person to be transferred is at real risk of inhuman treatment within the meaning of Art. 4 CFR as well as Art 3 ECHR (European Court of Justice, 2011). Systemic deficiencies can be caused by weaknesses inherent in the asylum system itself, which predictably and regularly affect those seeking protection (cf. Administrative Court Mannheim, 2014). A first structural deficit of the Turkish asylum system is that a protection status corresponding to the Geneva Refugee Convention is only applied to European refugees. Secondly, the Turkish asylum system is overburdened which can be demonstrated by the opening of the border for refugees in March 2020, and earlier by an investigation conducted by the German Institute for Human Rights from 2014, which states that there are systematic and serious deficiencies in the Turkish migration management system (Follmar-Otto, 2014).

The EU Turkey statement also states that all asylum applications processed by the Greek authorities will be evaluated on a case-by-case basis, in accordance with the Asylum Procedures Directive. Nevertheless, according to Article 19(2) of the CRSR, there is an individual ban on deportation, expulsion and extradition in line with Article 3 of the ECHR if there is a risk of death penalty, torture or other inhumane punishment for the person concerned in the country of destination (Rossi, 2016). Accordingly, as part of the EU Turkey Statement, in the case of a return from Greece, it must be checked whether the deportation to a third country is to be expected, where there is a real risk of treatment incompatible with Art. 3 ECHR (Zimmermann & Elberling,

2013). In fact, after the EU Turkey statement was published, deportations from Turkey to Iraq or Afghanistan were documented (Amnesty International, 2016). In October 2016, Presidential Decree 676 even expanded the possibility of deportations (Presidency of the Republic of Türkiye, 2016). Since then, a decision to deport a person can be issued at any stage of the application for international protection, or after protection has been granted, if the applicant is convicted of membership of a terrorist organization, [or being] a threat to public order or security (Presidency of the Republic of Türkiye, 2016). According to the decree, no court decision is necessary to trigger the deportation order. Only after a ruling by the Constitutional Court in 2019, this exception had been reversed (Asylum Information Database 2020, n. p.). Adding to this, a long list of at least 26 security markings, so-called "codes", were introduced (Asylum Information Database, 2020; see Appendix B). These are issued by the General Directorate for Migration Management (DGMM). Neither this list itself nor its application are regulated transparently. NGOs report that refugees often learn by accident that a code from this list has been applied to them (Marx, 2016). Deportations on grounds of public order, public security [code G82], and public health [code Ç116] have reportedly been linked to the use of the codes. Other examples of restriction codes are: work permit - other activity [code N99], return from Greece [code V89] or illness [code G78].

5.2.2 The debated concept of Turkey as a safe third country

A safe third country is a term regulated in Art. 38 of the European Union's Asylum Procedures Directive (European Parliament and Council of the European Union, 2013), and is defined as a country where life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group of the preceding or political opinion; where there is no risk of serious harm, as also defined in Directive

2011/95/EU (European Parliament and the Council of the European Union, 2013); where the principle of non-refoulement in accordance with the Geneva Refugee Convention and 1967 Protocol is respected; the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Refugee Convention and Protocol (European Parliament and the Council of the European Union, 2013).

The concept of the safe third country aims at those refugees who could have found protection in a third country while transiting. However, Turkey has ratified the Geneva Refugee Convention with the regional limitation. It is also necessary to comply with the prohibition of refoulement under the Geneva Refugee Convention and the ECtHR. In addition, those seeking protection must have the opportunity to apply for refugee status and receive refugee protection under the CRSR. In comparison to the principle of safe European third country, the unconditional ratification of the CRSR is not mentioned here. On the other hand, there is an additional requirement that neither refugee nor human rights-related dangers may exist in the country concerned. In the case of the EU Turkey Statement, the Greek legislative body assured that Turkey meets these criteria both legally and factually (UNHCR 2016). However, the geographic reservation alone speaks against guaranteeing refoulement protection in the sense of the CRSR in Turkey (Marx, 2016). The European Commission and the research service of the German Bundestag see it differently, who consider classification as a safe third country to be legally justifiable if the ban on refoulement is effectively guaranteed despite the reservation, whereas many scholars summarize in detail numerous

significant violations of the principle of refoulement by Turkish authorities (Dutch Council for Refugees, 2016).

5.3 The facility for refugees in Turkey as a further emphasis of transactionalism

5.3.1 The special design of the facility

The Facility for Refugees in Turkey (FRiT) precedes the EU Turkey statement as it was being implemented as of November 2015 (European Commission, 2015), and remains a key component of the 2016 EU Turkey Statement, marking a significant scaling-up of financial EU support to refugees in Turkey (European Commission, 2022). At the same time, as is going to be shown in this chapter, the FRiT is another sign of transactionalism in the relations between the EU and Turkey.

The Facility for Refugees in Turkey as the core of the payment agreement from the EU Turkey Statement and a further argument for how the EU externalizes its migration policy, how Turkey for its part europeanizes its migration policy, and ultimately also an example of how transactional relations between the two sides have become. Turkey follows EU norms and principles and financial regulations which are well established, even though Turkey is not even an EU member.

The funds of the Facility for Refugees in Turkey are divided into humanitarian actions and development actions. Projects that fall under Humanitarian Actions are divided into Protection, Health, Basic needs, Education, Administrative Expenditure and Technical Assistance. Projects falling under Development Actions are divided into Protection, Health, Socio-economic support, Municipal infrastructure, Education

infrastructure, Education, Monitoring and Evaluation, Audit, Communication and Administrative Expenditure.

When the Facility was created, European institutions sent out various press releases (e.g., European Commission, 2015; Council of the European Union, 2016). A cursory reading of these press releases could leave the reader with the inaccurate impression that the money was going to be given directly to the Turkish government. In a European Commission press release from 24 November 2015, it is being stated that a “... €3 billion Refugee Facility for Turkey” is in the making, while a European Council press release from 24 November 2015 states that it provides money to Turkey, not to organizations who have projects in this country (European Commission, 2015). European media outlets turned to the press release as primary information source for reporting news on the EU Turkey statement, and announced themselves that Turkey would receive three billion Euro and “political concessions” (BBC, 2016), or that the EU had promised Turkey three billion Euro (Deutsche Welle, 2016).

The way the initial facility funding mechanism is structured contains several implications: First, the full disbursement of funding will actually be slower than the time frame suggests. Adding to this, funding for new projects is privileged over support for pre-existing infrastructure. Furthermore, governmental, non-governmental and inter-governmental organizations all compete for facility funding. Yıldız (2016, 123) describes FRiT as an elementary part of the externalization of the EU's immigration policy, which has clearly picked up speed since the 2000s.

The European Commission informs through an Internet article (European Commission, n.d. n), a Facility Table (European Commission, 2022a), a Facility Results Framework Monitoring Report (European Commission, 2021a), a Strategic Mid-Term Evaluation of the Facility for Refugees in Turkey (European Commission, 2021b) and

an Annual Report on the Facility for Refugees in Turkey (European Commission, 2021c) regularly about the cash flows. In these documents, above all, the success of the facility is emphasized. The first tranche of the Facility for 2016 and 2017 includes funding of three billion euros. Two billion of this is financed by national contributions from individual EU member state budgets while the remaining 1 billion Euro is financed via the EU budget. While the three billion Euro facility must be contracted within the 2 year period of 2016 and 2017– meaning that contracts for projects must be signed and funds earmarked within this timeframe – the actual disbursement of funds might extend over a longer period (Reno, 2017).

The facility focuses on humanitarian aid, education, migration management, health, community infrastructure and socio-economic support. The Facility for Refugees in Turkey had been established by means of the Commission Decision of 24 November 2015, amended on 10 February 2016, and again on 14 March and 24 July 2018. The money comes from both the EU budget and the member states, which are integrated into the EU budget as “external assigned revenue” (European Commission, 2016b). According to the documents, Turkey must give the European Commission a need assessment document, submitted by the Turkish Vice President’s Office, in which the Turkish side assesses the priorities of the Financial assistance, e.g., schools or hospitals in certain Turkish provinces. Following this, the European Commission’s Directorate Generals ECHO and NEAR organize the distribution of the money. Once this has been decided, the European Commission issues calls for proposals. The only parliamentary control of FRiT is done through the general EU budget, as the European parliament, like the European Council, is part of the budgetary authority of the EU. When the European Commission submits a proposal for financial decisions, it must be sent to approval. However, there is no ex-ante control on the allocation of funds.

The Facility coordinates financing through humanitarian aid (Council Regulation, 1996), the European Neighborhood Instrument (Regulation of the European Parliament and of the Council, 2014c), the Development Cooperation Instrument (Regulation of the European Parliament and of the Council, 2014d), the Instrument for Pre-accession Assistance (European Parliament and Council of the European Union, 2014a) and the Instrument contributing to Stability and Peace (Regulation of the European Parliament and of the Council, 2014).

The funding of the Facility is managed by a Steering Committee, chaired by the European Commission, and composed of EU Member State representatives, with Turkey sitting in an advisory capacity, that meets periodically to decide how to distribute funds (European Commission, 2022a). Organizations have to compete to propose projects to the steering committee to receive Facility funding. The total amount was divided into two tranches. By April 2022, all operational funds have been committed and contracted and over 4.3 billion Euro disbursed (European Commission, 2022a). The funds came from the EU budget and contributions from Member States (Reno, 2017).

As early as 2018, the European Court of Auditors (ECA) found that the Facility for Refugees in Turkey had quickly mobilized three billion euros in a challenging environment to react quickly to the refugee crisis. Despite this, it has not fully achieved its goal of effectively coordinating this response. The audited projects provide helpful support for refugees. Most of them have achieved their results, but half of them have not yet achieved their expected results. In addition, the ECA has identified room for increasing the efficiency of cash assistance projects and concludes that the facility could be more effective and achieve better value for money (European Court of Auditors, 2021).

The ECA also mentions disagreements between the European Commission and Turkey on how to meet the need for municipal infrastructure and socio-economic support. Therefore, from the point of view of the ECA, these areas were insufficiently covered. Supporting similar activities in health and education through different instruments made coordination more complex and led to the parallel use of different administrative structures to fund similar projects. There were good examples in the health sector where the Commission supported the transition from humanitarian to longer-term development aid, but this was not done systematically. The auditors also found room for improvement in the efficiency of the humanitarian projects: the Commission did not consistently and comprehensively assess the reasonableness of the estimated costs. Indirect costs paid to partners running large cash assistance projects were high and upfront payments did not match actual cash outflows. This shows the hectic nature of the EU Turkey Statement.

The Strategic Mid-Term Evaluation of the Facility for Refugees in Turkey 2016-2019 and 2020 find that, while FRiT has made „a significant contribution to the welfare of Syrians and others fleeing conflict in the region in areas such as health, education, protection and socio-economic support [...] the EU needs to do more to mitigate social tensions for refugees, including developing a social cohesion strategy. [...] It also states that the Facility's set-up as a coordination mechanism of financial instruments had limitations regarding strategic coherence“ (European Commission, 2021b).

The Commission has taken appropriate measures to monitor humanitarian projects. The biggest limitation was the Turkish authorities' refusal to provide access to beneficiary data for the two cash assistance projects. The European Court of Auditors had to conclude that neither the auditors nor the Commission's services managed to trace the project beneficiaries from registration to payment.

In particular, the auditors recommend that in the future the European Commission better respond to the needs of refugees for municipal infrastructure and socio-economic support, develop a strategy for the transition from humanitarian to development assistance, improve the efficiency of cash assistance projects, work together with the Turkish authorities addressing the need to improve the operating environment for NGOs and improve monitoring and reporting on the Facility for Refugees in Turkey (European Commission, 2021c).

While there was no change in the categorization of the humanitarian actions between the first and second tranche, there were more categories in the first tranche of the development actions; in addition to those mentioned, these were also migration management and higher education.

There are also differences between the first and second tranches when it comes to the implementation organizations. In the first tranche, humanitarian actions include numerous NGOs and UN organizations, including United Nations International Children's Emergency Fund, World Food Program, World Health Organization, and the International Organization for Migration, as well as the Danish Refugee Council, Diakonie, Deutsche Welthungerhilfe and Médecins du Monde. The development actions of the first tranche also include a large number of different non-governmental and governmental organizations, including United Nations International Children's Emergency Fund, World Health Organization, UN Development Network, UN Women, World Food Program (WFP) and Gesellschaft für Internationale Zusammenarbeit (GIZ), the Union of Chambers and Commodity Exchanges of Turkey (TOBB), Danish Red Cross, as well as the Turkish Ministry of Health, Kreditanstalt für Wiederaufbau (KfW), and World Bank (e.g., European Commission, 2022a). In the second tranche, it is noticeable that the World Bank accounts for a significantly larger budget item for

Development Actions. It is noteworthy that in the second tranche, the Turkish Ministry of Health was awarded 210,000 million Euro as a direct grant, which has never been publicly explained in detail (European Commission, 2022a).

The WFP received 348 million euros in the first tranche and another 650 million euros as a follow-up for the ESSN project, which are fully committed, contracted, and disbursed. In total, this results in a total of 998 million euros. In the second tranche, a grant under the keyword C-ESSN in the amount of 245 million euros went to the Turkish Ministry of Family, Labor and Social Sciences, of which 245 million euros were contracted and 98,137,675 euros were disbursed. The website of the Turkish Crescent Society Kizilay explains that the "C" stands for "Complementary" and that this project is funded by the European Union and implemented by the Ministry of Family, Labor and Social Sciences and the Turkish Red Crescent (Kizilay, 2021). This is a payment from Directorate-General for European Neighbourhood Policy and Enlargement Negotiations (DG NEAR) to the Ministry of Family and Social Services (MoFSS; European Commission, 2022a). According to unofficial background information from Brussels and Ankara, it has long been a strategic goal for the EU to see part of the program taken over by the Turkish Ministry of Finance (Demircan, 2019). The EU, in that case, would be able to emphasize that the focus is now on "development" instead of "humanitarian help", although the same people are being supported as before under the keyword "humanitarian help".

In addition, in the second tranche, there is a grant for ESSN to the WFP in the amount of 357.8 million euros, of which 354,966,886 euros have been contracted and 332,500,000 euros have been disbursed to date. Another grant of 500 million euros for ESSN went to IFRC, of which 500 million euros were contracted and 490 million euros

were disbursed. Overall, this results in a total of 1102.8 million euros, which, unlike in the first tranche, has been divided between three implementation companies.

Overall, the Turkish state, in the form of the Turkish Ministries of Health and Ministry of National Education as well as the Turkish Directorate General for Migration Management (DGMM), received a total of 660 million euros in the first tranche. In the second tranche, the Turkish state received a total of 875 million euros in the form of the Ministries for National Education, Ministry of Health and Ministry of Family, Labor and Social Services. This is an increase of 215 million euros.

After the first day of the EU Leaders' Summit in Brussels 24 June 2021, the European Commission announced that it has adopted a number of conclusions on Turkey, among others the start of work at technical level towards a mandate for the modernization of the EU-Turkey Customs Union, even though the EU Turkey Statement had an EU pledge for a modernization of the Customs Union which had not been put into effect by Brussels on the grounds of Erdoğan's harsh treatment of the opposition in domestic politics (European Council, 2021a). Angela Merkel, then Federal Chancellor of Germany, has stated that the EU Commission submitted a report on how the migration deal with Turkey, which was signed in 2016, can be extended. She has said that it was agreed with additional funding of three billion Euro and linked this with improvements in the situation in the Mediterranean (Bundesregierung, 2021).

On 22nd December 2021, The European Commission has adopted two financing decisions to support the education of refugees in Turkey and ensure their access to higher education as well as for migration and border protection. The funding which amounts to 560 million Euro, according to a statement by the EU, is to be given as part of an additional 3 billion Euro announced by the European Commission in June 2021 to

prolong EU financial assistance to refugees in Turkey for the period of 2021-2023 (European Commission, 2021d).

5.3.2 Social assistance programs as part of FRiT

The Emergency Social Safety Net (ESSN) is a central social assistance program for refugees in Turkey and was and is financed within the framework of the program. The ESSN Programme is jointly implemented by Türk Kızılay, the Ministry of Family and Social Services (MoFSS) and the International Federation of Red Cross and Red Crescent Societies (IFRC), funded by the European Union Civil Protection and Humanitarian Aid (ECHO) and supported by the General Directorate of Population and Citizenship Affairs (GDPCA) and the General Directorate of Migration Management (DGMM). It is a money card system that provides cash to vulnerable people living outside refugee camps (e.g., Kizilay, 2021). According to the TRC, 1.8 million people, around 50 percent of all refugees, benefited from the ESSN program as of January 2022. Other programs include: Conditional Cash Transfer for Education (CCTE); PIKTES “to improve integration and access to quality education for Syrian children”; SIHHAT a project "to facilitate specialized support services such as mental health and psychosocial support, physiotherapy and rehabilitation and the integration of protection services within the 'migrant health centers" "and various construction projects. Kizilay (2021a) has listed the criteria for benefiting from the ESSN, including its shares in the beneficiaries (as of April 2021): households with four or more children (41.3 percent), households with high dependency ratio (26.5 percent), households with single caregiver and children under 18 years old (13.7 percent households with one or more individual with a disability (9.3 percent), single female (5.1 percent), elderly people above 60 years old with no other adults in the household (1.4 percent).

The monthly donation had initially been decided to be 120 Lira per family member which is loaded onto a cash card called Kizilay Kart. The program was designed to support foreigners living in Turkey under three statuses identified under the Law on Foreigners and International Protection No. 6458: Temporary Protection, Humanitarian Residence Permit or International Protection. The social transfers via the Kizilay Kart have existed as cooperation between WFP and TRC since 2012 as a food e-voucher program for Syrian civil war refugees in refugee camps (Kizilay 2021, n.p.). In 2015, the program was further developed to include refugees outside of camps, including as part of the EU-Turkey Joint Action Plan, thereby extending the externalization of EU migration policy to people seeking protection outside the EU and outside of special camps. Since the program was implemented, it has been carried out as a cooperation between WFP and TRC. Since April 2020, the IFRC has taken over the part from the WFP. However, the purchasing power of this transfer payment has drastically reduced during several economic crises in Turkey. 120 Turkish Liras were worth around 40 Euros at the start of the ESSN program in April 2016, after the start of the program; in 2019, however, the converted sum was just under 19 euros. In the summer of 2020, the value was increased to 155 Turkish lira, and thus the equivalent was raised from back-then 15.60 euros to 20.15 euros. In January 2022, 155 lira has an equivalent value of 10.13 euros. The annual inflation rates in Turkey in those years were 7.78 percent (2016), 11.14 percent (2017), 16.33 percent (2018), 15.18 percent (2019), 12.28 percent (2020) and in 2021 it was 16.98 percent (Statista, 2022).

5.3.3 Pre-accession assistance is being used for externalization purposes

It is noteworthy that Instrument for Pre-accession (IPA) budgets, which had been partially suspended after 2017 (Delegation of the European Union to Turkey, 2020) due

to criticism about the freedom of speech, human rights, and its drifting away from European democratic standards, are used for both the first and second tranche of FRiT, although this was ruled out in advance (cf. e.g., Reuters, 2017). As described in the previous chapter, IPA serves to make it easier for EU accession candidates to join the European Union or to achieve the EU *Acquis*.

According to the European Commission, IPA budgets are mostly used for institution building, Cross-border operations, regional development, human resources, or rural development. Migration has only become part of the third tranche, called IPA III (DG NEAR n.d., 1294).

In Turkey, IPA grants are implemented through the following programs: Environment Operational Program (EOP), Transport Operational Program (TOP) and Regional Competitiveness Operational Program (RCOP). Although none of these programs are related to minimizing or managing migration flows, FRiT includes several projects funded by IPA funds. A total of 1.298 billion euros was spent in the first tranche as part of the "IPA Support Measure (May 2017)", "IPA Special Measure 2 (April 2016)" and "IPA Special Measure 3 (July 2016)" and an "IPA Administrative Expenditure". In the second tranche, as part of the "Instrument for Pre-Accession Assistance (IPA) Special Measure 2019 on health, protection, socio-economic support and municipal infrastructure" and the "IPA Special Measure on Education 2018", the "IPA Support Measure 2019" and an "IPA Administrative Expenditure" awarded a total of 1.924 billion euros. These funds come from IPA budgets.

5.3.4 The second tranche of FRiT and Turkey's transactional approach

Under pressure from Ankara, the EU has changed the conditions for releasing the funds for a large part of the second tranche in such a way that several European and UN

organizations get receive less money, instead Turkey benefits from bigger grants (Demircan, 2019). Turkey is getting better conditions for paying the second, larger tranche of the refugee pact. When the first three billion euros from the refugee pact were distributed, United Nations organizations such as Unicef or the World Food Program still managed two-thirds of the total budget. The international community thus controlled the use of these funds. In the negotiations on the second three billion tranche, the Turkish government "expressed its desire to take on more personal responsibility", the German government confirmed in its answer to a parliamentary inquire (Die Linke, 2019). According to the German governments reply, in the first tranche around 660 million euros "were provided for basic needs within the framework of immediate humanitarian aid (ministry of family and health)", in the second tranche it is already 955 million euros. But in the first tranche, the UN's World Food Program was responsible for the project, set up structures and gave the program a professional and independent look (Deutscher Bundestag, 2019). Now these funds are given directly to the Turkish Ministry of Family Affairs. It is therefore not clear whether the project-related allocation of funds can still be monitored by the donors. Another part of the answer is interesting: According to this, around 255 million of the almost billion will flow into a budget for the "Emergency Social Safety Net", i.e. social assistance for refugees who are particularly needy. The Handelsblatt Newspaper had also reported on new allocation rules, through which practically all UN organizations are out of the refugee pact when applying for project funds (Demircan, 2019).

This is because the EU has set a four percent upper limit for administrative costs in the most recent tenders for project funds. However, UN groups such as Unicef or WFP must set a target of six to seven percent. This is stipulated in its statutes, which has been approved by all UN member states. The German development agency GIZ had

also received nothing so far (Handelsblatt 2019, no pagination). The organization applied with a project application as part of the EUR 1.4 billion tender but was not awarded the contract. According to the EU budget regulation, the EU Commission is entitled to set a quota of up to seven percent. But in its most recent tender, which is available to the Handelsblatt, it has set a maximum quota of four percent. The article continues saying: "The federal government has advocated the application of the usual flat-rate administration fee to meet international standards, transparency and planning security." The federal government also stated that the EU Commission had "proposed a return to the usual percentage" for the future.

But until then, the Turkish state can reach out. In a list by the EU Commission on the specific allocation of funds to various "implementing organizations", which had been obtained by Handelsblatt Newspaper (last update of the list: September 30, 2019), an item in the amount of 500 million euros was recently contractually fixed. The recipient is the IFRC. This is the largest sum awarded to a single organization in the second tranche. Kerem Kinik, President of the Turkish Red Crescent, sits on the executive committee of the umbrella organization IFRC. From the first tranche, the IFRC received only 17 million euros in project funds.

CHAPTER 6

THE IMPLEMENTATION OF THE EU TURKEY STATEMENT

The EU regularly argues that the EU Turkey Statement has been a success (e.g., European Commission, 2019, 2020, 2021a, 2021b, 2021e), especially with regards to the diminution of migratory flows arriving to Europe via Turkey, fewer deaths at sea and the full mobilization of the promised six billion Euro. It also underlined that the EU Turkey Statement has become the key framework for EU-Turkey cooperation on migration, saying among others that “[t]he March 2016 EU Turkey Statement continued yielding results and remained the key framework governing cooperation on migration despite Turkey’s repeated calls to update the Statement” (European Commission, 2021e). Turkey, on the contrary, has been increasingly critical of the outcomes of the statement, accusing the EU of not keeping its promises and frequently asked to update it, a request, which remains unaddressed by Brussels until today, shown in the continuation of the aforementioned quote (European Commission 2021e, no pagination). NGOs have been equally critical but because of the consequences of the EU Turkey Statement on refugees’ rights and have repeatedly pointed out to the lack of compliance of the EU Turkey Statement with key international human rights instruments (Human Rights Watch, 2016a).

Considering this criticism, the overall success of the EU Turkey Statement is to be nuanced or at least questioned. First, one may ask how to measure the success of a policy. McConnell suggests that a policy is deemed successful if it reaches the goals that stakeholders set out to achieve while it draws no criticism, or support is virtually universal (McConnell, 2010). Furthermore, a policy can be considered a political success if it helps a government’s “electoral prospects, reputation or overall governance

project” (McConnell, 2010, 574). A policy is successful if it is acceptable according to some norm, principle or value held by the public opinion (Kerr, 1976).

Furthermore, a policy is successful when the costs of implementing it is acceptable (cf. Baldwin, 2000). Policy success should be considered over time as short- and long-term impacts become clear (Bovens and Hart, 1996). Other scholars also pointed out that the EU Turkey Statement performance matters only partially as performance is measured only partially, and these measures are often instrumentalized by political leaders, that migration cooperation governance like the EU Turkey statement is implemented by a complex web of actors, that it occurred in a situation of crisis in which leaders had to act promptly, that it was negotiated in a politicized context amid deteriorating relations between the two sides, and that the actors and stakeholders of the EU Turkey Statement held contradictory goals, underlining the transactional idea of the statement (Tantardini and Tolay, 2019). It is also important to bear in mind that the variety of actors involved in the EU Turkey Statement, when the latter was formulated and developed, had different goals, which makes the assessment of its performance more difficult, as for what some people may consider a success (for example reduced arrivals) may look like a failure for others (refoulement; Tantardini and Tolay 2019, 7-9):

The success of the implementation of the EU Turkey Statement can be first assessed with regards to the listed objectives detailed in the previous chapter it sought to achieve (European Council, 2016). This chapter will classify these objectives into two categories: the migration related elements and the non-migratory ones. While the first category is claimed to have been fully or partially achieved in a medium turn, in the EU’s main benefit, for the second one (re-energizing the accession process, deepening EU-Turkey relations, granting visa liberalization for Turkey, work on the upgrade of the

customs union), which were demanded by Turkey, the work towards these objectives have been either put on hold or have been unsuccessful. This chapter will discuss the asymmetrical success with regards to the different objectives of the statement at the expense of Turkey as well as its nuanced success claimed by the EU.

6.1 The migration-related elements of the statement

When it comes to the migration management objectives of the EU Turkey Statement as well as the financial assistance mobilized by the EU for the refugees in Turkey, the positive outcomes seem at first sight more tangible. The first objective of the statement was to rapidly diminish the numbers of arrivals from Turkey to Greece. In 2015, UNHCR concluded that over 800,000 refugees and migrants came via the Aegean Sea from Turkey into Greece, amounting to 80 per cent of the people arriving irregularly in Europe by sea that year (UNHCR, 2022). Following the entry into force of the EU Turkey Statement, the number of arrivals dropped as only 26,000 refugees and migrants arrived on the Aegean islands in the 12 months after (UNHCR 2022, no pagination).

This led the European Commission in its second progress report on the implementation of the EU Turkey Statement to conclude that The sharp decrease in the number of irregular migrants and asylum seekers crossing from Turkey to Greece is “proof of the Statement's effectiveness – and in particular, that the business model of smugglers can be broken” (European Commission, 2016c). Further, it states that “The clear message to migrants is that getting on a boat in Turkey, and endangering lives in the process, is not worth the risk given that there is a legal and safe pathway through resettlement” (European Commission, 2016c).

However, many scholars have questioned these numbers arguing that they should be nuanced and placed into a broader context. They notably underlined that the

decrease in arrivals is also due to the fact that the Statement was agreed in winter, when fewer migrants risk embarking on a dangerous journey, and to the gradual closing of the Western Balkan route between November 2015 and March 2016 (Spijkerboer, 2016). They also argue that the decrease in arrivals can also be explained by the fact that most people had left Syria before the EU Statement was introduced (cf. Alpes et al. 2017, 8), this means that this reduction of arrival cannot be justified only by the EU Turkey Statement. Therefore, while it is one of the most praised outcomes of the Statement by the European Commission, the decrease on the number of irregular arrivals via sea to Greece, cannot be explained solely as a direct result of the implementation of the EU Turkey Statement.

6.2 The non-migratory elements of the statement

While initially presented as a multi-dimensional agreement, ranging from accession to migration management, it turned out that the non-migratory elements have been unsuccessfully implemented. The European Commission issued seven stand-alone reports on the progress made in the implementation of the EU Turkey Statement, covering all the elements of the statement. These reports have been integrated later in the Progress Report on European Agenda on Migration. While the Commission reported on the progress with regards to the upgrade of the customs union or accession in the stand-alone progress reports, it excluded these objectives of the EU Turkey Statement when reporting in the European Agenda on migration. By excluding progressively these key elements, which matter especially for Turkey, the Commission suggests that no progress has been achieved towards these objectives nor is to be expected, therefore undermining the EU Turkey Statement and what was agreed with Turkey.

The Commission's first progress report on the implementation of the EU Turkey Statement listed progress made on chapters 33, 15, 23, 24, 26 and 31 of the accession negotiations agreement. However, it already underlined in this first report that "the EU expects Turkey to respect the highest standards when it comes to democracy, rule of law, respect of fundamental freedoms, including freedom of expression" (European Commission, 2016d). The next reports reiterate this wording, and following the attempted coup in July 2016 the third progress report states that "in the key areas of the judiciary and fundamental rights, and justice, freedom and security (Chapters 23 and 24), the Commission is updating the documents to take account of the latest developments" (European Commission, 2016e). Gradually, the progress reports become increasingly brief and repetitive on the accession process, until the seventh progress report concludes that within the framework of accession negotiations, 16 chapters had been opened so far and only one of these had been provisionally closed. No meetings took place in the reporting period. Given that the Council took the decision in June 2018 neither to open any new chapter for accession nor to pursue the work on the update of the customs union, both the objective of re-energizing Turkey accession negotiations, and to upgrade the customs union cannot be said to have been achieved. Therefore, the success of the EU Turkey Statement is already undermined by the lack of progress on these key objectives. For Turkey, these non-migration-related objectives are crucial and without these included in the statement, Turkey may have not agreed to the EU Turkey Statement in the first place. It is worth noting that the unaddressed objectives of the statement are those which were of higher importance for Turkey.

On 1 October 2020, the European Council in an attempt to re-energize EU-Turkey relations following the de-escalation of tensions in the Eastern Mediterranean, agreed to launch a positive political EU-Turkey agenda which foresees the

modernization of the Customs Union and trade facilitation, people to people contacts, High level dialogues. The European Council also agreed to continue cooperation on migration issues, in line with the 2016 EU Turkey Statement (European Council, 2020). So far, only technical discussions were held in the relevant working group of the Council and no real progress has been achieved for the upgrade of the customs union.

The progress on visa liberation, which was, according to the EU Turkey statement itself an provided all benchmarks being met, would have been granted by June 2016 at the latest (European Council 2016, number 5), has not been achieved and seems to be currently on hold. The EU launched the Visa liberalization Dialogue with Turkey on 16 December 2013, prior to the EU Turkey Statement with the objective to make progress towards the elimination of the visa requirement currently imposed on the Turkish citizens traveling to the Schengen area for a short-term visit. The Visa liberalization Dialogue is based on the Roadmap which sets out the requirements that Turkey needs to meet to enable the European Parliament and the Council to amend Regulation (EC) No 539/2001. It would allow Turkish citizens holding biometric passports that are in line with EU standards to travel to the Schengen Member States without a visa for short stays and allow citizens of those EU Member States that still need a visa for short stays to enter Turkey to travel visa-free. As of March 2020, EU nationals of Belgium, Austria, the Netherlands, Poland, and Spain must apply for a visa before visiting Turkey (Ministry of Foreign Affairs of the Republic of Türkiye, 2020). The Roadmap comprises 72 benchmarks of which Turkey has so far fulfilled 66 (e.g., European Commission, 2016f). Since the launch of the visa liberalization roadmap, the Commission issued three reports on progress by Turkey in fulfilling the requirements (European Commission, 2016g). The last one dates back to May 2016 and since then, no progress has been made fulfil the remaining benchmarks and the Commission only

briefly mentioned in its latest annual report on Turkey that “no outstanding visa liberalization benchmarks were fulfilled and that Turkey still needs to further align its legislation with the EU *Acquis* on visa policy (Turkey Report, 2021). More specifically, the remaining 6 criteria require to cooperate with Europol, amend the anti-terror law and protection of personal data in line with the EU *Acquis*, increase in fight against corruption, ensure judicial cooperation in civil and criminal matters with all EU Member States (therefore including Cyprus) and implement of the Readmission Agreement for third country nationals (Turkey Report 2021, no pagination).

The reform of the legal framework regarding organized crime and terrorism in line with the ECHR has been one of the most significant obstacles in EU-Turkey relations, as it is a benchmark in both the visa liberalization dialogue and Turkey’s EU accession process. Unless Turkey adopts a real shift in its policy and aligns its legislation with the EU’s recommendation, no progress can be expected with regards to visa liberalization, making one of the key elements of the EU Turkey Statement realistically unachievable in the near future. It is worth noting that, visa liberalization has been included in the so-called positive agenda offered by the European Council in October 2020, reinforcing the feeling that no progress has been made between 2016 and 2020.

While the EU Turkey Statement has been presented as a major success by the EU (cf. e.g. European Commission 2016d, 2016e, 2016f, 2016g, 2016h, 2016i, 2016j, 2017, 2018, 2019a, 2020b, 2021c), others have put forward several aspects and arguments to nuance such assumption, in particular with regards to the unfulfilled commitments Turkey expected from the EU with regards to the non-migration related elements of the statement. Even more importantly, the EU Turkey Statement has shown, how easily norms and values can be bent and, in some cases, disregarded when the

political willingness is directed towards other objectives deemed more important. While the EU has ignored its very own norms and values it is supposedly founded upon, the EU Turkey Statement has given way to further transactionalism in EU-Turkey relations as the next chapter will explain as well as the broader consequences the EU Turkey Statement bears on the overall relation.

6.3 A failure of EU's claimed norms and values approach

It is helpful to remember Article 2 of the Treaty of the EU, which states that the EU is "founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (European Union, 2017). All EU Member States are signatories of the Geneva Convention and implemented it through national legislation. The EU is also the only organization that has adopted in 2005 (and updated in 2009) guidelines on promoting compliance with International Humanitarian Law. Furthermore, the EU Member states are also bound to abide by Article 18 of the EU Charter of Fundamental Rights and Article 14 of the Universal Declaration of Human Rights in protecting the 'right to seek asylum'.

However, the compatibility of the measures foreseen under the EU Turkey Statement with international and European refugee law and human rights law standards has been immediately questioned and criticized by scholars and civil society organizations (Gatti & Ott, 2016; Marx, 2016). According to Human Rights Watch, the EU Turkey statement represents "a disturbing disregard for international law covering the rights of refugees, asylum seekers, and migrants" as Human Rights Watch Executive Director Kenneth Roth argued in a letter addressed to EU heads of state or

government on the eve of the announcement of the EU Turkey Statement (Human Rights Watch, 2016b).

The process of institutionalization of human rights frameworks is implemented through governments who commit themselves to abide by international human rights norms due to the underlying values they convey and their overpowering ideological and normative appeal (Moravcsik, 2000, 223).

In the specific context of EU-Turkey relations, one must bear in mind that Turkey remains a candidate country. The EU uses norms institutionalization as a principle of conditionality, according to which the EU resort to human rights norms and liberal democratic principles as conditions both for EU membership and when negotiating agreements with third countries (Schimmelfennig 2005). However, with regards to the elaboration and implementation of the EU Turkey Statement, the EU resorted to a more pragmatic interpretation of the norms and values it claims to be based on. The EU Turkey Statement therefore illustrates the argument that norm emergence is closely interrelated to rational game theory, and social strategic decision making, in which norms are carefully chosen because deemed to be useful to reach certain objectives (Finnemore & Sikkink, 1998). Van Kersbergen and Verbeek (2007, 218) argue that even though the EU is both a supranational and an intergovernmental actor, mechanisms to enforce norms in the EU remains confronted to a dilemma which regularly opposes political pragmatism over norms. However, NGOs and non-state actors have questioned this finding and dismissed Turkey being a safe third country, thus urging the EU to comply more effectively with human rights norms.

When criticizing the EU Turkey Statement, NGOs directly refer to the EU's normative fundamental principles and the EU long history in its commitment to international law and human rights on which many of its policies have been based on.

They see the EU Turkey Statement not only as a missed opportunity for the EU to show its leadership on migration by adopting policies that uphold its founding values, it undermines these very same principles (Lovett et al., 2017).

While the urgency of the migration crisis has been used to justify the hasty elaboration of the EU Turkey Statement, one could argue based on NGOs heavy criticism and the consequences of the EU Turkey Statement on refugees and asylum seekers' rights, that human rights norms and standards are not resilient in times of 'crisis' in the EU and are easily sacrificed for pragmatism. Norms gradually shift, undergoing normative changes, as laws and contexts are amended and reformulated following tactical concessions and strategic decision making in response to perceived crisis conditions.

Such paradoxical situation has eroded the EU's credibility regarding its status as a normative actor. The EU Turkey Statement has been perceived by the public opinion as a blackmail operation imposed by Turkish President Erdoğan in which people can be traded for money and/or for other people. The EU offered a substantial financial assistance to Turkey in exchange of hosting refugees.

CHAPTER 7

THE IMPACT OF THE EU TURKEY STATEMENT ON EU-TURKEY RELATIONS

When it comes to EU-Turkey relations, scholars divide Turkey's EU policy under the AKP government into three broad periods: Europeanization, selective Europeanization and De-Europeanization (Aydın-Düzgit & Kaliber, 2016; Saatçioğlu, 2016; Yılmaz, 2016).

As already mentioned earlier, a general definition of Europeanization can be found in Radaelli (2003, 30), who describes it as a complex “process of (a) construction, (b) dissemination and (c) institutionalization of formal and informal regulations, procedures, policies, behaviors as well as shared beliefs and Norms that were originally defined and enshrined within the framework of EU decision-making processes and then incorporated into the logic of domestic political discourse, national identities, political structures and policy areas”. The extent of Europeanization in individual areas varies; the Europeanization in the EU countries is well advanced in environmental and transport policy, because national policy is essentially determined by EU directives (Art 4 (2)(g) TFEU). As shown in the previous chapters, migration is a field that has also gradually become Europeanized as EU integration progresses. In the field of social policy, on the other hand, a Europeanization of national policy can only be observed in its infancy. Processes of Europeanization are not limited to the member states of the EU, but also, for example, to accession candidates. They go through a process of Europeanization during adopting the so-called *Acquis Communautaire* even before accession talks begin and long before the aspired EU membership. The EU Commission regularly reviews the status of the reforms and the degree of Europeanisation in these countries within the framework of so-called progress reports and recommends the start

of accession talks based on such reports. It is interesting that there are hardly any approaches to a critical theory of European integration and Europeanization, especially since the process itself is open-ended. At the same time, it seems difficult to intellectually grasp the issue of European integration and Europeanization (Vobruba, 2007). With the first signs of institutionalization, the founding of the Council of Europe (1949), the European Coal and Steel Community (1952) and finally with the Treaty of Rome (1958), the topic of European integration went from a sociological-geopolitical discussion to the responsibility of politics and career bureaucracy (Vobruba 2007, 7). During institutionalization, specific EU elites emerged as well as a predominantly critical attitude of the population towards these elites and the institutions of the EU. Since the affirmative position is occupied by the political EU elite and the critical position by the population, there is hardly any room for a genuinely intellectual perspective on European integration (Vobruba 2007, 10-11).

From the perspective of the EU elites, European integration is an all-encompassing positive-sum game. Their argument: everyone benefited from Europeanization and European Integration. In this view, different time horizons and specific distribution patterns in which the costs and benefits of European integration accrue are generally ignored. The integration appears to be as progressive as there is no alternative. From the point of view of the EU elites, further integration progress is a question of appropriate political control and educating the population about it. In other words, the EU is a policy issue and a presentation issue (cf. e.g., Dinan, 2005).

However, on the one hand, national political elites, as the lords of the treaties, are the driving force behind the development of the EU; on the other hand, however, they are tied back to the interests and interpretations that the respective electorate develops with regard to the EU.

The abstract and materialistic quality of the idea of a united Europe proves to be insufficient to legitimize its own institutions and to keep the citizens' trust in the long term (Judt 1996, 137). Judt sees unbridgeable prosperity gaps and regional differences of interest in the EU and predicts that "the countries of the formerly communist Europe can never become members of the Union on the same terms" (Judt 1996, 137-139).

In addition, there is an interpretation of Europeanization that is hardly discussed and has little resonance, which is not concerned with visions and political projects, but with coping with everyday life and the routines that make normal life possible and can be described as Europeanization that is actually taking place (Schlögel 2004, 400). This concept cannot be found at congresses or in press releases, but on motorways, in trains, at border crossings, or in the national strategies of political parties. Such an interpretation of Europeanization contains an implicit criticism of EU elite politics (Schlögel 2004, 400).

Which brings us to Turkey and the Europeanization of Turkey. Even Turkey's Europeanization period between 2002 and 2005 is not the kind of Europeanization that the EU itself would have wished for: one based on conviction, ideological agreement and political alignment. The young generation of AKP founders in particular used EU conditionality to push through their own reforms and limit the power of the military. Turkey's relations with the EU can certainly be described as value-based because the conditionality was high. But this value-based approach served above all to polish the image of the AKP founding generation (Bashirov & Yılmaz 2019, 6).

In this context, Noutcheva and Aydin-Düzgüt (2012, 68) see that EU incentives played a major role in Europeanization in Turkey. The so-called EU conditionality, which includes compliance with the Copenhagen Criteria and the adoption of the *Acquis communautaire* as conditions for candidate countries, can be defined as the use of

conditions attached to the provision of benefits. In fact, half of the Turkish judicial reforms since the then current constitution came into force in 1982 can be located between 1999 and 2005; i.e. the period in which the EU conditionality was judged to be the strongest after Turkey's formal admission as an EU candidate (Noutcheva & Aydin-Düzgit 2012, 68). Since then, however, the conditionality has decreased and with it the incentive for the Turkish legislature to actually implement the Europeanization of their own country (Noutcheva & Aydin-Düzgit 2012, 68). The authors see the reasons for this as the electoral successes of the ruling AKP, followed by internal EU crises such as constitutional reform or the sovereign debt crisis. The AKP's electoral victories, especially since 2007, have reduced their dependency on the EU and EU conditionality (Noutcheva & Aydin-Düzgit 2012, 70). As a result, reforms (desired by the EU) were carried out more selectively. This shows that both internal EU reasons and tendencies within the candidate countries such as Turkey can lead to Europeanization being carried out completely, selectively, or not at all (Noutcheva & Aydin-Düzgit 2012, 75).

In this context, the European Financial Crisis does not yet represent a break in Turkey's Europeanization, but it can be described as a turning point, which also has to do with the increase in Turkey's economic and geopolitical importance (Bashirov & Yılmaz 2019, 171). The foreign policy doctrine "Zero problems with our neighbors" of the then foreign policy advisor to the government in Ankara, Ahmet Davutoğlu, was the political vehicle for a selective Europeanization period (Bashirov & Yılmaz 2019, 171). But while, according to Davutoğlu, Turkish foreign policy at the time complemented that of the EU, the Turkish government saw the killing of ten Turkish NGO employees in 2010 by Israeli security forces and the protests in numerous Arab countries as an opportunity to present itself as an important regional actor (Bashirov & Yılmaz 2019, 171). The third electoral victory of the AKP in 2011 increased the self-confidence of the

Turkish governing party, through which it gradually lost focus on the EU, Europe and Europeanization as a normative policy goal (Aydın-Düzgit & Kaliber, 2016). Another turning point was the violent suppression of the so-called Gezi protests in June 2013.

The most important name in this context is not Recep Tayyip Erdoğan, but Ahmet Davutoğlu. He had meanwhile been appointed foreign minister and was now pursuing his neo-Ottoman vision in one of the country's highest offices. According to this, Turkey should revive the Turkish Republic in the old zones of influence of the Ottoman Empire (Davutoğlu, 1999). His vision of civilizational competition is made even clearer by the fact that he saw Islam and Christianity as two different civilizations (cf. Ozkan, 2014). The fundamentally different approaches between the EU and Turkey in their Africa policy are also evidence of this development (Bashirov & Yılmaz 2019, 160). In this context, the then Turkish President Abdullah Gül summed up the civilizational competition in 2011 as follows: “We are different from Europeans. We do not take away your raw materials.” (Bashirov & Yılmaz 2019, 165-170, as cited in Afacan 2013, 52). An attempted coup and the previous dismissal of Ahmet Davutoğlu as Prime Minister in 2016 heralded a new phase in Turkish foreign policy in general and in EU-Turkey relations in particular (Bashirov & Yılmaz 2019, 176).

However, the image according to which Erdoğan subordinated his EU policy and rhetoric to his own political struggle for survival (Bashirov & Yılmaz 2019, 166) must be drawn more finely and in another color: the blue color of the EU flag. Various EU institutions have sharply criticized Turkey for the decline in civil liberties and the repression of an attempted coup in July 2016, prompting the Turkish government to react, adding fuel to the politically distant but thematic highly intertwined relations between the EU and Turkey, resulting in an ever deeper transactional nature of the relations between the two sides. Bashirov and Yılmaz (2019) give, in this context, a

synthesis and a blueprint of what was to follow, describing transactionalism as a foreign policy approach that favors bilateral over multilateral relations, which focuses on short-term gains rather than longer-term strategic foresight, promotes a zero-sum worldview, rejects value-based policymaking, and does not follow a grand strategy.

Transactionalism specifically chooses bilateral relations over multilateralism as multilateral relations are more complex to sustain than bilateral ones because it involves multiple actors and their respective diverging and sometimes conflicting interests.

Multilateralism also usually requires long-term commitments from the stakeholders to negotiated agreements and provides benefits in the long-term rather than the immediate future. On the contrary, bilateral agreements, however, are usually easier to complete to achieve short-term objectives (Bashirov & Yilmaz 2019, 167).

The transactional nature of the EU Turkey Statement is reflected in the fact that the actors apparently did not want to solely resort to the CRSR, but rather prepared a regime tailored to them that was intended to serve the short-term goals of both sides. The EU Turkey Statement is designed to be short-term, as the limitation of the duration for the FRiT payments indicate, assumes the asymmetry between the two actors, and intervenes deeply in the domestic affairs of the partner country Turkey. Moreover, a certain "winning now" strategy has only paid off in full for the EU itself, but to a much lesser extent for Turkey. In addition, the policy goals agreed in the EU Turkey Statement contradict each other elsewhere, as shown e.g. in Chapter 4. The accession negotiations, which were supposed to gain new impetus from the statement, are faltering - and this at the request of the EU institutions themselves. The customs union is now bound, at least rhetorically, to the EU Turkey Statement and to political concessions from Ankara; and not to the simple conclusion of mutual benefits for both sides.

At the same time, the demand of the former Prime Minister Davutoğlu to combine the migratory components of the statement with non-migratory policy goals such as the customs union or visa liberalization can be understood in such a way that Ankara would achieve quick tangible successes during a constitutional referendum that the electorate was aiming for wanted to present. In transactional relationships, this often leads to impulsive foreign policy decisions (cf. Zoellick, 2017), as the combination of migratory and non-migratory elements in the statement shows. This argument underscores the fact that the long-term non-migratory elements were ultimately not achieved, while the short-term migratory goals and policy goals were almost completely achieved. It is therefore not surprising that the EU Turkey Statement is losing approval first with the Turkish government and now also with the population (cf. Yılmaz et al., 2019). Focusing on a zero-sum game leads to disappointment when the tie turns into a win for the other side.

7.1 The acceleration from a norms-based to a norm-free approach

The refugee crisis in 2015 led to a policy shift in the cooperation between the EU and Turkey largely characterized since then by a transactional approach, exemplified notably by the EU Turkey Statement. The best description of this shift comes from the EU itself, namely from the former President of the European Commission Jean-Claude Juncker, who said before the issuing of the EU-Turkey Action Plan in November 2015 “(...) EU and the European institutions have outstanding issues with Turkey on human rights, press freedoms and so on. We can harp on about that but where is that going to take us in our discussions with Turkey?... We want to ensure that no more refugees come from Turkey into the European Union” (The Telegraph, 2015). The statement makes it straightforwardly reasonable to claim that functionalism and transactionalism

now effectively shape EU-Turkey relations, furthermore, revealing the EU's retreat from democratic conditionality on Turkey (Saatçioğlu 2019, 11). While both concepts have in common to reduce the risk of conflict in the relations between states (Eilstrup-Sangiovanni, 2006), functionalism in an interdependent world would lead to support of regional or supranational organizations (cf. Mitrany, 1933), in a conviction that technical vehicles can solve political problems, whereas transactionalism does not presume any kind of national, regional or supranational entity to enhance cooperation between states (see Deutsch, 1954).

Both sides can claim points that may have increased their motivation for the EU Turkey Statement and which they were able to sell domestically as profits, underscoring the transactional nature of the agreement. Turkey received financial aid, the prospect of visa liberalization and an update on the customs union, as well as a restart in EU accession negotiations. For the EU, in turn, the agreement was a good opportunity not only to reduce the number of refugees, but also to externalize its migration management (Fal 2021, 5).

Transactionalism's main strategic shortcomings is that it fails to consider long-term, wider impact of its policy actions as it only aims to achieve immediate gains, making foreign policy unpredictable and unstable (Payne, 2017). The shift towards transactionalism in EU-Turkey relations can be best observed in the EU Turkey statement, not only because of the strictly transactional character of its bilateral policy agenda, but also because the transactional era largely differs from the previous periods. Tsarouhas (2021) argues that concrete steps of integration and cooperation, ranging from the customs union to the opening of Turkey's accession talks and EU Turkey Statement showed how a transactional, issue-specific character of EU-Turkey relations has evolved over time and is unlikely to change any time soon. According to him, the

transactional partnership approach largely stems from the logic of external differentiated integration, which refers to forms of cooperation/policy harmonization between the EU and third countries ranging from narrow, bilateral, static to broad, multilateral, dynamic models (Gstöhl, 2015).

The EU Turkey Statement marked in several ways this major shift to transactionalism in Turkey-EU relations (Saatçioğlu, 2019; Bashirov & Yılmaz, 2019). The rise of transactionalism in Turkey-EU relations breaks with the early 2000s, when Turkey, under the AKP leadership, pursued its EU accession process based on the norms and principles set by the EU institutions. When in March 2016, the EU and Turkey agreed on an unprecedented type of agreement, ignoring well-established EU decision-making processes, negotiated under immense pressure stemming from the unfolding refugees crisis, aiming at managing the refugees' influx coming from Turkey to Europe, both sides tried to gain out of this deal maximized interests for themselves. On the one hand, Turkey agreed to prevent the refugees from Syria to the EU, whereas the EU accepted to disburse 3 billion Euros in two years to Turkey for hosting them. On the other, Turkey also obtained the promise to be granted visa liberalization by June 2016 at the latest, speeded work on the upgrade of the customs union and to proceed with the opening of a chapter in Turkey's accession negotiations to the EU (European Council, 2016). Therefore, the deal was based on transactions in the interest of both sides. However, it is worth noting that while the results aimed by the EU were expected to be achieved as soon as possible (reduction of the migratory flows), promises to Turkey were already expected to be achieved in a longer term.

Once Turkey realized that the promises obtained through the EU Turkey Statement were not going to materialize due to a variety of reasons, it resorted to threats and blackmail towards the EU (Dursun-Özkanca, 2019). Proving the unprincipled,

transactional nature of the deal, Turkish president Erdoğan has threatened on multiple occasions the EU with revoking the deal in subsequent crisis with both the EU itself and several of its member states. For example, when the Turkish government had a crisis with Austria, Germany and the Netherlands during the 2017 referendum campaign, President Erdoğan threatened the EU to revoke the refugee deal if the crisis continues (European Council, 2016). Turkey's opening of its land border with Greece in March 2020 is one of the latest examples. These serious incidents clearly exemplify the short-term and zero-sum nature of Turkey's relation with the EU and that the EU Turkey Statement is based on short-term cost–benefit analysis, which thus can be easily broken once the expected promises and benefits disappear.

Instead of resorting to international and EU norms and principles designed for the handling of refugees, both sides agreed to design an ad-hoc temporary and unique mechanism to address the migration crisis. Similarly, instead of conditioning visa liberalization for Turkey to its full compliance with the visa liberalization roadmap' benchmarks, the EU promised visa liberalization “at the latest by June 2016”, further work on the customs union modernization in exchange for Turkey's agreement to curtail refugee flows. Likewise, the EU Turkey Statement foresaw progress in accession process without conditioning it to principles and norms, as it would have been done during the Europeanisation period, but instead included this long-awaited promise by Turkey in an ad-hoc transactional, legally questionable, agreement fulfilling both sides' objectives and interests.

The EU and Turkey's short-term interests' preference over their long-term principled and strategic engagement led to this shift to a transactional approach. For the EU, the immediate short-term objective was to prevent the influx of massive numbers of

Syrian refugees. The refugee crisis does not only create an economic burden for the EU, which had to find a way to finance the unforeseen 6 billion euros.

More importantly, the increased politicization of the question of refugees in many EU Member States during that period has fueled exceptionally high tensions between different European governments over the right course of action. It fueled internal crises within the EU as radical right-wing parties largely use the refugee crisis to boost their votes (Mudde 2016, 300). The rise of populist movements exploiting the migration crisis, the solidarity towards refugees and at the same time growing anti-refugee actions and demonstrations across Europe demonstrate this level of politicization (Mudde 2016, 300-301).

For Turkey, the transactional relationship and the promises obtained with the EU Turkey Statement would boost President Erdoğan's domestic popularity. Progressing on the EU accession track allows President Erdoğan to portray himself as a democratic leader and silence his detractors both at home and abroad, despite a deteriorating human rights record documented yearly by the European Commission among others. Also, visa liberalization has been a long-awaited wish of Turkish citizens, and its realization would help the AKP increase its popularity at home. Moreover, its strategic importance in curtailing the refugee flow to Europe gives President Erdoğan a significant advantage in opposing the EU's repeated calls for democratic reforms in Turkey while continuing to receive the benefits stemming from the EU Turkey Statement. While the European Commission's reports have been critical of the deteriorating democratic and human rights situation in Turkey, it has systematically used a very positive narrative to assess Turkey's progress under chapter 24 regarding migration management and asylum policy despite its acknowledgement of the dire conditions migrants are held in.

In a transactional era of EU-Turkey relations observed since 2016, Turkey no longer pursues a strategic long-term cooperation with the EU but resorts to a strict zero-sum logic. On the other hand, the EU does not reward Turkey anymore for fulfilling its promises by opening new negotiation chapters (Saatçioğlu 2019, 11). Turkey-EU relations are no longer based on norms and principles and the current Turkish government is further distancing itself from the EU's political and normative values, norms and guidelines, as the Council underlined since 2018. One can legitimately ask whether the EU accession remains a goal for Turkey anymore.

It is worth noting that the EU's shift towards "pragmatism" in its foreign policy also dates back to 2016. In the European Union Global Strategy, the EU, which aims among many other objectives to improve management of immigration, refers frequently to the notion of "principled pragmatism" in an attempt to combine the EU's normative idealism with a realistic assessment, thus paving the way towards more pragmatic decision at the expense of its own values. For example, the EU repeatedly condemned countries like Ethiopia, Sudan, or Egypt because of the serious human rights violations in these countries (e.g. Council of the European Union, 2021). However, the EU has signed mutually beneficial bilateral or multilateral agreements with these countries in an attempt to better manage migration. This "flexible" use of norms by the EU in the external dimension of its migration policies in the name of "principled pragmatism", undermines the EU's underlying norms and values.

7.2 The impact on EU institutions

Moreover, the shift toward transactionalism has also greatly reshaped the role of EU institutions with regards to their Turkey policy, especially the European Commission and the European Parliament. Instead of turning to these supranational EU institutions,

President Erdoğan's government directly engages with specific EU members states' leaders to address common issues and negotiate short-term bilateral deals. Tsarouhas (2021, 57) argues analogously that the EU member states will in future cultivate their relations with Turkey in such a way that they themselves see clear and intensive preferences and pursue interests.

The migration crisis provides a good example to illustrate the side-lining of EU institutions and further enhanced intergovernmentalism. Although tensions increased in 2020, the EU and Turkey kept their channels of communication open but not the traditional ones. Following President Erdoğan's trip to Brussels, only the leaders of Turkey, Germany, France and the UK met in Istanbul to discuss the EU Turkey Statement and the situation in Syria, without any prior mandate agreed nor given by the European Council. Similarly, in March 2021, Turkey's presidential spokesperson and Turkey's Deputy Foreign Minister met with representatives of the President of the European Council, of the German Chancellor, and of the French President in the presence of the Head of the EU Delegation to Turkey where they discussed EU-Turkey relations ahead of a meeting between President Erdoğan and EU leaders (Sanchez-Amor, 2021). This restricted and unprecedented format triggered criticism from the European Parliament (2017) and underlined how relations with Turkey are now handled not only at a strictly intergovernmental level but also involving a few EU Member States' leaders. The Commission's role has become secondary and the critical voice of the European Parliament is largely ignored in the daily handling of the EU relations with Turkey (Tsarouhas, 2021). With the gradual fading of the accession narrative since 2018 and the Council's conclusions that accession negotiations are at a standstill, the European Council's 'transactional partnership narrative' has become increasingly important and has shaped progressively EU-Turkey cooperation (Tsarouhas 2021, 53).

It is important to note here that the European Commission is not being sidelined. However, the quote from the then Commission President Juncker (2015) shows much more than that the Commission also gets involved in transactional and intergovernmental business with Turkey, at the expense of its supranational and normative character. Another example of this is the fact that then-Commission President Juncker attended the meeting between then-Council President Tusk and then-Turkish Prime Minister Davutoğlu on 7 March 2016. What followed was not a statement on EU conditionality or a norms-based statement. Rather, what followed was the EU Turkey Statement a few days later. The Commission's "European Agenda of May 2016" also follows this new rationale of the European Commission, which refers to bilateral and norms-free transactional approaches in migration issues, as does the "New Pact on Migration and Asylum" of September 2020.

A closer look is also worthwhile in the case of the European Parliament. The Report on the 2016 Commission Report on Turkey (European Parliament, 2017) for example "condemns strongly the serious backsliding and violations of freedom of expression" (e.g., European Parliament 2017, 8). At the same time, this report also emphasizes the "strategic importance of good EU-Turkey relations" (European Parliament 2017, 6). Furthermore, this report calls for "the deepening of EU-Turkey relations in key areas of joint interest" (European Parliament 2017, 10) and argues on the same page that "strengthening trade relations could bring concrete benefits to citizens in Turkey and the EU" (European Parliament 2017, 10). In this way, too, this parliamentary report leaves room for a transactional relationship between the EU and Turkey. As the accession perspective fades away without being suspended nor cancelled though as repeatedly requested by the European Parliament, its inherent norms-based conditionality has given way to an interest-driven, functional and issues-based

partnership in areas of common interest, too. These areas of common interest have been identified repeatedly by the European Council since November 2015 when the EU and Turkey agreed that High-level dialogues should also be conducted on key issues (European Council, 2015). Back then European Council President Tusk's labelling of Turkey as a "key partner" of the EU in areas of common interest for EU-Turkey relations such as security, migration and energy along with the reference of Turkey as a candidate country indicates both the various policy fields covered by this narrative as well as the decreasing importance of the candidate status (European Council 2015, n.p.). There are numerous European Council conclusions on EU–Turkey cooperation on the management of the migration influx to Europe which underlined the transactional nature of EU-Turkey cooperation on migration already back in October 2009 when the Heads of State or Government welcomed the beginning of the reinforced dialogue on migration with Turkey (European Council, 2009). Nevertheless, the heightening of the Syrian refugee crisis in 2015 and the subsequent EU–Turkey statement of March 2016 institutionalized this interest-driven functional partnership between the EU and Turkey and set the precedent for a recurrent use of the transactional by the EU Member States' leader. It is worth noting that the areas of common interest have continuously expanded considering the emergence of common global issues such as health (European Commission, 2021f), or climate change (European Commission, 2021g).

7.3 The EU Turkey statement and other frameworks of EU-Turkey cooperation

While the European Parliament has repeatedly called for the suspension of accession negotiations and the European Commission, though refraining to put forward such conclusions, documented in its annual report the serious human rights violations, Turkey remains officially a candidate country. The Council and European Council have

systematically made sure that while the reference to Turkey as a “key partner” gained more and more importance in their successive conclusions adopted amidst and after the migration crisis, the reference to Turkey as a candidate country never disappeared. Keeping this status notably allows Turkey to continue receiving pre-accession financial assistance (IPA), to participate in certain EU programs. Also, by refraining from suspending accession negotiations with Turkey, EU Member States keep their most important leverage they probably have on Turkey: a perception that Turkey’s European perspective remains on the table, therefore Turkey should keep complying with EU requirements. The candidate status therefore no longer appears like a source of democratic conditionality which imposes on Turkey the obligation to abide by EU’s norms and values but rather as a carrot the EU can resort to when negotiating transactional deals with Turkey.

The current state of play of the implementation of the statement leads to two longer-term consequences, probably unexpected or underestimated, the statement has had on the overall EU Turkey relations. Firstly, the statement fueled an increasing dysfunctional relationship mostly due to various shortcomings with regards to its implementation as explained in the previous chapter which notably led to a growing mistrust between the two partners and an even stronger frustration on the Turkish side.

7.4 The transactional partnership narrative gained force again

The EU Heads of state or government came up once again with a new transactional offer to Turkey in October 2020, decided unilaterally by the EU and not based on a negotiation with Turkey. It largely re-uses several elements of the EU Turkey Statement and even refers to the former while the EU has always systematically refused to upgrade the EU Turkey Statement as asked by Turkey. The so-called positive agenda also

foresees additional funding for the refugees hosted by Turkey, reminding one of the FRIT without calling it as such. However, this agenda fails to attach any democratic conditionality to it. It is worth noting that it is mentioned for the first time under the heading “Eastern Mediterranean” which is the only condition the Heads of State or Government attached to the realization of this positive agenda. The European Council conclusions agreed that “provided constructive efforts to stop illegal activities vis-à-vis Greece and Cyprus are sustained, the European Council has agreed to launch a positive political EU-Turkey agenda with a specific emphasis on the modernization of the Customs Union and trade facilitation, people to people contacts, High level dialogues, continued cooperation on migration issues, in line with the 2016 EU Turkey Statement”. (European Council, 2020)

The other consequence is that the statement de facto tends to take over the accession framework and thus become the main framework for cooperation between the EU and Turkey, against Turkey’s claimed strategic objective to become an EU Member State.

The EU Turkey Statement when agreed between the EU and Turkey was only meant to govern migration cooperation. However, by including other elements such as the modernization of the customs union or the opening of new accession chapters, the EU went beyond the core initial objective of the statement: reducing irregular and dangerous crossings on the Eastern Mediterranean Route to Europe. By doing so, the EU included elements pertaining to other frameworks such as the association agreement, which covers the decision to establish a customs union between the EU and Turkey as well as elements from the accession framework as it foresaw the opening of chapter 33 (European Council, 2016). By doing so, the EU turned a migration agreement into a wider framework, which would cover non-migratory issues and while not formally putting an end to the accession negotiations, provide a new framework for

cooperation, which constitutes a temporary alternative. However, by failing to deliver on the non-migratory elements of the statement, the EU fueled Turkey's frustrations and complaints, which probably led Turkey to violate its part of the agreement by opening the border in February 2020 and actively encourage migrants and refugees to take the land route to Europe through Greece. Therefore, not only the content itself of the statement led to an institutionally dysfunctional cooperation, which went beyond its initial objective, it also undermined the overall EU-Turkey relations by fueling mistrust and mutual blames between the EU and Turkey.

The two most comprehensive agreements covering the entire relationship, the association agreement and the negotiating framework are either de facto on hold or highly dysfunctional. In line with the enlargement council decisions on enlargement of 2018, 2019 and most recently 2021, the Council noted that "Turkey continues to move further away from the European Union, and recalled its previous conclusion which noted that Turkey's accession negotiations therefore effectively have come to a standstill and no further chapters can be considered for opening or closing." (European Council, 2021b). Therefore, while Turkey remains formally a candidate country which is subject to the same reporting as the other candidate countries with the European Commission annual reports and continues to benefit from IPA (pre accession funds) financial assistance, negotiations are de facto on hold, an unprecedented situation in the EU as the only paused negotiations were back then decided by the candidate country itself, Iceland.

On the other hand, the Association Agreement or Ankara agreement which dates back to 1963 and provides the basic framework for EU-Turkey relations has become increasingly dysfunctional. Its Association Council, which was designed as the main decision-making body between Turkey and the EU tasked to foresee the implementation

of the Association Agreement, has not been held since March 2019. This is due to the Council decision not to hold the Association Council and further meetings of the EU-Turkey high-level dialogues for the time being as part of the measures taken against Turkey in July 2019 following its drilling activities in the Eastern Mediterranean (Council of the European Union, 2019). Before that, it has not been held between 2016 and 2019 because of the 15 July 2016 coup attempt in Turkey and the subsequent decision to establish a state of emergency. While the technical committees set up by the association agreement continues to meet bi-annually, they only offer a platform for the EU and Turkey to exchange on their respective legislation in a wide range of areas. However, without any accession perspective, it largely undermines their relevance.

In light of the aforementioned developments, and because the transactional narrative has progressively replaced the accession one, the EU Turkey Statement has de facto taken over the key and comprehensive frameworks for cooperation as it focuses on areas, which are mostly in the interest of the EU when it comes to its cooperation with Turkey and focuses on a sector based approach.

An immediate consequence is that EU-Turkey relations were previously and traditionally anchored around a values-based approach. The commitment of member states' heads of states or government to a reinforced partnership with Ankara in exchange of a generous reward package, which even foresaw the acceleration of Turkey's accession negotiations at a time of democratic backsliding documented in the European Commission's annual report, was an example in which the short term strategic interests of EU Member States' leaders trumped the EU normative concerns. This undermined the EU's conditionality strategy, placing EU-Turkey relations on a transactional basis outside the accession framework.

Benvenuti (2017) argues that following the EU's shift of its focus on migration control, and Turkey repeated requests for progress with regard to visa liberalization and EU accession, clashes between the two partners on migration management could potentially damage the EU Turkey Statement, but also longer-term relationships between the EU and Turkey.

By focusing mostly on migration, the relationship turned much more pragmatic and transactional and the EU Turkey Statement has institutionalized this new reality. This transactional approach is neither in the interest of Turkey which officially keeps affirming that accession remains a strategic objective and asks for all cooperation issues to be on the table and not only migration while the EU loses any leverage to call for democratic reforms by giving up its values based approach. Repeatedly, EU lawmakers have argued that its only legitimacy to criticize Turkey's democratic track record stems from Turkey's candidate status. Should Turkey become a regular third country without accession perspective, the EU would lose leverage for democratic reforms in Turkey.

The March 2016 agreement offered Ankara, on paper, visa liberalization and further work on the customs union, though it has not materialized, and an upgrade of its institutional high level dialogue with the EU outside the accession framework based on regular EU-Turkey summits and thematic high-level dialogues. These mechanisms draw on the dialogue procedures the EU resorts to when handling its strategic partnerships that are largely of a transactional and sectoral nature (Turhan, 2017).

The EU Turkey Statement is a key example of the EU outsourcing of its migration management. While the EU has long-standing practices of outsourcing its migration and asylum responsibilities to countries bordering its territory, with Germany cooperating with central and eastern European countries on migration management in the wake of massive population displacement triggered by the Balkan wars in the 1990s,

cooperation between the EU, Italy and Libya is a decades-long affair. This outsourcing policy is morally highly questionable as it involves collaborating with third countries, which cannot be considered as safe countries for refugees and asylum seekers in exchange of financial assistance, training, and equipment. While EU Member States could not agree on taking in a substantial number of refugees, with the notable exception of Germany which took in 1.2 million refugees. The alternative solution for the EU Member States was therefore to encourage and support measures outside the EU, initially looking to Turkey but also North Africa and the Sahel region. The EU Turkey Statement should thus be seen as part of a period of “radical experimentation” (Parkes, 2017) in the EU, which is ongoing.

However, the EU Turkey Statement has been highly criticized for many reasons, notably because of its non -legally binding nature. As such, it has never been part of any legislative act in any of the European Union’s member states’ national Parliaments. Therefore, replicating such a statement would likely further undermine the EU norms, institutionalized processes, and further favor transactionalism over Europeanization.

CHAPTER 8

CONCLUSION

Has the EU Turkey Statement reignited Turkey-EU relations - or brought them to a standstill? Is Turkey's accession to the EU again being debated thanks to the "refugee deal" - or is context-related transactional cooperation in crisis situations enough for the EU? And are only internal or also external factors responsible for those developments?

This thesis examined the impact of the EU Turkey Statement on EU-Turkey relations. The EU Turkey Statement accelerated the policy shift of EU-Turkey relations from a norms based approach to a transactional one, accelerated the importance of inter-governmentalism vs supranationalism in shaping EU-Turkey relations, i.e. the European Commission and the European parliament are further side-lined, and de facto replaced other existing frameworks of EU-Turkey cooperation.

It turns out that the ongoing EU integration process, including the opening of the internal borders, has led to shielding and sealing off at the external borders. *Borderless* Europe created the *Fortress* Europe. In this context, migration had been increasingly seen as a security risk, its policy subsequently securitized and then partly transferred to third countries via externalization strategies, partly in violation of international rules (Gatti & Ott, 2016).

One of the target countries of EU's externalization strategy is Turkey, which originally saw itself as a country of emigration and immigration but had increasingly become a transit country for international migration, especially in the eyes of the EU itself. At the same time, while Turkey was striving for EU accession, this ambition overlapped both with the country's democratic backsliding as well as with the EU's externalization strategy, which was intended to affect Turkey as a direct EU neighbor.

And while the EU accession process came to a standstill, Turkey became more and more important as a cooperation partner on the issue of migration. The so-called refugee crisis of 2015, in which several million people irregularly entered the EU, primarily via the eastern Mediterranean route via Turkey, increased the pressure to act for both sides on a topic which had previously received little attention in the formal EU-Turkey relations frameworks. The EU Turkey Statement, as argued in this thesis, can be understood as the conclusion of this confrontation of two circumstances, with major implications for the overall relationship between the EU and Turkey:

The EU Turkey Statement, after negotiations about the September 2015's EU Turkey Statement October 2015's Joint Action Plan, the EU Turkey Statement has now become a new reality in EU-Turkey relations. But the Statement is now more than six years old. And it's not clear how much longer it will be used to regulate refugee flows from Turkey to the EU. And this not only shows the success of the so-called "refugee pact". It also shows how the EU's migration policy influences relations with third countries; even to those that officially belong to the candidate countries. Herein lies a danger that affects the EU itself: If migration, and above all the unconditional fight against it, determines relations with other states, dangerous political sloping and dependent relationships arise.

Brussels has been pursuing a double logic for years: freedom of movement for people, work, goods and money flows within the EU and the Schengen area. At the external borders, on the other hand, it is often said: up to here and no further. The externalization of this policy, i.e. the assignment of third countries to perform a sort-of entry control into the EU, is increasingly determining relations with these countries. Even dictatorial states in Africa are eligible for subsidies if they prevent migrants from continuing their journey to the EU (cf. Akkerman, 2018).

In the case of Turkey, while both sides should actually negotiate at which point Turkey would be ready to join the EU, this progress of accession negotiations is now officially part of the refugee pact (European Council 2016, Bullet point 8). The same applies to the lifting of visa requirements for Turks, and an update of the Customs Union (European Council 2016, Bullet point 8). In other words, Turkey will only enjoy EU benefits if it follows the EU's wishes on the issue of migration. The EU Turkey statement has effectively annulled important cooperation agreements between Brussels and Ankara: the cooperation agreement of 1963, the customs union of 1995, and the accession negotiations of 2005.

At the same time, the EU and Turkey appear to have lost mutual trust over time, moving from peaceful to “conflictual cooperation” on various geopolitically important issues such as migration, energy and security (Saatçioğlu et al., 2019). While EU member states have continued to show reluctance to share refugee responsibilities with other member states such as Greece and Italy, thereby bringing down European migration and asylum regimes, there have even been difficulties in providing Turkey with sufficient money. Turkey's reaction sounds cruel and rational at the same time: The government in Ankara has used refugees as an instrument to achieve its own foreign and economic policy goals.

Subsequently, common challenges and areas of cooperation, peaceful or in conflict, show the potential for joint approaches by the EU and Turkey. A new framework agreement should be created which is able to manage all other existing and new challenges, and covers all important points in the EU-Turkey relations: EU accession negotiations, trade, freedom of movement, and migration.

The development of a new, all-encompassing framework for all areas of cooperation between the EU and Turkey could help bring relations back to a norms-

based level as a collection of mutual spillovers. The EU could thus return to the norms-based approach that it has committed itself to. Turkey, on the other hand, would be able to cooperate with the EU on a rule-based base in important areas without losing sight of the accession negotiations.

Because one thing is clear: Turkey has now become too important to be ignored. The country plays a role in almost all geopolitical conflicts that are relevant to Europe and the EU: from energy supply to migration, economic cooperation and trade, to conflicts and wars. It should be in the EU's own interest not to just delegate these existential questions to a six-year-old press release.

APPENDIX A

EU TURKEY STATEMENT, 18 MARCH 2016

Today the Members of the European Council met with their Turkish counterpart. This was the third meeting since November 2015 dedicated to deepening Turkey-EU relations as well as addressing the migration crisis.

The Members of the European Council expressed their deepest condolences to the people of Turkey following the bomb attack in Ankara on Sunday. They strongly condemned this heinous act and reiterated their continued support to fight terrorism in all its forms.

Turkey and the European Union reconfirmed their commitment to the implementation of their joint action plan activated on 29 November 2015. Much progress has been achieved already, including Turkey's opening of its labour market to Syrians under temporary protection, the introduction of new visa requirements for Syrians and other nationalities, stepped up security efforts by the Turkish coast guard and police and enhanced information sharing. Moreover, the European Union has begun disbursing the 3 billion euro of the Facility for Refugees in Turkey for concrete projects and work has advanced on visa liberalisation and in the accession talks, including the opening of Chapter 17 last December. On 7 March 2016, Turkey furthermore agreed to accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters. Turkey and the EU also agreed to continue stepping up measures against migrant smugglers and welcomed the establishment of the NATO activity on the Aegean Sea. At the same time Turkey and the EU recognise that further, swift and determined efforts are needed.

To break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey today decided to end the irregular migration from Turkey to the EU. To achieve this goal, they agreed on the following additional action points:

1) 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. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. 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. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the EU.

2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to

migrants who have not previously entered or tried to enter the EU irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons. The Members of the European Council welcome the Commission's intention to propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken in the framework of this arrangement to be offset from non-allocated places under the decision. Should these arrangements not meet the objective of ending the irregular migration and the number of returns come close to the numbers provided for above, this mechanism will be reviewed. Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued.

3) Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect.

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

5) 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. To this end Turkey will take the necessary steps to fulfil the remaining

requirements to allow the Commission to make, following the required assessment of compliance with the benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision.

6) The EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March. A first list of concrete projects for refugees, notably in the field of health, education, infrastructure, food and other living costs, that can be swiftly financed from the Facility, will be jointly identified within a week. 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.

7) The EU and Turkey welcomed the ongoing work on the upgrading of the Customs Union.

8) The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015. They welcomed the opening of Chapter 17 on 14 December 2015 and decided, as a next step, to open Chapter 33 during the Netherlands presidency. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States' positions in accordance with the existing rules.

9) The EU and its Member States will work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe.

All these elements will be taken forward in parallel and monitored jointly on a monthly basis.

The EU and Turkey decided to meet again as necessary in accordance with the joint statement of 29 November 2015.

APPENDIX B

LIST OF RESTRICTION CODES AND FORMS OF THE TURKISH DIRECTORATE GENERAL FOR MIGRATION MANAGEMENT

The codes are issued by DGMM (Asylum Information Database, 2020) based on a presidential decree from 2016 (Presidency of the Republic of Türkiye, 2016). However, they are not governed by clear, publicly available criteria and are not based on concrete laws. It is likely that they are governed via internal circulars. According to the currently publicly available information (e.g., Asylum Information Database, 2020), the different categories stand for:

A court decisions

Ç temporary entry bans

G and O entry bans

N entry based on work permits.

A99 Convicted by court (and unable to leave Turkey) | Mahkeme kararı (yurt dışına çıkış yasağı)

Ç114 Foreigner under criminal proceedings | Haklarında adli işlem yapılan yabancılar

Ç116 Foreigner threatening public morality and public health | Genel ahlak ve kamu sağlığını tehdit eden yabancılar

Ç119 Foreigner under administrative fine pursuant to Law 4817 for undeclared employment | 4817 sayılı kanun, kaçak çalışan idari para cezası

Ç120 Visa / residence permit violation | Vize ve ikamet ihlali nedeniyle

Ç137	Person invited to leave Terke davet edilen şahıslar
Ç141	Entry ban Ülkemize giriş bakanlık iznine tabi
G78	Illness Hastalık
G82	Activities against national security Milli güvenliğimiz aleyhine faaliyet
G87	General security Genel güvenlik
G89	Foreign terrorist fighter Yabancı terörist savaşçı
H42	Drug-related offences Uyuşturucu madde suçu
N82	Work permit – activities against national security Istizanlı vize – milli güvenliğimiz aleyhine faaliyet
N99	Work permit – other activities Istizanlı vize – diğer
O100	Entry ban and cancellation of asylum Semt-i meçhul yurda giriş yasaklı sığınmacı
V71	Unknown location Semt-i meçhul
V74	Person requiring permission to exit Çıkış İzni Bakanlık – Valilik Iznine Tabidir
V84	Short-stay entry (180/90 days) 180/90 İkamet şartlı vize
V87	Voluntary returned foreigner Gönüllü geri dönen yabancılar
V89	Greece – Return Yunanistan – geri dönüş
V91	Temporary protection holder requiring permission to exit Ülkemizden Çıkışı İzne Tabi Geçici Koruma Kapasamındaki Yabancı
V92	Subsequent registered foreigner Mükerrer kaydı olan yabancı
Y26	Illegal terrorist activity Yasadışı örgüt faaliyeti.

Furthermore, DGMM provides different Codes for persons proceeding in immigration and asylum application processes. Here are three publicly available examples (Asylum Information Database, 2020):

- T1 Deportation / Irregular Entry Form | Sınır Dışı Etme Kararı Tebliğ Formu
- T2 Invitation to Leave the Country Form
- T6 Administrative Surveillance Decision Form ordering release from a
Removal Centre and reporting obligation | İdari Gözetim Kararı
Sonlandırma Tebliğ Formu

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