

ANALYSIS OF THE EU-TURKEY STATEMENT WITHIN THE SCOPE OF
EXTERNALIZATION OF MIGRATION POLICY OF THE EU

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ABSTRACT

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This thesis analyzes the EU-Turkey Statement in relation to the externalization of migration policy of the EU. The main aim of this study is to evaluate the tools of externalization of migration policy of the EU within the EU-Turkey Statement announced on 18th March 2016. One of the main reasons for the existence of the Statement is the externalization of migration policy of the EU. In this context, this thesis first explains the formation of the externalization of migration policy of the EU and its tools. Later, the formation of the Statement, its elements, implementations and challenges are discussed. Finally, the elements of the Statement are analyzed in their relations with the tools of externalization of migration policy of the EU. As the main argument, this thesis supports that the EU-Turkey Statement is an outcome of the externalization of migration policy of the EU. This is due to the fact that the Statement involves tools of the externalization of migration policy of the EU through elements on the EU accession process, border controls, the principles of the Dublin system, readmission processes and financial assistance.

Keywords: EU-Turkey Statement, Externalization, Migration policy of the EU, Syrian refugees, Migration policy of Turkey

ÖZ

AVRUPA BİRLİĞİ – TÜRKİYE MUTABAKATI'NIN AVRUPA BİRLİĞİ'NİN GÖÇÜ DIŞSALLAŞTIRMA POLİTİKASI KAPSAMINDA İNCELENMESİ

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Bu tez, AB-Türkiye Mutabakatını AB'nin göçü dışsallaştırma politikası bağlamında incelemektedir. Bu çalışmanın temel amacı 18 Mart 2016 tarihinde duyurulan AB-Türkiye Mutabakatında yer alan AB'nin göçü dışsallaştırılma politikasına yönelik araçları değerlendirmektir. Bu bağlamda tez öncelikle AB'nin göçü dışsallaştırılma politikasının oluşumunu ve araçlarını açıklamaktadır. Daha sonra Mutabakatın oluşumu, unsurları, uygulanması ve sorunları tartışılmaktadır. Son olarak, Mutabakatın unsurları, AB'nin göçü dışsallaştırma politikasının araçlarıyla olan ilişkileri bağlamında incelenmektedir. Temel argüman olarak, bu tez, AB'ye katılım süreci, sınır kontrolleri, geri kabul süreçleri, mali yardım ve Dublin sisteminin ilkeleri gibi AB'nin göçü dışsallaştırma politikasına dair araçlar içerdiği için AB-Türkiye Mutabakatının AB'nin göçü dışsallaştırma politikasının bir parçası olduğunu savunmaktadır.

Anahtar Kelimeler: AB-Türkiye Mutabakatı, Dışsallaştırma, AB göç politikası, Suriyeli mülteciler, Türkiye Göç Politikası

To the valuable memory of my father Yaşar Fal

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LIST OF ABBREVIATIONS

AMIF	Asylum, Migration and Integration Fund
AVRR	Voluntary Return and Reintegration Programme
CEAS	Common European Asylum Policy
CJEU	Court of Justice of the European Union
DGMM	Directorate General of Migration Management
EASO	European Asylum Support Office
EC	European Commission
ECtHR	European Court of Human Rights
EEC	European Economic Community
ENP	European Neighbourhood Policy
EP	European Parliament
EU	European Union
EURODAC	European Automated Fingerprint Recognitions
EUROPOL	European Police Office
FRiT	Facility for Refugees in Turkey
FRONTEX	European Border and Coast Guard Agency
GAMM	Global Approach to Migration and Mobility
ISIS	Islamic State in Iraq and Syria
LFIP	Law on Foreigners and International Protection
MFA	Macro-Financial Assistance
MPF	Mobility Partnership Facility
NPAA	National Programme for the Adoption of the Acquis

PCA	Partnership and cooperation agreements
SEA	Single European Act
SIS	Schengen Information System
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TGNA	Turkish Grand National Assembly
UNHCR	United Nations High Commissioner for Refugees
VHAS	Voluntary Humanitarian Admission Scheme
VIS	Visa Information System
WW I	World War I
WW II	World War II

CHAPTER 1

INTRODUCTION

Increase in the irregular crossings after the Arab Spring starting from 2011 and specifically after 2015 caused an increase in the migration-based dialogue between the European Union (EU) and Turkey, which has constituted an essential aspect of EU-Turkey relations. During this process, the already existing externalization of migration policy of the EU has deepened, which can be defined as the practices developed by the EU for shifting the responsibility on migration management to third countries.¹ Turkey as a candidate country of the EU became a key partner in the externalization of migration for the EU because of the Union's security concerns, discourses and practices. One of the main outcomes of this intense dialogue and partnership is the EU-Turkey Statement published on 18th March 2016 within the context of externalization. This research investigates if the EU-Turkey Statement is a part of the externalization of migration policy or not. This thesis questions the relationship between the elements of the Statement and the tools of the security-based externalization of migration policy of the EU. The analysis includes the background of the Statement, its elements and their relations with the tools of the externalization of migration policy of the EU. The EU-Turkey Statement includes several elements which can be studied as the tools of the externalization of migration policy of the EU such as the EU accession process, the readmission agreement, strengthened border controls, financial assistance and compliance with the Dublin system.

The Union develops discourses on the humanitarian need for developing an international protection regime within the EU based on the responsibility sharing principle. However, most of the policies and practices formulated by the EU on

¹ İçduygu, A. & Demiryontar, B. (2019). "Mediterranean's Migration Dilemma and the EU's Readmission Agreements: Reinforcing a Centre-Periphery Relation" EuroMedMig Working Paper Series Number 1. pp. 10

irregular migration are based on the security-based externalization of migration. The need for a legal basis for international protection came to the international arena after the loss of millions of lives in the World War II across Europe because civilians could not escaped from wars or persecution in their countries. After the unpleasant experiences of World War II, the Convention Relating to the Status of Refugees was signed in 1951 in Geneva. The definition of who is a refugee and obligation of the signatory states on protecting refugees were explained in the Convention. In addition, the *non-refoulement* principle, which forbids the signatories to send back an asylum seeker to the country of origin or transit country that s/he came to if the country can/do not protect the asylum seeker, was defined.² After the signature of the Convention, there has been an increase in the development of legal frameworks at both national and international levels on the rights and protection of asylum seekers and refugees. There were also attempts to regulate migration management and control. European countries and later the EU Member States have been vital destination countries not only for the forced migrants who seek international protection, but also labour migrants. In the polarized environment of the Cold War and with the following crises in immediate and near regions, like the Bosnian, Kosovo and Iraq Wars, and more recently with the Syrian civil war, procedures and regulations on migration and international protection have been developed in the EU.³ Additionally, since these migration movements are the matters that can be issued internationally, it has become important for the EU to develop a common migration and asylum policy.

The EU, as one of the main destination areas for irregular migrants, is an international entity whose existential elements are free movement of goods, capital, services, and people. The Schengen system is one of the backbones in providing the four freedoms. Therefore, the Schengen system which can be defined as a free-border system among the EU Member States, except for Bulgaria, Croatia, Cyprus,

² OHCHR, (1951). “Convention relating to the Status of Refugees”, <https://www.ohchr.org/en/professionalinterest/pages/statusofrefugees.aspx> (accessed 19 August 2021)

³ Boccardi, I. (2007). “Confronting a False Dilemma: EU Asylum Policy between ‘Protection’ and ‘Securization’”. *Current Legal Problems*. 60(1). pp. 204

Ireland and Romania, and some non-EU States, namely Iceland, Norway, Switzerland and Liechtenstein has drastic importance for the EU.⁴ After the Schengen Agreement which has been implemented since 1995, the EU can determine an internal border-free area on an international level and an outside. The Schengen system facilitates free movements among the signatory states which increases the importance of a common system for international protection determination and services in the Union among the Member States.

Because of the border-free Schengen system, migration and asylum are the policy areas that need cooperation and commonality among the EU Member States. However, the lack of commonalities in the asylum procedures and policies among the Member States, and the lack of willingness in implementation of solidarity and fair sharing of responsibility principles in the Article 80 of the Treaty on the Functioning of the European Union (TFEU) can cause problems for not only protecting the rights of the asylum seekers and refugees but also the free market and European citizenship understanding and even the future of the EU.⁵ Therefore, the existing Common European Asylum System (CEAS) has become more important especially after the increase in the number of refugees and asylum seekers since the beginning of Arab Spring and Syrian civil war in 2011. However, until recently, the commonality in the migration management and the effectiveness of the CEAS have been questionable. Within literature, the possibility of a common EU asylum policy in between the protection of Schengen and the protection of the rights of asylum seekers and refugees is one of the discussion points. The securitized and nationalist

⁴ European Commission, “Schengen Area”, https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en#:~:text=Today%2C%20the%20Schengen%20Area%20encompasses,have%20joined%20the%20Schengen%20Area (accessed 19 August 2021)

⁵ Owen, D. (2019). “Refugees, EU Citizenship and the Common European Asylum System A Normative Dilemma for EU Integration”. *Ethical Theory and Moral Practice*. pp. 348

policies and procedures related to the migration and asylum system of the EU is another point for discussions in the literature.⁶

The responsibility sharing and solidarity principles presented in the CEAS have not been fully adopted by all of the EU Member States. This situation paves the way for the externalization of the migration policy which has constituted a persistent policy choice for the EU in migration management. The fact that the resettlement and quota system in CEAS is not fully implemented keeps the externalization policy as one of the most important aspects of the EU migration policy. However, the lack of solidarity and fair sharing of responsibility is not the only cause for the externalization of migration policy. The externalization of migration policy has already been a part of the migration policy of the EU for a long time mainly because of the security concerns. The Eastern enlargements, the terrorist attacks in the 2000s, the demographic change in the EU, and lastly the Arab Spring and Syrian civil war mass movements are the four main points which make the externalization of migration policy more important for the EU.⁷ Especially the enlargement process, terrorist attacks, and the Syrian crisis increase the EU's emphasis on the linkage between security and irregular migration. The Union wants to secure its free-border system and existence through keeping the irregular migrants, which it sees as threats, out of the Union's area. The EU needs to externalize the irregular migrants because it defines them as threats for the identity and future of the Union. Therefore, rather than providing right-based and inclusive solutions for the irregular migrants it applies policies based on the responsibility shifting to the third partner countries. The wish of the EU on the externalization of migration requires cooperation with the non-EU, mostly neighboring, states such as Turkey. Especially after the movements of the millions of Syrian refugees escaping from the civil war in Syria to the EU, Turkey

⁶ Boccardi, I. (2007). "Confronting a False Dilemma: EU Asylum Policy between 'Protection' and 'Securitization'". *Current Legal Problems*. 60(1). pp. 224; Papagianni, G. (2013). "Forging an External EU Migration Policy: From Externalization of Border Management to a Comprehensive Policy?". *European Journal of Migration and Law*. 15(3). pp. 295; Moreno-Lax, V. (2017). "Solidarity's reach: Meaning, dimensions and implications for EU (external) asylum policy". *Maastricht Journal of European and Comparative Law*. 24(5). pp. 749.

⁷ Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 1.

becomes one of the main actors in the externalization of migration policy of the EU. Therefore, the Syrian crisis intensifies a migration-based dialogue, which has already existed because of the candidate member status of Turkey, between the EU and Turkey.

Arab Spring and Syrian civil war bring an unsafe life for the people living in this geography. Therefore, millions of people become subjects of forced migration. Most of the Syrian refugees have stayed in the neighboring countries, namely Turkey, Lebanon, and Jordan.⁸ Turkey became the biggest refugee-hosting country in the world with the number of 3.6 million registered Syrian refugees under temporary protection and 330.000 asylum seekers from different national backgrounds.⁹ Some of the refugees reach or at least attempt to reach the EU Member States. However, the EU seeks for a solution to keep these irregular migrants out of the Union with the security-based arguments of protecting itself, its external borders and its identity. In this context, as the product of the negotiations related to the irregular migrants and mostly the Syrian refugees, using the Turkey-Greece land border, the Evros River, and the Aegean Sea in order to reach the EU, between the EU and Turkey in 2015, the EU-Turkey Statement was introduced in March 2016.

The parties had strong motivations for the Statement. On the one hand, Turkey expects financial aid, visa liberalization, and re-energized EU accession process from the Statement. On the other hand, the EU saw the Statement as a new and strong opportunity for the externalization of migration in securing its internal system. Decreasing the number of irregular migrants reaching the EU for asylum-seeking was the main expectation of the EU from the Statement. The EU aims to keep the irregular migrants out of the Schengen area as much as possible as the main point for the externalization of migration. In the almost absence of a common and right-based European solution for the problems existing or deepening with the unexpected increase in the number of asylum seekers and refugees, the EU and the Member

⁸ UNHCR, "Data", <https://data2.unhcr.org/en/situations/syria> (accessed 19 August 2021)

⁹ GİGM, "Geçici Koruma", <https://www.goc.gov.tr/gecici-koruma5638> (accessed 19 August 2021)

States increase their common attention on short-term, unilateral, and external solutions in order to protect its free border system and existence.¹⁰

The EU-Turkey Statement has a unique structure among both the cooperation examples in the international protection field and the externalization of migration policy tools of the EU at the same time. In the research field, it is mostly examined as a part of the relationship between the EU and Turkey as a candidate state. However, the externalization of migration policy of the EU can be observed in the Statement too. In addition, the Statement is helpful in the examination of the commonality and externalization of the migration policy of the EU. This thesis is hypothesized that the Statement is constructed in the context of the externalization of migration policy of the EU. Moreover, it can serve as a blueprint for the future cooperation between the EU and third partner countries in the field of externalization of migration policy of the EU in terms of its structure.

In this thesis, it is described in what ways the EU-Turkey Statement introduced in March 2016 after the mass movements of the Syrian refugees to Turkey and the EU is a part of the externalization policy of the EU. In this context, what the externalization policy of the EU is and its relationship with the EU-Turkey Statement is examined in the thesis. The EU-Turkey Statement is analyzed with its all aspects and outcomes. In addition, the question of in what ways it is a part of the externalization policy of the EU is examined in the thesis in detail as the main question of the thesis. In this context, the asylum and migration policies of the EU based on the security concerns are the independent variable of this thesis whereas the dependent variable is the tools of the externalization of migration policy of the EU, which are used in the EU-Turkey Statement too as this thesis discusses. The tools of externalization have been shaped in the scope of the securitized migration policy of the EU.

Externalization of migration policy of the EU is based on the security concerns of the EU. After the 9/11 in 2001 and terror attacks in Barcelona and London in 2004, irregular migration has been considered more as a security issue within the EU.

¹⁰ Goodman, S. W. & Schimmelfennig, F. (2019). "Migration: a step too far for the contemporary global order?". *Journal of European Public Policy*. pp. 1109

Later, with the effect of the unexpected increase in irregular migrants after 2011 with the effects of the Arab Spring and Syrian crisis, the EU has securitized migration as a way of policy in a collective way. It is because of the fact that according to the European Commission Report in 2018 removal of the internal border controls within the Union can be maintained only with the effective control of the common external borders.¹¹ It can be interpreted from the Commission's Report that the EU securitizes the control of borders and so the irregular migration by emphasizing the protection of the internal system with excluding the outsiders.

Collective securitization brings externalization with the emphasis on protecting the internal collectively against the irregular migrants coming from outside.¹² The EU has wanted to eliminate the security challenge, which is the irregular migrants according to the EU, through the externalization tools. The tools have already been a part of the EU migration policy in order to protect the internal Schengen border system within the context of the CEAS and in the absence of a proper responsibility sharing mechanism among the Member States.

The externalization of migration policy of the EU as a collective securitization response can be seen in different ways like it will be explained in the following chapter based on either the remote control approach or root causes approach. Its main aim is controlling the external borders and to cooperate with neighboring countries like Turkey for implementation of the externalization policy. In this matter, the cooperation between the EU and Turkey on externalization of migration is not new as mentioned above. However, there has been an increase after the rising of security-based concerns and discourses of the EU with the sudden increase in the number of asylum seekers and refugees after 2011. Since the increase in irregular crossings and the inability and unwillingness of the EU in providing them a secure way for migrating or proper international protection, externalization of migration can be

¹¹ Ceccorulli, M. (2018). "Back to Schengen: the collective securitisation of the EU free-border area". *West European Politics*. 42(2). pp. 304

¹² *Ibid.* pp. 303

observed more in the migration policies of the EU as a part of the collective securitization.

Within the literature, externalization policy of the EU can be explained through the security-based argument. Externalization can be explained by securitization theories as used for the theoretical framework of this thesis. The argument supports that the EU defines an inside and outside. Therefore, the EU as a security agent uses externalization policy to keep the inside safe and secure through its discourses and practices. For example, migration is considered in the context of ‘promoting our way of life: protecting our citizens and our values’ by the European Commission with an extra emphasis on cooperation with the partner countries.¹³ As the scholars explain, one of the major implications of security-based migration control desire is externalizing the irregular migrants with the motivation to keep the newcomers outside of the EU’s borders in tackling the irregular crossings, although security and protection cannot be two options that are possible to choose one of it.¹⁴

As the other main point of this thesis, the EU-Turkey Statement has been questioned a lot among the scholars working on the EU, European integration, EU-Turkey relations, migration and security studies. The scholars question different aspects of the Statement. Some of the studies are on whether it can be considered part of the integration or accession processes of the EU, securitization process of the EU or an outcome of the lack of a common asylum policy of the EU. In addition, based on the answers given to these questions, there are scholars supporting the Statement as a solution for the international protection crisis as much as not supporting and describing it as a tool for externalization of migration in the EU preventing the right of asylum seeking. On these questions here, there are some optimist and pessimist scholars in the literature about the Statement on its outcomes in the context of its

¹³ European Commission, “Promotin our European way of life”, https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life_en (accessed 19 August 2021)

¹⁴ Çetin, R. A. (2020). “Externalization of the European Union Migration Regime: The Case of Turkey”. *New Political Science*. 42(4). pp. 539; Moreno-Lax, V. and Giuffré, M. (2017). “The Raise of Consensual Containment: From ‘Contactless Control’ to ‘Contactless Responsibility’ for Forced Migration Flows”. S. Juss (ed.), *Research Handbook on International Refugee Law* (Edward Elgar, Forthcoming). pp. 18

effect in EU-Turkey relations and so called ‘refugee crisis’. For example, Adam, Dimitriadi, Şenyuva and Üstün, Okyay and Zaragoza-Cristiani¹⁵ have some questions on the fulfillment of the requirements and impacts of the Statement. On the other hand, Elitok, Kale, and Arisan-Eralp¹⁶ mention some possible positive aspects of the Statement. Finally, some scholars such as Matusescu, Öztürk and Soykan, and Gkliati¹⁷ question the validity and legal existence of the Statement which is questioned in this thesis too in the relevant chapter. Addressing generally all of the questions on the Statement and externalization, this thesis aims to investigate the tools of the externalization of the migration policy of the EU in the EU-Turkey Statement.

In the thesis, it is examined whether the EU-Turkey Statement is a part of the EU’s externalization of migration policy or not. In this context, qualitative research method is used on purpose. Literature review on secondary sources on the different aspects of the Statement is examined in detail. The externalization of migration policy of EU, CEAS and migration management and history of Turkey are analyzed through the several scholarly articles and official documents. In addition, related legal texts and documents from the state agencies of the Republic of Turkey and the EU institutions and some related news from different sources are examined in order to answer the main question of this thesis.

¹⁵ Adam, L. (2017). “The EU-Turkey Deal One Year On: A Delicate Balancing Act”. *The International Spectator*. 52(4), pp. 44-58; Şenyuva, Ö. and Üstün, Ç. (2016). “A Deal to End “the” Deal: Why the Refugee Agreement is a Threat to Turkey-EU Relations”. GMF; Okyay, A. and Zaragoza-Cristiani. (2016). “The Leverage of the Gatekeeper: Power and Interdependence in the Migration Nexus between the EU and Turkey”. *The International Spectator*. 51(4). pp. 51-66

¹⁶ Elitok, S. (2018). “Turkey’s Migration Policy Revisited: (Dis)Continuities and Peculiarities”. IAI Papers 18; Kale, B. (2016). “The EU-Turkey Action Plan is Imperfect, But Also Pragmatic, And Maybe Even Strategic”. GMF; Arisan-Eralp, N. (2016). “Challenges of the German-Led Refugee Deal between Turkey and the EU”. CESifo Forum. 17(2). pp. 21-24

¹⁷ Matusescu, C. (2016). “Considerations on the Legal Nature and Validity of the EU-Turkey Refugee Deal” *Law Review*. 6(special issue). pp. 91-101; Öztürk, N and Soykan, C. (2019). “Üçüncü Yılında AB – Türkiye Mutabakatı: Hukuki Bir Analiz”. GAR Analizleri No.1; Gkliati, M. (2017). “The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees”. *Movements*. 3(2). pp. 213-224

The literature review and secondary sources, the documents of the EU acquis and EU law, are involved in this research in searching for the EU migration policy and the tools of the externalization of migration. In examining the EU-Turkey Statement, the announcement of the Statement, the reports on the Statement by the Commission and the Statement-relevant news are also examined. The Progress Reports of the Commission on the accession process of Turkey and other relevant documents are used in mentioning the development process of the Statement. The data of the irregular crossings before and after the Statement is taken from the reports of the Commission and the Frontex.

In the light of the information above, this thesis aims mainly to explore whether the EU-Turkey Statement is a part of the externalization of migration policy of the EU or not. As the sub-questions, to support the main one, in what ways and methods it is part of the externalization of migration policy of the EU is also examined. In order to reach the answer, the thesis aims to discuss what externalization is, what the externalization policy of the EU is, what the tools of externalization policy are and how many of them are parts of the EU-Turkey Statement, and how they are implemented in practice.

In the following chapter, the migration and asylum policy of the EU is covered in detail. After mentioning its historical development, this thesis will evaluate the Dublin Regulation, Qualification Directive, Reception Conditions Directive, Asylum Procedures Directive, and Temporary Protection Directive as the legal basis of CEAS and their relationships with the externalization of migration policy of the EU. Later, in the chapter, externalization is explained in the context of the EU and why it is used by the EU. In this matter, the thesis will mention the base of the externalization in the context of the migration policy of the EU. This research will try to analyze the questions of what is externalization, why it is needed in the migration policy of the EU by the policy makers and in what ways it causes violation of human rights. In the final of this chapter, the general tools of the EU for the externalization of migration which are ENP, Mobility Partnerships, EU Accession Process, Readmission Agreements, border controls, financial assistance and the Dublin

System in the context of the CEAS including the third safe country and first country of asylum principles are discussed.

In the second chapter, in order to give the background for the EU-Turkey Statement from the Turkish side, an analysis of the migration history of Turkey will be given. The chapter will try to explain how Turkey became a transit and destination country for irregular migrants especially after the 2015 Syrian crisis. Later the focus is on the EU-Turkey Statement itself. This chapter will explain the background of the Statement especially in terms of the dialogue between the EU and Turkey in migration policies in detail including the accession perspective. Secondly, the elements and implementation of the Statement will be covered. Finally, some achievements, failures and criticisms about the Statement, especially on its legality and efficiency will be discussed.

In the third chapter, it will be discussed whether the EU-Turkey Statement is a part of the externalization of the EU migration policy and if yes how it is. In this matter, the chapter will discuss why in most ways the Statement is one of the main parts of the externalization of the migration policy of the EU. It is explained by examining some of the elements of the Statement; namely re-energization of the EU accession process, modernization of the Customs Union, visa liberalization, readmission of irregular migrants, strengthen border controls, the Facility for Refugees in Turkey (FRiT), and the principles of Dublin System, in comparison with the tools of externalization of migration policy of the EU.

Finally, the conclusion will discuss the overall findings and examine the implications of these findings on policy outcomes.

CHAPTER 2

CONCEPTUAL AND THEORETICAL FRAMEWORK OF THE EU MIGRATION POLICY

In this chapter of the thesis, migration policy of the EU is analyzed in detail in relation to externalization. Looking at the tools of the externalization of migration policy of the EU can give some insight in analyzing the EU-Turkey Statement in a structured way. The EU migration policy includes policies, practices and tools of security-based externalization. These tools of security-based externalization are not solely. It is not only an outcome of lack of responsibility sharing mechanisms or solidarity mechanisms between the Member States and/or within the EU. The EU restricts the asylum seeking right of the irregular migrants which it defines as threats with the argument of protecting its identity and way of life. In order to give further insight on these issues, this chapter will, first, analyze migration policy of the EU, its history and legal framework. Later, the tools of externalization policy, their possible impacts on the rights of irregular migrants and asylum seekers are discussed in detail. Migration and asylum did have a critical place within the four freedoms base of the EU, free movements of people, goods, services, and capital. However, over time this has changed. Although all of the founding Member States of the European Economic Community (EEC) were later the EU signatories of the 1951 Geneva Convention which defines the basics of the international protection regime, until the 1980s and 1990s the EU Member States did not need to develop a common policy on migration and asylum. Migration and asylum policies with the determination processes have been totally in the national spectrum of the Member States. With the development of policies that relate to the abolishment of internal borders, the development of common policies of external border controls became a necessity.

After the explanation of the historical development of the asylum and migration policy of the EU and CEAS, in order to better understand the externalization of

migration policy of the EU and its implementations, the chapter later focuses on the externalization of migration policy and the tools implemented by the EU in externalizing migration.

1.1 Common European Asylum System (CEAS) and the Legal Framework of the EU Migration Policy

With the Amsterdam Treaty, for the first time, immigration and asylum were regulated by intergovernmental measures and moved to the First Pillar. At the Tampere Council in 1999, the EU Member States decided to uniform a common asylum policy, called Common European Asylum System (CEAS). In the 2009 Stockholm Programme, the European Council mentioned the formation of CEAS in accordance with the Article 78 of the TFEU until 2012 as one of the key policy objectives of the Union.

Dublin Regulations are the main part of the CEAS. In addition, the Reception Conditions Directive, Asylum Procedures Directive, Qualification Directive and Temporary Protection Directive are the legal framework of the CEAS. The Dublin Regulations are based on the question of which Member State is responsible for the status determination of the asylum applicant. Furthermore, the Regulations aim to define the minimum standards for asylum procedures among the Union.

CEAS and its directives create a uniform framework for the international protection regulations of the Member States. However, because of the fact that the directives are not legally binding for the Member States,¹⁸ there can be a lack of solidarity and willingness to cooperate among the Member States despite the Art.80 of Treaty on Functioning of the European Union (TFEU) on solidarity and burden sharing. Some parts of the directives have already been problematic in terms of human rights or responsibility sharing whereas some of them are refused to be implemented by the Member States. The lack of responsibility sharing and solidarity among the Member States in the asylum and international protection field can be seen as a source for the increase in the externalization of migration policy. Although the externalization of

¹⁸ Camboulives, S. (2017). "Luck of the Draw for Asylum Seekers in Europe: Why the Common European Asylum System is a Breach of Justice and why a Third Phase of Amendments is Required". *Vermont Law Review*. 42. pp. 394

migration has already been a part of the EU migration policy and CEAS itself, the fact that other features of CEAS are not applicable makes externalization more important as a way of migration management. The directives themselves are not only part of the common policy for asylum but also part of the externalization policy as explained below particularly.

As the first main step in regulating the common migration and asylum policy, the Dublin Convention was signed in 1990 but it came into force in 1997.¹⁹ The main aim of the Dublin is determination of the responsible Member State for the asylum applications and status determinations in the free border system of the Union. Moreover, with the emphasis on a common asylum procedure system in Tampere, the Dublin has become the base of the CEAS. Later in 2003, the Dublin Convention was replaced by the Dublin II Regulation. Its main aim was still identifying the responsible Member States on the asylum applications and preventing possible abuses of the system through secondary movements.²⁰ The Dublin III Regulation was introduced in 2013. However, it does not have much difference from the previous version. It has still had the assumption that all Member States provide the same level and standard of protection and procedure for the asylum seekers which can be not the case in some of the Southern Member States like in the several examples.²¹ The main aim of the Dublin is determination of the responsible state for the asylum application in the free border system of the Union. Therefore, in the Dublin System it is important to identify the asylum seekers and irregular migrants in order to decide on the responsible Member State for the procedure. In addition, it includes a relocation scheme among the Member States based on the solidarity and fair sharing of responsibility principle. However, recently it can be interpreted from the implications

¹⁹ Gray, H. (2013). "Surveying the Foundations: Article 80 TFEU and the Common European Asylum System". *Liverpool Law Review*. 34. pp. 177

²⁰ EUR-Lex, (2011). Dublin II Regulation, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133153> (accessed 19 August 2021)

²¹ EDAL, "ECtHR - M.S.S. v Belgium and Greece", <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609> (accessed 19 August 2021)

that the identification process becomes only a matter of security of the EU rather than a procedure. In addition, the relocation scheme does not work because of the xenophobic policies and discourses of some of the Member States like Hungary.²²

One of the other parts of the legal framework in common policy within the EU on migration and asylum is the Reception Conditions Directive. It was first designed in 2003 and later recasted as The Reception Conditions Directive (Directive 2013/33/EU) in 2013.²³ It aims to create standards related to the receptions of asylum seekers in the Member States. The Directive includes all international protection applicants of third-country nationals and stateless persons.²⁴ It aims to ensure the availability of housing, food, healthcare, labour market, and education for the asylum seekers waiting for the decision in all EU Member States in order to offer them all a dignified standard of living conditions in this process.²⁵

The legal basis of the Directive lays down to the Art.78 (2)(f) TFEU. However, because of the fact that it is a Directive, it is not legally binding for the EU Member States. Therefore, the standards offered by the Member States in order to provide standard level of protection and living conditions for the applicants in EU and prevent the secondary movements within the EU Member States because of the disparities in the conditions of the reception systems at national level can differ among the Member States.²⁶ As this Directive initiates, preventing the secondary

²² Staudenmaier, R. (2018). "Hungary's Orban tells Germany: 'You wanted the migrants, we didn't'". *DW*, 8 January, <https://www.dw.com/en/hungarys-orban-tells-germany-you-wanted-the-migrants-we-didnt/a-42065012> (accessed 19 August 2021)

²³ Camboulives, S. (2017). "Luck of the Draw for Asylum Seekers in Europe: Why the Common European Asylum System is a Breach of Justice and why a Third Phase of Amendments is Required". *Vermont Law Review*. 42. pp. 398

²⁴ Boeles, P, Heijer, M, Lodder, G. and Wouters, K. (2014). *European Migration Law*. Intersentia. pp. 268

²⁵ European Commission, *supra* note 13, at 5.

²⁶ Boeles, P, Heijer, M, Lodder, G. and Wouters, K. (2014). *European Migration Law*. Intersentia. pp. 267

movements through developing the reception conditions in the frontier Member States within the Union is desirable for specifically the Northern Member States. Through the Directive, it can be interpreted that the EU aims to externalize the irregular migrants at least to the frontier Member States such as Greece when externalization to the neighbouring states is not possible. Furthermore, unified and human rights based reception conditions are not common within the Union as can be interpreted from the *M.S.S. v Belgium and Greece* case in European Court of Human Rights (ECtHR) which can cause violation of the rights of the irregular migrants and asylum seekers.²⁷

The Asylum Procedures Directive (Directive 2013/32/EU) aims to ensure an effective and fair application process for the asylum seekers regardless of the applied Member States within the Union.²⁸ It is legally based on the Art.78 (2) (d), which was the recasted version of the Directive in 2005. Although it aims to imply common procedures on asylum applications, it includes flexibilities based on the national legal systems of the Member States.²⁹ In addition, The Asylum Procedures Directive is a directive too; therefore, it is not legally binding too for the Member States.

The Directive determines some principles and guarantees to be respected in the examination process such as the right to access to the procedure, be medically examined if relevant or be visited by the UNHCR.³⁰ It aims to regulate the procedures based on human rights stemming from the ECHR and EU Charter on

²⁷ EDAL, “ECtHR - *M.S.S. v Belgium and Greece*”, <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609> (accessed 19 August 2021)

²⁸ Camboulivès, S. (2017). “Luck of the Draw for Asylum Seekers in Europe: Why the Common European Asylum System is a Breach of Justice and why a Third Phase of Amendments is Required”. *Vermont Law Review*. 42. pp. 396.

²⁹ Boeles, P, Heijer, M, Lodder, G. and Wouters, K. (2014). *European Migration Law*. Intersentia. pp. 275-276

³⁰ *Ibid.* pp. 278

Fundamental Rights, and the principles of *non-refoulement* and the right to an effective judicial remedy.³¹

Uniforming the procedure for the asylum seekers in the EU Member States based on the human rights obligations is not the only aim of the Directive.³² The other side of the Directive is preventing the abuse of the free border system. The concepts of ‘first country of asylum’ (Art.35), ‘safe country of origin’ (Art.36) and ‘safe third country’ (Art.38) are introduced with the Directive.³³ These concepts in the Asylum Procedure Directive are not only a door for possible human rights violations and commonality of lower standards for the asylum seekers but also they are part of the externalization policy of the EU with the security concerns. Specifically the ‘safe country of origin’ and ‘third safe country’ concepts are tools for externalizing the irregular migration by the EU. In this context, detailed explanations of these principles in the context of externalization of migration policy of the EU are conducted in the following part of this chapter.

The Qualification Directive (2011/95/EU) is the recasted version of the one in 2004. It aims to regulate the asylum application rejections or approvals based on the same standards in the Member States. In addition, based on the Directive, the applications should be examined individually by taking into consideration background information, gender and age of the applicant.³⁴ However, it is still not possible to mention a uniform standard for granting international protection in the Member States. The differences in the acceptance rates of the applicants from the same countries and similar backgrounds can be evidence for the continuation in asylum

³¹ *Ibid.* pp. 285

³² Schittenhelm, K. (2018). “Implementing and Rethinking the European Union’s Asylum Legislation: The Asylum Procedures Directive”. *International Migration*. 57(1). pp. 230

³³ EUR-Lex, (2013). “Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection”, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032> (accessed 19 August 2021)

³⁴ Camboulives, S. (2018). “Luck of the Draw for Asylum Seekers in Europe: Why the Common European Asylum System is a Breach of Justice and Why a Third Phase of Amendments is Required”. *Vermont Law Review*. 42. pp. 400

qualification. In addition, the Directive is lacking in terms of including clarifying conditions for subsidiary protection.³⁵

The temporary protection concept is not new in the international arena or peculiar to the EU. It was mentioned in the 1969 African Refugee Convention for the first time and structured coherently in the UNHCR's 1994 Report on International Protection.³⁶ After the mass movements of asylum seekers in the 1990s with the dissolution of Yugoslavia, the EU wanted to develop a short-term emergency response in order to provide protection for them. Therefore, in 2001 the Temporary Protection Directive (Directive 2001/55/EC) was casted. It aims to respond quickly in a legal system and in a standard way based on the solidarity principle in the EU Member States. Protecting the large number of displaced persons who are temporarily unable to return to their country of origin, preventing the possible pressure on national asylum systems of the Member States and providing responsibility sharing among the Member States are the main three goals of the Directive.³⁷

The main difference between the regular international protection system and temporary protection is the need for individual application and examination process. If the Directive is activated, the displaced persons do not have to apply for international protection individually. They are protected under the umbrella of the Temporary Protection Directive as soon as they enter a Member State. The normal duration of the temporary protection is one year, and it can be extended to three years for maximum. In addition, persons under temporary protection can apply for regular asylum application procedure in this process.

The Temporary Protection Directive has never been activated although the EU has faced several humanitarian crises which fit the aim of the Directive. However, the

³⁵ Ippolito, F. and Velluti, S. (2011). "The Recast Process of the EU Asylum System: A Balancing Act between Efficiency and Fairness". *Refugee Survey Quarterly*. 30(3). pp. 43

³⁶ Selanec, N. (2015). "A Critique of EU Refugee Crisis Management: On Law, Policy and Decentralisation". *Croatian Yearbook of European Law and Policy*. 11(1). pp. 95

³⁷ Boeles, P, Heijer, M, Lodder, G. & Wouters, K. (2014). *European Migration Law*. Intersentia. pp. 286

Member States and the EU institutions prefer to take “the priority of keeping refugees out or at the periphery of the EU”.³⁸ The Member States do not agree on a standard way for responsibility sharing on the temporary protection scheme. Moreover, they prefer to keep the asylum seekers out as much as possible from the Union rather than gather them legal status and protect them within the Union territory. Therefore, the inactivation of the Temporary Protection Directive can be interpreted as the lack of solidarity among the Member States and externalization of migration desire of the Union as the security agent and the Member States as the audience in the collective securitization process.

1.2 Externalization of Migration Policy of the EU

In this part of the chapter, the externalization of migration policy of the EU will be explained. In this context, the theoretical and conceptual framework for the externalization of migration, the evolution of the externalization of migration policies of the EU, its challenges and the tools of the externalization of migration of the EU will be explained.

1.2.1 Theoretical and Conceptual Framework

Externalization of migration policy of the EU can be defined as the responsibility shifting in migration management to the third countries through several tools. The EU applies the externalization of migration policy because of the security concerns. Rather than implementing the right-based policies and practices on migration, the EU prefers to implement the tools of the externalization of migration. Through the discourses and practices used by the EU and the Member States, the irregular migrants, asylum seekers and refugees are defined in the context of security. For protecting its internal system, the EU makes a strict distinction on the internal and external. In protecting the internal, it tries to externalize the irregular migrants which it defines as threats in its discourses specifically after the strengthen discourse on the connection between irregular migration and terrorism. Therefore, in this part of the

³⁸ Genç, D., Şirin-Öner, N.A. (2019). “Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union”. *International Journal of Political Science & Urban Studies*. 7(1). pp. 2

thesis, the collective securitization is used for explaining the background of the externalization of migration policy of the EU.

Before defining collective securitization, the securitization itself first can be defined as the process by which an actor defines a ‘threat’, attributes a special status to that threat. Therefore, the securitizing actor is able to justify and then execute ‘urgent and exceptional measures’ in response.³⁹ Securitizing includes referent object, security actor, audience and policy in the article of Sperling and Webber. In the securitization process, the EU is the securitizing actor and its Member States are the audience using a securitizing move to reach policy action in the securitization definition of Floyd.⁴⁰

The increase in transnational challenges for nation states leads them to rely on intergovernmental organizations, such as the EU, more; so that the EU can build a securitizing actor identity for itself.⁴¹ The creation of an intergovernmental inside and protection of this inside through excluding the threats coming from the outside or externalizing the inside problems collectively is the character of the EU in the securitization process as the securitizing actor. For example, the EU can apply its externalization of migration policy practices through its security identity with the argument of protecting the inside.

Collective securitization includes six steps. The first one is status quo security discourse and practice. The second stage is a single one or a following group of precipitating events which challenge this status quo and are interpreted as a possible way for worsening the internal or external security situation by the security actor and

³⁹ Buzan, B. and Waever, O. (2003). *Regions and Powers: the Structure of International Security*. Cambridge: Cambridge University Press in Sperling, J. & Webber, M. (2018). “The European Union: security governance and collective securitisation”. *West European Politics*. 42(2). pp. 9

⁴⁰ Floyd, R. (2018). “Collective securitisation in the EU: normative dimensions”. *West European Politics*. 42(2). pp. 392

⁴¹ Sperling, J. & Webber, M. (2018). “The European Union: security governance and collective securitisation”. *West European Politics*. 42(2). pp. 233

its audience, in the EU case, the EU and its Member States.⁴² As the third step, the precipitating event brings the securitizing move as a speech act. The speech act emphasizes the presence of a threat to a referent object, to the EU, and to the systemic properties which are sustaining it. Therefore, the language used in the speech act is important for explaining the responses and effects of the authoritative actors of the EU like the European Commission.⁴³ In the fourth step, the confirmation of the audience is empowered on the definition of threat, referent object and policies. The fifth stage is the creation and implementation of security threat related policies. At this point, common policies are required in the collective securitization process at the EU level.⁴⁴ In the final stage of the collective securitization, the changed or new language, agenda or practice becomes the new routine. They constitute the new status quo.

The EU's legal framework includes collective defense and collective security responsibilities. Like it is stated in the Art.22 of the TFEU, the Member States of the EU should act in solidarity and based on collective security.⁴⁵ Therefore, the EU, as a security actor, uses the collective securitization process explained above. When there is a distinction between the inside and outside, like the irregular migration issue and protection of the Schengen system, the EU uses collective securitization in order to deal with the issue. In this context, in scope of the collective securitization steps, after the already existing status quo as the first step, the increase in irregular migrants can be determined as one of the precipitating events as the second step. Later, as the third step, the EU defines the irregular migrants as a threat for the EU and European identity in the meetings and documents as the speech act. In this respect, as the following step, the Member States as the audience use securitized discourses and

⁴² *Ibid.* pp. 245

⁴³ *Ibid.* pp. 245-246

⁴⁴ *Ibid.* pp. 247

⁴⁵ *Ibid.* pp. 251

policies on irregular migration too together with the EU agencies.⁴⁶ In the fifth step, the EU implies policies in line with the threat discourses such as Frontex operations and border closures.⁴⁷ Most of the steps on externalization of migration can be seen as a part of the fifth step of the collective securitization like in the case of border controls which enable the EU to keep irregular migrants, defined as threats for the security of the Union, out of the Union. As in the final stage of the collective securitization applied by the EU on irregular migration and constructed through the speech act and following practices, the irregular migrants become the cause of the crisis and problem that should be solved and externalize as much as possible in order to keep the EU safe as the new status quo.

Considering the irregular migration issue as a security subject rather than humanitarian protection with a right-based approach allows the security actor, the EU, and its audience, the Member States, to use the argument of protection of the EU, and its citizens and identity from the harms of irregular migration. Therefore, the actor and the audience can use the tools of externalization policy while keeping irregular migrants out of the Union for keeping themselves safe as a way of collective securitization.

The founding principles of the EU and specifically the Schengen *acquis* require a Union based control of the external borders of the EU and common policies on migration and asylum. However, the Member States prefer to collaborate more on secularization of the borders and the migration and asylum rather than the EU values based policies on common system on asylum. Therefore, as a part of the collective securitization, the EU as a security agent externalizes the migration through its several practices with the discourse of possible damages coming from irregular migrants in terms of terrorism threat and cultural differences.

⁴⁶ Lucarelli, S. (2019). "The EU as a securitising agent? Testing the model, advancing the literature". *West European Politics*.42(2). pp 17

⁴⁷ Floyd, R. (2018). "Collective securitisation in the EU: normative dimensions". *West European Politics*. 42(2). pp. 402

In order to maintain the security of the system, the EU tends to solve the problems, which are sourced from the lack of willingness of the Member States on improving the Union based internal protection principles, by cooperating with the countries of origin which irregular migrants come and transit countries which irregular migrants pass. The wish on externalizing the migration control of the EU to the third countries can be seen in some European Council conclusions which mention the need for existence of migration and asylum in the EU's external policy.⁴⁸ Externalization of migration can be defined as the practices developed by the EU for shifting the responsibility on migration management to the third countries.⁴⁹

Boswell mentions two approaches on the externalization of migration policy of the EU.⁵⁰ The first one is the remote control approach. Since the early 1990s migration is securitized through mentioning it in relation to international organized crime and terrorism continuously at an increasing rate which allows some political parties within the EU Member States to create an anti-immigrant discourse and policies on control instruments of migration⁵¹ in accordance with the collective securitization steps. The EU aims to externalize migration control to its neighbours and the candidate states as a part of the accession process. The neighbours and candidate states are expected to apply stricter border control policies against irregular migration and improve their asylum policies in order to keep irregular migrants away from the EU Member States.

The second approach of the EU on the externalization of migration policy is the preventive/root cause approach. In addition to the externally controlling of the

⁴⁸ Boswell, C. (2003). "The 'external dimension' of EU immigration and asylum policy". *International Affairs*. 79(3). pp. 619

⁴⁹ İçduygu, A. & Demiryontar, B. (2019). "Mediterranean's Migration Dilemma and the EU's Readmission Agreements: Reinforcing a Centre-Periphery Relation" EuroMedMig Working Paper Series Number 1. pp. 10

⁵⁰ Boswell, C. (2003). "The 'external dimension' of EU immigration and asylum policy" *International Affairs*. 79(3). pp. 620

⁵¹ *Ibid.* pp. 624

migration, the EU aims to prevent the formation of irregular migration flows from its very beginning. This approach includes strategies on prevention such as development and economic assistance, efforts to improve conditions of human rights, democracy and rule of law in the countries of origin and transit countries.⁵² Therefore, individuals do not need to migrate irregularly to the EU territory as the EU and its Member States intend. Thanks to the root causes approach, the EU aims to eliminate the push factors in those countries.⁵³ The reduction of irregular migrants coming to the EU through the elimination of push factors in countries of origin and transit countries from the very beginning is the main goal of the Union in this approach. Conflict prevention, improving employment, support for democracy and human rights in those countries are some of the elements used by the EU in achievement of this goal.

Root causes approach can be seen as a less security-based one at the first sight. However, in practice it is not the case for the EU. Dealing with the root causes with an emphasis on development is done with the motivation of preventing irregular migration. Therefore, although its outcomes can be beneficial for the countries of origin and transit countries in terms of economic and democratic improvements, the aim of the Union is protecting the internal system by keeping the irregular migrants out of the Union's territory, which makes this approach also security-based.

1.2.2 Challenges of the Externalization of Migration Policy

Although especially from the Tampere Programme, the EU wants to keep security-based and rights-based policies in balance, it can be interpreted that the security-based policies are the ones which have priority in implementation.⁵⁴ Protection of the internal market and the free-border system through strict external border controls is

⁵² Kirchner, E. & Sperling, J. (2007). *EU security governance*. Manchester University Press. pp. 163

⁵³ Aubarell, G., Barrero, R., & Aragall, X. (2009). "New directions of national immigration policies: The development of the external dimension and its relationship with the Euro-Mediterranean proces. Euromesco Paper No. 79. pp. 15, quoted in Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 17

⁵⁴ Çilingir, S. (2018). "Kriz Gündeminde AB Göç Politikasının Yetkiler, Hedefler ve Araçlar İtibariyle Değerlendirilmesi: Sınır Yönetimi Örneği". *İşletme Fakültesi Dergisi*, 19 (1). pp. 41

constructed as more important than the protection of the right of asylum seeking of irregular migrants in need and responsibility sharing on international protection among the Member States.

As a securitization tool, the externalization of migration policy is problematic in terms of its contradictory relationship with the *non-refoulement* principle and the right-based approach in general based on international law and principles. The *non-refoulement* principle is one of the main parts of the Geneva Convention and international law in this respect as mentioned before. It prevents possible return to persecution of the irregular migrant not only in the country of origin but also in third countries.⁵⁵ Although there are examples of minimalist and territory based interpretations of the principle, which supports that the principle covers only for the irregular migrants who have already been in the territory of the host country, many others believe that the principle is applicable for the rejections at the external borders as well as the ones in the territory.⁵⁶ Through the externalization of migration, the EU keeps irregular migrants, who may be in need of international protection, away from the Union territory and prevent their right of asylum seeking. Therefore, through externalization, the EU can cause repetition of persecution for irregular migrants in the country of origin or transit country because they have to remain in the country of persecution. However, the EU and its Member States, based on the Geneva Convention, international customary law and its primary law and cases in the ECtHR, should support the protection of the rights of irregular migrants and *non-refoulement* principle.⁵⁷

While the Dublin Regulations takes all of the Member States as the safe countries for irregular migrants, the respect for human rights is a part of the main principles of the EU, and protecting the rights of irregular migrants and guaranteeing them to access

⁵⁵ Rijken, C. Pijnenburg, A. & Oudejans, N. (2018). "Protecting the EU external borders and the prohibition of refoulement". *Melbourne Journal of International Law*. 19(2). pp. 4

⁵⁶ *Ibid.* pp. 4

⁵⁷ *Ibid.* pp. 3

asylum application is a duty for all of the Member States, because of the security concerns externalization of not only the migration as an issue but also the migrants is *de facto* the main policy of the EU and its Member States in practice as constructed through collective securitization steps. As a part of the externalization policy, the EU can cooperate and become partners with countries which are known for their notoriety on human rights.⁵⁸ Therefore, the principles such as human rights and rule of law serving as the ground for the EU becomes not applicable when security-based externalization of migration policy is on the stage. The creation of an internal identity which should be protected from the irregular migrants coming from the outside through externalizing them is the main policy of the EU on the issue. However, prohibition of asylum seeking and contradictions on the *non-refoulement* principle do not suit the founding principles and values of the EU and international migration law.

1.2.3 Evolution of Externalization of Migration Policy of the EU

The EU can get the small part of the responsibility sharing on protecting the rights of irregular migrants and asylum seekers through the externalization of migration. Both of the approaches on externalization of migration mentioned in the previous parts can be seen in the policies and discourses of the EU in order to protect the Schengen and the system of the EU in general. In this part of the chapter, the development of the externalization of migration policy of the EU is explained in its historical process.

When five of the Member States, Belgium, Germany, France, Luxemburg, and the Netherlands, abolished the border controls for the movements of people with the Schengen Agreement has implemented since 1995, the need for determination of third country nationals' movement became an issue for the Union. Later, in 1987, with the Single European Act (SEA) border controls were abolished for the movements of people, goods, services and capital at the latest December 1992. In addition, it was also important that in this period the EU enlargement was continuing with the inclusion of Greece, Spain and Portugal which keeps attention on a possible increase in irregular migration. Lastly, according to Guild, the fall of the Berlin Wall

⁵⁸ Menz, G. (2014). "The promise of the principle-agent approach for studying EU migration policy: The case of external migration control". *Comparative European Politics*. 13. pp. 318

and end of the Cold War is an important step for the migration policy base of the EU.⁵⁹ Movement of people either with or without documents has been in increase after the fall of the Wall. With the end of the international political bipolar system, the number of asylum seekers in the EU Member States rises.⁶⁰ Through the common borders understanding of the Schengen and the increase in the number of irregular migrants, the EU developed a security-based externalization of migration policy.

In the 1990s, the increase in asylum seekers coming to the Member States was continuing with the crisis in the Balkans after the dissolution of Yugoslavia after the end of the Cold War.⁶¹ The Schengen Implementing Agreement (CISA) was signed in 1990. It is the first time that a European treaty regulates international protection for the region because thanks to the CISA abolishment of the border controls required regulations for the asylum seekers and international protection. According to the Agreement, the borders were abolished for the four components of the Union, not for the asylum seekers. Borders are still valid for the asylum seekers. In addition, the signatory states are still responsible for the determination and protection process. Although there are some differences in terms of the signatory states, the Dublin Agreement signed in 1990 includes similar elements like the CISA on asylum subject.

In the Pillar based system of the Maastricht Treaty, the Third Pillar includes policies on Justice and Home Affairs. In this respect, in order to improve the cooperation between the Member States on migration and asylum Europol was established⁶² because the EU wanted to form a common background for the security of the common borders. It has been serving for the externalization of migration too because it aims to ensure cooperation between the Member States for controlling the common

⁵⁹ Guild, E. (2016). "Does the EU Need a European Migration and Protection Agency?". *International Journal of Refugee Law*. 00(00). pp. 3-4

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² IKV, "Tarihçe", https://www.ikv.org.tr/ikv.asp?ust_id=3&id=28 (accessed 19 August 2021)

external borders. The Treaty of Amsterdam signed in 1997, and came into force in 1999, brings measures on asylum seeking processes.⁶³ Thanks to the Treaty of Amsterdam, the asylum issue is based on a legislation process in the Area of Security and Justice as a part of the Community Pillar.⁶⁴

In the Tampere European Council it was agreed on the establishment of a Common European Asylum System (CEAS) in 1999. The Hague Programme proposed the establishment of the European Asylum Support Office (EASO) in 2005. The EASO regulation came into force in 2010 and it started to operate in 2011 in order to maintain cooperation among the Member States on asylum.⁶⁵ Eurodac is the fingerprint data system of the Union which is in operation since 2003. It was revised with the Dublin Regulation in 2013.⁶⁶ The main aim of the Eurodac Regulation is to collect the fingerprints of asylum seekers and irregular migrants in order to maintain the function of the Dublin Regulation and CEAS and prevent the secondary movements of the asylum seekers and irregular migrants within the EU Member States. Hence, it eases the externalization of migration policy of the EU through its focus on preventive approach.

The Green Paper on the Future Common European Asylum System defines the objectives of the system in two time frames. The first one, which was originally designed for 1999-2005, is the process of policy harmonization on asylum procedures among the EU Member States whereas the second stage, which was originally designed as 2005-2010, increases the common standards of protection and

⁶³Bovens, L., Chatkupt, C., Smead, L. (2011). "Measuring common standards and equal responsibility-sharing in EU asylum outcome data". *European Union Politics*. 13(1). pp. 71

⁶⁴Gray, H. (2013). "Surveying the Foundations: Article 80 TFEU and the Common European Asylum System". *Liverpool Law Review*. pp. 34.

⁶⁵ EASO, "EASO History", <https://www.easo.europa.eu/about-us/easo-history> (accessed 19 August 2021)

⁶⁶ Boeles, P, Heijer, M, Lodder, G. & Wouters, K. (2014). *European Migration Law*. Intersentia. pp. 264

level of solidarity.⁶⁷ In addition, The Treaty of Lisbon signed in 2007 and entered into force in 2009 also mentions the need for a common asylum policy based on the 1951 Geneva Convention and 1967 Additional Protocol with the principle of solidarity and fair sharing of responsibility.⁶⁸ Lastly, New Pact on Migration and Asylum was introduced by the European Commission in September 2020. The aim of the Pact is abolishing the Dublin System and ensuring two main principles, more solidarity and clear responsibilities based scheme for the common asylum policy of the Union. However, it is highly criticized by the scholars as being part of the Dublin and externalization of migration policy rather than offering new solutions for the existing problems in the system.⁶⁹

The European Council Summit in Laeken in 2001 and Seville in 2002 suggested an external migration control based conclusion.⁷⁰ Although it focuses on the need for a common policy on asylum and immigration too, the Laeken Declaration on the Future of the European Union mentions that a true common asylum and immigration policy should include “the integration of the policy on migratory flows into the European Union's foreign policy” with an emphasis on readmission agreements with third countries.⁷¹ Moreover, it mentions the need for more effective control of external borders in order to “...help in the fight against terrorism, illegal immigration

⁶⁷Bovens, L., Chatkupt, C., & Smead, L. (2011). “Measuring common standards and equal responsibility-sharing in EU asylum outcome data”. *European Union Politics*. 13(1). pp. 71.

⁶⁸ *Ibid.* pp. 72

⁶⁹Spijkerboer, T.P. (2020). “I wish there was a treaty we could sign”. *ASILE*, 28 September, <https://www.asileproject.eu/i-wish-there-was-a-treaty-we-could-sign/>; Dalkıran, M. (2020). “AB’nin Yeni Göç ve İltica Paktı Aslında Bir Geri Gönderme Paktı mı?”. *Perspektif*, 13 October. <https://www.perspektif.online/abnin-yeni-goc-ve-iltica-pakti-aslinda-bir-geri-gonderme-pakti-mi/> (accessed 19 August 2021)

⁷⁰ Boswell, C. (2003). “The 'external dimension' of EU immigration and asylum policy” *International Affairs*. 79(3). pp. 636

⁷¹ Council of the European Union, (2001). “European Council Meeting in Laeken”, <https://www.consilium.europa.eu/media/20950/68827.pdf> (accessed 19 August 2021)

networks and the traffic in human beings”.⁷² Therefore, it can be claimed that the externalization of migration policy, specifically with the emphasis on remote control approach, of the EU is not the only outcome of the ill-functioning of the CEAS or Syrian crisis recently. It has already been a part of the CEAS itself.

The Seville Declaration includes a title on “Measures to combat illegal immigration”.⁷³ It calls for regulations on visa policies for countries of origin and readmission agreements with them. Furthermore, in addition to the regulations on the improvement of the integrated management of common external borders, the Declaration emphasizes the role of the immigration policy in the EU’s relations with third countries. It calls for action on handling the root causes of immigration in countries of origin like economic assistance and conflict prevention as the approach offers too. It suggests that “any future cooperation, association or equivalent agreement” which the EU realizes with any country should include cooperation on migration flows and compulsory readmission agreement.⁷⁴ The Union should be ready for technical and financial assistance in return for the cooperation on border controls and readmission agreements with the countries of origin and transit countries according to the Declaration. The Seville Declaration locates the migration policy into the external relations of the EU. It aims to prevent irregular migration, and if not possible keep irregular migrants out of the Union territory. If it is not possible too, lastly, it aims to turn them back through the readmission agreements. The root causes based plans for implementations, the compulsory readmission agreements, and desire for cooperation on control of borders and migration movements together with the countries of origin and transit countries are some tools for externalization of migration of the EU, as will be mentioned following part of the chapter in detail.

⁷² *Ibid.*

⁷³ Council of the European Union, (2002). “Seville European Council”, <https://www.consilium.europa.eu/media/20928/72638.pdf> (accessed 19 August 2021)

⁷⁴ *Ibid.*

The Hague Programme: Strengthening Freedom, Security and Justice in the European Union declared in 2004 covers general and detailed explanations and expectations on the externalization of migration policy of the EU. According to the Programme countries of origin and transit countries should be encouraged to make their capacity for refugee protection strong. In addition, the European Council continues to emphasize on interrelated policies on migration and development while creating dialogue and cooperation with the third countries. Finally, the Council support and request some improvements on management of external border control, like the establishment of Frontex, biometric and information system, like the workings of Schengen Information System(SIS), the Visa Information System(VIS) and Eurodac, and common visa policies in order to “...tackling illegal immigration”.⁷⁵ The Hague Programme emphasizes the importance of the external dimension of the migration policy of the EU and effective security measures in external borders in order to fight irregular migration, which makes it a strong security-based document by the EU on migration policy as a part of the speech act in collective securitization. However, it clashes with the right-based arguments of the EU not only in the same document but also in general discourses of the EU.

The Stockholm Programme which is framed in the light of the Lisbon Agreement contains elements on the place of migration policy in EU’s external policy, and, in this matter, relations with the third countries.⁷⁶ In the Programme, the importance of capacity building and development in the third countries is emphasized. Mobility Partnerships and voluntary returns are also encouraged by the Council. According to the Programme, a credible and sustainable common asylum policy can be achieved by not only solidarity within the EU but also solidarity with third countries to

⁷⁵ Council of the European Union, (2005), “The Hague Programme”, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XG0303%2801%29> (accessed 19 August 2021)

⁷⁶ Çilingir, S. (2018). “Kriz Gündeminde AB Göç Politikasının Yetkiler, Hedefler ve Araçlar İtibariyle Değerlendirilmesi: Sınır Yönetimi Örneği”. *İşletme Fakültesi Dergisi*, 19 (1). pp. 24

“...help (them) building capacity to handle migratory flows...”.⁷⁷ Finally, it puts emphasis again on the importance of integrated border management and common visa policies among the EU Member States and readmission agreements with third countries. One of the goals of the Programme is stated as guaranteeing security for the citizens of the EU.⁷⁸ Therefore, it can be implemented as possible and supported implementations by the Council for securing the internal. Although the Programme includes elements of a right-based approach for migrants and asylum seekers, its main focus is restricted to keep the internal safe and the external outsider.

The Global Approach to Migration and Mobility (GAMM) was defined by the European Council in 2005 and later developed in 2007 and 2008. It frames the cooperation between the EU and third countries on migration and asylum. It is later mentioned in the Stockholm Programme for “...consolidating, strengthening and implementing...”.⁷⁹ In 2011, the GAMM was renewed. One of the main priorities of this version is the external dimension of the EU’s migration policy based on the dialogue and partnerships with third countries such as mobility partnerships and readmission agreements together with the capacity-building mechanisms in third countries to prevent migration flows to the EU territory.⁸⁰ The documents have a strong emphasis on the importance of the external dimension of the EU. It includes elements on both remote control and root causes approaches as a part of the externalization of migration policy of the EU in order to keep irregular migration movements away from the Union.

⁷⁷ Council of the European Union, (2002). “Stockholm Programme”, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_stockholm_programme_-_an_open_and_secure_europe_en_0.pdf, pp. 72 (accessed 19 August 2021)

⁷⁸ *Ibid.*

⁷⁹ European Commission, “GAMM”, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/global-approach-migration-and_en (accessed 19 August 2021)

⁸⁰ EUR-Lex, (2011). “GAMM”, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0743> (accessed 19 August 2021)

The EU develops its common migration policy including the security-based externalization of migration. Therefore, either with a root causes approach or remote control approach, the EU has developed several tools for the externalization of migration.

1.3 Tools of Externalization of Migration Policy of the EU

The EU uses several tools in the externalization of migration policy. Some of these tools are different types of bilateral agreements including some rewards for the partner countries in terms of cooperation in externalization whereas some of them are principal base and sourced from the CEAS itself. The tools can be in a comprehensive, legal and organizational framework, based on technical and organizational assistance or governmental, intergovernmental and multilateral task-specific agencies in implementation of the externalization policies.⁸¹ In this part of the chapter, the tools of the externalization of migration policy of the EU, their aims, implementations and relations with the third countries will be defined, so that it can be possible to examine their existence in the EU-Turkey Statement in the following parts of the thesis. In this context, European Neighbourhood Policy, Mobility Partnerships, EU accession process, readmission agreements, border controls, financial assistance and the Dublin System are described as the tools of the externalization of migration policy of the EU.

1.3.1 European Neighbourhood Policy (ENP)

The EU attempts to integrate the country of origins and transit countries in its neighbourhood into its migration system through ENP and Partnership and cooperation agreements (PCA) mostly in order to externalize the irregular migration in the region. Specifically after and as a response to the enlargement process, the ENP is used by the EU because of the increase in the external borders and need for

⁸¹ Zeilinger, B. (2010). "Governing 'Wider Europe' in an interdependent world. EU's external policy towards Eastern Europe on migration management." ECPR Conference Fifth Pan- European Conference on EU Politics. Porto. pp. 1-36, quoted in Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave. pp. 26

regulations on movements of more people in the Schengen area⁸², which can be interpreted as another precipitating event in the collective securitization process for externalization of migration.

The PCA, as a part and tool of the ENP, came into force in 1997/98 in order to improve cooperation between the EU and its Eastern neighbours and create a comprehensive legal and organizational framework in this respect. The PCAs are a form of bilateral cooperation in mostly trade, transportation, energy, environment and Justice and Home Affairs. In addition, the Strategic Partnership with the Russian Federation of the EU is also a part and tool of not only the ENP but also the externalization of the migration policy because it includes institutional frameworks on external cooperation on irregular migration.⁸³

The ENP as one of the structured ways of the external relations of the EU establishes a cooperation-based relationship in accordance with the EU *acquis* between the neighbours and the EU without mentioning the possibility of full membership.⁸⁴ In return, what the neighbours gain is access to the world's biggest single market and political cooperation. It is important in the externalization of migration policy of the EU because through the ENP the EU aims to keep the neighboring countries stable so that the EU can prevent possible irregular migration movements to the Schengen area based on the root causes approach. The readmission agreements signed with the ENP countries as a part of the cooperation serves for the externalization of migration too. However, the ENP does not contain membership perspective for the neighbours. Therefore, it is the lack of influence of the countries in implantation in terms of conditionality, especially in the migration field because of the inequalities in

⁸² *Ibid.*

⁸³ Zeilinger, B. (2010). "Governing 'Wider Europe' in an interdependent world. EU's external policy towards Eastern Europe on migration management." ECPR Conference Fifth Pan-European Conference on EU Politics. Porto. 1-36, quoted in Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave. pp. 29

⁸⁴ Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 27

responsibility sharing between the EU and the neighbours.⁸⁵ More importantly, enabling the neighbouring countries to access the market and cooperating in several fields in return for keeping the irregular migrants away because of the security concerns is an outcome of collective securitization of the migration issue in the EU. Moreover, it does not match with the responsibility sharing understanding. The increase in the number of irregular crossings to the EU after the Arab Spring triggered the EU's wish on externalizing the irregular migrants to the countries issued in the context of the ENP. Therefore, after the Arab Spring uprisings, the ENP is reviewed⁸⁶ in this context for rendering possible the externalization of migration after the Arab Spring to the neighboring partner countries with a remote-control approach.

1.3.2 Mobility Partnerships

Negotiations for the mobility partnerships are carried out by the European Commission. However, it needs to be approved by the Council of Ministers. Within the context of the ENP and external dimension of the EU's policies, the Commission initiates the mobility partnerships with the neighbouring countries in the Southern and Eastern sides of the Union. For example, Moldova, Cape Verde, Georgia, Armenia and Morocco are the countries that mobility partnerships are carried on by the EU.⁸⁷ The European Commission puts emphasis on the individuality of each of these political decisions which are not legally binding actually. In return for the financial and technical support through different ways, the third countries are

⁸⁵ *Ibid.* pp. 28

⁸⁶ European Commission, "European Neighbourhood Policy", https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/european-neighbourhood-policy_en (accessed 19 August 2021)

⁸⁷ Menz, G. (2014). "The promise of the principle-agent approach for studying EU migration policy: The case of external migration control". *Comparative European Politics*. 13. pp. 315

expected to fulfill the expectations on readmission, strict border controls or/and combat trafficking.⁸⁸

Mobility partnerships can offer visa liberalization in traveling the EU and limited labour migration in return for cooperation on border controls, readmission agreements, joint surveillance and deportation.⁸⁹ Mobility partnerships between the EU and third countries which are willing to work actively in managing the migration flows, specifically the irregular migration movements, in partnership with the EU are based on the negotiations between the European Commission and the third countries. In return, the third countries, the neighbours, can be rewarded through the possibilities of mobility between their countries and the EU for their citizens, in terms of regular migration opportunities.⁹⁰

Mobility partnerships are stated as a contribution for management of migration flows in a spirit of shared responsibility, in line with the principles of the 'Global Approach to Migration' by the Commission. On the other hand, they are ways of restricting the seeking asylum of the irregular migrants in the Union's territory with the effect of the fact that these partner countries are third safe countries for the EU.⁹¹ Therefore, in the context of the mobility partnerships and third safe country principle, irregular migrants cannot seek asylum in an EU Member States which is a restriction in terms of human rights. In addition, responsibility sharing is not fair usually in these partnerships because most of the responsibility is in the third countries, which may have human rights violations or economic problems, as a result of the return of irregular migrants as being their national or not. Finally, the emphasis of Commission on the distinction between the 'legality' and 'illegality' of migration

⁸⁸ Brocza, S. & Paulhart, K. (2015). "EU mobility partnerships: a smart instrument for the externalization of migration control". *European Journal of Futures Research*. 3(15). pp. 2

⁸⁹ Menz, G. (2014). "The promise of the principle-agent approach for studying EU migration policy: The case of external migration control". *Comparative European Politics*. 13. pp. 315

⁹⁰ European Commission, "Mobility Partnerships", https://ec.europa.eu/commission/presscorner/detail/en/MEMO_07_197 (accessed 19 August 2021)

⁹¹ *Ibid.*

and offering ‘legal’ migration for the citizens of the third countries in return for working for keeping the ‘illegal’ migrants away from the Union consolidates the relationship between the EU and partner countries on development and security nexus⁹² rather than finding a right-based solution. Therefore, the mobility partnerships as a tool for the externalization of migration can be defined in the context of both remote control and root causes approaches.

1.3.3 EU Accession Process

As a part of the enlargement project, the EU uses the accession process as a tool for the externalization of migration policy too. In the accession process the EU can ask for the full adaptation of the *acquis*.⁹³ In a carrot and stick based relations, EU conditionality can be applicable in the accession process conducted with the candidate countries. Therefore, implementations in the pre-accession period for the candidate countries are also parts of the externalization of migration policy for the EU. In the context of the accession process, the EU expects improvement on the areas of justice, freedom and security in general which covers migration too. Fight against terrorism, corruption and organized crime, judicial cooperation and cooperation in the field of drugs are some of the titles issued in the field of justice, freedom and security in the alignment with the EU *acquis* other than the migration-related issues. Regulations in migration policies and national asylum systems, alignment with the Schengen system, border controls and visa policies in accordance with the EU *acquis* are necessary for the accession process.⁹⁴ However, they are important for the externalization of migration too at the same time. The accession negotiations and externalization of the security-based migration policy of the EU go

⁹² Brocza, S. & Paulhart, K. (2015). “EU mobility partnerships: a smart instrument for the externalization of migration control”. *European Journal of Futures Research*. 3(15). pp. 3

⁹³ Lavenex, S. and Schimmelfennig, F. (2009). “EU rules beyond EU borders: theorizing external governance in European politics”. *Journal of European Public Policy*. 16(6). pp. 803

⁹⁴ Yıldız, A. G. (2016). *The European Union’s immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 28

hand in hand.⁹⁵ For example, development in the asylum system of the candidate and potential candidate countries can serve for the externalization with a root causes approach. In addition, the EU wants to strengthen border controls in order to prevent the further movement of irregular migrants in a case that they achieve to reach the candidate country so that the EU can keep them at least in the neighbouring candidate country with a remote control approach. As a result, in relation to the accession process, Eastern neighbours of the EU become a buffer zone in the context of irregular migration;⁹⁶ so that the EU can protect itself from the effects of the irregular migration by keeping them in the buffer zone, namely the possible future member states of the EU. For example, after the closure of the borders of Hungary for irregular crossings in September 2015, irregular migrants are stuck in Serbia, although they want to move further to the Northern EU countries.⁹⁷ Hence, the right of asylum seeking becomes prevented for the irregular migrants through externalization. The regulations on the asylum systems and migration policies in the candidate countries for adopting the *acquis* can improve the countries in this field. However, the regulations can serve for the security of the EU because irregular migrants are defined as threats through speech act and they should be kept in outside of the Union like in the candidate or potential candidate countries for the Union at the same time through the practices developed in the accession process.

1.3.4 Readmission Agreements

One of the main tools of externalization of migration policy of the EU is readmission agreements with a remote control approach. It can be mentioned as a secondary tool in the externalization process because it aims to be sure on elimination of the irregular migrants from the Union territory even if they have been reached already.

⁹⁵ Bobić, M. and Šantić, D. (2019). “Forced migrations and Externalization of European Union Border Control: Serbia on the Balkan Migration Route”. *International Migration*. 58(3). pp. 3

⁹⁶ Green, P. (2006). “State Crime Beyond Borders”, in Pickering, S. and Weber, L. (eds). *Borders. Mobility and Technology*. Springer, quoted in Torresi, T. (2013). “An Emerging Regulatory Framework for Migration the Libya–Italy Agreement and the Right of Exit”. *Griffith Law Review*. 22(3). pp. 654

⁹⁷ Bobić, M. and Šantić, D. (2019). “Forced migrations and Externalization of European Union Border Control: Serbia on the Balkan Migration Route”. *International Migration*. 58(3). pp. 10.

In return for various technical and financial assistance, the EU expects acceptance of irregular migrants not only the nationals of the partner third country but also the ones reaching the EU through passing the third country back. In addition, like generally in the Mobility Partnerships and pre-accession process, strict border controls on irregular passing is crucial for the EU.

The EU has 18 readmission agreements recently with several third countries including Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, North Macedonia, Bosnia & Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde and Belarus. Yet, especially for the ones which are not in an accession perspective, readmission agreements bring less in terms of visa facilitation and financial support generally.⁹⁸ Therefore, although the EU has a strong motivation for readmission agreements in the externalization of migration policy, the materialization and implementation of them can be problematic in reaching the ‘Fortress Europe’. In such cases that the practices developed in the context of collective securitization actions become fruitless, the EU Member States can initiate bilateral readmission agreements in a similar manner with the third countries that they have close relations on the historical or migration-related grounds, like in the cases of Italy-Libya, Spain-Morocco or Greece-Turkey, in order to achieve their security goals on irregular migration.⁹⁹

All of the Member States are declared as to be respectful for human rights and the *non-refoulement* principle according to the Geneva Convention and EU *acquis*. Furthermore, it is mentioned by the EU that the returns are implemented in the light of the relevant EU rules within the context of the relevant regulations in CEAS¹⁰⁰. However, in practice, the returns can cause human rights based problems and

⁹⁸ Richey, M. (2013). “The North African Revolutions: A Chance to Rethink European Externalization of the Handling of Non-EU Migrant Inflows”. *Foreign Policy Analysis*. 9(4). pp. 423

⁹⁹ Yıldız, A. G. (2016). *The European Union’s immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 29

¹⁰⁰ European Commission, “Return & Readmission”, https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en (accessed 19 August 2021)

violation of *non-refoulement* principle. Which irregular migrant should return and which one can apply for international protection becomes a problem in practice even if it is clear in documents. In addition, readmission agreements shift responsibility to the third country without checking the ability and capacity of the asylum system of the third country, which also can limit the rights of the irregular migrants.

1.3.5 Border Controls

Border controls are one of the cornerstones of the externalization of migration policy of the EU. Because of the fact that the EU lays down on the four freedoms and the free border system of the Schengen Agreement, controls on the external borders are vital for the maintenance of the system. On the other hand, the increasing concerns of the EU on irregular migration and its security aspect, namely securitization of migration, especially stranding from the 2000s makes control of the external borders more important. As a part of the policy response on the collective securitization of migration can be seen as externalization of migration in relations with the third countries of the EU and some institutional developments in the EU on border controls with a remote control approach.¹⁰¹

Visa liberalization has been issued for the citizens of Montenegro, Serbia and North Macedonia, Albania, Bosnia and Herzegovina, Moldova, Georgia and Ukraine in the context of the Western Balkans and Eastern Partnership.¹⁰² In return for the visa liberalization, the countries are expected to fulfill the EU's requirements mostly on the migration and security nexus. The EU usually offers visa liberalization in return for the strict border control of the common borders with the third countries so that the control of the borders becomes the responsibility of the third countries.¹⁰³

¹⁰¹ İçduygu, A. and Demiryontar, B. (2019). "Mediterranean's Migration Dilemma and the EU's Readmission Agreements: Reinforcing a Centre-Periphery Relation" EuroMedMig Working Paper Series Number 1. pp. 8

¹⁰² European Commission, "Visa liberalisation: Commission reports on the continued fulfilment of requirements by the Western Balkans and Eastern Partnership countries", https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1327 (accessed 19 August 2021)

¹⁰³ Çilingir, S. (2018). "Kriz Gündeminde AB Göç Politikasının Yetkiler, Hedefler ve Araçlar İtibariyle Değerlendirilmesi: Sınır Yönetimi Örneği". *İşletme Fakültesi Dergisi*, 19 (1). pp. 28-29;

However, that security-based and remote control approach and policy of the EU can be a barrier for irregular migrants in access to rights, specifically the asylum seeking right.

Several institutions of the EU have big or small responsibilities on the securitization of migration based external border controls like the EASO, Frontex, Eurojust and Europol. The EASO is responsible for operational support in the Member States to make the possible continuation of the hotspot approach which is another step in the externalization of migration.¹⁰⁴ In the context of the hotspot approach, Italy and Greece are supported by the EU institutions for immediate actions in the borders specifically in return of the irregular migrants.¹⁰⁵ In addition, Eurojust and Europol in cooperation with the host EU Member States are working for disassembling migrant smuggling and human trafficking networks for ensuring not only irregular migrants but also, specifically, the Member States.¹⁰⁶ Among these institutions, on the border controls, the most crucial one is the Frontex. Its full name is European Border and Coast Guard Agency. It conducts joint operations with the request of the Member States through the cooperation of the third countries if necessary.¹⁰⁷ Through these operations and push-backs in the Mediterranean with a security emphasis, the EU aims to prevent the arrival of the irregular migration to the Union territory at the very beginning of their journey if possible. However, in terms of access to asylum, it

Toğral-Koca, B. (2014). “Biyopolitika, Güvenlik ve Frontex’in Türkiye-Yunanistan sınırındaki rolü”. *Göç Dergisi*. 1(1). pp. 68-69

¹⁰⁴ European Parliament, “Hotspots at EU external borders State of play”, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI\(2018\)623563_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf), pp. 2 (accessed 19 August 2021)

¹⁰⁵ European Commission, “Hotspot Approach”, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/hotspot-approach_en (accessed 19 August 2021)

¹⁰⁶ European Parliament, “Hotspots at EU external borders State of play”, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI\(2018\)623563_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf), pp. 2 (accessed 19 August 2021)

¹⁰⁷ Frontex, “Our Mission”, <https://frontex.europa.eu/about-frontex/origin-tasks/> (accessed 19 August 2021)

limits the rights of irregular migrants. In addition, the operations and push-backs which are questionable in terms of its compliance with the human right base norms and rule of law principle of the EU creates buffer zones in the external environment of the EU and shift the responsibility to them.

1.3.6 Financial Assistance

Like visa facilitation, the EU offers some financial and technical support for the third countries in return for their cooperation on the externalization of migration policy. The assistance is in the context of the readmission agreements, mobility partnership agreements and cooperation on migration management. In this respect, the Asylum, Migration and Integration Fund (AMIF) was for the period of 2014-20, with a total of EUR 3.137 billion budget.¹⁰⁸ It includes four main components. The two of them are related to the implication of CEAS and solidarity among the Member States whereas the other two are on supporting ‘legal migration’ and return of irregular migrants, which can serve for the externalization of migration. The AMIF is also one of the sources of the Mobility Partnership Facility (MPF). It aims to create migration dialogue with the partner countries, better legal frameworks on legal migration and opportunities for possible irregular migrants on legal ways of migration.¹⁰⁹ Lastly, the FRiT was conducted in the framework of the Joint Action Plan in 2015 after the Syrian crisis and developed later with the EU-Turkey Statement in 2016.¹¹⁰ Because of the fact that the Facility is a part of the Statement, it will be covered in the following chapters of the thesis in detail.

On the one hand, through the money, the conditions of the facilities in the third countries like the reception centers, detention centers or the legal framework and

¹⁰⁸ European Commission, “Asylum, Migration and Integration Fund - Union actions in the field of asylum”, https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en (accessed 19 August 2021)

¹⁰⁹ European Commission, “Mobility Partnership Facility (MPF)”, https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/mobility-partnership-facility_en (accessed 19 August 2021)

¹¹⁰ Council of the European Union, (2016). “EU-Turkey Statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

social services like health and education services offered for the irregular migrants, asylum seekers and refugees can be improved and they can enjoy their rights and legal services.¹¹¹ On the other hand, buffer zone construction of the EU can be seen in these assistances too. It is part of a persuasion process of the third countries in accepting the return of irregular migrants. The EU aims to develop the conditions through the given financial assistance so that the number of irregular migrants trying to reach the EU Member States and asylum applications decrease as in line with the EU's purpose as a part of the root causes approach on externalization.

1.3.7 Dublin System

Most of the EU Member States apply a specific Dublin office in their asylum application systems so that they can deter the inadmissible applications according to the Dublin Regulations in the application process. In the process, first of all, they try to determine which Member State or, if it is admissible for the case, third safe country is responsible for the assessment of the asylum application. As one of the ways of implementing the externalization of migration policy, EU names some neighbouring countries as the third safe countries so that the Member States can send the asylum seekers coming or passing from these countries without the assessment of their asylum application in the context of readmission agreements in the context of the remote control approach. Furthermore, if the third safe country cannot be admissible for the case, the first country of asylum is a tool of externalization of the EU based on the Dublin Regulations. However, this time, the externalization is implemented within the EU. Based on the principle, the responsibility of assessment of the asylum application is in the Member States which is used by the asylum seeker while entering the EU. It brings the case that most of the time asylum seekers send back to the Member States in the Southern part of the Union that they enter the EU. The implementation can be interpreted as the externalization of the migration from the Northern Member States to the Southern frontline Member States like Greece and

¹¹¹ Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 30-31

Italy.¹¹² Therefore, the responsibility shifting sourced from the externalization of migration policy is not only the case for the third countries but also the frontline Member States within the EU. If the resettlement and relocation scheme within CEAS was adopted and implemented in a regular way by the Member States, the situation would be different for not only the third countries and frontline Member States in terms of responsibility sharing but also asylum seekers in terms of protection of their rights.

The inadmissibility of the asylum applications based on the third safe country and first country of asylum coming from the externalization policy brings violations of human rights and the *non-refoulement* principle. First of all, it prevents the right of asylum seeking. Although the right is not regulated with the Geneva Convention, based on the customary law and EU *acquis* asylum seeking is a right. However, the safe third country and first country of asylum principles in the Dublin system limit this right. In addition, return of the asylum seekers without accepting the application to the third country may be against the *non-refoulement* principle because of the possible inadequate conditions in respect for human rights and rule of law in the third countries. Furthermore, it can be the situation even within the Union itself like in the *M.S.S. v Belgium and Greece* case.¹¹³ Because of the first country of asylum principle, most of the responsibility of the asylum seekers entering the EU is on the frontier border states. Therefore, the conditions in these relatively less developed Southern Member States can be inappropriate for the asylum seekers.¹¹⁴ It is against the solidarity principle of the TFEU because of the inequalities in distribution of the number of asylum seekers and economic power of the Member States. At the same

¹¹² Niemann, A. & Zaun, N. (2018). "EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives". *Journal of Common Market Studies*. 56(1). pp. 14

¹¹³ McDonough, P. and Tsourdi, E. (2012). "The 'Other' Greek Crisis: Asylum and EU Solidarity". *Refugee Survey Quarterly*. 31(4). pp. 68

¹¹⁴ Rempel, L. and Doulgkeri, F. (2018). "Moria refugee camp conditions "not meeting the minimum requirements". *Euronews*, 20 September. <https://www.euronews.com/2018/09/20/moria-refugee-camp-conditions-not-meeting-the-minimum-requirements> (accessed 19 August 2021)

time, it can be a barrier for asylum seekers in reaching fundamental rights such as even accommodation and food like in the case of the camps in Greece.

In conclusion, this chapter of the thesis aims to describe the externalization of migration policy of the EU. In order to do so, CEAS and historical development of the migration policy of the EU is explained in relation to the externalization of migration. It can be concluded that externalization has been part of the migration policy of the EU from the first mention of a common asylum and migration policy because of the security concerns. The EU applies collective securitization through defining itself as a security actor together with its audience, the Member States, in order to protect itself from the outsiders, the irregular migrants as constructed through the speech acts specifically after the increase in the irregular crossing as a precipitating event. Later, the externalization of migration policy is explained in detail, which brings the conclusion that the EU applies both root causes and remote control approaches for externalizing the migration in a security-based manner. Lastly, the tools which the EU uses while externalizing its migration policy are evaluated so that in the related chapter it can be possible to evaluate the use of these tools in the EU-Turkey Statement.

In the following chapter of this thesis, the EU-Turkey Statement is explained in detail with its background, elements, implementations, achievements, failures and criticisms before examining its relation with the externalization of migration policy of the EU.

CHAPTER 3

THE EU-TURKEY STATEMENT

The EU-Turkey Statement was introduced on 18th March 2016 after an intense dialogue between the EU and Turkey. Although migration and asylum have always been an important agenda in the dialogue between the EU and Turkey, it has reached to the top of the political agenda with the Syrian crisis starting in 2011. After the crisis, the Syrian refugees and forcibly displaced persons has been escaping from the civil war and trying to reach neighboring countries including Turkey. In some cases, this flight continued until they reached to the EU Member States. The EU has already been applying the tools of the externalization of migration policy in cooperation with Turkey because it defines irregular migrants as threats. Furthermore, it has been hesitant to accommodate the needs of high numbers of asylum seekers and irregular migrants after the Syrian crisis. Hence, it has wanted to make relations and cooperation deeper with Turkey on externalizing irregular migration and refugee protection.

In this chapter of the thesis, the EU-Turkey Statement is examined in detail to scrutinize its position with the externalization of migration policy of the EU. Before discussing the Statement in detail, the history of migration policy in Turkey is analyzed in the first part of this chapter in order to understand the expectations of Turkey from the Statement. Later, the background of the Statement is analyzed in relation to the Syrian crisis, its effects on the EU and Turkey and how these issues are addressed in the Statement. After the examination of each clause in detail, the chapter concludes with the outcomes of the Statement in terms of achievements for both parties. The failures of or criticisms for the Statement in terms of its legal framework and possible human rights violations for the irregular migrants and asylum seekers are also discussed in this final section.

2.1. History of Migration Policy in Turkey

Turkey has always been a hub for migratory movements because of its geographical location. During and after the collapse of the Ottoman Empire, Anatolia faced mass population movements from different ethnic backgrounds. In order to regulate the settlement of the newcomers after its foundation, the Republic of Turkey introduced the Settlement Law in 1934.¹¹⁵ In 1950 the Passport Law entered into force to regulate the entrance in and exit from Turkey.¹¹⁶ During the Second World War Turkey hosted asylum seekers escaping from persecution.¹¹⁷ After the Second World War, in 1951 the Convention on the Status of Refugees (1951 Geneva Convention) was signed in the United Nations' auspices in order to prevent the violations of rights of the people who try to escape from the war. The Convention defines the definition of a refugee, protection principles for refugees, specifically the *non-refoulement* principle and their rights provided by protector states.¹¹⁸ Turkey is a signatory to the Geneva Convention. However, while nearly all of the signatory states eliminated the time and geographical limitations originally existing in the Geneva Convention, with the 1967 Additional Protocol, Turkey eliminated the time limitation while keeping the geographical limitation. According to the geographical limitation, an asylum seekers coming outside of Europe cannot reside as a refugee in Turkey after s/he is granted the refugee status. These refugees are resettled in third countries. In defining the geographical location of Europe, Europe is defined as the member states of the

¹¹⁵ Karasu, M.A. (2018). "Türkiye'ye Yönelik Dış Göçler, Suriyeli Sığınmacı Göçü ve Etkileri". *Paradoks Ekonomi, Sosyoloji ve Politika Dergisi*. 14(1). pp. 27

¹¹⁶ *Pasaport Kanunu*, <https://www.mevzuat.gov.tr/MevzuatMetin/1.3.5682.pdf> (accessed 4 June 2021)

¹¹⁷ Kale, B. (2015), "19.Yüzyılda Zorunlu Göçün Osmanlı İmparatorluğu'na Olan Etkileri", M. Erdoğan ve A. Kaya (der.), *14. Yüzyıldan 21.Yüzyıla Türkiye'ye Göçler*, İstanbul: Bilgi Üniversitesi Yayınları.

¹¹⁸ UNHCR, (1951). "The Refugee Convention", <https://www.unhcr.org/4ca34be29.pdf> (accessed 19 August 2021)

European Council.¹¹⁹ The elimination of the geographical limit has always been one of the requests of the EU as commonly mentioned in the Progress Reports of the European Commission prepared during the accession process.¹²⁰

In 1964, the Turkish Citizenship Law came into force to regulate naturalization and denaturalization.¹²¹ After the Second World War, Turkey became an emigration country through the bilateral agreements signed with the Western European countries which needed labour force. In this respect, until the oil crisis in the 1970s, Turkish citizens immigrated to Western European countries, especially Western Germany, as labour force.¹²²

Turkey has not only been a country of emigration but also a country of immigration and refugee flows during its history.¹²³ During the 1980s, because of the political pressures on the ethnic Turks in Bulgaria, Bulgarian citizens who are ethnic Turks fled to Turkey.¹²⁴ At the end of the 1970s and beginning of the 1980s, asylum seekers came to Turkey because of the political pressure in Iran, until they were

¹¹⁹ Uluslararası Af Örgütü, “Türkiye, 65 yıl önce imzalanan Cenevre Mülteci Sözleşmesi'ne koyduğu sınırlamayı kaldırmalıdır”, <https://www.amnesty.org.tr/icerik/turkiye-65-yil-once-imzalanan-cenevre-multeci-sozlesmesine-koydugu-sinirlamayi-kaldirmalidir> (accessed 19 August 2021)

¹²⁰ As the example see 2002 Regular Report on Turkey’s Progress towards Accession, pp. 122 and Turkey 2005 Progress Report, pp. 111

¹²¹ Türk Vatandaşlığı Kanunu, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5901.pdf> (accessed 4 June 2021)

¹²² Abdülal, A. I. (2016). “Turkish Immigration Policies: Challenges end Responses”. *Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi*. 21(4). pp. 1466.

¹²³ Kirişçi, K. (2003). “Turkey: a transformation from emigration to immigration,” Migration Information Source, November, <https://www.migrationpolicy.org/article/turkey-transformation-emigration-%C4%B0mmigration> (accessed 4 June 2021)

¹²⁴ İçduygu, A., Erder, S. and Gençkaya, Ö. F. (2014). Türkiye’nin Uluslararası Göç Politikaları, 1923-2023: Ulus-devlet Oluşumundan Ulus-Ötesi Dönüşümlere. MireKoç Proje Raporları 1/2014. İstanbul. pp.152-153, <https://mirekoc.ku.edu.tr/wp-content/uploads/2017/01/Tu%CC%88rkiyenin-Uluslararası-C4%B1-Go%CC%88c%CC%A7-Politikalar-C4%B1-1923-2023-.pdf> (accessed 4 June 2021)

resettled to other European countries or the USA.¹²⁵ Later, in the 1990s asylum seekers escaping from the war in Iraq, Afghanistan, Kosovo and Bosnia-Herzegovina stayed in Turkey. Some of these refugees returned to their countries when the wars came to an end.¹²⁶ With the end of the Cold War and dissolution of the USSR, immigrants from the Eastern Bloc reached Turkey irregularly in the 1990s. In this atmosphere, the first regulation of Turkey on international protection was accepted in 1994. The changes in the nature and number of movements of people into Turkey after the mid-1980s, namely the cross border movements of Iraqi Kurds in 1988 and 1991, Bulgarian Turks in 1989 and Bosnians in 1992 and 1993 affected the regulation. Mainly Turkey's worries on national security about the high number of border crossings of the Iraqi Kurds were the main trigger point for the 1994 Regulation on Asylum.¹²⁷ Hence, it prioritized security concerns over human rights and protection principles. Therefore, Turkey has faced some cases in the ECtHR in that matter.¹²⁸

After the Helsinki European Council decision in December 1999, Turkey became an official candidate country for membership to the EU. This membership prospect opened the possibility for the EU to influence Turkish asylum and migration policy in an unprecedented manner. Based on the EU conditionality in this matter, adopting the EU *acquis* on migration and asylum policies has been an integral part of Turkey's accession process. Turkey as an emigration, immigration and transit country had to harmonize its migration and asylum policies in line with the fulfillment Copenhagen Criteria as the Progress Reports of the European Commission suggested specifically in the 2000s. Turkey has improved several points like visa and border controls in this

¹²⁵ İçduygu, A. and Aksel, D. (2012). *Irregular Migration in Turkey*. IOM. Ankara. pp. 12

¹²⁶ Karasu, M.A. (2018). "Türkiye'ye Yönelik Dış Göçler, Suriyeli Sığınmacı Göçü ve Etkileri". *Paradoks Ekonomi, Sosyoloji ve Politika Dergisi*. 14(1). pp. 28

¹²⁷ Kirişçi, K. (2002) "Justice and Home Affairs. Issues in Turkish-EU Relations". Istanbul, Tesev Publications. Pp. 6

¹²⁸ Menekşe, T. (2019). "Uluslararası Sistemde İltica: Almanya, İngiltere ve Türkiye'nin Karşılaştırmalı Analizi". Unpublished Master's Thesis. Gazi University. pp. 57

context.¹²⁹ In addition, the Commission commonly has mentioned the need for a readmission agreement with Turkey.¹³⁰ However, Turkey refused to fulfill this request for a long time.

In the light of the need for improvement in asylum and migration management policies because of the EU accession process and, based on the 2003 National Programme for the Adoption of the Acquis (NPAA), “Turkish National Action Plan on Adoption of the European Union Acquis in the Field of Asylum and Migration” (*İltica ve Göç Alanındaki Avrupa Birliği Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Eylem Planı*) entered into force in 2005.¹³¹ This Plan covered the regulations, investments and precautions on legislations, organizational structure and physical infrastructure for the adoption of the EU *acquis*.¹³² In line with these legal and institutional developments, Migration and Asylum Legislation and Administrative Capacity Development and Implementation Office of the Ministry of Interior (*İçişleri Bakanlığı Göç ve İltica Mevzuatı ve İdari Kapasitesinin Geliştirilme ve Uygulama Bürosu*), in short “Migration and Asylum Office”, was established in 2008.¹³³ This Office prepared the Law on Foreigners and International Protection (LFIP) in between the years 2009 and 2012 together with the contributions of the different actors working in migration policy field.¹³⁴ The LFIP was accepted by the

¹²⁹ European Commission, “2001 Regular Report on Turkey’s Progress towards Accession”, pp. 81-82

¹³⁰ European Commission, “1998 Regular Report from the Commission on Turkey’s Progress towards Accession”, pp. 44

¹³¹ Menekşe, T. (2019). “Uluslararası Sistemde İltica: Almanya, İngiltere ve Türkiye’nin Karşılaştırmalı Analizi”. Unpublished Master’s Thesis. Gazi University. pp. 58-60

¹³² “2005 İltica ve Göç Alanındaki AB Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Eylem Planı”, <https://multecihaklari.org/?p=13> (accessed 19 August 2021)

¹³³ Ekşi, N. (2015) “2014 Yılında Kabul Edilen İdari Yargıda İstinaf Müessesesinin Yabancılar ve Uluslararası Koruma Kanunu Kapsamında Açılacak İdari Davalara Etkisi”. *Göç Araştırmaları Dergisi*. pp. 14

¹³⁴ *Ibid.*

Turkish Grand National Assembly (TGNA) in 2013 which entered into force in 2014. Some parts of the already existing legislation, some articles of the Passport Law and the Law on Settlement and Travels of Foreigners in Turkey, was abolished with the more comprehensive regulations in the LFIP.¹³⁵ The Law aims to regulate entry in and exit from the country of foreigners, settlement of foreigners, deportation, international protection, statelessness status and implementations of migration-related policies. In this respect, the Directorate General for Migration Management (DGMM) was established based on the Article 103 of LFIP.¹³⁶ DGMM's mandate and its tasks are explained in the Article 104 of the same law.¹³⁷ Policy development, implementation of strategies and execution of the processes on regular and irregular migration, international protection and integration are the main responsibilities of the DGMM. The adoption of the law and the establishment of the DGMM meant the Migration and Asylum Office was abolished.¹³⁸ The LFIP and the DGMM formed the main legal framework and implementation body for all of the aspects of migration management in Turkey. All in all, it can be interpreted that Turkey developed a more comprehensive policy and practices within the years in terms of migration and international protection together with the effect of the EU accession process and developments in the international arena.

2.2. Background of the EU-Turkey Statement

The grounds for the Statement started by the Syrian crisis in 2011 with the protests erupted against the Bashar al-Assad government's policies on human rights and

¹³⁵ Baykal, S.&Yılmaz, L. (2020). "Yabancılar ve Uluslararası Koruma Kanunu ile Göç İdaresi Bağlamında Türkiye'nin Yeni Göç Siyaseti". *Optimum Ekonomi ve Yönetim Bilimleri Dergisi*. 7(2). 645

¹³⁶ *Yabancılar ve Uluslararası Koruma Kanunu*, (2013), <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf> (accessed 4 June 2021)

¹³⁷ Baykal, S. and Yılmaz, L. (2020). "Yabancılar ve Uluslararası Koruma Kanunu ile Göç İdaresi Bağlamında Türkiye'nin Yeni Göç Siyaseti". *Optimum Ekonomi ve Yönetim Bilimleri Dergisi*. 7(2). pp. 643

¹³⁸ Ekşi, N. (2015) "2014 Yılında Kabul Edilen İdari Yargıda İstinaf Müessesesinin Yabancılar ve Uluslararası Koruma Kanunu Kapsamında Açılacak İdari Davalara Etkisi". *Göç Araştırmaları Dergisi*. 1(1). pp. 14

economy.¹³⁹ Later the protests escalated into an armed conflict between the state forces and opponents. Several opponent groups from different backgrounds and with clashing interests have been involved in the civil war. In addition, different countries have supported different sides in the process. For example, while Russia is financially supporting the al-Assad government, the Turkish army is controlling some parts of the Syrian side of the Turkey-Syria border.¹⁴⁰ Some terrorist groups like the Islamic State in Iraq and Syria (ISIS) have become part of the conflict. During the civil war, more than 500.000 people were missing or killed.¹⁴¹

In this chaotic and unsafe situation, half of the population of Syria has fled from the country starting from 2011.¹⁴² As one of the neighbours of Syria, Turkey welcomed the Syrian refugees escaping from the civil war. They have been under temporary protection since 2014. Being under temporary protection without a permanent solution meant some of the Syrians preferred searching for ways towards the EU Member States. At the beginning of the crisis, the number of refugees and irregular migrants trying to reach the EU was not high. Yet, the beginning of the civil war and the movements of Syrian refugees opened up a deeper channel for a dialogue between the EU and Turkey in migration. It became more vital for specifically the EU when the number sharply increased in the summer of 2015.

¹³⁹ “Why has the Syrian war lasted 10 years?”, *BBC*, 12 March 2021, <https://www.bbc.com/news/world-middle-east-35806229> (accessed 4 June 2021)

¹⁴⁰ Roth, A. (2020). “Russia and Turkey agree ceasefire in Syria's Idlib province”, *The Guardian*, 5 March, <https://www.theguardian.com/world/2020/mar/05/russia-and-turkey-agree-ceasefire-in-syrias-idlib-province>

¹⁴¹ “Why has the Syrian war lasted 10 years?”, (2021). *BBC*, 12 March, <https://www.bbc.com/news/world-middle-east-35806229> (accessed 4 June 2021,

¹⁴² *Ibid.*

While the number of irregular migrants reaching the EU through the Eastern Mediterranean Route was 50.834 in 2014, it reached 885.386 in 2015.¹⁴³ Although the EU has the Temporary Protection Directive in order to deal with sudden mass movements, it was entered into force in the summer of 2015. Therefore, the EU and its Member States have to cope with some problems. For example, identifying the needs of irregular migrants, fighting against human smuggling, making status determination of the high number of asylum applications, organizing search and rescue operations at sea were some of the issues that needed to be regulated in accordance with the implementation of CEAS.

Starting with the Syrian crisis and later especially with the increase in the number of irregular migrants coming from mostly Syria, Afghanistan and Iraq in 2015, EU put forward the justification of border controls to be in the benefit of irregular migrants. The argument was in line with humanitarian reasons such as preventing the deaths at sea or aiming to find long-term solutions for the problems as mentioned in the Agenda on Migration in May 2015.¹⁴⁴ Based on these arguments, the first implementation package of the Agenda on Migration aimed to decrease the pressure in the frontline states, specifically Italy and Greece, through a Union wide relocation of the asylum seekers in these frontline states based on the solidarity principle of the EU.¹⁴⁵ The second implementation package was issued in September 2015. The relocation was extended to Hungary as one of the Member States in the road of the asylum seekers in trying to reach the northern Member States.¹⁴⁶ 120.000 asylum seekers in Greece, Italy and Hungary were issued to be relocated among the Member

¹⁴³ Frontex, “Eastern Mediterranean Route”, <https://frontex.europa.eu/we-know/migratory-routes/eastern-mediterranean-route/> (accessed 19 August 2021)

¹⁴⁴ Ceccorulli, M. (2018). “Back to Schengen: the collective securatisation of the EU free-border area”. *West European Politicts*. 42(2). pp. 306; European Commission, “New Pact on Migration and Asylum”, https://ec.europa.eu/home-affairs/what-we-do/policies/new-pact-on-migration-and-asylum_en (accessed 19 August 2021)

¹⁴⁵ Ceccorulli, M. (2018). “Back to Schengen: the collective securatisation of the EU free-border area”. *West European Politicts*. 42(2). pp. 306-307

¹⁴⁶ *Ibid.* pp. 307

States based on the Commission's implementation package.¹⁴⁷ The third implementation package was issued in December 2015 by the Commission. The last one was mostly based on the protection of external borders and the Schengen system. Because of the fact that some of the Member States like Hungary, Slovenia, Germany and Sweden introduced temporary border controls within the Schengen area with the security-based arguments, the EU aimed at protecting the free passing system of the Schengen through the last package. Within the scope of collective securitization, the EU tried to externalize the irregular migrants in order to protect its system without considering possible violation of human rights of the migrants after the increase in number of irregular crossings as the precipitating event.

In this process, the EU aims to protect its external borders from the irregular migrants with a strict emphasis on security. The Member States prefer to apply collective securitization once again in the aftermath of the Syrian crisis rather than collective responsibility on the asylum issue. Quota system on resettlement cannot be applied in lack of solidarity. Frontier Member States have to deal with most of the responsibility because resettlement of refugees based on the population and financial situation of the Member States has not been applied by most of the Member States. Increasing xenophobia and populist discourses related to the quota system for resettlement and free movement of the refugees within the Union of the right wing governments of especially the Visegrad countries challenge the existence of the Schengen System, and so possibly the future existence of the EU.¹⁴⁸ Moreover, the lack of solidarity between the Member States on the protection of rights of refugees, asylum seekers and irregular migrants in accordance with international law and the EU *acquis* challenges the normative power discourse of the EU. The EU is

¹⁴⁷ Çilingir, S. (2018). "Kriz Gündeminde AB Göç Politikasının Yetkiler, Hedefler ve Araçlar İtibariyle Değerlendirilmesi: Sınır Yönetimi Örneği". *İşletme Fakültesi Dergisi*. 19(1). pp. 35.

¹⁴⁸ See Staudenmaier, R. (2018). "Hungary's Orban tells Germany: 'You wanted the migrants, we didn't'". *DW*, 8 January, <https://www.dw.com/en/hungarys-orban-tells-germany-you-wanted-the-migrants-we-didnt/a-42065012> (accessed 19 August 2021); Zaun, N. (2017). "States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System". *Journal of Common Market Studies*. 56(1). pp. 10

challenged in its claim to be the supporter of human rights through this lack of solidarity on protecting refugee rights.¹⁴⁹

One of the other motivations of the EU for keeping refugees out of the Eastern Mediterranean Route after the Syrian crisis is the terror attacks of ISIS. Some of the EU Member States intensified a security-based approach to the Syrian refugees through matching being Muslim with being a terrorist after these attacks.¹⁵⁰ This approach reflected on the willingness of the Member States and the EU to strengthen border controls of the Union before the EU-Turkey Statement. Lastly, one of the other expectations of the EU from the Statement is to unburden the Greek asylum system because the Dublin System increases the pressure on Southern frontier Member States through its principle on preventing secondary movements within the Union.¹⁵¹ As being the border Member State of the Eastern Mediterranean route, Greece has the main responsibility as a country facing economic problems. Therefore, the EU aims to ease the ‘burden’ of Greece so that the conditions in Greece for the refugees, asylum seekers and irregular migrants can be dignified for keeping them in Greece as a frontier Member States at least. Even this support system can be interpreted as one of the mechanisms of the externalization of migration within the EU.

¹⁴⁹ Hess and Heck. (2017). “Tracing the Effects of the EU-Turkey Deal – The Momentum of the Multi-layered Turkish Border Regime”. *Movements*. 3(2). pp. 35-57

¹⁵⁰ Kale, B. (2016). “The EU-Turkey Action Plan is Imperfect, But Also Pragmatic, And Maybe Even Strategic”. GMF; Zaun, N. (2017). “States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System”. *Journal of Common Market Studies*. 56(1). pp. 13

¹⁵¹ Fullerton, M. (2017). “Refugees and the Primacy of European Human Rights Law”. Brooklyn Law School BrooklynWorks. pp. 58; Kale, B. (2016). “The EU-Turkey Action Plan is Imperfect, But Also Pragmatic, And Maybe Even Strategic”. GMF; Zaun, N. (2017). “States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System”. *Journal of Common Market Studies*. 56(1). pp. 12

Meanwhile, Turkey applied an open door policy for the Syrian refugees. The arrival of Syrian refugees started in 2011 April.¹⁵² According to the LFIP, Syrian refugees could have benefited from a conditional refugee status based on the geographic limitation of Turkey.¹⁵³ However, Turkey was estimating that the civil war will end soon. Hence, it preferred to adopt a ‘temporary protection’ status for the Syrian refugees with the expectation that the return of them will be soon. Later, it is realized that Syrians are not likely to return back to Syria soon and accommodation centers (refugee camps) will not be able to accommodate the growing number of refugees. The DGMM required registration within designated registration cities based on their ‘temporary protection’ status including in LFIP issued in 2013 which is in line with the Temporary Protection Directive of the EU developed in 2001.¹⁵⁴ According to the Regulation issued in 2014 Syrians under temporary protection (STP) can enjoy their social and legal rights with an identity card showing their temporary protection status.¹⁵⁵ Access to healthcare, education, labor market, social assistance and services will be provided to Syrian refugees who have identity cards according to the Regulation.¹⁵⁶

Until 2015, Turkish authorities did not aim to receive international humanitarian support. This was mainly because of the lack of willingness in sharing information

¹⁵² Kirişçi, K. (2002) “Justice and Home Affairs. Issues in Turkish-EU Relations”. Istanbul, Tesev Publications. pp. 1

¹⁵³ DGMM, “Conditional Refugee”, <https://en.goc.gov.tr/conditional-refugee> (accessed 19 August 2021)

¹⁵⁴ Memişoğlu, F. and Ilgıt, A. (2016). “Syrian refugees in Turkey: multifaceted challenges, diverse players and ambiguous policies” *Mediterranean Politics*. 22(3). pp.7

¹⁵⁵ Şimşek, D. (2017). “Göç politikaları ve insan güvenliği: Türkiye’deki Suriyeliler örneği”. *Toplum ve Bilim*. 140. pp. 19

¹⁵⁶ İçduygu, A. (2015). Syrian refugees in Turkey: The long road ahead. Migration Policy Institute, Washington, DC, pp. 9

on international protection procedures.¹⁵⁷ However, when it has been realized that the numbers are rising and refugees will no longer stay temporarily, Turkish authorities have started to mention the international cooperation for the Syrian refugees that Turkey hosts. Turkey has already exceeded its ‘psychological limit’, which was declared by Davutoğlu, who was the prime minister at that time, as 100.000 Syrian refugees in 2012.¹⁵⁸ Therefore, Turkey needed some financial help and technical assistance in order to continue to provide the needs of the Syrian refugees in Turkey.

With different experiences and expectations of the EU and Turkey, specifically in the aftermath of 2015 summer, the parties increase their dialogue on the issue in order to lead the situation according to their own interests. Migration can be an example for the issue-based dialogue and cooperation between the EU and Turkey in this process.¹⁵⁹ At the beginning of the crisis, in 2013 the Readmission Agreement between Turkey and the EU had already been signed. Based on the Readmission Agreement, Turkey has committed to accept irregular migrants, including both Turkish nationals and later third country nationals as agreed in 2016, who crossed to the EU territory through Turkey. The Readmission Agreement is one of the main elements that are covered in nearly all of the Progress Reports of the European Commission in the Justice, Freedom and Security section of the Reports since the very beginning. Readmission agreements are one of the main elements of the Directorate General for Migration and Home Affairs of the European Commission.¹⁶⁰ The Commission wants to include readmission agreements in all possible

¹⁵⁷ Kale, B. (2017). “The Limits of an International Burden-sharing Approach: The Syrian Refugee Protection Crisis and Its Consequences on Turkey’s Refugee Policy”. *Perceptions*. 22(4). pp. 65

¹⁵⁸ See “Davutoğlu: “Sığınmacılar konusunda kırmızı çizgi aşıldı””. (2013). *CNNTURK*, 26 October, <https://www.cnnturk.com/2013/dunya/10/26/davutoglu-siginmacilar-konusunda-kirmizi-cizgi-asildi/728654.0/index.html> (accessed 19 August 2021)

¹⁵⁹ Alpan, B. (2021). “Europeanization and EU–Turkey Relations: Three Domains, Four Periods” in Reiners, W. and Turhan, E. (eds.). *EU-Turkey Relations Theories, Institutions, and Policies*. Palgrave Macmillan. pp. 124

¹⁶⁰ European Commission, “Irregular Migration and Return”, https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy_en (accessed 19 August 2021)

partnerships with the third countries in order to make the externalization of migration easier.

In return for the Readmission Agreement and acceptance of irregular migrants a visa liberalization roadmap was prepared for Turkey so that Turkish nationals can enjoy traveling freely in the Schengen Area.¹⁶¹ In the context of the visa liberalization roadmap, Turkey was expected to fulfill 72 criteria in order to make the EU decision on the issue possible.¹⁶² Turkey fulfilled 65 of these criteria until the failed coup attempt in 2016 summer of 2016. Later, the one related to the biometric passports was also fulfilled. However, the remaining 6 criteria related to the cooperation with Europol, amendment in anti-terror law and protection of personal data in line with the EU *acquis*, increase in fight against corruption, judicial cooperation in civil and criminal matters with all of the Member States and implementation of the Readmission Agreement for the third country nationals too as added to the Agreement in 2016 are still waiting to be fulfilled by Turkey.

The Readmission Agreement cannot be a solution for the EU in the externalization of irregular migrants because the numbers continue to rise. Specifically in 2015 summer of 2015, the numbers of irregular migrants and asylum seekers increased 45%.¹⁶³ Therefore, the EU is emphasizing more on keeping them in Turkey as one of the main partner countries used by the irregular migrants in the migration route with the collective securitization principle rather than applying more humanitarian and solidarity-based solutions like resettlement. Therefore, in 2015 and 2016, there were several meetings with the EU institution presidents and Member States leaders and the Turkish government for finding a way in keeping more irregular migrants out of

¹⁶¹ İçduygu, A. and Demiryontar, B. (2019). “Mediterranean’s Migration Dilemma and the EU’s Readmission Agreements: Reinforcing a Centre-Periphery Relation”. EuroMedMig Working Paper Series Number 1. pp. 13

¹⁶² Türkiye Cumhuriyeti AB Bakanlığı, “Türkiye-AB Vize Muafiyeti Süreci ve Geri Kabul Anlaşması Hakkında Temel Sorular ve Yanıtları”, pp. 5-6, https://www.ab.gov.tr/files/pub/turkiye_ab_vize_muafiyeti_sureci_ve_geri_kabul_anlasmasi_hakkinda_temel_sorular_ve_yanitlari.pdf (accessed 19 August 2021)

¹⁶³ Frontex, (2015). “FRAN Quarterly”, October-December, <https://frontex.europa.eu/publications/fran-q4-2015-10xeu1> (accessed 19 August 2021)

the EU Member States. In this respect, in July 2015 first meeting of the Joint Readmission Committee on implementation of the Readmission Agreement was held in Brussels and in October Turkish President Erdoğan, President of the European Council Donald Tusk, President of the European Parliament Martin Schulz and President of the European Commission Jean-Claude Juncker meet in Brussels.¹⁶⁴ After the meeting, the parties agreed on the Action Plan for controlling the irregular migration after the Syrian crisis. The first EU-Turkey Summit on Joint Action Plan was held in Brussels with the participation of the leaders of EU institutions and the Member States in November. The Joint Action Plan was explained by the European Commission as “...to step up cooperation for the support of Syrian refugees under temporary protection and their host communities in Turkey and to strengthen cooperation to prevent irregular migration flows to the EU.”¹⁶⁵ However, as it was highlighted through the graphics in the same document, the most important aim of the Joint Action Plan and expectation of the EU from Turkey is reduction of the irregular arrivals to the EU territory through Turkey. In the context of the Joint Action Plan, Turkey promised on mainly registration of and proper protection for the Syrians under temporary protection, strengthening of Coast Guard and cooperation on readmission while the EU promises on mainly increasing financial assistance for Turkey for supporting the Syrians under temporary protection and the host community, supporting Turkey for strengthening its capacity to fight against migrant smuggling and working on resettlement schemes.¹⁶⁶

The second EU-Turkey Summit was held on March 7, 2016 in Brussels. Although there was some progress in reducing the number of irregular migrants using Aegean

¹⁶⁴ T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 15, <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

¹⁶⁵ European Commission, Managing the Refugee Crisis EU-Turkey Joint Action Plan: Implementation Report, https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/background-information/docs/managing_the_refugee_crisis_-_eu-turkey_join_action_plan_implementation_report_20160210_en.pdf (accessed 19 August 2021)

¹⁶⁶ *Ibid.*

Sea, the EU wanted a clear decrease in the irregular crossings.¹⁶⁷ Therefore, the main outcome of the Summit was the rapid return of all irregular migrants coming from Turkey to Greek islands that are not in need of international protection, as highlighted by both of the parties.¹⁶⁸ In this respect, one-to-one mechanism was presented. In addition, Voluntary Humanitarian Admission Scheme (VHAS) was presented as a way of resettlement of Syrians from Turkey to the EU Member States when irregular crossings in the Aegean Sea decrease substantially or end.¹⁶⁹ The other elements proposed in the Summit were visa liberalization, opening new chapters in the accession negotiations, an additional 3 billion EUR for the FRiT and working together for the improvement of humanitarian conditions in Syria to keep the population living there in safe and make possible to return of the Syrians in Turkey and the EU Member States. Both of the parties introduced a proposal at the end of the Summit to tackle migrant smugglers and to stop the deaths in the Aegean Sea in cooperation. Although some elements served for these goals too, the main expectation of the EU was reducing irregular crossings, securing external borders, keeping the irregular migrants in Turkey and leaving their assessment on whether they need international protection or not through a remote control approach whereas Turkey aims to use the issue in its accession dialogue which needs to be re-energized with the EU. The outcomes of both the first and second summits serve for the externalization of migration of the EU. However, because in the third one they are re-mentioned, they are not examined deeply in this part of the chapter. In the following part of this chapter, the elements of the EU-Turkey Statement are analyzed

¹⁶⁷ Council of the European Union, (2016). “Meeting of the EU heads of state or government with Turkey”, 7 March, <https://www.consilium.europa.eu/en/meetings/international-summit/2016/03/07/> (accessed 19 August 2021)

¹⁶⁸ Council of the European Union, (2016). “Meeting of the EU heads of state or government with Turkey”, 7 March, <https://www.consilium.europa.eu/en/meetings/international-summit/2016/03/07/> (accessed 19 August 2021) and T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 16-17 <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

¹⁶⁹ T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 16-17 <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

deeply through mentioning its background in the Joint Action Plan and the previous two summits.

On 18th March 2016, almost one week later than the Second Summit, the Third EU-Turkey Summit was held in Brussels with the participation of the Members of the European Council and Turkish committee with the presidency of Prime Minister Ahmet Davutoğlu. The conclusion of the Summit was published on the official websites of the parties as the EU-Turkey Statement. The parties agreed on implementation of the Joint Action Plan activated in the First EU-Turkey Summit in November 2015.

The achievements of Turkey which have already been implemented by Turkey in migration management, such as developments in securing the borders by coast guards and sharing information, making access of the Syrians under temporary protection possible to the labour market and one-to-one scheme, are welcomed by the EU in the Third Summit.¹⁷⁰ In return, disbursing the 3 billion EUR of the FRiT based on the projects, working on visa liberalization and accession negotiations, including the opening of Chapter 17 in December 2015 are the achievements of the EU until the Statement. Moreover, it is mentioned that EU and Turkey agree to continue fighting against migrant smugglers and welcomed the establishment of the NATO operation on the Aegean Sea with the purpose of reducing the number of irregular crossings.¹⁷¹ The parties agreed on further cooperation on the issue in general and the points that they have decided previously in the Summits.

In respect of the expectation of the EU and Turkey, the elements of the Statement were shaped. The main expectation of the EU, which is decreasing the number of the irregular crossings, was formed after the peak in the number in 2015 summer

¹⁷⁰ Council of the European Union, (2016). “EU-Turkey statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

¹⁷¹ Council of the European Union, (2016). “EU-Turkey statement”, 18 March , <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021) and Council of the European Union, (2016). “Meeting of the EU heads of state or government with Turkey”, 7 March , <https://www.consilium.europa.eu/en/meetings/international-summit/2016/03/07/> (accessed 19 August 2021)

whereas most of the expectations of Turkey, such as the modernization of the Customs Union, were dated back for years. The elements of the Statement are designed based on these main expectations of the parties. In addition, mostly they are continuation or reformed versions of the points in the Joint Action Plan and conclusions of the following Summits.

Return of the irregular migrants crossing from Turkey to Greek islands after 20th March 2016, one-to-one scheme, strict border controls, possible Voluntary Humanitarian Admission Scheme, fulfillment of visa liberalization roadmap, distribution of 3 billion EUR and additional 3 billion EUR, modernization of the Customs Union, re-energized accession process and opening new chapters and lastly improving conditions in Syria are the elements that the EU and Turkey agreed on Brussels.¹⁷²

All of the elements of the EU-Turkey Statement are part of or serving for the externalization of the migration policy of the EU. After the precipitating event as the increase in the number of irregular crossings and defining it as a threat for the EU, the Statement is conducted in the context of externalization of the threat as a securitization practice.

In the following part of the chapter, all elements of the EU-Turkey Statement are analyzed in detail with their background so that it can be possible to explain in what ways they are part of the externalization of migration policy of the EU in the following chapter of the thesis.

2.3. Elements of the EU-Turkey Statement

The EU-Turkey Statement includes nine elements. Readmission, one-to-one scheme, border controls, Voluntary Humanitarian Admission Scheme, visa liberalization for Turkey, Facility for Refugees in Turkey, modernization of the Customs Union, re-energization of the EU accession process of Turkey and improvement of

¹⁷² Council of the European Union, (2016). “EU-Turkey statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

humanitarian conditions in Syria in cooperation of the parties are the elements of the Statement that will be explained in this section.

The first element of the Statement is related to the readmission of the irregular migrants from Greece to Turkey. According to the element, all new irregular migrants crossing from Turkey to Greek islands as of 20th March 2016 are returned to Turkey. In order to be in line with the international law and EU *acquis* there are several explanations in the element. It is mentioned that the returns happen in full accordance with the international standards and in respect of the *non-refoulement* principle in order to make the distinction between the returns and collective expulsion.

The returns are planned in a way that all of the irregular migrants coming to Greek islands from Turkey duly registered by the Greek authorities and, if there is any, their applications assess individually in line with the Asylum Procedure Directive with the cooperation of the UNHCR. It is said that the irregular migrants sent back to Turkey are the ones not applying for asylum or whose applications are found inadmissible in accordance with the Asylum Procedure Directive.¹⁷³

Turkey and Greece are assisted by the EU institutions and agencies in all this process in order to ensure proper connection between the parties and functioning of the arrangements and return operations. The cost of the return operations of irregular migrants who should return based on the description in the element is covered by the EU according to this element of the Statement. It is explained that the return element of the Statement is a temporary and extraordinary precaution which is necessary for ending human suffering in specifically Aegean Sea and readjusting public order.¹⁷⁴

In the second element of the EU-Turkey Statement, a special scheme in readmission, later called as one-to-one, is explained. According to the element, for every Syrian being returned to Turkey from Greek islands in line with the first element of the Statement, another registered Syrian is resettled from Turkey to the EU Member

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

States in accordance with the UN Vulnerability Criteria.¹⁷⁵ The mechanism is shaped with the assistance of the European Commission, EU agencies and the Member States and the UNHCR in order to ensure that this principle is implemented within the same day the returns start. In order to discourage the irregular crossings to the EU, priority will be given to Syrians who have not previously entered or tried to enter the EU irregularly according to the element.

On the EU side, resettlement under this mechanism takes place through the commitments taken by the Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on July 2015. It is declared that 18.000 resettlement possibilities remain and any further need for resettlement is carried out through a similar kind of voluntary involvement up to a limit of an additional 54.000 Syrians. It is also mentioned that if the arrangements are not meet the purpose of ending the irregular migration in the Aegean Sea and the number of returns comes close to the numbers provided for above, this mechanism can be reviewed. However, if the number of returns exceeds the numbers provided for above, this mechanism can be ceased.¹⁷⁶

According to the elements on border controls, Turkey should take necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU and will cooperate with neighbouring states as well as the EU to this effect.¹⁷⁷ Border controls have been an issue since the very beginning of the EU accession process for Turkey. In the Progress Reports prepared by the European Commission, it is commonly mentioned that Turkey should develop its integrated border management policy with the establishment of a civil and professional coast

¹⁷⁵ UNHCR, “Vulnerability Screening Tool”, <https://www.unhcr.org/protection/detention/57fe30b14/unhcr-ipc-vulnerability-screening-tool-identifying-addressing-vulnerability.html> (accessed 19 August 2021)

¹⁷⁶ Council of the European Union, (2016). “EU-Turkey Statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

¹⁷⁷ *Ibid.*

and border protection agency in order to reduce the irregular crossings.¹⁷⁸ Therefore, it was mentioned in the Statement too to decrease the irregular crossings increasing with the Syrian crisis.

As another part of the Statement, 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. The EU Member States will contribute on a voluntary basis to this scheme.¹⁷⁹

The Council published a document on VHAS.¹⁸⁰ It constitutes a flanking measure to the mutual commitments contained in the Joint Action Plan with Turkey including a joint approach to managing migration. The scheme aims to create a system of solidarity and burden sharing with Turkey for the protection of migrants forcefully displaced to Turkey as a result of the conflict in Syria.¹⁸¹ In addition, it was mentioned that according to the EU-Turkey Statement, admissions under the VHAS with Turkey will be activated once irregular crossings between Turkey and the EU have ended or at least have been substantially and sustainably reduced as a result of the implementation of the one-to-one scheme.

Proposed first in the context of the Readmission Agreement between the EU and Turkey in 2013, the visa liberalization roadmap is re-stated in the EU-Turkey

¹⁷⁸ As the examples see Commission Staff Working Document Turkey 2015 Report, pp. 71-72, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_turkey.pdf (accessed 19 August 2021) and Turkey 2005 Progress Report, pp. 111 https://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2005.pdf (accessed 19 August 2021)

¹⁷⁹ Council of the European Union, (2016). “EU-Turkey Statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> accessed 19 August 2021

¹⁸⁰ Council of the European Union, (2017). “Voluntary Humanitarian Admission Scheme with Turkey - Endorsement”, 5 December, <https://data.consilium.europa.eu/doc/document/ST-14571-2017-REV-1/en/pdf> (accessed 19 August 2021)

¹⁸¹ *Ibid.*

Statement for lifting the visa requirements for Turkish citizens at the latest by the end of June 2016 if Turkey can meet the requirements of all 72 benchmarks in the roadmap.¹⁸²

3 billion EUR have already been arranged in the Joint Action Plan. In the Statement, it is declared that the EU speeds up the disbursement of the initially allocated 3 billion EUR under the FRiT, in cooperation with Turkey, and ensures funding of further projects for migrants under temporary protection identified with swift input from Turkey before the end of March. The first list of proper projects for refugees, in the fields of health, education, infrastructure, food and other living costs which can be swiftly financed from the Facility, will be jointly identified within a week after the Statement. In addition, it is promised that once these resources are about to be used to the full, and provided the above commitments are met, the EU mobilizes additional funding for the Facility of an additional 3 billion EUR up to the end of 2018.¹⁸³

In the Statement, it is mentioned that the EU and Turkey welcomed the ongoing work on the modernization of the Customs Union.¹⁸⁴ The Customs Union is dated back to 1995 in accordance with the Ankara Agreement between the EC and Turkey in 1963. It abolishes the customs duties between the EU Member States and Turkey on industrial and processed agricultural products. However, because of the fact that the scale of the products and dispute solution is not enough in the framework of the Customs Union, specifically Turkey wants to revise it. In addition, Turkey wants to solve the disagreements on Free Trade Agreements (FTA) conducted between the

¹⁸² T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 18, <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

¹⁸³ Council of the European Union, (2016). “EU-Turkey Statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

¹⁸⁴ *Ibid.*

EU and third countries which cause problems for Turkey to be part of.¹⁸⁵ Therefore, in addition to the Joint Action Plan, modernization of the Customs Union is a part of the EU-Turkey Statement too.

In the Statement, the EU and Turkey reconfirmed their commitment to re-energize the accession process as set out in the Joint Action Plan in November 2015. They welcome the opening of Chapter 17 on Economic and Monetary Policy in December 2015 and decided, as a next step, to open Chapter 33 on Financial and Budgetary Provisions during the Netherlands Presidency in 2016.¹⁸⁶

It was declared lastly in the Statement that the EU and Member States work with Turkey in any joint effort 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 safer¹⁸⁷; so that the returns of the Syrians can be possible both from Turkey and the EU and further irregular crossing from Syria can be prevented this way. However, how the conditions in Syria can be improved is not mentioned in the Statement.

2.4. Implementation of the EU-Turkey Statement

As being one of the important examples of not only externalization of migration policy of the EU but also cooperation in the field of migration management in the international arena, most of the elements of the EU-Turkey Statement start to be implemented as soon as the Statement published in the website of the Commission. The Statement achieve its main goal through decreasing the irregular crossings from Turkey to the Greek islands through mainly the stricter border controls of Turkey and improvement in the migration management in Turkey, while some of the elements in the Statement have not been realized within the years. On the one hand, FRiT,

¹⁸⁵ IKV, “Gümrük Birliği”, <https://www.ikv.org.tr/ikv.asp?id=38> (accessed 19 August 2021)

¹⁸⁶ Council of the European Union, (2016). “EU-Turkey Statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

¹⁸⁷ *Ibid.*

accession negotiations and border controls are the elements of the Statement that can be observed some progress through the implementations. On the other hand, on the elements related to the VHAS, modernization of Customs Union, visa liberalization, one-to-one scheme, readmission and creating a safe zone in Syria in cooperation, there have been limited steps taken in the afterword of the Statement. There are four reports of the European Commission on the implementation and effectiveness of the Statement on annual basis until 2020.

According to the Statement, starting with the 20th March 2016, irregular migrants not applying for asylum in Greece or whose asylum applications have been declared inadmissible is returned to Turkey. The legal framework for the returns in the Statement is the bilateral Readmission Agreement between Greece and Turkey signed in 2002 and the EU-Turkey Readmission Agreement signed in 2013.¹⁸⁸ However, Turkey announced the suspension of the Readmission Agreement with the EU in 2019 due to the political atmosphere.¹⁸⁹ In addition, according to the last progress report of the Commission on the Statement in 2020, the pace of returns from the Greek islands to Turkey under the Statement remains slow, especially concerning Syrians, with 2,735 migrants returning from March 2016 until 2020.¹⁹⁰ In addition, 4,030 migrants have returned voluntarily from the Greek islands since June 2016, supported by the Assisted Voluntary Return and Reintegration Programme (AVRR) in the context of the readmission part of the Statement. From the beginning of 2016 to the end of January 2020, a total of 18,711 migrants have returned voluntarily from

¹⁸⁸ European Commission, “Implementing the EU-Turkey Statement – Questions and Answers”, https://ec.europa.eu/commission/presscorner/detail/it/MEMO_16_1664 (accessed 19 August 2021)

¹⁸⁹ Eck, D. (2019). “Turkey suspends deal with the EU on migrant readmission”. *Euractiv*. <https://www.euractiv.com/section/global-europe/news/turkey-suspends-deal-with-the-eu-on-migrant-readmission/> (accessed 19 August 2021)

¹⁹⁰ European Commission, (2020). “EU-Turkey Statement Four years on”, March, https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf (accessed 19 August 2021)

both the Greek islands and mainland to the country of origin through the mentioned programme as stated in the last report.¹⁹¹

The Statement is mainly relying on the effective return of irregular migrants to Turkey and strict border control.¹⁹² Therefore, the implementation of the readmission element in the Statement is important for keeping irregular migrants outside of the EU purpose of the EU and the Member States. However, the overburdened Greek asylum system has had difficulties in assessing the asylum claims.¹⁹³ Therefore, there have been problems in implementation of the return operations based on the readmission agreements because the Greek authorities cannot assess the applications properly for deciding whether the applicant is under the readmission procedure of the Statement or not.¹⁹⁴ Furthermore, the principle of third safe country in CEAS becomes problematic for Turkey because of the human rights violations in Turkey which create questions on safeness of Turkey for the returnees.¹⁹⁵

Number of the returns from the Greek islands to Turkey has been low. Hence, the number of the registered Syrians in Turkey who are resettled to the EU Member States under the one-to-one scheme of the Statement has remained low. According to the last Progress Report of the European Commission on Turkey in 2020, the EU Member States resettle 26.835 Syrians in return for the 1968 irregular migrants

¹⁹¹ *Ibid.*

¹⁹² Kale, B., Dimitriadi, A., Sanchez-Montijano, E. and Süm, E. (2018). “Asylum Policy and the Future of Turkey-EU Relations: Between Cooperation and Conflict”. FEUTURE Online Paper No. 18 . pp. 20

¹⁹³ *Ibid.*

¹⁹⁴ Tsourdi, E. (2020). “Holding the European Asylum Support Office Accountable for its role in Asylum Decision-Making: Mission Impossible?”. *German Law Journal*. 21(3). pp. 509

¹⁹⁵ Öztürk, N.Ö. and Soykan, C. (2019). “Üçüncü Yılında AB – Türkiye Mutabakatı: Hukuki Bir Analiz”. GAR Analizleri No 1. pp. 4.
<https://www.gocarastirmalaridernegi.org/attachments/article/54/ucuncu-yilinda-ab-turkiye-mutabakati-hukuki-bir-analiz.pdf> (accessed 19 August 2021)

returning to Turkey based on the scheme.¹⁹⁶ Although the Greek Asylum law has been changed with the purpose of making implementation of the one-to-one scheme of the Statement possible, the Greek law does not accept Turkey as a third safe country explicitly.¹⁹⁷ Rather adopting a hotspot approach for temporary and quick rights and assessments for the irregular migrants is preferred by the Greek authorities and supported by the EU.¹⁹⁸ In addition, the resettlement of the Syrians is an issue that the Member States and the EU cannot have a consensus on. As the pioneer of the Statement, Germany is responsive to the resettlement quotas whereas specifically the Member States from the Visegrad group refuse to fulfill the resettlement quotas.¹⁹⁹ Furthermore, even if the Member States are convinced for resettlement, the features of the Syrians for being resettled can cause discussions on their vulnerabilities versus labour force and the process can take a long time like one or two years.²⁰⁰

Border management has already been an important issue within the migration dialogue between the EU and Turkey even before the Statement.²⁰¹ The EU has been supporting the efforts of Turkey on strengthening its capacity in migration management and establishment of an effective and efficient border management

¹⁹⁶ European Commission, “Commission Staff Working Document Turkey 2020 Report”, pp. 48, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf (accessed 19 August 2021)

¹⁹⁷ Lehner, R. (2018). “The EU-Turkey-’deal’: Legal Challenges and Pitfalls”. *International Migration*. 57(2). pp. 4.

¹⁹⁸ *Ibid.*

¹⁹⁹ Canveren, Ö. and Akgül-Durakçay, F. (2017). “The Analysis of the Hungarian Government’s Discourse towards the Migrant Crisis: A Combination of Securitization and Euroscepticism”. *Yönetim ve Ekonomi*. 24(3). pp. 862-865.

²⁰⁰ Kale, B. (2016). “Geri göndermeler Avrupa bütünleşmesinin sonu olabilir”. *Birgün*, 10 April, <https://www.birgun.net/haber/geri-gondermeler-avrupa-butunlesmesinin-sonu-olabilir-108656> (accessed 19 August 2021)

²⁰¹ Delegation of the European Union to Turkey, “EU Supports Stronger Border Management in Turkey”, <https://www.avrupa.info.tr/en/eu-supports-stronger-border-management-turkey-41> (accessed 19 August 2021)

system as repeatedly insisted in the Commission’s Progress Reports for Turkey through co-funding some projects in border management.²⁰² Effective border management and stricter border controls are one of the main elements of the Statement specifically after the increase in the number of irregular crossings in 2015 with the number of 1.850.000 while the previous year the number was 287.567.²⁰³ Therefore, after the EU-Turkey Statement, Turkish authorities have imposed stricter land borders and sea coast controls with the humanitarian discourse of saving lives as mentioned in the Statement.²⁰⁴ Moreover, in 2021, construction of the wall in the Syria-Turkey border was almost completed²⁰⁵ in order to prevent the irregular crossings.

It can be concluded that one of the most fulfilled elements in the Statement is the border controls in order to decrease the number of the irregular crossings through Turkey to Greece in line with the EU’s wish because since the Statement has been in place, irregular arrivals have decreased significantly. As it is explained in the Implementation Document of the Commission on the Statement in 2020, from 10,000 people crossing in a single day in October 2015, daily crossings have decreased to an average of 105 people per day.²⁰⁶ In addition, the number of deaths

²⁰² *Ibid.*

²⁰³ IOM, (2015). “Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015: IOM”, 12 December, <https://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom> (accessed 19 August 2021)

²⁰⁴ Üstübcü, A. (2019). “The impact of externalized migration governance on Turkey: technocratic migration governance and the production of differentiated legal status”. *Comparative Migration Studies*. 7(46). pp. 12.

²⁰⁵ “Dev bloklar, jiletli teller... Suriye sınırı ’güvenlik duvarı’ ile örüldü”, (2021). *Cumhuriyet*, 10 May, <https://www.cumhuriyet.com.tr/haber/dev-bloklar-jiletli-teller-suriye-siniri-guvenlik-duvari-ile-oruldu-1834970#:~:text=Suriye%20s%C4%B1n%C4%B1r%C4%B1na%20%C3%B6r%C3%BClecek%20duvar%20projesinin,b%C3%B6l%C3%BCm%C3%BC%20tamamlama%20%C3%A7al%C4%B1%C5%9Fmalar%C4%B1n%C4%B1n%20s%C3%BCrd%C3%BC%C4%9F%C3%BC%20%C3%B6l%C4%9Frenildi>. (accessed 19 August 2021)

²⁰⁶ European Commission, (2020). “EU-Turkey Statement Four years on”, March, <https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda->

in the Aegean Sea has also decreased in 20 months from 1,175 to 439 since the Statement has been in place. Therefore, it can be mentioned that the EU can keep the irregular migrants out of the Union through the Statement. The decrease in the number of irregular crossings after the Statement in accordance with the externalization of migration policy of the EU can be observed from the graphic in the Commission’s report on the Statement below.²⁰⁷

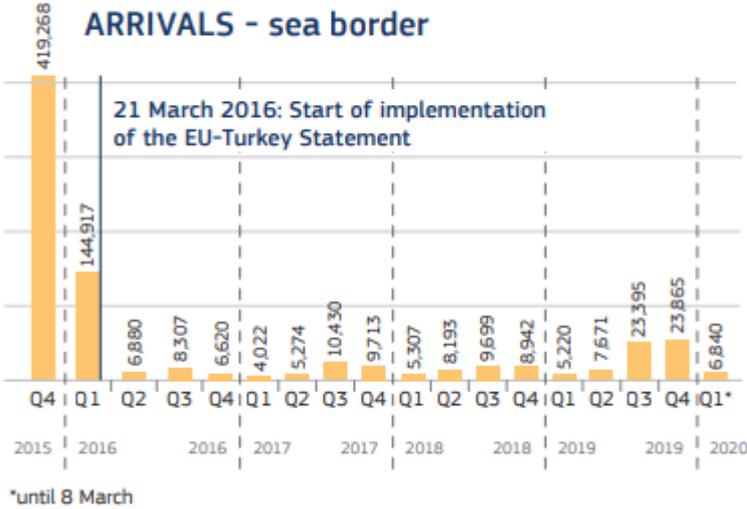


Figure 1: The arrivals from the sea border after the Statement. Source: European Commission, EU-Turkey Statement Four years on, March 2020, https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf

It is stated in the Statement that "Once irregular crossings between Turkey and the EU are ending or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated."²⁰⁸ According to the number of the irregular

https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf (accessed 19 August 2021)

²⁰⁷ *Ibid.*

²⁰⁸ Council of the European Union, (2016). "EU-Turkey Statement", 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

crossings in the Aegean Sea as stated above, the pre-conditions of the VHAS have been ready since almost the beginning of implementation of the Statement.²⁰⁹ However, the realization of the VHAS has not even been mentioned. Until March 2020, the EU Member States resettle only 27.000 Syrians from Turkey under the one-to-one scheme in the Statement.²¹⁰ Even if the resettlement of 72,000 Syrians is realized through this scheme as it is mentioned, there is no sign for implementation of the VHAS for further cooperation in responsibility sharing, although the number of the irregular crossings has been decreasing as the precondition. Moreover, Germany's hopes on creating responsibility sharing cooperation through accepting refugees voluntarily within the EU Member States become disappointment because such a voluntary distribution seems more unlikely after the terrorist attacks in Paris and Brussels together with the xenophobic arguments of the Member States in the Balkan Route.²¹¹ The Member States prefers to continue to keep their security concerns oriented policies and practices rather than responsibility sharing and solidarity within the Union.

The efforts on Turkey for fulfilling the benchmarks in the Visa Liberalization Roadmap coming from the Readmission Agreement between the EU and Turkey in 2013, included in Joint Action Plan in 2015 and later in the EU-Turkey Statement in 2016 has continued in the following years of the Statement. In the process, Turkey fulfills 66 benchmarks out of 72 listed in the Visa Liberalization Roadmap required for the assessment of the EU for the visa liberalization for Turkish nationals in order to make Turkey's policies on Justice and Home Affairs more in line with the EU

²⁰⁹ Kadkoy, O. (2017). "Why the voluntary humanitarian admission scheme?". TEPAV, 7 September, <https://www.tepav.org.tr/en/blog/s/5980> (accessed 19 August 2021)

²¹⁰ European Commission, "EU-Turkey Statement Four years on", March 2020, https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf (accessed 19 August 2021)

²¹¹ Arisan-Eralp, N. (2016). "Challenges of the German-Led Refugee Deal between Turkey and the EU". CESifo Forum. 17(2). pp. 23

acquis.²¹² The remaining benchmarks that Turkey should fulfill in the visa liberalization process are applying Readmission Agreement for the third country nationals too, accepting necessary legislation for the Council of Europe Group of States against Corruption and protection of personal data, negotiating the operational agreement with Europol, ensuring judicial cooperation with all of the EU Member States and revising the related legislation on terrorism in line with the EU *acquis*.²¹³

Through the Facility for Refugees in Turkey, the EU Member States provide additional funding to support refugees in Turkey and manage a total of €6 billion, mobilized in two tranches.²¹⁴ The first tranche serves to fund projects that run until mid-2021 latest while most projects are pretended to finish earlier. The second tranche serves to fund projects which run until mid-2025 latest. The full operational budget of €6 billion has been committed and contracted and more than €4 billion has been disbursed. The main focus areas of the Facility are humanitarian assistance, education, health, municipal infrastructure, and socio-economic support. In this context, more than 1.8 million refugees receive support for basic daily needs, 365 new schools are in the process of being constructed to respond to the education needs, over 14 million primary health care consultations are delivered, provision of 177 migrant health centers have been under way through the supported projects according to the fact sheet of the Facility prepared by the Commission.²¹⁵

Through the concerns of Turkey on transportation quotas, visas and Free Trade Agreements into account, it has already been suggested that the Customs Union should be extended in a way to include agriculture, services and public procurement

²¹² T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 18, <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

²¹³ *Ibid.*

²¹⁴ European Commission, “The EU Facility for Refugees in Turkey”, https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/frit_factsheet.pdf (accessed 19 August 2021)

²¹⁵ *Ibid.*

and better methods on dispute solution before the Statement.²¹⁶ After the Statement, in line with the element in it, the European Commission prepared an impact assessment regarding the modernization of the Customs Union and released it to the public on 21 December 2016.²¹⁷

At the General Affairs Council organized in June 2018, it was mentioned that although efforts of Turkey related to hosting Syrian refugees are appreciated by the EU after the Statement, it is added that Turkey is diverging from the EU and further work in modernization of the Customs Union is not foreseen in the near future.²¹⁸ After the negotiations in 2020 on the possible revision of the Statement and the Council meeting in March 2021, modernization of the Customs Union came to the agenda again.²¹⁹

Similar to the modernization of the Customs Union element in the Statement, re-energizing of the accession process has shown some progress for a while. The Turkey-EU High Level Dialogue meetings are held and Chapter 33 – Financial and Budgetary Provisions is opened in 2016 after the Statement.²²⁰ However, the positive direction in the relations changes with the failed coup attempt in July 2016 in Turkey. After the attempt, there has been a transformation in most of Turkey’s domestic bureaucratic and political institutions. In addition, there have been some policy changes in almost all of the policy fields. These changes bring some criticism

²¹⁶ Özgöker, U. and Bedirhan, Z.A. (2016). “The Modernisation of the EU-Turkey Customs Union”, *İstanbul Arel Üniversitesi İletişim Çalışmaları Dergisi*. 5(10). pp. 8.

²¹⁷ İKV, “Gümrük Birliği”, https://www.ikv.org.tr/ikv.asp?ust_id=4&id=38 (accessed 19 August 2021)

²¹⁸ *Ibid.*

²¹⁹ “EU to reset relations with Turkey by refinancing migration deal”, *Euronews*, 23 March 2021. <https://www.euronews.com/2021/03/19/eu-to-reset-relations-with-turkey-by-refinancing-migration-deal> (accessed 19 August 2021)

²²⁰ T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 18, <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

from the EU side to Turkey for not being respectful enough for human rights. Moreover, the effect of the conditionality that the EU intensifies through the offers in the Statement has been decreasing because of these changes in policy directions in Turkey after the coup attempt.²²¹ Later, the negotiations based dialogue started again after the opening of the Turkish-Greek border for irregular migrants by Turkey in March 2020.²²²

As the last element in the Statement, cooperation in Syria in order to prevent new irregular crossings and the possible returns from the EU and Turkey has not been realized after the Statement. Although, in the Statement the cooperation in peace building in Syria seems common for the interests of the parties, later it is understood that while Turkey and the EU have complementary or intersecting interests in the Syrian conflict, their threat perceptions and degree of exposure are different in this case. On the one hand, Turkey is a neighboring country experiencing a more direct threat from the conflict in Syria and the damage of the non-state actors, especially ISIS and YPG. On the other hand, the threat has been more indirect and could be handled by cooperation with transit countries such as Turkey through externalization for the EU.²²³

2.5. Achievements of the EU-Turkey Statement

Within five years after the Statement, some of the elements of it have been realized while some of them have not been even mentioned. Although the political character of the Statement creates problems in implementation, decreasing irregular crossings from Turkey to Greek islands as the main aim of the Statement has been achieved

²²¹ Kale, B., Dimitriadi, A., Sanchez-Montijano, E. and Süm, E. (2018). “Asylum Policy and the Future of Turkey-EU Relations: Between Cooperation and Conflict”. FEUTURE Online Paper No. 18 . pp. 23

²²² “Press Release Regarding the Conclusions of the EU Council Meeting of March 2021 / Republic of Turkey, Ministry of Foreign Affairs”, Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs, https://www.ab.gov.tr/press-release-regarding-the-conclusions-of-the-eu-council-meeting-of-march-2021-republic-of-turkey-ministry-of-foreign-a_52492_en.html (accessed 19 August 2021)

²²³ Nas, Ç. (2019). “The EU’s Approach to the Syrian Crisis: Turkey as a Partner?”. *Uluslararası İlişkiler*, 16(62). pp. 63.

within the years. Therefore, it can be interpreted that the EU-Turkey Statement works in terms of externalization of migration policy of the EU through mainly externalizing the irregular migrants as a way for securing the internal system.

The EU-Turkey Statement can be considered as satisfactory for the EU more than Turkey because it basically has declined the number of Syrian refugees arriving in Greece, so the EU, through Turkey. However, there are problems in the fulfillment of the other expectations related to the resettlement and Greece. In addition, the Statement creates problems for the refugees especially in the Greek islands which challenge the humanitarian arguments of the EU.

The main motivation and expectation of the EU for the EU-Turkey Statement is reducing the number of irregular crossings through the Aegean Sea between Greece and Turkey by the irregular migrants in order to reach the EU, especially after the Syrian civil war. The number of Syrian refugees arriving in Greece declines.²²⁴ The arrivals decreased by 97% after the Statement.²²⁵ The irregular border crossings decline from 10.000 to 83 for a day.²²⁶ In addition, the deaths in the Aegean Sea in the irregular crossing process decreased from 1175 to 310 in a 20 months period.²²⁷ Recently, the number of irregular crossings is low. However, the Syrian refugees under temporary protection status in Turkey live mostly with little income and unsatisfied conditions.²²⁸ Moreover, there is discussion in the literature whether the

²²⁴ Adam, L. (2017). "The EU-Turkey Deal One Year On: A Delicate Balancing Act". *The International Spectator*, 52(4). pp. 45-46

²²⁵ European Commission, "EU-Turkey Statement Three years on (2019)", https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20190318_eu-turkey-three-years-on_en.pdf (accessed 19 August 2021)

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ Yıldırım-Mat, T. and Özdan, S. (2018). "AB ile Türkiye arasındaki Geri Kabul Anlaşması'nın İnsan Hakları Açısından Değerlendirilmesi" *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi*. 24(1). pp. 46.

decline in the number is a direct success of the Statement or not. Elitok²²⁹ supports that it is an outcome of the closure of the Western Balkan route. Adam²³⁰ and Heck and Hess²³¹ mention that the increasing security-based restrictive measures of Turkey cause the decline of the number of arrivals to the EU; it is not only the outcome of the Statement itself.

Financial aid, as one of the few fulfilled expectations of Turkey, is given to Turkey by 1 billion from the EU budget and 2 billion the EU Member States.²³² Half of the 6 billion EUR offered in the Statement is given until 2018 through the 72 projects.²³³ Later, in 2019, 1.2 billion Euros is also distributed.²³⁴ However, Turkey has already spent 12 billion EUR on the technical, administrative and social needs of the Syrian refugees in Turkey.²³⁵ The aid is distributed through the NGOs and projects mostly on the food, education, employment and health of the Syrians under temporary protection in Turkey. Nevertheless, Turkish authorities want to reach the money directly, not through the projects. On the other hand, the EU wants to be sure on the

²²⁹ Elitok, S. (2019). “Three Years on: An Evaluation of the EU-Turkey Refugee Deal”. MiReKoç Working Papers, pp. 4

²³⁰ Adam, L. (2017). “The EU-Turkey Deal One Year On: A Delicate Balancing Act”. *The International Spectator*, 52(4). pp. 46

²³¹ Heck, G. and Hess, S. (2017). “Tracing the Effects of the EU-Turkey Deal – The Momentum of the Multi-layered Turkish Border Regime”. *Movements*. 3(2). 44

²³² Adam, L. (2016). “The Refugee Card in EU-Turkey Relations: A Necessary but Uncertain Deal”. *Global Turkey in Europe*, Global Turkey in Europe, Working Paper 14. pp. 5

²³³ Walter-Franke, M. “Two years into the EU-Turkey ‘deal’: Impact and challenges of a turbulent partnership”. Jacques Delors Institut Berlin, 15 March 2018, pp. 4; European Commission, EU-Turkey Statement Three years on (2019), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190318_eu-turkey-three-years-on_en.pdf (accessed 19 August 2021)

²³⁴ *Ibid.*

²³⁵ Elitok, S. (2019). “Three Years on: An Evaluation of the EU-Turkey Refugee Deal”. MiReKoç Working Papers, pp. 5

place of the spending money offered in the EU-Turkey Statement until recently. Therefore, it will possibly continue to fund the projects for the Syrian refugees in Turkey, not the Turkish authorities directly in the future. In 2020, all of the Facility is based on a project. In addition, after the border opening crisis in March 2020, there have been some discussions between the EU and Turkish government and the possibility of an additional funding and revision of the Statement based on the changing conditions were mentioned.²³⁶

The Statement has been criticized in terms of legal and humanitarian perspective as explained in the following part of the chapter and most of the elements of the Statement has changed or not been realized in the context of the tension in the political atmosphere. However, as one of the main aims of the Statement, decreasing the number of irregular crossings has been realized. It can be enough to make the Statement one of the strong examples of externalization of migration policy of the EU in practice by keeping most of the irregular migrants in Turkey.

2.6. Failures of and Criticisms for the EU-Turkey Statement

The Statement was announced with the discourse of protecting human lives at the Aegean Sea. However, it is mainly constructed for the externalization of migration by the EU which causes criticism for the Statement by the scholars. In addition, most of the elements of the Statement have not been realized which can be defined as the failures of the Statement in terms of fulfillment.

The EU has not been able to realize its aim on unburdening the Greek asylum system through the Statement. Despite the changes in the asylum law of Greece in accordance with the Statement, the Greek bureaucracy, which has been already slow, has difficulties dealing with the application process.²³⁷ The number of applications in

²³⁶ Boffey, D. "EU and Turkey hold 'frank' talks over border opening for refugees", *Guardian*, 9 March 2020, <https://www.theguardian.com/world/2020/mar/09/turkey-erdogan-holds-talks-with-eu-leaders-over-border-opening> (accessed 19 August 2021)

²³⁷ Dimitriadi, A. (2016). "The Impact of the EU-Turkey Statement on Protection and Reception: The Case of Greece," *Global Turkey in Europe*, Working Paper 12. pp. 6

Lesvos tripled after the Statement.²³⁸ Some irregular migrants who are not allowed to go to the mainland cannot apply for asylum because of the lack of information on the bureaucracy and weakness of the system in the Greek islands.²³⁹ Moreover, the Statement makes the Greek islands final destination rather than a transit point for the Syrian refugees. Therefore, they have to live in the hotspots which are not managed successfully and lack sources, and work overcapacity.²⁴⁰ Even the reception conditions in the islands are insufficient for the needs of the irregular migrants. In other words, it is again Greece which takes the main responsibility of the Syrian refugees among the Member States even after the Statement, and how it deals with that amount of responsibility is a question. In addition, the conditions in the islands become more complicated with the Covid-19 pandemic and fires in the camps. Because of the living conditions in the camps, the risk of infection among the refugee population has been high.²⁴¹ Moreover, the fire in the Lesbos island has required the transportation of the refugees in the conditions of the pandemic.²⁴²

The one-to-one scheme does not function as much the as the EU expected for the Statement. The irregular migrants who apply for asylum in the Greek islands are generally accepted as refugees because the Greek Asylum Service refuses to accept

²³⁸ Öztürk, N and Soykan, C. (2019). “Üçüncü Yılında AB – Türkiye Mutabakatı: Hukuki Bir Analiz”. GAR Analizleri No.1, pp. 4

²³⁹ Adam, L. (2016). “The Refugee Card in EU-Turkey Relations: A Necessary but Uncertain Deal”. Global Turkey in Europe, Global Turkey in Europe, Working Paper 14. pp. 3

²⁴⁰ Walter-Franke, M. “Two years into the EU-Turkey ‘deal’: Impact and challenges of a turbulent partnership”. Jacques Delors Institut Berlin, 15 March 2018. pp. 3 https://hertieschool-f4e6.kxcdn.com/fileadmin/user_upload/20180315_Two-years-into-the-EU-Turkey-Deal_Walter-Franke.pdf (accessed 19 August 2021)

²⁴¹ Kondilis, E., Papamichail D., McCann, S., Carruthers, E., Veizis, A., Orcutt, M. and Hargreaves, S. (2021). “The impact of the COVID-19 pandemic on refugees and asylum seekers in Greece: A retrospective analysis of national surveillance data from 2020”, *EClinicalMedicine*. 37(2021). pp 5

²⁴² Grant, H. (9 September 2020).” 'Catastrophe' warning as thousands left homeless by Lesbos refugee camp fire”. *The Guardian*. <https://www.theguardian.com/global-development/2020/sep/09/catastrophe-warning-as-thousands-left-homeless-by-lesbos-refugee-camp-fire> (accessed 19 August 2021)

Turkey as the third safe country.²⁴³ Therefore, generally, they are not returned to Turkey from the Greek islands based on the Statement. According to the EU sources, 14.924 migrants return voluntarily from the Greek islands and mainland through the Assisted Voluntary Return and Reintegration (AVRR).²⁴⁴ Moreover, as the other side of the scheme, the Voluntary Resettlement Admission Scheme part of the Statement is not likely to be fulfilled. More than 20.929 Syrian refugees have been resettled from Turkey to the EU.²⁴⁵ However, the EU and especially Germany were expecting an increasing amount of solidarity on the issue, and so an increase in the resettlement numbers of the registered Syrian refugees coming from the camps in Turkey among the Member States. It is an un-materialized expectation for the EU for now.

On the other hand, it is hard to say that the expectations of Turkey on the Statement are fulfilled. The visa liberalization and revitalization of the EU accession process for Turkey do not exist after five years. The anti-terror law and increasing security perspective on most of the policy fields of the Turkish authorities cause problems in the EU-Turkey relations. In addition, the fact that some of the army officers attempting the failed coup in July 2016 seek asylum in Greece and the problems with Cyprus creates tension between Greece and Turkey, and so the EU and Turkey which affects the effectiveness of the Statement too. In addition, the news²⁴⁶ about the push backs of irregular migrants at the border by the Frontex or Greek authorities also triggers the discussions on the implementation of the Statement.

The visa liberalization has been already based on the effort of Turkey according to the Statement; it is not directly given to Turkey in return for keeping the Syrian

²⁴³ Weber, B. (2017). "The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route" The Friedrich-Ebert-Stiftung. pp. 9.

²⁴⁴ European Commission, "EU-Turkey Statement Three years on (2019)", https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190318_eu-turkey-three-years-on_en.pdf (accessed 19 August 2021)

²⁴⁵ *Ibid.*

²⁴⁶ McKernan, B. "Greece accused of 'shocking' illegal pushback against refugees at sea". *The Guardian*, 26 April 2021. <https://www.theguardian.com/world/2021/apr/26/greece-accused-of-shocking-pushback-against-refugees-at-sea> (accessed 19 August 2021)

refugees inside the country as the outcome of the Statement. Two deadlines for the visa liberalization are missed in June and October 2016 after the Statement.²⁴⁷ It is because of the fact that Turkey cannot fulfill all of the criteria in the Visa Liberalization Roadmap, especially related to the definition of terror. The EU concerns about providing asylum for Turkish nationals escaping political persecution and entering the EU with the visa liberalization.²⁴⁸ On the other hand, Turkish authorities have concerns about changing the anti-terror law in the constitution especially because of the failed coup attempt. Therefore, this element of the Statement which is one of the main expectations of Turkey from the Statement has remained unfulfilled.

The Statement is not able to fulfill the revitalization of the EU accession process expectation of Turkey after five years. There have been few movements in the re-energized process. The Chapter 23, related to justice and fundamental rights, and the Chapter 24, related to justice, freedom and security, which are important for the full membership of Turkey to the EU, have not been opened in this process as mentioned in the Statement. Moreover, some delays in the money given to Turkey in the matter of the Statement, the democracy question in some of the policies of the Turkish government, increasing security concerns after the failed coup attempt, and the negative EU related discourses of the ruling party in Turkey become the challenges for the re-energization of the accession process mentioned in the Statement.

The EU-Turkey Statement was published through the website of the European Commission after the meeting between the parties on 18th March 2016. One of the criticisms for the Statement among the scholars is that it is not legally binding because it lacks a legal framework. Secondly, one of the other criticisms for the Statement is the fact that it does not contain any concerns on protection of the rights of irregular migrants. The availability of seeking asylum in this system can be impossible for the irregular migrants who wish to do so. In addition, possible

²⁴⁷ Weber, B. (2017). "The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route" The Friedrich-Ebert-Stiftung. pp. 10.

²⁴⁸ Adam, L. (2016). "The Refugee Card in EU-Turkey Relations: A Necessary but Uncertain Deal". Global Turkey in Europe, Global Turkey in Europe, Working Paper 14. pp. 5

contradictions with the *non-refoulement* principle because of the Statement can be another point for criticism. Lastly, EU's acceptance of Turkey as a third safe country for making the returns possible according to the CEAS is also criticized. Through the Statement, the EU can create a limbo for the irregular migrants and asylum seekers²⁴⁹, namely Turkey, as a part of the externalization of migration policy.

The Statement is not legally binding as one of the criticisms. The EU expects a lot from the Statement. However, it does not take the legal responsibility of the Statement.²⁵⁰ The Statement is not a binding international agreement.²⁵¹ According to the decision of the General Court of the European Union on a case application to the Court of Justice of the European Union (CJEU), the responsibility of the EU-Turkey Statement does not belong to the EU, but it belongs to the governments of the negotiator Member States.²⁵² In such a case, the legitimization of the Statement becomes blurred and its implementation becomes dependent to the political atmosphere between the EU and Turkey. Moreover, the situation can make it easier to tackle the Statement as an instrument in the externalization of migration rather than a way for finding solutions for the parties and the irregular migrants.

The resettlement of the refugees and quota system has already created problems for the EU and CEAS.²⁵³ The Statement will cause more for the EU and its Member States because it will increase the number in a non-working system. In addition, the

²⁴⁹ Ineli-Ciğer, M. and Ulusoy, O. (2020). "Why the EU-Turkey Statement should never serve as a blueprint". <https://www.asileproject.eu/why-the-eu-turkey-statement-should-never-serve-as-a-blueprint/> (accessed 19 August 2021)

²⁵⁰ Adam, L. (2017). "The EU-Turkey Deal One Year On: A Delicate Balancing Act". *The International Spectator*, 52(4). pp. 3

²⁵¹ Matusesçu, C. (2016). "Considerations on the Legal Nature and Validity of the EU-Turkey Refugee Deal" *Law Review*.6. Special issue. pp. 93

²⁵² Öztürk, N. and Soykan, C. (2019). "Üçüncü Yılında AB – Türkiye Mutabakatı: Hukuki Bir Analiz". *GAR Analizleri No.1*. pp. 3

²⁵³ Elitok, S. (2019). "Three Years on: An Evaluation of the EU-Turkey Refugee Deal". *MiReKoç Working Papers*. pp. 7-8

fact that all irregular migrants coming through Turkey to the Greek islands after the Statement return to Turkey but the only registered Syrians in the camps in Turkey will be resettled causes nation based discrimination among the refugees who have to escape from their country of origin.²⁵⁴ In addition, this element of the Statement can prevent the right of asylum seeking which is one of the fundamental human rights in international law.²⁵⁵

According to the EU, Turkey is a third safe country. Therefore, the returning of the inadmissible applicants in the Statement is in accordance with the *jus cogens non-refoulement* principle of international law. However, whether Turkey constitutes the third safe country standard or not is a discussion point. Poon mentions that Turkey is not a Member State of the EU; therefore, an EU principle cannot be applied for it.²⁵⁶ In addition, she argues that Turkey cannot be considered as a third safe country because whether it fulfills the requirements or not is a question.²⁵⁷ It is questioned the execution of the *non-refoulement* principle in Turkey and supported that the Statement may cause some non-voluntary returns of the Syrian refugees to Syria. Moreover, the Olive Branch Operation on the Kurds in Turkey may create a security question for the Syrian Kurds being returned to Turkey in the context of the EU-Turkey Statement.²⁵⁸ Lastly, the human rights violation of the current government even on its own nationals and the decisions in the ECtHR about some of these violations intensify the question of whether Turkey is a third safe country or not.

²⁵⁴ Dimitriadi, A. (2016). “The Impact of the EU-Turkey Statement on Protection and Reception: The Case of Greece,”. Global Turkey in Europe, Working Paper 15. pp. 9

²⁵⁵ Alpes, M.J., Tunaboylu, S. and van Liempt, I. (2017). “Human Rights Violations by Design: EU-Turkey Statement Prioritises Returns from Greece Over Access to Asylum”. Policy Briefs; 2017/29; Migration Policy Centre. pp. 2

²⁵⁶ Poon, J. (2016). “EU-Turkey Deal: Violation of, or Consistency with, International Law?”. *European Papers*. 1(3). pp. 1201

²⁵⁷ *Ibid.*

²⁵⁸ Walter-Franke, M. “Two years into the EU-Turkey ‘deal’: Impact and challenges of a turbulent partnership”. Jacques Delors Institut Berlin, 15 March 2018. pp. 7

Political tension between the EU and Turkey has created problems for the implementation of the elements of the Statement. For example, opening of the Greece borders in March 2020 by the Turkish government for the irregular migrants after the armed attack in Iblid did not match with the stricter border control element of the Statement. It is because the EU did not satisfy the expectation of Turkey on the element of developing the conditions in Syria in the Statement for both making possible the return of irregular migrants possible and securing the Turkish border.

To conclude this chapter, the EU-Turkey Statement is one of the unique examples of cooperation in the international arena although it is tackled in relation to the externalization of migration policy of the EU in this thesis. The Statement is shaped by not only the increase in the number of irregular crossings from Turkey to Greece but also the background of migration-based dialogue between the EU and Turkey in scope of the possible EU membership of Turkey. In the previous chapter, migration policy of the EU is described in relation to externalization. As a continuation, as the other party of the Statement, migration policy and history of Turkey are explained in this chapter. Later the Statement is explained in detail with its background and elements. Lastly, the implementation and achievements and failures of elements and some criticisms on the Statement in terms of its lack in protection of the rights of irregular migrants and legal framework are evaluated. Constructed in the context of externalization of migration policy of the EU, the Statement includes the tools of the externalization and it is far away from offering inclusive solutions for the people in need of international protection in the region.

In the following chapter, the relation between the externalization of migration policy of the EU and the EU-Turkey Statement, including its elements and implementations, is covered in order to answer the main question of this thesis which is whether the Statement is a part of the externalization of migration policy of the EU or not.

CHAPTER 4

THE EU-TURKEY STATEMENT IN THE SCOPE OF THE EXTERNALIZATION OF MIGRATION POLICY OF THE EU

In this chapter, the EU-Turkey Statement is analyzed in the scope of the externalization of migration policy of the EU through its tools. Migration policy of the EU, externalization and its relation with and existence in the EU migration policy were previously evaluated in the thesis. In addition, migration policy and history of Turkey, background and implications of the Statement were mentioned in the previous chapter in order to make the analysis of the Statement in terms of externalization of migration policy of the EU possible in this chapter of the thesis. The tools of externalization of migration policy are explained as the ENP, mobility partnerships, EU accession process, readmission agreements, border controls, financial assistance and the Dublin system in the previous chapters. In addition, the elements of the Statement are mentioned together with their implementations. In this chapter, the elements of the Statement are analyzed in the context of their relations with the tools of externalization of migration policy of the EU.

The rest of the elements can be considered within the context of the externalization of migration policy of the EU too. However, five tools of the externalization of migration policy of the EU can be seen in the Statement. The EU accession process, readmission, border controls, financial assistance and Dublin system are the tools of externalization of migration policy of the EU which are used in the EU-Turkey Statement in order to reach the goal of keeping irregular migrants away from the EU as a step in the collective securitization of the EU through either the root causes or remote control approaches. In the analysis in this chapter, the readmission and one-to-one scheme elements in the Statement are examined as the readmission tool used by the EU in externalization of migration. Similarly, the elements on the EU accession process, the modernization of the Customs Union and the visa liberalization process in the Statement are evaluated in the title of the EU accession

process together because of the fact that these tools are used in the context of Turkey's partnership as a candidate country in return for the Turkey's alliance in externalization of migration.

The rest of the elements of the Statement which are not evaluated separately under the titles in this chapter can be associated with the externalization of migration policy of the EU too, although they are not directly examples of the tools of externalization that the EU uses in migration policy as described previously in the thesis. The VHAS, as an element of the Statement, planned to be applied by the EU Member States can be an example of responsibility sharing and solidarity with a partner country. However, the resettlements remained limited with the ones realized under the one-to-one scheme. Moreover, the number of the resettlements remained low compared with the irregular migrants, asylum seekers and refugees that Turkey is hosting.²⁵⁹ Therefore, the VHAS becomes an ostensible element in the Statement which is serving for the responsibility-shifting to Turkey as the partner country in externalization of migration. In addition, the element in the Statement on improving the conditions in Syria can be defined in the context of the root-causes approach based on externalization because its main cause of existence in the Statement is making possible to return of the Syrian refugees in need of international protection from the EU Member States and Turkey to Syria. Hence, although the improvement in the humanitarian conditions of Syria can serve for the people living there and the security of the region, the main expectation from this element of the Statement of the parties, specifically the EU, is creating the proper conditions for the return of Syrians to Syria so that the externalization of migration can be implemented even for the country of origin.

In the rest of this chapter, elements of the Statement are evaluated in the context of five tools of the externalization of migration policy of the EU as explained in the previous chapters. The use of tools in the elements of the Statement is explained in

²⁵⁹ European Commission, "EU-Turkey Statement Four years on, March 2020", https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf (accessed 19 August 2021)

detail in order to argue that the Statement is designed in the scope of the externalization of migration policy of the EU.

3.1. The EU Accession Process as a Tool of the Externalization

The EU uses the accession process as a tool for externalization of migration. While the EU demands for some regulations in the migration management and border controls from the candidate and potential candidate countries in harmonizing their legal framework and practices with the EU *acquis*, the requirements of the EU is serving for the externalization of migration too.

The Statement includes several elements which can be related to the EU accession process of Turkey. It can be interpreted that Turkey aims to re-energize its relations with the EU which is almost at a breaking point, while the EU aims to apply the related implementations of its externalization of migration policy through the accession process within the context of the Statement. The relations have gained a movement within the context of the migration based dialogue.²⁶⁰ The trans-sectional nature of the Statement allows Turkey to improve some plugged points in the EU-Turkey relations whereas the EU can externalize irregular migrants by keeping them in Turkey in return for accepting some requirements of Turkey related to the accession process and its candidacy. In addition, Turkey justifies the Statement publicly through the incentives offered in return for externalization of irregular migrants by the EU in the Statement related to the accession process, visa liberalization and modernization of the Customs Union.²⁶¹

After the Readmission Agreement between the EU and Turkey in 2013, the visa liberalization is re-mentioned in the EU-Turkey Statement for lifting the visa requirements for Turkish citizens if Turkey can meet the requirements of all 72

²⁶⁰ Turhan, E. (2017). "Mülteci Krizinin AB-Türkiye İlişkilerine Etkisi: AB'ye Üyelik Sürecinden Bir "Stratejik Ortaklığa" Doğru Mu?". *İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi*. 16(31). pp. 658

²⁶¹ Heck, G. and Hess, S. (2017). "Tracing the Effects of the EU-Turkey Deal The Momentum of the Multi-layered Turkish Border Regime". *Movements*. 3(2). pp. 45

benchmarks in the roadmap.²⁶² The visa liberalization can be used by the EU as a carrot in the externalization of migration policy for the partner countries like in the case of the Statement. In addition, the 72 benchmarks which are pre-conditions for the visa liberalization include elements on the externalization of migration policy of the EU based on the EU *acquis*. For example, one of the elements which have not been fulfilled yet by Turkey is related to the implementation of the Readmission Agreement signed between the EU and Turkey for the third country nationals too. Through this element, the EU wishes to readmit the irregular migrants not only coming from Turkey but also pass through Turkey. Therefore, the visa liberalization as an element of the EU-Turkey Statement shows similarities with the accession process and ENP tools of the EU in the externalization of migration.

In the Statement, it is mentioned that the EU and Turkey welcomed the ongoing work on the modernization of the Customs Union²⁶³ which can be mentioned as a tool for externalization of migration policy of the EU in convincing Turkey for cooperation. Although modernization of the Customs Union can serve for the benefit of both of the parties, Turkey is more enthusiastic about it. Turkey has been waiting for the inclusion of new areas such as agriculture, public procurement, services and e-commerce and more comprehensive methods for the dispute solutions in the context of the Customs Union.²⁶⁴ However, although it is included in the Statement as a carrot in return for the externalization of irregular migration to Turkey in the context of conditionality, the EU has not brought it to the agenda because of the political disagreements with Turkey in the aftermath of the Statement. It can be mentioned as an example of the tools of the externalization of migration policy of the EU because its existence is based on being a carrot for Turkey, as the partner

²⁶² T.C. Dışişleri Bakanlığı Avrupa Birliği Başkanlığı, “Türkiye Avrupa Birliği İlişkilerinde Önemli Tarihler”, pp. 18, <https://www.ab.gov.tr/siteimages/birimler/kpb/kronoloji-trkce-ocak2020.pdf> (accessed 19 August 2021)

²⁶³ Council of the European Union, (2016). “EU-Turkey Statement”, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

²⁶⁴ IKV, “Customs Union”, https://www.ikv.org.tr/ikv.asp?ust_id=4&id=38 (accessed 19 August 2021)

country, in return for keeping irregular migrants out of the Union as the EU wishes as the security agent.

In the Statement, the EU and Turkey reconfirm their commitment to re-energize the accession process as mentioned in the Joint Action Plan in November 2015. The positive direction in the relations is one of the other carrots given Turkey by the EU in return for the other elements in the Statement that can serve for the externalization of migration policy of the EU. However, in the scope of the Statement, the carrots that Turkey has in the context of conditionality in return for the externalization of migration policy of the EU have lost their attractiveness in time because of the political tension between the parties increasing in time specifically after the failed coup attempt in Turkey in July 2016. Although there are problems in the implementation, the re-energization of the EU accession process of Turkey is an element in the Statement that serves for the externalization of migration too.

In the aftermath of the Statement, the EU-Turkey relations were negatively affected by the failed coup attempt and later gas drilling operations of Turkey in the Mediterranean Sea.²⁶⁵ Although the EU wants to continue to apply its practices on the externalization of migration policy based on the collective securitization of the Union, the influence of the Statement as a political document has lost its attractiveness for Turkey with the decrease in the conditionality between the EU and Turkey based on the accession process. However, the implementations applied in the scope of the Statement have already affected the migration management of Turkey through the regulations on the legal framework and border control practices of Turkey which serves for the externalization of migration policy of the EU on both approaches.

3.2. Readmission as a Tool of the Externalization

One of the main tools of externalization of migration policy of the EU is readmission agreements as mentioned in the relevant chapter. It can be mentioned as a secondary tool in the externalization process because it aims to be sure on the elimination of

²⁶⁵ Ünalp-Çepel, Z. (2020). "Critical Arguments about Readmission Practices and Policies between EU and Turkey". *Ankara Avrupa Çalışmaları Dergisi*. 19(2). pp. 511

irregular migrants from the Union territory even if they have been reached already. Hence, remote control can be possible for the irregular migrants in externalization. In return for various technical and financial assistances, the EU expects acceptance of irregular migrants not only the nationals of the partner third countries but also the ones reaching the EU through passing the third countries back. In addition, readmission agreements shift responsibility to the third countries without checking the ability and capacity of the asylum system of the third countries, which also can create violation of the rights of the irregular migrants because of the possible insufficiencies in the system.

The first element of the Statement is related to the readmission of the irregular migrants from Greece to Turkey. According to the element, all new irregular migrants crossing from Turkey to Greek islands as of 20th March 2016 are returned to Turkey in the scope of the Statement. The returns are planned in a way that the Greek authorities register all of the irregular migrants coming to Greek islands from Turkey and individual assessments of the applications are realized in line with the Asylum Procedure Directive with the cooperation of the UNHCR. According to the relevant element, the irregular migrants returned back to Turkey are the ones not applying for asylum or whose asylum applications are found inadmissible in accordance with the Asylum Procedure Directive. In the same manner, in the second element of the EU-Turkey Statement, a special scheme in readmission, one-to-one, is explained. According to the element, for every Syrian being returned to Turkey from Greek islands in line with the first element of the Statement on readmission, another registered Syrian is resettled from Turkey to the EU Member States in accordance with the UN Vulnerability Criteria.²⁶⁶

Both of the elements on the readmission of the irregular migrants are within the context of the externalization of migration policy of the EU. The EU aims to apply one of the main tools of the externalization of migration policy within the context of the Statement. The implementations aim to externalize the irregular migrants who achieve to reach the Union's territory by returning them to Turkey. Although the

²⁶⁶UNHCR, "Vulnerability Screening Tool", <https://www.unhcr.org/protection/detention/57fe30b14/unhcr-idc-vulnerability-screening-tool-identifying-addressing-vulnerability.html> (accessed 19 August 2021)

main aim of the EU is keeping them outside of the Union from the very beginning of their journey through the improvement of the migration management in the partner countries and strict border controls, in the cases that the EU cannot prevent the irregular crossings it aims to send them back to the partner countries like in the case of the Statement to Turkey. In addition, keeping the irregular migrants in the Greek islands for return or not taking their asylum application are the steps taken for not including in the legal framework of the CEAS so that externalization can be easier in the informal and political sphere of the Statement.

One-to-one scheme can be interpreted as a way for discouraging the irregular crossings within the context of protecting lives and responsibility-sharing between the EU Member States and Turkey, because of the fact that the resettlement part has not worked effectively and it divides irregular migrants based on their nationality. However, it can be mentioned within the context of security-based externalization of migration policy of the EU. The non-Syrian irregular migrants deported from Greece to Turkey in the context of the Statement have to face additional challenges in Turkey.²⁶⁷ The geographical limitation that Turkey refuses to eliminate causes problems for the non-Syrian irregular migrants as a result of their externalization from the EU Member States to Turkey in the context of the Statement. Lastly, the push-backs in the Aegean Sea become a tool for the EU as a part of the return policy²⁶⁸ in the absence of a well-functioning readmission scheme with Turkey in the context of the Statement as an externalization of migration practice. The readmission element in the Statement limits the right of reaching international protection together

²⁶⁷ Alpes, M. J., Tunaboğlu, S., Ulusoy, O. and Hassan, S. (November 2017). “Post-deportation risks under the EU-Turkey Statement: What happens after readmission to Turkey?”. Migration Policy Centre Robert Schuman Centre for Advanced Studies European University Institute, Policy Brief. 2017/3. pp. 4

²⁶⁸ Gökalp-Aras, N. E. (2021). “The European Union’s Externalisation Policy in the Field of Migration and Asylum: Turkey as a Case Study”. RESPOND Working Papers Global Migration: Consequences and Responses. pp. 35

with the element on the border controls²⁶⁹ as the tools of the externalization of migration policy of the EU.

3.3. Border Controls as a Tool of the Externalization

Border controls are one of the cornerstones of the externalization of migration policy of the EU. The EU applies this tool in externalization of migration because of the fact that the protection of the internal system is an important point in collective securitization. In this respect, as a part of the policy response on the collective securitization of migration can be seen as the externalization of migration in the relations between the EU and the third countries and some of the institutional developments in the EU on border controls.²⁷⁰ Through the stricter border controls applied by the third countries, remote control approach on the externalization of migration can be implemented by the EU.

Security-based and preventive approach and policy of the EU can be a barrier for irregular migrants in access to rights, specifically the asylum seeking right. Due to the border controls element of the Statement, Turkey increases its importance in securing the border of the EU²⁷¹ as a third country through externalization. It shifts the responsibility of the border management to the third countries as one of the main elements of externalization.²⁷²

Through the push-back operations of the Frontex in the Mediterranean applied with a security emphasis, the EU aims to prevent the arrival of the irregular migrants to the Union territory at the very beginning of their journey if possible. However, in terms

²⁶⁹ Çetin, R. A. (2020). "Externalization of the European Union Migration Regime: The Case of Turkey". *New Political Science*. 42(4). pp. 556

²⁷⁰ İçduygu, A. & Demiryontar, B. (2019). "Mediterranean's Migration Dilemma and the EU's Readmission Agreements: Reinforcing a Centre-Periphery Relation" EuroMedMig Working Paper Series Number 1. pp. 8

²⁷¹ Mütüler-Baç, M. (2017). "Turkey's future with the European Union: an alternative model of differentiated integration". *Turkish Studies*. 18(3). pp. 432

²⁷² Mc Namara, Frank (2013). "Member State responsibility for migration control within third states : externalisation revisited". *European journal of migration and law*. 15(3). pp. 326

of access to asylum, it limits the rights of irregular migrants. In addition, the operations and push-backs, which are questionable in terms of their compliance with the human rights base norms and rule of law principle of the EU, shift the responsibility to the third countries like in the case of Turkey.

According to the elements on border controls within the Statement, Turkey should take necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU and will cooperate with neighbouring states as well as the EU to this effect.²⁷³ However, the emphasis on border controls not only makes Turkey a final destination for the high number of irregular migrants, asylum seekers and refugees but also means being stuck in Turkey for the irregular migrants in need of international protection who wish to pass the Union territory.²⁷⁴

Effective border management and stricter border controls are one of the main elements of the Statement. After the Statement, Turkish authorities have implied stricter land borders and sea coast controls with the humanitarian discourse of saving lives as mentioned in the Statement.²⁷⁵ It can be concluded that one of the most fulfilled elements in the Statement is the border controls in order to decrease the number of irregular crossings through Turkey to Greece in line with the EU's wish because since the Statement has been in place, irregular arrivals have decreased significantly. Therefore, it can be interpreted that asylum seeking rights of the irregular migrants violated through the Statement by keeping them in Turkey despite their unwillingness. Because of the fact that Turkey has to deal with the irregular migrants in high numbers, responsibility sharing principle has become eliminated. Moreover, the high number can cause violation of social and legal rights of the

²⁷³ Council of the European Union, (2016). "EU-Turkey Statement", 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

²⁷⁴ Kuschminder, K. (2018). "Afghan Refugee Journeys: Onwards Migration Decision-Making in Greece and Turkey". *Journal of Refugee Studies*. 31(4). pp. 583

²⁷⁵ Üstübcü, A. (2019). "The impact of externalized migration governance on Turkey: technocratic migration governance and the production of differentiated legal status". *Comparative Migration Studies*. 7(46). pp. 12.

irregular migrants within Turkey. In addition, stricter border controls in Turkey in the context of the Statement and externalization of migration policy of the EU, migration policy of Turkey becomes securitized too. With the Statement stricter border controls started to be applied not only in the EU borders but also in the south-eastern borders of Turkey.²⁷⁶ Externalization of migration can cause possible violations of human rights for people who wish to immigrate from the state of war but cannot do so because of the security-oriented border controls. With the help of the Frontex²⁷⁷ as an agency of the EU as the security agent in collective securitization, Turkey applies stricter border controls in specifically the Greece border in the context of the Statement as a tool of externalization of migration policy of the EU. Frontex has a work arrangement with Turkey and shares intelligence²⁷⁸ for stricter border controls. Although the EU uses the discourse of saving lives²⁷⁹ in the Aegean and Mediterranean in externalizing the responsibility of border control to Turkey, the main aim of the Union is securing the borders of the Schengen area in the externalization of the irregular migrants, which are threats for the Union as defined in the discourses of the EU with a remote control approach.

3.4. Financial Assistance as a Tool of the Externalization

Like the visa facilitation, the EU offers some financial and technical support mechanisms for third countries in return for their cooperation on the externalization of migration policy. In this context, the EU can offer financial assistance under the readmission agreements, ENP, Mobility Partnerships or Macro-Financial Assistance

²⁷⁶ Yıldız, A. G. (2016). *The European Union's immigration policy: Managing migration in Turkey and Morocco*. Palgrave, pp. 115.

²⁷⁷ Karadağ, S. (2019). "Extraterritoriality of European borders to Turkey: an implementation perspective of counteractive strategies". *Comparative Migration Studies*. 7(12). pp. 9

²⁷⁸ Frontex, "Other Partners and Projects", <https://frontex.europa.eu/we-build/other-partners-and-projects/non-eu-countries/> (accessed 19 August 2021)

²⁷⁹ Ceccorulli, M. (2018). "Back to Schengen: the collective securitisation of the EU free-border area". *West European Politics*. 42(2). pp. 307

(MFA) to non-EU partner countries.²⁸⁰ The EU aims to externalize the control of migration to the third partner countries like Turkey in the context of the preventive approach on the externalization of migration. Providing financial assistance in this process for the third countries is one of the tools that the EU uses²⁸¹ in return for the responsibility shifting like in the case of Turkey in the Statement.

Before the Statement, 3 billion EUR has already been promised in the Joint Action Plan as the financial assistance of the EU. In the Statement, it is declared that the EU speeds up the disbursement of the initially allocated 3 billion EUR under the FRiT, in cooperation with Turkey, and ensures funding of further projects for migrants under temporary protection identified with swift input from Turkey before the end of March 2016.²⁸² In total, in the context of the migration dialogue between the EU and Turkey deepened after the Syrian civil war, the EU provides 6 billion EUR financial assistance to Turkey in return.

The FRiT can be interpreted as the most comprehensive element of the Statement in terms of including the refugees because its financial aid goes to the projects serving for the livelihood and integration of the people in need of international protection in Turkey.²⁸³ In addition, the fact that the financial assistance has been distributed through the civil society organizations empowers civil society existence in migration

²⁸⁰ European Commission, “Macro-Financial Assistance (MFA) to non-EU partner countries”, https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/macro-financial-assistance-mfa-non-eu-partner-countries_en (accessed 19 August 2021)

²⁸¹ Moreno-Lax, V. and Giuffré, M. (2019). “The Raise of Consensual Containment: From ‘Contactless Control’ to ‘Contactless Responsibility’ for Forced Migration Flows”. in S. Juss (ed), *Research Handbook on International Refugee Law* (Edward Elgar, forthcoming). pp. 25

²⁸² Council of the European Union, “EU-Turkey Statement”, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 19 August 2021)

²⁸³ Kirişçi, K. “As EU-Turkey migration agreement reaches the five-year mark, add a job creation element”. *Brookings*. 17 March 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/03/17/as-eu-turkey-migration-agreement-reaches-the-five-year-mark-add-a-job-creation-element/> (accessed 19 August 2021)

management in Turkey.²⁸⁴ Improvement of the conditions of the refugees in Turkey can be the outcome. However, the main aim of this aid is facilitating the conditions to keep refugees in Turkey. Therefore, with an emphasis on social and economic integration needs of refugees in Turkey, the FRiT is an element of the Statement which can be taken as a tool in the externalization of migration of the EU. In the context of the root causes approach, through the FRiT, the EU aims to support enough refugees in Turkey in order to eliminate possible conditions which can lead the refugees to move forward to the EU.

The six priority areas, which are humanitarian assistance, migration management, education, health, municipal infrastructure and socio-economic support,²⁸⁵ within the FRiT have been serving irregular migrants, asylum seekers and refugees in Turkey together with the host community. Therefore, it can be said that the FRiT has not only been serving in the six areas of priority but also for the integration of the refugee and host societies through its inclusion of the host society. The EU supports not only the services to the refugee community but also the integration of the refugee and the host community for eliminating the push factors for the refugees in Turkey based on the preventive approach on externalization of migration. The better conditions and the better services for the refugee community and the integration of the communities allow keeping the irregular migrants, asylum seekers and refugees in Turkey. Through the improved conditions in Turkey as a partner country, the irregular migrants do not seek for further protection from the EU Member States according to the expectation of the EU from the Statement. Therefore, although its outcomes serve for the refugee and the host community in Turkey in several aspects of daily life, the FRiT in the Statement is a reflection of the tool of financial assistance of the EU in the externalization of migration to the third countries based on the preventive approach.

²⁸⁴ Adam, L. (2017). "The EU-Turkey Deal One Year On: A Delicate Balancing Act". *The International Spectator*, 52(4), pp. 55

²⁸⁵ Ark-Yıldırım, C., Komşuoğlu, A., and Özekmekçi, İ. (2019). "The transformation of the primary health care system for Syrianrefugees in Turkey". *Asian and Pacific Migration Journal*. 28(1). pp. 88

3.5. The Dublin System as a Tool of the Externalization

As one of the ways of implementing the externalization of migration policy, the EU names some neighbouring countries as the third safe countries. The Member States can send the asylum seekers coming or passing from these countries without the assessment of their asylum applications in the context of readmission agreements based on the Dublin system as a part of the remote control approach on the externalization of migration.

The inadmissibility of the asylum applications based on the third safe country and first country of asylum principles coming from the externalization of migration policy brings violations of human rights and the *non-refoulement* principle. First of all, it prevents the right of asylum seeking. The safe third country and first country of asylum principles in the Dublin system limit this right through limiting the secondary movements which can be necessary. In addition, return of the asylum seekers without accepting the application to the third country may be against the *non-refoulement* principle because of the possible inadequate conditions in respect for human rights and rule of law in the third countries.

In the Statement, the returns are based on the principle that Turkey is a third safe country for the EU. In order to be seen in line with the *non-refoulement* principle, Turkey should be a country where irregular migrants can be returned from Greek islands in the context of the readmission element in the Statement. However, the principle of third safe country in the Dublin system can become problematic for Turkey because of the human rights violations in Turkey which create questions on the safeness of Turkey for the returnees in the context of the Statement.²⁸⁶. Moreover, refugees cannot enjoy their legal status as refugees in Turkey because of the geographical limitation in the Geneva Convention.

According to the EU, Turkey is a third safe country. Therefore, the returning of the inadmissible applicants in the Statement is in accordance with the *jus cogens non-*

²⁸⁶ Öztürk, N.Ö. and Soykan, C. (2019). “Üçüncü Yılında AB – Türkiye Mutabakatı: Hukuki Bir Analiz”. GAR Analizleri No 1. pp. 4.
<https://www.gocarastirmalaridernegei.org/attachments/article/54/ucuncu-yilinda-ab-turkiye-mutabakati-hukuki-bir-analiz.pdf> (accessed 19 August 2021)

refoulement principle of international law. However, whether Turkey constitutes the third safe country standard or not is a discussion point. Poon mentions that Turkey is not a Member State of the EU; therefore, an EU principle cannot be applied for it.²⁸⁷ In addition, she argues that Turkey cannot be considered as a third safe country because whether it fulfills the requirements or not is a question.²⁸⁸ It is questioned the execution of the *non-refoulement* principle in Turkey and supported that the Statement may cause some non-voluntary returns of the Syrian refugees to Syria which can create violation of human rights.

The non-elimination of the geographical limitation in the Geneva Convention is another questionable point for Turkey as a third safe country. Because of the geographical limitation irregular migrants coming outside of the countries of Council of Europe cannot enjoy their rights as refugees. Although Turkey offers temporary protection for the Syrians in need of international protection, non-Syrians are not offered temporary protection status which can cause violation of rights and access to services. Lastly, the human rights violation of the current government even on its own nationals and the decisions in the ECtHR about some of these violations intensify the question of whether Turkey is a third safe country or not. Defining Turkey as a third safe country is one of the tools of the EU in externalization of migration which is one of the legal gaps within the Statement²⁸⁹ like its weakness in terms of constituting a legal framework. Through defining Turkey as a third safe country to allow readmissions and implementation of the one-to-one scheme, the EU externalizes its non-solved problems²⁹⁰ on migration policy and practices with the emphasis on the security of its internal system to Turkey as the outside rather than a

²⁸⁷ Poon, J. (2016). "EU-Turkey Deal: Violation of, or Consistency with, International Law?". *European Papers*. 1(3). pp. 1201

²⁸⁸ *Ibid.*

²⁸⁹ Paçacı-Elitok, S. (2018). "Turkey's Migration Policy Revisited: (Dis)Continuities and Peculiarities". IAI Papers. pp. 11

²⁹⁰ Lehner, R. (2018). "The EU-Turkey-'deal': Legal Challenges and Pitfalls". *International Migration*. 57(2). pp. 8

partner and candidate country without investigating its problems in protecting human rights.

To conclude, in this chapter of the thesis, the elements of the EU-Turkey Statement are associated with the tools of the externalization of migration policy of the EU in the context of the main argument of this thesis which is claiming that the Statement is a part of the externalization of migration policy of the EU. Although the Statement constitutes one of the examples of the cooperation between two parties in the international arena in the field of migration, its main reason for existence is the externalization of migration policy of the EU. The EU aims to apply some of its tools developed for externalization of migration for the irregular migrants and asylum seekers increasing after the Syrian crisis in the region. Because of the fact that the main route for the irregular migrants for asylum seeking is through Turkey and Turkey has already been a partner country in the field of migration, asylum and border controls as a candidate country, the EU-Turkey Statement published in 2016 as a continuation of a previous dialogue between the parties includes several examples of the tools of externalization of migration policy of the EU in the context of collective securitization after the increase in the number of irregular crossings as a precipitating event.

In the Statement, five of the tools of externalization of migration policy of the EU can be evaluated. Re-energization of the EU accession process of Turkey, modernization of the Customs Union and visa liberalization can be interpreted in the context of the EU accession process tool of the EU in externalization of migration because through these concessions offered to Turkey by the EU, the EU can keep the irregular migrants, which it defines as threats through several discourses, out of the Union, in Turkey. Implementation of the readmission agreement and one-to-one scheme can be interpreted as an example of the readmission tool of the EU in externalization of migration. Through the readmission tool in the Statement, the EU can externalize the irregular migrants even if they try to reach the Union territory. Border controls element in the Statement is one of the main examples of the externalization of migration policy tools of the EU. The border control is one of the backbones among the externalization of migration policy tools of the EU. It aims to

develop practices on border controls together with the partner countries as a part of the remote control approach with a security emphasis. Therefore, the stricter border controls element in the Statement is an important tool for the EU in keeping the irregular migrants out of the Union and securing the internal system. The financial aid element in the Statement is one of the other tools for the externalization of migration policy of the EU. It is common for the Union to offer financial and technical assistance for the partner countries in return for keeping irregular migrants out of the Union. In the Statement, through the financial aid, the EU aims to develop the conditions in Turkey for the irregular migrants and asylum seekers so that they do not need to move forward to the EU Member States from Turkey. As the last tool in the Statement in the context of the externalization of migration policy of the EU, the principles of the Dublin system can be observed in the Statement. The readmission tool can be applied through the definition used in the Dublin system and its implementation for Turkey. In the context of the Dublin system, Turkey is defined as the third safe country. The EU uses this discourse and develops practices like readmission based on this discourse in accordance with the collective securitization step. In the Statement, Turkey is defined as a third safe country in order to make possible the return of the irregular migrants from the EU Member States to Turkey in accordance with the international law and EU *acquis*.

The VHAS scheme can be an element of the fair sharing of responsibility between the parties if the implementation of it becomes possible. In addition, improving the humanitarian conditions in Syria can serve the irregular migrants escaping from an armed dispute. However, at the same time, it can be interpreted as an element for externalizing the Syrians to not only Turkey as a third safe country but also to Syria as the country of origin. Moreover, the implementation of this element has never been realized in cooperation by the parties.

All in all, the EU-Turkey Statement is constructed in the context of the externalization of migration policy of the EU through its several tools. Although it includes some elements which can be interpreted as the humanitarian and inclusive parts of the Statement, it is mainly serving for the EU's security-based externalization of migration policy discourses and practices after the precipitating

event triggering the existed status quo, which is unexpected increase in the number of irregular crossings, in the creation of a new status quo for securing the internal system from the irregular migrants defined as dangerous for the values and existence of the Union by the EU as the security agent through several discourses.

The Statement includes elements reflecting the tools of the externalization of the migration policy of the EU. The elements related to the re-energization of the EU accession process, readmission of irregular migrants, stricter border controls, financial assistance and the use of the principles of the Dublin system in the Statement for Turkey are the elements that match with the tools of the externalization of migration policy of the EU including both of the approaches. Therefore, as this thesis supports, the EU-Turkey Statement is constructed as a part of the externalization of migration policy of the EU through the use of its tools although it restrict the rights of the irregular migrants, asylum seekers and refugees.

CHAPTER 5

CONCLUSION

The EU-Turkey Statement was introduced in March 2016 as an example of cooperation in the field of migration. The Statement is a part of the externalization of migration policy of the EU. Externalization is one of the backbones of the migration policy of the EU. Therefore, in time, the EU develops several tools for the externalization of migration policy. In the thesis, it is argued that some of the tools of the externalization of migration policy of the EU can be observed in the Statement based on two of the approaches on the externalization of migration, remote control and root causes. Therefore, the EU-Turkey Statement can be defined in the context of the externalization of migration policy of the EU.

The thesis questions the EU-Turkey Statement in the context of its relations with the externalization of migration policy of the EU. In this respect, migration history and policy of the EU, formation of the externalization of migration policy of the EU, tools of the externalization, migration policy and history of Turkey, background of the EU-Turkey relations and the Statement, in particular, elements, implementations, achievements, failures and criticism of the Statement are analyzed in the thesis in the relevant chapters in order to clarify the Statement as a part of the externalization of migration policy of the EU as the main outcome of this thesis. In addition, the match between the tools of the externalization of migration policy of the EU and the elements of the EU-Turkey Statement is analyzed in detail in order to explain its relevance in the context of the externalization of migration policy of the EU.

At the beginning of the thesis, the externalization of migration policy of the EU is explained through the collective securitization theory. Collective securitization is a six-step process including status quo, precipitating event, creation of discourse and practices and creation of new status quo by the security agent and the audience. Within the context of the EU and externalization of migration specifically after the

Arab Spring and Syrian crisis is explained through the collective securitization within the Union. The precipitating event can be described as the increase in the irregular crossings towards the Union after the Arab Spring and specifically the crisis in Syria. They trigger the status quo of the practices of the Union on migration and asylum which have already included security-based externalization practices. Later, the Union, as the security agent, together with the Member States, as its audience, intensifies its discourse on irregular migrants, asylum seekers and refugees as the threats for the security, future and existence of the Union. Therefore, based on the perception of irregular migrants as possible threats for the Union and European citizens, the security agent develops new practices or improves the ones already existed on the externalization of the issue in order to protect the internal system both on the remote control and root causes approaches; so that, through the practices, like the EU-Turkey Statement, the EU can create a new status quo which is based on the externalization of migration to the partner countries.

The migration policy of the EU has always included tools of externalization as an outcome of the collective securitization process from its formation through the idea of a common migration and asylum policy after the implementation of the Schengen Agreement and creation of a free border system. Hence, in the first chapter of the thesis, development of a common ground for the migration and asylum policy within the Union among the Member States is examined. After the abolition of the pillar system in the Maastricht Treaty, in the late 90s, the creation of CEAS is the main point in the common policy in migration.

Externalization can be observed within the common base of the migration policy of the Union from the creation of CEAS. It is not only an outcome of the lack of common, responsibility sharing and solidarity base actions among the Member States but also a part of the externalization practices of migration policy. Five directives forming the CEAS contain elements on externalization. Dublin Regulations as the backbone of the CEAS is mainly based on the determination of the responsible Member States in assessing the asylum applications. Because of the preventing second movement mission within the Union, the Dublin Regulations externalize migration within the Union itself from the Northern Member States to the frontier

Southern Member States. Secondly, the Reception Conditions Directive aims to uniform and improve reception conditions within the Union. This Directive can be interpreted as another tool in externalizing migration within the Union because when the reception conditions improve in the Southern frontier Member States, asylum seekers do not need to move further to the core of the Union territory. As the third directive forming CEAS, the Asylum Procedures Directive aims to uniform the asylum procedure in the Union in a proper standard.

The introduction of the first country of asylum and third safe country principles for the migration policy of the EU as a part of the Dublin system, it can be interpreted as a part of the externalization of migration. The first country of asylum principle aims to limit secondary movement within the Union. Therefore, it is like the Dublin Regulations, which can be mentioned as a part of the externalization within the Union. The third safe country principle, on the other hand, aims to externalize migration to the third countries by defining them as safe countries for the asylum seekers who passed these countries before reaching the Union territory so that the EU can eliminate the *non-refoulement* principle. The Qualification Directive aims to uniform the asylum systems of the Member States; however, it is not possible to mention the existence of a common asylum system which is uniform in the assessment of the same applications. Therefore, the assessment processes and status determination percentages can differ among the Member States. As the last directive within the CEAS, the Temporary Protection Directive aims to grant international protection temporarily for the irregular migrants who are in need of, without individual assessment processes in mass movement situations to the Union territory. However, the Directive has never been put into effect.

Externalization has always been part of the migration policy of the EU in the context of collective securitization. The externalization is sourced from the steps of collective securitization as a collective and easier response, than responsibility sharing and solidarity based, inclusive and human rights oriented response, for migration and asylum by the EU and its Member States. It can be explained through root-cause or preventive approaches. In the root-causes approach, the aim is to prevent irregular movements from the beginning by developing practices and

policies for eliminating the push factors in not only the countries of origin but also transit countries. On the other hand, in the preventive approach, externalization is for preventing possible irregular movements by security measures, specifically in the borders. Both of the externalization approaches can be interpreted as the outcomes of a security-based perspective on migration and asylum because in both of them the main aim is externalizing the irregular migrants and asylum seekers to the third countries and restricting the right of movement and asylum seeking.

The EU uses both of the approaches to externalization in its migration policy. From the formation of the CEAS from the Tampere Declaration to the GAMM and Migration Pact later, the EU includes externalization-based discourses and practices as a part of the collective securitization as the security agent. Although the EU uses discourses on human rights protection and saving lives, one of the main cornerstones of the EU migration policy is externalization with its both approaches and several tools. However, the tools can cause human rights violations and violation of the asylum seeking right. The externalization of migration policy excludes the main subjects of the issue; irregular migrants, asylum seekers and refugees. The security-based policies cause the violation of human rights through ignoring their rights in order to protect the domestic system of the Union rather than finding responsibility sharing and solidarity based solutions within the Union among the Member States for both providing security for the Union and people in need of international protection.

The EU develops its tools not only for eliminating the root causes of the irregular movements from the countries of origin and transit countries but also applying stricter border controls for preventing the irregular crossings. In this context, in time, the EU develops several practices based on its discourses on protecting the internal system and identity. For example, the ENP and financial assistance are implemented in the scope of the root causes approach based on the externalization of migration policy by the EU as the security agent. Through the ENP, the EU aims to empower the neighbouring countries so that it can be possible to prevent possible irregular migration movements from these countries to the EU Member States. In the context of the ENP, the EU aims to improve the economic conditions in the partner country and support the civil society for preventing the development of a possible irregular

migration movement to the Union. Likewise, the EU uses financial assistance in limiting the push factors in the partner neighbours. Mobility Partnerships, EU accession process, readmission agreements, border controls and implementations in the context of the Dublin system can be interpreted in the context of remote control approach based on externalization of migration. In the Mobility partnerships and readmission agreements, the EU offers financial or technical assistance and some political conditionality options to the partner countries in return for stricter border controls and the readmission of not only the nationals of the partner country but also the third country nationals who passed through the partner country to the Union territory. Border controls are the main parts of the externalization of migration policy of the EU. In this respect, the agencies of the EU such as Frontex cooperate with the partner countries in order to restrict the irregular crossings as a collective securitization practice. The EU accession process is also used as a tool for externalization of migration in the context of conditionality. Border controls and readmission are the strong parts of the negotiations process. In addition, the developments in the asylum system and reception conditions can be interpreted as the parts of the root causes approach in the externalization of migration policy of the EU. Lastly, the Dublin system serves for the externalization of migration through a remote control approach to the externalization of migration policy. The first country of asylum and third safe country principles are the tools for externalizing irregular migration of the frontier Member States or third countries because it aims to prevent the irregular crossings by keeping them in the outside or at least border Member States of the Union.

Before the evaluation of the EU-Turkey Statement in the scope of the externalization of migration policy of the EU, its background and features and implementations of the Statement have been analyzed. The Statement is based on the constant dialogue between the EU and Turkey on not only migration but also the accession process of Turkey to the EU. In the progress reports of the European Commission on Turkey from the very beginning of the accession process migration, asylum and border controls have kept an important place. The EU expects Turkey to develop its migration and asylum policies and empower its border control in order to ensure

securing its common borders. The accession process is highly used by the EU in externalizing migration because Turkey is one of the main transit countries that irregular migrants use to pass the EU territory.²⁹¹ A proper legal framework and bureaucratic practices in migration and asylum and civil border agency are some of the requests of the EU in the accession process. After the crisis in Syria, specifically with the 2015 summer, irregular crossings from Turkey to Syria and Turkey to the EU have been increased as the precipitating event in the collective securitization steps of the EU. Therefore, the new status quo creation need of the EU as the last step in collective securitization has been increased too. In this context, the relationship between the EU and Turkey intensifies based on the EU's increasing wish on externalizing the migration policy specifically to Turkey as a partner and candidate country.

The Readmission Agreement between the EU and Turkey was signed in 2013. Later, in 2015 and 2016 there were three high level meetings in the context of the Joint Action Plan. The EU-Turkey Statement is the outcome of the last meeting that emerged on 18th March 2016 between the Turkish government, the governments of the EU Member States and the European Commission.

The Statement is formed in the context of externalization of migration as a step in the collective securitization of the EU after the increase in the number of irregular crossings with the Syrian crisis as the precipitating event including tools on both of the approaches on the externalization of migration. In this respect, the Statement includes discourses and practices on the collective securitization based externalization of migration. The elements of the Statements are examples of the tools of externalization of migration policy of the EU.

The Statement includes several elements which bring the EU's wish on the externalization of migration policy from the progress reports in the context of the accession process of Turkey, the Readmission Agreement and the Joint Action Plan. One of the main elements and the goals of the EU is the readmission of the irregular

²⁹¹ European Council, "Eastern Mediterranean route", <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eastern-mediterranean-route/> (accessed 19 August 2021)

migrants who do not apply for asylum or whose application is inadmissible in terms of the Dublin system. In addition, one of the other elements in the Statement on readmission of the irregular migrants is the one-to-one scheme. According to the scheme, based on the Readmission Agreement between Greece and Turkey, all of the irregular migrants crossing to the Greek territories from Turkey have to be readmitted by Turkey. In return, the EU offers to relocate the Syrians registered under temporary protection based on the solidarity and responsibility sharing principles. However, the relocation of the Syrians has remained in low numbers. At the same time, the fact that Turkey is taken as a third safe country for readmitting the irregular migrants in accordance with the Dublin system was not approved by some of the court decisions in Greece. The possible violation of the *non-refoulement* principle by sending the irregular migrants to Turkey creates problems for the Greece legal system. Readmission is one of the most used tools of the EU in the externalization of migration policy as existed in the Statement too. However, readmission of the irregular migrants and the one-to-one scheme cause possible violation of rights of the irregular migrants because they limit the right of asylum seeking. In addition, it makes the Turkish newly developed asylum system overburden which can limit the rights of irregular migrants and asylum seekers returned to Turkey.

The element in the Statement on the border controls is one of the most important goal of the EU. Based on the remote control approach on the externalization of migration policy, the EU has intensified its border control practices in accordance with the collective securitization steps after the precipitating event. Therefore, in the Statement, one of the main expectations of the EU from Turkey is to restrict the irregular crossings from Turkey to the Union territory. This element of the Statement is one of the most important clues of the fact that the Statement is a part of the externalization of migration policy of the EU because through the stricter border controls applied by Turkey the EU can decrease the number of irregular crossings to the EU by keeping them in Turkey. However, as a harmful effect of the externalization of migration policy of the EU, the irregular migrants and asylum seekers stay stuck in Turkey which can cause violation of rights in an overburdened

asylum system rather than relocated in a readmission scheme among the Member States as a part of the responsibility sharing. In this respect, in the Statement, there is an element on the possible implementation of the Voluntary Humanitarian Admission Scheme. According to the element, when the number of the irregular crossings decreases substantially, the scheme starts to be implemented. However, although the numbers were decreased, the EU has not implemented the scheme. This element can be mentioned as a humanitarian and inclusive part of the Statement. It aims to decrease the irregular crossings and encourages regular relocation among the registered Syrians. Yet, although it can be beneficial for the Syrians, it excludes the irregular migrants and asylum seekers from the other nationalities. Therefore, in this element too, the people in need of international protection from other than Syrians are externalized to Turkey which intensifies the formation of the Statement as an outcome of the practices and discourses of the externalization of migration policy of the EU.

Visa liberalization for Turkey in the Schengen area, modernization of the Customs Union between the EU and Turkey and re-energizing the EU accession process of Turkey are other elements of the Statement which can be evaluated in the context of the externalization of migration policy of the EU. First of all, the Visa Liberalization Roadmap includes 72 benchmarks on Turkey's accordance with the EU *acquis* specifically on the justice and home affairs, which can serve as the tools of the externalization of migration policy of the EU too such as the implementation of the Readmission Agreement between the EU and Turkey for the third country nationals too. On the other hand, the modernization of the Customs Union and re-energizing the EU-Turkey relations in the context of the accession process can be evaluated as the carrots given to Turkey in return for keeping irregular migrants in Turkey and prevent their passing to the Union as a part of the security-based externalization policy.

In the Statement, lastly, possible cooperation between the EU and Turkey for developing the humanitarian conditions in Syria so that not only the security of the region can be ensured but also, and mostly, the possible voluntary returns of Syrians in need of international protection back to Syria can be mentioned. This element of

the Statement can be analyzed in the scope of the root causes approach of the externalization policy of the EU. In this element, it is aimed that the harmful effects of the armed conflict in Syria are eliminated by the cooperation between the EU and Turkey so that the returns of the Syrians can be possible to Syria. However, because of the increasing duration of the crisis, the difference in the threat perspectives of the EU and Turkey and the disagreements in the political sphere between the EU and Turkey; this element of the Statement has never been implemented. In addition, the emphasis on voluntary returns of the refugees by the EU and even Turkey is also problematic in terms of ignoring the needs of the Syrians refugees. Predicting the fact that they want to return to Syria when the crisis is over is the wish of the EU in externalization of migration to Syria in this case as the country of origin, rather than Turkey as a third country.

This thesis analyses the EU-Turkey Statement in the scope of the externalization of the migration policy of the EU through the tools of the externalization of migration policy of the EU. In this respect, because of the fact that the Statement is evaluated in its relation with the tools of the externalization, the analyses of the other aspects of the Statement stays limited in this research. Its legal framework, its formation in the context of the EU-Turkey relations, its structure which can cause violation of human rights and its future evolvement could not be mentioned in detail in scope of this thesis and can be explained further in future studies.

The opening of the western borders by Turkey in February 2020 and the new discussions between the EU and Turkey on migration management pointed out a revision for the Statement. Furthermore, the changing border practices due to the Covid-19 pandemic, needs of the refugees and political affairs between the EU have necessitated the revision for the Statement. Although the Statement, in practice, has not completed its course, the political tension between the parties has caused some problems in the implementation. However, the EU keeps its desire for externalizing the migration through the partnership of Turkey despite the political tension. Therefore, the Statement can serve as a blueprint for the future cooperation between the EU and Turkey, and even the other third countries, in the externalization of migration policy of the EU.

In this thesis, the Statement is analyzed in the context of externalization of migration policy of the EU. As the main argument of the thesis, the EU-Turkey Statement constitutes an example for the externalization of migration policy of the EU with its elements. The elements can be related with the tools of externalization of migration policy of the EU based on the discourses and practices that the EU develops as the security agent with the security concerns based on the root causes and remote control approaches for responsibility shifting to the third partner countries. Although the Statement can serve for the benefit of the irregular migrants, asylum seekers and refugees, the main reason for the existence of the Statement is the desire of the EU for protecting its internal Schengen system from the irregular migrants which are defined as threats for the EU by the Union through externalizing them to Turkey as a candidate and partner country. Its existence as an example for cooperation between the EU and a partner country in the field of migration can serve for the future cooperation for the benefit of the asylum seekers and refugees. However, it mostly relies on the practices of the externalization of migration. In addition, the Statement does not show an inclusive character in terms of the needs of the asylum seekers and refugees. The future models of cooperation and possible revision of the Statement can go beyond being only an example for the externalization of migration policy of the EU through including the needs and wishes of the people in need of international protection

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APPENDICES

APPENDIX A: TURKISH SUMMARY/TÜRKÇE ÖZET

Bu tez, 18 Mart 2016'da duyurulan Avrupa Birliği (AB) - Türkiye Mutabakatı'nı AB'nin göçü dışsallaştırılma politikası bağlamında incelemektedir. Dışsallaştırma, AB'nin göç politikasının temel unsurlarından biri olarak ele alınmaktadır. AB, göçün üçüncü ülkelere dışsallaştırılması için çeşitli araçlar geliştirmektedir. Tezde, AB'nin göçü dışsallaştırılmasına yönelik bazı araçların, uzaktan kontrol (*remote control*) ve önleyici/kök neden (*preventive/root causes*) yaklaşımlarına dayalı olarak Mutabakatta yer aldığı ve bu nedenle AB-Türkiye Mutabakatının AB'nin göçü dışsallaştırma politikası kapsamında ele alınabileceği tartışılmaktadır.

Tezde AB-Türkiye Mutabakatının AB'nin göçü dışsallaştırma politikasıyla olan ilişkisi bağlamında AB'nin göç tarihi ve politikası, AB'nin göçü dışsallaştırılma politikasının oluşumu ve dışsallaştırmanın araçları incelenmektedir. Ayrıca, Türkiye'nin göç politikasının gelişimi, AB-Türkiye ilişkilerinin arka planı ve Mutabakat tüm yönleriyle ele alınmaktadır. Çalışmanın ana çıktısı olarak, AB'nin göçü dışsallaştırmak için geliştirdiği araçlarla AB-Türkiye Mutabakatının maddeleri arasındaki bağlantı açıklanmaktadır.

Tezin başlangıcında, AB'nin göç politikasının dışsallaştırılması toplu güvenlikleştirme (*collective securitization*) teorisi üzerinden açıklanmıştır. Toplu güvenlikleştirme, statüko, hızlandırıcı olay (*precipitating event*), buna bağlı söylem ve uygulamaların yaratılması ve güvenlik ajanı (*security agent*) ve izleyici (*audience*) tarafından yeni statükonun yaratılmasını içeren altı adımlı bir süreçtir. Bu çalışmada, AB bağlamında, özellikle Arap Baharı ve Suriye krizinden sonra, göçün dışsallaştırılması AB'nin geliştirdiği toplu güvenlikleştirme pratikleri üzerinden açıklanmaktadır. Hızlandırıcı olay, Arap Baharı ve özellikle Suriye'deki kriz sonrası AB'ye yönelik düzensiz göçmen geçişlerinin artması olarak tanımlanmaktadır. Bu durum Birliğin hali hazırda güvenlik temelli dışsallaştırma araçlarından faydalanan

göç ve sığınma konusundaki uygulamalarını pekiştirmektedir. Daha sonra Birlik, güvenlik ajanı olarak, Birliğin güvenliğine, geleceğine ve varlığına yönelik tehditler olarak tanımladığı düzensiz göçmenler, sığınmacılar ve mülteciler konusundaki söylemini yoğunlaştırmaktadır. Böylece, AB, güvenlik ajanı olarak, Birlik ve Avrupa vatandaşları için olası bir tehdit olarak tanımladığı düzensiz göçmelerin dışsallaştırılmaları için mevcut politika ve araçları muhafaza etmiş ve yenilerini geliştirmiştir.

AB'nin göç politikası, Schengen Anlaşması'yla birlikte serbest bir sınır sisteminin oluşturulmasından sonra ortak bir göç ve sığınma politikası fikrinin güçlenmesiyle, toplu güvenlileştirme sürecinin bir sonucu olarak dışsallaştırma araçlarını içermektedir. Bu nedenle, tezin birinci bölümünde, Birlik içerisinde göç ve sığınma politikası için ortak zeminin geliştirilmesi incelenmektedir. 90'lı yılların sonlarında Maastricht Antlaşması'ndan sonra, sığınma politikasının ortaklaşması noktasında CEAS (*Common European Asylum System*) oluşturulmuştur.

Dışsallaştırma, CEAS'ın oluşturulmasından itibaren Birliğin göç politikasında ortak bir unsur olarak gözlemlenmektedir. Göçün dışsallaştırılması sadece Üye Devletlerin sorumluluk paylaşımı ve dayanışma odaklı pratikler geliştirememesinin bir sonucu değildir. Dışsallaştırma AB'nin göç politikasının temelden bir parçası olarak açıklanabilir. CEAS'ı oluşturan beş yönetmelik, dışsallaştırmaya ilişkin unsurlar içermektedir. CEAS'ın omurgasını oluşturan Dublin Yönetmeliği, esas olarak, sığınma başvurularının değerlendirilmesinde sorumlu Üye Devletin belirlenmesine yöneliktir. Birlik içindeki ikinci bir düzensiz göç hareketini engelleme görevi nedeniyle, Dublin Yönetmeliği, Birlik içindeki düzensiz göçü Kuzey Üye Devletlerden sınır Güney Üye Devletlerine dışsallaştırmaktadır. İkinci olarak, *Reception Conditions Directive*, Birlik içindeki kabul koşullarını tek tip hale getirmeyi ve iyileştirmeyi amaçlamaktadır. Bu yönetmelik, Birlik içinde göçün dışsallaştırılmasında bir diğer araç olarak yorumlanabilir çünkü Güney sınırındaki Üye Devletlerde kabul koşulları iyileştiğinde, sığınmacıların AB içerisinde ikinci bir göçe teşebbüs etmelerine gerek kalmamaktadır. CEAS'ı oluşturan üçüncü yönetmelik olan *Asylum Procedures Directive*, Birlik içerisindeki sığınmaya dair süreçlerin uygun bir standartta tek tip hale getirilmesini amaçlamaktadır.

Dublin sisteminin bir parçası olarak AB'nin göç politikasına ilk sığınma ülkesi ve üçüncü güvenli ülke ilkelerinin getirilmesi, göçün dışsallaştırılmasının bir parçası olarak yorumlanabilir. İlk sığınma ülkesi ilkesi, Birlik içindeki ikincil hareketi sınırlamayı amaçlamaktadır. Üçüncü güvenli ülke ilkesi ise, AB'nin geri göndermeme (*non-refoulement*) ilkesini geçersiz kılmak adına, düzensiz göçmenlerin AB sınırlarına ulaşmadan geçtikleri üçüncü ülkeleri güvenli üçüncü ülke olarak tanımlayarak göçü bu ülkelere dışsallaştırmayı amaçlayan bir ilkedir. *Qualification Directive*, Üye Devletlerin sığınma sistemlerini tek tip hale getirmeyi amaçlamaktadır. Ancak AB içerisinde sığınma başvurularının değerlendirilmesinde tek tip ortak bir sığınma sisteminin varlığından bahsetmek mümkün değildir. Bu nedenle, değerlendirme süreçleri ve verilen statüler Üye Devletler arasında farklılık gösterebilmektedir. CEAS kapsamındaki son yönetmelik olan Geçici Koruma Yönergesi (*Temporary Protection Directive*), AB sınırlarına yönelik toplu düzensiz göç durumlarında bireysel değerlendirme süreci olmaksızın, ihtiyacı olan düzensiz göçmenlere geçici olarak uluslararası koruma sağlamayı amaçlamaktadır. Ancak, yönetmelik günümüze kadar yürürlüğe girmemiştir.

Dışsallaştırma, toplu güvenlikleştirme bağlamında AB'nin göç politikasının bir parçasını oluşturmaktadır. Dışsallaştırma, AB ve Üye Devletleri tarafından göç ve sığınma alanında sorumluluk paylaşımı ve dayanışma temelli, kapsayıcı ve insan haklarına yönelik pratiklerden ziyade toplu güvenlikleştirme adımlarından kaynaklanmaktadır. Dışsallaştırma kök neden veya uzaktan kontrol yaklaşımlarıyla açıklanabilir. Kök neden yaklaşımında amaç, sadece menşe ülkelerde değil, transit ülkelerde de itici faktörlerin ortadan kaldırılmasına yönelik uygulama ve politikalar geliştirerek düzensiz göçün oluşumunun önlenmesidir. Öte yandan uzaktan kontrol yaklaşımında dışsallaştırma, özellikle sınırlarda güvenlik önlemleri ile olası düzensiz göçmenlerin Birlik sınırlarından içeri alınmamasına yöneliktir. Dışsallaştırma yaklaşımlarının her ikisi de göç ve sığınma konusunda güvenlik temelli bir bakış açısının sonuçları olarak yorumlanabilir çünkü her ikisinde de asıl amaç düzensiz göçmenleri ve sığınmacıları üçüncü ülkelere dışlamak ve hareket ve sığınmaya erişim hakkını kısıtlamaktır.

AB, göçü dışsallaştırmaya yönelik her iki yaklaşımı da kullanmaktadır. Tampere Deklarasyonu ve CEAS'ın oluşumundan GAMM (*Global Approach to Migration and Mobility*) ve Göç Paktı'na (*Migration Pact*) kadar, AB, güvenlik temelli bir yaklaşımla dışsallaştırmaya yönelik söylemler yaratmış ve buna uygun pratikler geliştirmiştir. AB, göç ve sığınma alanında insan haklarının korunması ve hayat kurtarma temalı söylemler kullansa da, AB göç politikasının temel taşlarından biri dışsallaştırmadır. Bu bağlamda genel söyleme zıt olarak dışsallaştırma araçları insan hakları ihlallerine ve sığınma hakkı ihlallerine neden olabilmektedir. Göçün dışsallaştırılması için kullanılan araçlar çoğunlukla meselenin ana odağı olan düzensiz göçmenler, sığınmacılar ve mültecilerin ihtiyaçlarını göz ardı etmektedir. Güvenlik temelli dışsallaştırma pratikleri, AB içerisinde hem AB'nin hem de göçmen ve mültecilerin güvenliğini sağlayacak sorumluluk paylaşımı ve dayanışma temelli çözümler bulmaktan çok Birliğin kendi sistemini korumaya odaklanarak uluslararası koruma ihtiyacı olan kişilerin haklarını yok saymaktadır.

AB, dışsallaştırma araçlarını yalnızca menşe ve transit ülkelerden gelen düzensiz göçün temel nedenlerini ortadan kaldırmak için değil, aynı zamanda düzensiz geçişleri önlemek için daha sıkı sınır kontrolleri gibi uygulamalar olarak da geliştirmektedir. Bu bağlamda zaman içerisinde AB, Schengen'i ve oluşturduğu Avrupalı kimliğini tehdit olarak yorumladığı düzensiz göçmenlerden korumaya yönelik göçü dışsallaştırma araçları geliştirmektedir. Örneğin, Avrupa Komşuluk Politikası (*European Neighbourhood Policy*) ve AB'nin göç alanında iş birliği karşılığında sağladığı mali yardımlar, AB'nin bir güvenlik ajanı olarak göçün dışsallaştırılmasında kullandığı önleyici yaklaşım kapsamında değerlendirilebilir. AB, Avrupa Komşuluk Politikası aracılığıyla, bu ülkelerden AB Üye Devletlerine olası düzensiz göç hareketlerini önlemek için komşu ülkeleri güçlendirmeyi amaçlamaktadır. Avrupa Komşuluk Politikası bağlamında AB, Birliğe olası bir düzensiz göç hareketinin oluşumunu önlemek için göç alanında iş birliği içinde olduğu komşu ülkelerdeki ekonomik koşulları iyileştirmeyi ve sivil toplumu desteklemeyi amaçlamaktadır. Benzer şekilde, AB, iş birliği yaptığı komşu ülkelerdeki itici faktörleri sınırlandırmak için de mali yardımları kullanmaktadır. *Mobility Partnerships*, AB adaylık süreci, geri kabul anlaşmaları, sınır kontrolleri ve

Dublin Sistemi bağlamındaki uygulamalar göçün dışsallaştırılmasında uzaktan kontrol yaklaşımına bağlı araçlar olarak yorumlanabilir. *Mobility Partnership* ve geri kabul anlaşmaları bağlamında AB, daha sıkı sınır kontrolleri ve yalnızca ortaklık yapılan ülkenin vatandaşlarının değil, aynı zamanda sınırdan geçen üçüncü ülke vatandaşlarının da geri kabulü karşılığında ortaklık yaptığı ülkelere mali veya teknik yardımlar sunmaktadır. Üçüncü ülkelerle iş birliği kapsamındaki sınır kontrollerinin sıkılaştırılması AB'nin göçü dışsallaştırılmasının temel unsurlarından biridir. Bu bağlamda, Frontex gibi AB ajansları da toplu güvenlikleştirmeden kaynaklı bir dışsallaştırma uygulaması olarak düzensiz geçişleri kısıtlamak için ortak ülkelerle işbirliği yapmaktadır. Sınır kontrollerinin sıkılaştırılması ve AB'yle geri kabul anlaşmasının imzalanması AB üyelik sürecinde yürütülen müzakerelerin bir parçasıdır. Ayrıca üyelik müzakereleri sürecinde AB müktesebatıyla uyumlu olmak adına sığınma sisteminde yapılan iyileştirmeler, AB'nin göçü dışsallaştırılmasında kök neden yaklaşımının bir parçası olarak da yorumlanabilir. Son olarak, Dublin Sistemi, göçün dışsallaştırılmasına yönelik uzaktan kontrol yaklaşımıyla AB'nin göçü dışsallaştırılmasına hizmet etmektedir. Birinci sığınma ülkesi ve üçüncü güvenli ülke ilkeleri, üçüncü ülkelere veya sınır Üye Devletlerine düzensiz göçün dışsallaştırılmasına yönelik araçlar olarak adlandırılabilir çünkü AB bu prensipler üzerinden düzensiz geçişleri Birliğin dışında veya en azından sınır Üye Devletlerinde tutarak düzensiz göçü uzaktan kontrol etmeyi amaçlamaktadır.

Bu çalışma kapsamında, AB-Türkiye Mutabakatının AB'nin göç politikasının dışsallaştırılması kapsamında değerlendirilmesinden önce, Mutabakatın arka planı, maddeleri ve maddelerin uygulaması incelenmektedir. Türkiye'nin AB'ye adaylığı sürecinde Avrupa Komisyonu'nun Türkiye ile ilgili ilerleme raporlarında en başından itibaren göç, sığınma ve sınır kontrolleri önemli bir yer tutmaktadır. AB, ortak sınırlarının güvenliğini sağlamak için Türkiye'nin göç ve sığınma politikalarını geliştirmesini ve sınır kontrolünü güçlendirmesini beklemektedir. Türkiye, düzensiz göçmenlerin AB'ye geçmek için kullandığı temel geçiş ülkelerinden biri olduğundan, AB tarafından göçün dışsallaştırılmasında Türkiye'nin AB'ye aday üyelik süreci dışsallaştırma araçlarından biri olarak kullanılmaktadır. Bu kapsamda, göç ve sığınma alanında uygun yasal çerçeve ve uygulamalar ve sınır kontrollerinin sivil bir

kurum tarafından uygulanması AB'nin aday üyelik sürecindeki taleplerinden bazılarıdır. Suriye'deki krizden sonra, özellikle 2015 yazıyla birlikte, AB'nin toplu güvenlikleştirme adımlarında hızlandırıcı olay olarak Suriye'den Türkiye'ye ve Türkiye'den AB'ye düzensiz geçişler artmıştır. Bu nedenle, toplu güvenlikleştirmede son adım olan AB'nin yeni statüko oluşturma ihtiyacı da artmıştır. Bu bağlamda, AB ile Türkiye arasındaki ilişki, AB'nin göç politikasını özellikle bir ortak ve aday ülke olarak Türkiye'ye dışsallaştırma konusundaki artan isteği doğrultusunda yoğunlaşmaktadır.

AB ile Türkiye arasında 2013 yılında Geri Kabul Anlaşması imzalanmıştır. Daha sonra 2015 ve 2016 yıllarında Ortak Eylem Planı kapsamında üç üst düzey toplantı yapılmıştır. Bu bağlamda AB-Türkiye Mutabakatı, Türkiye Cumhuriyeti hükümeti, AB Üye Devletleri hükümetleri ve Avrupa Komisyonu arasında yapılan 18 Mart 2016'daki son toplantının sonucudur.

Mutabakat, toplu güvenlikleştirme kökenli göçün dışsallaştırılmasında her iki yaklaşıma da ilişkin araçlar içermektedir. Mutabakat, göçün toplu güvenlikleştirme temelli dışsallaştırılmasına ilişkin söylem ve uygulamalar içermektedir. Mutabakatın maddeleri, AB'nin göçü dışsallaştırma politikasına yönelik araçlara örnek oluşturmaktadır.

Mutabakat, Türkiye'nin katılım sürecinde paylaşılan ilerleme raporları, AB-Türkiye Geri Kabul Anlaşması ve Ortak Eylem Planı'nda da bahsi geçen AB'nin göç politikasının dışsallaştırılması isteğiyle ilişkili çeşitli araçlar içermektedir. Bu bağlamda AB'nin temel hedeflerinden biri, sığınma başvurusunda bulunmayan veya Dublin Sistemi açısından başvurusu kabul edilemez olan düzensiz göçmenlerin Türkiye tarafından geri kabul edilmesidir. Yunanistan ve Türkiye arasında imzalanan Geri Kabul Anlaşması kapsamında, bire bir uygulaması (*one-to-one scheme*) adıyla Türkiye'den Yunan adalarına geçen tüm düzensiz göçmenlerin Türkiye tarafından geri kabul edilmesi gerekmektedir. Buna karşılık AB, dayanışma ve sorumluluk paylaşımı ilkelerine dayalı olarak Türkiye'de geçici koruma altında kayıtlı olan Suriyelilerin AB Üye Devletlerine yeniden yerleştirilmesini teklif etmektedir. Ancak geri gönderilen düzensiz göçmen sayısı da Türkiye'den yeniden yerleştirilen

Suriyelilerin sayısı da çok yüksek rakamlara ulaşmamıştır. Aynı zamanda, Dublin sistemine göre düzensiz göçmenlerin geri kabulünde Türkiye'nin üçüncü güvenli ülke olarak tanımlanması tartışmalara neden olmuştur. Düzensiz göçmenlerin Türkiye'ye gönderilmesiyle geri göndermeme (*non-refoulement*) ilkesinin olası ihlali, Yunanistan hukuk sistemi içinde de bazı sorunlara neden olmuştur. Geri kabul, Mutabakatta da olduğu gibi göçü dışsallaştırmada AB'nin en çok kullandığı araçlardan biridir. Ancak düzensiz göçmenlerin geri kabulü ve bire bir uygulaması, sığınma hakkını sınırlayarak düzensiz göçmenler için olası hak ihlallerine neden olmaktadır. Ek olarak geri kabul, Türkiye'de gelişmekte olan sığınma sistemine aşırı yük bindirerek düzensiz göçmenler ve Türkiye'ye geri gönderilen sığınmacılar için hak ihlallerine sebep olabilmektedir.

Mutabakattaki sınır kontrollerine ilişkin madde, AB'nin Mutabakattan en önemli beklentilerinden biridir. AB, göç politikasının dışsallaştırılmasına ilişkin uzaktan kontrol yaklaşımıyla hızlandırıcı olay sonrası toplu güvenlikleştirme adımlarına uygun olarak sınır kontrol uygulamalarını yoğunlaştırmıştır. Bu nedenle Mutabakatta, AB'nin Türkiye'den temel beklentilerinden biri, Türkiye'den AB'ye düzensiz geçişlerin sınırlandırılmasıdır. Mutabakatın bu maddesi, Mutabakatın AB'nin göçün dışsallaştırılmasının bir parçası olduğunun en önemli kanıtlarından birisi sayılabilir çünkü AB, Türkiye tarafından uygulanan daha sıkı sınır kontrolleri yoluyla AB'ye düzensiz geçişlerin sayısını azaltabilmektedir. Ancak, AB'nin göçü dışsallaştırılmasının bir etkisi olarak, düzensiz göçmenler ve sığınmacılar Türkiye'de mahsur durumunda kalabilmekte ve bu durum aşırı yüklenilmiş bir sığınma sisteminde sığınmacı ve mülteciler için hak ihlallerine neden olabilmektedir. Bu bağlamda, Mutabakatta, Gönüllü İnsani Kabul Programının olası uygulamasına ilişkin bir madde bulunmaktadır. İlgili maddeye göre düzensiz geçişlerin sayısı önemli ölçüde azaldığında Program uygulanmaya başlanacaktır. Ancak, Mutabakat sonrasında düzensiz geçiş sayıları azalmış olsa da Plan uygulanmamıştır. Bu madde, Mutabakatın insani ve kapsayıcı bir maddesi olarak ele alınabilir. Düzensiz geçişleri azaltmayı ve kayıtlı Suriyelileri düzenli yollardan göç etmeye teşvik etmeyi amaçlamaktadır. Bu madde, Suriyeli mülteciler için faydalı olarak sayılabilse de diğer milletlerden düzensiz göçmen ve sığınmacıları içermediğinden onlar için bir

çözüm önerisi sunmamaktadır. Dolayısıyla, bu madde de kayıtlı Suriyeliler dışındaki uluslararası korumaya ihtiyaç duyan kişilerin Türkiye'ye dışlanması öngördüğünden Mutabakatın AB'nin göçü dışsallaştırılmasına yönelik uygulama ve söylemlerinin bir parçası olduğu savını desteklemektedir.

Türkiye'ye Schengen bölgesi için vize serbestisi, AB ile Türkiye arasındaki Gümrük Birliği'nin modernizasyonu ve Türkiye'nin AB'ye katılım sürecinin yeniden canlandırılması Mutabakatın diğer maddelerindedir. Vize Serbestisi Yol Haritası, Türkiye'nin AB müktesebatına uyum konusunda özellikle adalet ve iç işlerine ilişkin gerçekleştirmesi gereken 72 kıstas içermektedir. Bu kıstasların içerisinde AB ile Türkiye arasındaki Geri Kabul Anlaşması'nın üçüncü ülke vatandaşları için de uygulanması gibi AB'nin göçü dışsallaştırma aracı olarak da hizmet edebilecek unsurlar da bulunmaktadır. Öte yandan, Gümrük Birliği'nin modernizasyonu ve katılım süreci bağlamında AB-Türkiye ilişkilerinin yeniden canlandırılması, düzensiz göçmenlerin Türkiye'de tutulması karşılığında AB tarafından Türkiye'ye sunulan Türkiye'nin isteklerinden bazılarıdır.

Mutabakatta, son olarak, Suriye'deki kriz ortamında insani koşulların geliştirilmesi için AB ile Türkiye arasında olası işbirliğinden bahsedilmektedir. Bu madde sadece bölgenin güvenliğinin sağlanması değil, aynı zamanda uluslararası korumaya ihtiyaç duyan Suriyelilerin olası gönüllü geri dönüşlerinin sağlanması için de dışsallaştırmanın bir parçası olarak Mutabakatta yer almaktadır. Mutabakatın bu maddesi, AB'nin dışsallaştırma politikasının önleyici yaklaşımı kapsamında incelenebilir. Bu maddede, Suriye'deki silahlı çatışmanın zararlı etkilerinin AB ve Türkiye arasındaki işbirliği ile ortadan kaldırılması ve Suriyelilerin Suriye'ye dönüşünün mümkün olabilmesi amaçlanmaktadır. Ancak krizin süresinin uzaması, AB ve Türkiye'nin güvenlik tehditlerine karşı bakış açılarındaki farklılık ve AB ile Türkiye arasındaki siyasi anlaşmazlıklar nedeniyle Mutabakatın bu maddesi hiçbir zaman uygulanmamıştır. Ayrıca AB'nin ve hatta Türkiye'nin mültecilerin gönüllü geri dönüşüne vurgu yapması da Suriyeli mültecilerin ihtiyaçlarının göz ardı edilmesi açısından sorunlu olarak yorumlanabilmektedir.

Sonuç olarak, bu tez, 18 Mart 2016 tarihinde duyurulan AB-Türkiye Mutabakatını AB'nin göçü dışsallaştırma politikası kapsamında incelemektedir. Tezin temel çıktısı, AB'nin güvenlik odağıyla göçü dışsallaştırmak için geliştirdiği araçların birçoğunun Mutabakatta da yer aldığını işaret etmekte ve buradan hareketle Mutabakatın AB'nin göçü dışsallaştırma politikası kapsamında oluşturulduğunu savunmaktadır. Mutabakat uluslararası alanda göçe dair işbirliği alanında bir örnek olarak gösterilebilecek olsa da Mutabakatın temel amacı düzensiz göçmenleri Türkiye'ye dışlamak olduğu için düzensiz göçmen, sığınmacı ve mültecilerin hak ve isteklerini göz ardı eden bir yapıdadır. İleride Mutabakatın güncellenmesi durumunda daha kapsayıcı ve hak temelli olması Mutabakatın sadece AB'nin güvenlik odağıyla göçü dışsallaştırmasının örneklerinden biri olmasını önleyebilir.

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TEZİN ADI / TITLE OF THE THESIS (İngilizce / English): Analysis of the EU-Turkey Statement with in the Scope of Externalization of Migration Policy of the EU

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