



PERCEPTIONS

Policy Brief

July 2022

Safer Transits or Legal Oblivion for Syrian Refugees?

Implications of the EU-Turkey Statement and the Greek Joint Ministerial Decision

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● Executive Summary

The 2016 EU-Turkey Statement and the succeeding 2021 Greek Joint Ministerial Decision have affected refugee ambitions to seek better lives in Europe. The former outlines procedures for returning irregular migrant arrivals from Greece to Turkey to stop the flow of irregular migration from Turkey to Europe and prevent in-transit deaths in the Aegean Sea; meanwhile, the latter has declared Turkey a safe third country, restricting European asylum eligibility for refugees from Syria, Afghanistan, Somalia, Pakistan and Bangladesh. As a result, the number of irregular refugees reaching the EU from the Aegean Sea and the Balkan Route has dropped significantly. Yet, on the other hand, the impact of these legal instruments on refugee safety has been criticized. Turkey has begun to renege on its responsibilities per the EU-Turkey Statement, leaving some refugees in limbo, while the EU has struggled to resettle enough refugees and provide them with safe, legal ways of entry. Meanwhile, the Joint Ministerial Decision does not consider how Syrian refugees face refoulement and xenophobic violence in Turkey, overlooking the threat to their lives and livelihoods. As such, this policy brief discusses what impacts the EU-Turkey Statement and the Joint Ministerial Decision have had since their implementation and how their negative consequences can be lessened through five policy recommendations, including placing Turkey under a European sanctions and monitoring mechanism, repealing the Joint Ministerial Decision to acknowledge the threats refugees face in Turkey, and activating the Voluntary Humanitarian Admissions Scheme to increase the number of resettled Syrian refugees.

● Introduction

Syria's civil war has reached its eleventh year, and in pursuit of better lives, Syrians have continued to seek refuge in other countries in increasing numbers. Over 3.6 million Syrians have sought refuge in neighboring Turkey, and close to a million refugees call neighboring Lebanon home (United Nations High Commissioner for Refugees, 2022). Yet, for most refugees, these neighboring states – with tight restrictions on employment – will never become home. For many Syrian refugees, the final destination is clear: Europe, perceived as an abode of employment, safety, and hospitality (Fleming, 2015). Yet, because refugees cannot overcome the barrier of obtaining travel documents and visas from their war-torn countries, refugees ultimately rely on irregular means – such as traversing the land-based Balkan Route across Turkey into Greece and Bulgaria or navigating the water-based Eastern Mediterranean Route across the Aegean Sea onto Greek islands like Leros, Samos, and Lesbos – to reach Europe (ACAPS, 2021; Dockery, 2017). These modes of entry place them in the jurisdiction of both the EU-Turkey Statement and the subsequent Greek Joint Ministerial Decision, two instruments that set guidelines for undocumented refugee arrivals.

While these two tools are not specific to Syrian refugees, they remain the exclusive focus of this policy brief addressed to EU and Greek policymakers given the dire, ongoing eleven-year-long humanitarian situation in Syria that necessitates their migration to safety; the fact that they are the largest refugee population in the world; and statistics that show them as the nationality that submits the most asylum applications in Europe (European Commission, 2021). Furthermore, many elements of the EU-Turkey Statement to be discussed shortly, such as the one-to-one refugee exchange program, remain exclusive to Syrian refugees (European Council, 2016). The EU-Turkey Statement – reached in 2016 – initiated a joint effort between the EU and Turkey to decrease the number of irregular entries into the EU, step up measures against migrant smugglers, and prevent in-transit refugee deaths by “offering migrants an alternative to putting their lives at risk (European Council, 2016). Alongside decreeing that Turkey “take any necessary measures to prevent new sea or land routes for illegal migration,” the Statement established that any refugee arriving on the Greek Islands irregularly (by way of the aforementioned Eastern Mediterranean Route) will be returned to Turkey (European Council, 2016).

The EU also stipulated in the agreement that in exchange for Turkey accepting the deported refugee back, another refugee residing in Turkey will be legally resettled in Europe with a cap of 72,000 legal proceedings (European Council, 2016). And for obliging with the statement, Turkey would receive a 6-billion-euro endowment disbursed over two-terms applicable towards refugee infrastructure, sustenance, and health needs and Turkey's citizens would receive visa-free entry into the member states of the EU (European Council, 2016). It is noteworthy that the Statement did not specify a judicial institution

Key Issues:

- *Due to the unemployment and inhospitality Syrian refugees face in neighboring countries, the European Union countries are their preferred resettlement locations.*
- *Syrian refugees arrive in Europe mostly through the Balkan Route – across Turkey overland into Bulgaria or Greece – or the Eastern Mediterranean Route, taking boats to Greek Islands from Turkey.*
- *The EU-Turkey Statement aims to limit these perilous modes of entry by deporting irregular entries; for every returned refugee that Turkey accepts, the EU will accept one refugee that Turkey hosts.*
- *As part of the agreement, the EU will also provide Turkey with 6 billion euros*

for potential dispute resolution between Turkey and the EU. Moreover, according to case law of the European General Court, the legal nature of the Statement is questionable, and it is recognized only as an “international dialogue” and not an “agreement or treaty” (e. g, Case T-192/16, NF v. European Union, 2017). However, in some extent due to efforts by the parties involved – namely the close border controls and the 6-billion-euro endowment benefitting refugees in Turkey – the number of irregular refugee arrivals has continued to decrease over the years, reaching just 123,300 in 2021, compared to 1 million in 2015 (UNHCR, 2021).

On the other hand, the Greek Joint Ministerial Decision (JMD 42799/2021), was issued in June 2021 and established Turkey as a safe third country for refugees hailing from Syria, Afghanistan, Bangladesh, Pakistan, and Somalia; as a result of this decision, Syrian refugees in Turkey were decreed to be generally safe and not in need of European asylum. Since then, Greece has restricted asylum admissibility to only those Syrian refugees who could demonstrate that they are not safe in Turkey (Gupta, 2021). While Greece has not provided as to why the Joint Ministerial Decision was instituted, non-governmental critics of the policy, including the International Rescue Committee, have called it an attempt to “shift the responsibility to protect refugees [...] arriving in Europe to third countries” (International Rescue Committee, 2021).

As such, while the Statement has reduced the number of refugees irregularly arriving in the EU and the frequency of in-transit refugee deaths, the 2016 EU-Turkey Statement and the 2021 Greek Joint Ministerial Decision been criticized by actors like Doctors without Borders, the IRC, and Refugees International as Europe’s attempt to renege responsibility of refugees desperate for safety, security, and better lives (Chorou, 2021; International Rescue Committee, 2022; Refugees International, 2022). This policy brief, therefore, gauges: **how does the introduction of the EU-Turkey Statement and the Joint Ministerial Decision of 2021 impact Syrian refugees and how can the safety of Syrian refugees be improved?**

(Un)safe third country

Although the number of irregular refugee arrivals have continued to decrease over the years with the advent of the Statement, the amount of in-transit refugee deaths and the number of fatalities continue to remain considerably high and have risen every year since 2019 (UNHCR, 2021). These deaths – occurring due to circumstances like drowning at sea - are incredibly preventable through mere search-and-rescue operations and docking assistance for refugee vessels; however, the Norwegian Refugee Council reports how Member States like Italy and Malta have banned refugee boats from docking in their respective ports, fined private rescue vessels, and

to use towards refugee needs.

- *Despite the vague legal nature of the EU-Turkey Statement, irregular refugee arrivals have significantly decreased due to collective efforts.*
- *As a result of the Joint Ministerial Decision, Greece designated Turkey as a safe third country, providing asylum to only those refugees who were ruled unsafe in Turkey.*

Key Findings:

- *The statement has only reduced the number of refugee arrivals, not the frequency of in-transit deaths.*

introduced legislation that makes their operations more difficult (Hoving, 2021). Furthermore - save for Germany, Sweden, and Bulgaria - many EU Member States have failed to resettle an appropriate number of refugees (Christophersen, 2022). Considering that Turkey hosts 3.6 million refugees, in the Statement itself, the EU explicitly offers room for only 18,000 migrants, with a potential to progressively make space for 54,000 more; a “Voluntary Humanitarian Admission Scheme” is also referenced in the Statement whose planned launch is contingent upon evaluation revealing that “irregular crossings between Turkey and the EU [...] being substantially and sustainably reduced,” but its implementation has remained undiscussed (European Council, 2016). Amid this, a series of erratic relations between the EU and Turkey have only further worsened this situation that NGOs like Refugees International observed (Refugees International, 2022).

For instance, to express its discontent with the pace of the 6-billion-euro payments, the fact that the funds were given to refugee organizations instead of the Turkish government, and other actions of the EU, Turkey even opened its territory for refugees to reach the border in Spring 2020, in direct violation of the EU-Turkey Statement (Carlotta & Matina, 2020). The Greek government responded by saying that “Turkey, instead of curbing migrant and refugee smuggling networks, has become a smuggler itself” and proceeded to designate Turkey as a safe third country with the Greek Joint Ministerial Decision of June 2021, activating Article 33(2)(c) of the European Asylum Procedure Directive which allows the EU Member States to consider asylum applications inadmissible if the asylum-seekers can seek refuge in “a safe third country” (Stavis-Gridneff, 2020; European Union Agency for Asylum, 2013, p. 79). While Greece has begun to restrict asylum admissibility to only those Syrian refugees who could demonstrate that they are not safe in Turkey, since the beginning of the COVID-19 pandemic, Turkey has also reneged its obligation stemming from the EU-Turkey Statement to accept refugees returned by Greece; in such a case where the safe third country refuses to accept the asylum-seeker, Article 38(4) of the European Asylum Procedure Directive requires a Member State to examine asylum seekers’ claims, but Greece has been idle in doing so, leaving refugees in a state of legal uncertainty on Greek islands (Bluett, 2021; European Union Agency for Asylum, 2013).

Numerous factors keep Turkey from being a permanent safe haven for refugees

For a country to be considered a safe third country for refugees, it must meet certain conditions pursuant to Article 38 of the European Asylum Procedure Directive. The conditions relevant to disqualifying Turkey as a safe third country include (European Union Agency for Asylum, 2013):

- a) “life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group, or political opinion”;

- *Turkey and Greece frequently accuse each other of shirking their responsibilities to refugees, furthering the negative impact of the EU-Turkey Statement.*

- *Amid Greece designating Turkey as a safe third country and providing asylum to only those refugees who were ruled to be unsafe in Turkey, Turkey has refused to accept deported refugees, violating the EU-Turkey Statement.*

- *Numerous facts and figures which challenge Turkey’s designation as a safe third country have been neglected by the EU.*

- b) “there is no risk of serious harm”;
- c) “the principle of non-refoulement in accordance with the Geneva Convention is respected”;
- d) “the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman, or degrading treatment as laid down in international law, is respected”;

However, numerous refugee organizations such as Amnesty International and International Rescue Committee have recognized that Turkey violates these five conditions and infringes the EU-Turkey Statement’s expectation that “migrants will be protected in accordance with the relevant international standards,” and as such, Turkey cannot be designated a safe third country (Amnesty International, 2019; Dent, 2021; European Council, 2016). Even Greek courts realize that Turkey often does not meet the five conditions required of safe third countries by the European Asylum Procedure Directive, as seen in the fact that only 2,140 irregular arrivals have been deported since the signing of the EU-Turkey Statement (International Rescue Committee, 2022); for reference, in comparison, nearly 73,823 refugees have traveled to the Greek Islands irregularly from Turkey in just the past three years (InfoMigrants, 2022).

Condition A and B violated – Refugee Life and Liberty face threats and harm in Turkey:

Foremost, with xenophobic and nationalist sentiment in the Turkish sphere, Syrian refugees face threats to their life “on account of [...] nationality” and face risks “of serious harm” in disturbing riots, injuries, and deaths that the adoption of the EU-Turkey Statement has not been able to stop (European Union Agency for Asylum, 2013). In 2013, Turkish crowds in Ankara set fire to a building that provided shelter to Syrian refugees (Hurriyet Daily News, 2014). Similar news was also recently reported about Turkish crowds who attacked Syrian-owned businesses and homes in retaliation for an altercation between Turkish and Syrian youth that resulted in the death of a Turkish child in September 2021 (Reuters, 2021). These murders and riots are fueled by an “us versus them” mindset taking root in Turkish society, where Syrian refugees are accused of stealing employment opportunities from the Turkish population while living comfortably on Turkish taxpayer money (Simsek, 2015). This ill-treatment of Syrian refugees occurs in light of Turkey refusing to provide “protections required by the 1951 Refugee Convention” to refugees that originate from non-European countries (Gupta, 2021). As such, Turkey does not entirely allow Syrian refugees “to request refugee status,” and nor does it grant refugees “protection in accordance with the Geneva Convention” (European Union Agency for Asylum, 2013). Additionally, Turkey is no longer a signatory to the Istanbul Convention, a treaty signed between forty-five states aiming to combat acts of violence and domestic violence against women, and many Syrian women seeking refuge in Turkey report being victims of discrimination and deprivation (Gupta, 2021).

- *NGOs such as Amnesty International have found instances where Turkey has not met the five criteria expected of safe third countries established by Article 38 of the European Asylum Procedure Directives.*

- *Turkey violates the statement’s expectation of refugee protection and Syrian refugees have lost their businesses, homes, and lives to a surge of xenophobic violence in Turkey.*

- *Turkey does not grant legal protections to refugees, including vulnerable groups like women.*

Condition C and D violated - Turkey returns refugees to Syria at a threat to their lives:

The European Asylum Procedure Directive requires that for a state to be designated a safe third country, it must respect “the principle of non-refoulement in accordance with the Geneva Convention” (European Union Agency for Asylum, 2013). However, in numerous instances, non-governmental organizations like Amnesty International have found Turkey to violate this principle. Between 2019 and 2021, Turkey deported nearly 155,000 Syrian refugees back to the war-torn country for a variety of reasons, including illegal entry to Turkey, minor crimes, and “voluntary repatriation” (Middle East Monitor, 2022). According to Turkish law, even trivial and inconsequential acts are branded criminal enough to warrant refugee deportation. For instance, upon arrival in Turkey, Syrian refugees must register for a province-specific *kimlik* card and cannot physically leave the province where it was issued; as such, many refugees have been deported because they were found to be in a province apart from the one they were registered to receive temporary protection in (Syria Justice and Accountability Centre, 2020). Similarly, Syrian refugees must go through a painstaking process to become legal contributors to the Turkish labor market - a procedure requiring exorbitant fees, multiple registrations and applications, and months of waiting. Yet, the need for survival makes Syrian refugees desperate enough to contribute to the Turkish labor market without employment permits – a crime also worthy of refoulement to Syria.

Out of the three categories of refoulement, it is voluntary repatriation that draws the most scorn from NGOs and refugee advocacy organizations. These organizations report that sometimes, these “voluntary” returns are truly involuntary in nature, often extorted through violence, blackmail, and threats. In a 2019 report, Amnesty International wrote of 28 such cases; in one example, a 40-year-old Syrian man was asked to sign a voluntary repatriation form brandished as a “receipt for a blanket.” When he voiced his refusal, the interpreter himself signed the refugee’s forms and he was deported back to Syria (Amnesty International, 2019, p. 5). With instances of returning refugees to lands where they face danger, Turkey has violated the statement’s guideline to “respect the principle of non-refoulement” (European Council, 2016).

The Greek Joint Ministerial Decision (JMD) may leave numerous Syrian refugees in legal oblivion

Prescribed in the Greek Joint Ministerial Decision of June 2021, Greece has refused that Syrian refugees - alongside refugees from Afghanistan, Bangladesh, Pakistan, and Somalia - need European asylum by designating Turkey a safe third country; asylum is only provided to those refugees who demonstrate that they are not safe in Turkey, and as such, all other irregular refugee arrivals are deported back to Turkey upon discovery. However, because Turkey has also stopped accepting refugees returned by Greece since

- *In a direct challenge to international law, Turkey has used violence, blackmail, threats, and applications of an extreme criminal code to deport refugees back to Syria - where their lives face threats.*

- *Because Greece will only accept asylum-seekers it deems threatened in Turkey and because Turkey no longer accepts deportees, some refugees are stuck in oblivion.*

March 2020, refugees are placed in detention in camps on the islands like Lesbos and Chios instead of being considered for asylum by Greece under the grounds established by the aforementioned Article 38(4) of the European Asylum Procedure Directive (Refugees International, 2022; European Union Agency for Asylum, 2013). In turn, these refugees are left in a concerning situation and oblivion – lacking access to housing, financial assistance, employment, and even food (Dent, 2021). The International Rescue Committee points out that delays in providing even the most basic of material needs can be attributed to an overall under-preparation of the Greek government as the responsibility of the refugees shifted from the UNHCR to the national government. As a result, nearly 25% of the encamped population kept hungry are women, some of them pregnant, and 40% of the encamped population kept hungry are children (Dent, 2021). Alongside food concerns, clean water is limited as well (Chorou, 2021).

Their dire circumstances are exacerbated by the fact that Syrian refugees qualify for neither the Temporary Protection Directive – which would provide them with a one-year residence permit in the interest of international protection in the EU Member States - nor a suspension of the Dublin Convention, which would allow their asylum applications to be processed in countries other than the country-of-arrival (Greece) (European Union Publications Office, 2001; European Commission, n.d.). These refugees also lack documentation that signify their immigration status, and amid a lack of financial assistance, new Greek legislation now requires refugees requesting to petition the denial of their asylum admissibility to pay a 100 euro fee: an unsurmountable barrier for many refugees who do not even have the guarantee of three meals a day (Refugees International, 2022). These stressors have unimaginable medical consequences for the Syrian refugees trapped in these camps. Doctors without Borders reports that many residents of these camps “suffered from severe mental health conditions, including post-traumatic stress disorder and depression” and suicide attempts and self-harm were rampant as well, with the youngest victim being just six years of age (Chorou, 2021). Researchers have also reported elevated levels of respiratory conditions, Shigella, Hepatitis, and Leishmania (Papadimos, Pappada, Lyaker, Papadimos, & Casabianca, 2020).

In conclusion, while the EU-Turkey Statement has reduced irregular arrivals to Europe – with stricter border controls and endowments for refugee social services – the Greek Joint Ministerial Decision (JMD 42799/2021) to designate Turkey as a safe third country leaves Syrian refugees susceptible to discrimination, refoulement, xenophobia, and harm. This happens in the context of Turkey beginning to renege on its responsibilities per the EU-Turkey Statement and the European Union being accused of not settling enough refugees and leaving those held in Greek island camps in a state of limbo. As such, per its responsibility to refugees, the European Union can take steps to lessen the negative impacts of the EU-Turkey Statement and ensure the safety of Syrian refugees.

- *The Greek asylum system is under strain from the responsibility of refugees shifting from UNHCR to its national government.*
- *This strain is exacerbated with Syrian refugees being ineligible for the Temporary Protection Directive and a suspension of the Dublin Convention.*
- *Alongside lacking housing, financial assistance, medical care, employment, and even food, these refugees in oblivion face a variety of psychological and physiological disorders requiring immediate medical care.*

Recommendations

Recommendation 1: Safer and legal ways for refugees to access Europe are needed to reduce the high number of in-transit deaths. As such, the EU, after an assessment of the implementation and impact of the EU-Turkey Statement so far, should initiate dialogue between Member States about activating the Voluntary Humanitarian Admission Scheme to increase the number of refugee resettlements, as recommended by the European Commission in the Fifth Annual Report on the Mechanism for Refugees in Turkey.

Recommendation 2: Greece should reconsider the Joint Ministerial Decision of June 2021 which designates Turkey as a “safe third country” and resume reviewing asylum applications of Syrian refugees on merit. Refugees in Turkey face severe xenophobic violence, do not have access to asylum status, and are indiscriminately returned to Syria at times in complete threat to their lives.

Recommendation 3: Greece should refer to Article 38(4) of the European Asylum Procedure Directive for solutions to the legal oblivion refugees on its islands lay subject to. It should also provide documentation to these refugees that signify their immigration status and relieve asylum-seekers of the unsurmountable €100 fee to reapply for asylum if previously denied. To reduce strain on the Greek immigration system, the Temporary Protection Directive could be applied to Syrian refugees - providing them with a one-year residence permit in EU Member States - and the Dublin Convention should be suspended for Syrian refugees, allowing their asylum applications to be processed in countries other than the country-of-arrival.

Recommendation 4: Complete provision of healthcare, cash assistance, and food provisions is needed for the refugees stranded in camps on the Greek islands. The desolate medical, nutritional, and financial state of these refugees – many of them children and women – are painfully evident of the need for major changes in EU migration policy. It is crucial for all of their survival needs to be met, Medical NGOs like Doctors without Borders (MSF) must be given greater access to these populations as well.

Recommendation 5: Despite the disputable legal nature of the EU-Turkey Statement and its lack of specification surrounding dispute resolution, the European Union should pursue sanctions and sophisticate the existing monitoring mechanisms on Turkey for renegeing its responsibility to protect Syrian refugees within its borders. Turkey’s violations of the EU-Turkey Statement and the principles of non-refoulement, as documented by numerous NGOs, should also be taken into consideration when the EU evaluates the negotiation process for Turkey’s accession to the EU.

Key recommendations:

- The European Union needs to provide refugees safe and legal ways to access Europe.
- Greece should reconsider its 2021 Joint Ministerial Decision and no longer consider Turkey a safe third country.
- Refugees stuck on Greek islands should be provided with relevant immigration status documents and their asylum re-applications should be processed without the hefty €100 fee. The EU should also strategize to reduce the strain on the Greek asylum system.
- Refugees in oblivion should be provided with the healthcare, cash assistance, and food provisions they need.
- The EU should pursue sanctions and sophisticate the existing monitoring mechanisms on Turkey for its shortcomings in protecting Syrian refugees.

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Acknowledgement: This project has received funding from the European Union's Horizon 2020 Research and Innovation Programme under Grant Agreement No 833870.

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