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The EU-Turkey Agreement and its implications

An unavoidable but conditional agreement

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Between January and November 2015, the agency Frontex noted 1.2 million illegal crossings of the EU's external border¹, i.e. four times that of the entire year 2014. In October 2015 given the inability of the Member States to respond to the challenge of managing these migratory flows, Germany, with the support of the European Commission, encouraged cooperation with Turkey. This paper covers the different stages of this and the content of the agreement between the EU and Turkey.

One of the ten priorities of Jean-Claude Juncker's plan during the European election campaign in May 2014, the response given to the management of migrants – we were still not talking of refugees – matched the concerns expressed by the States that faced a significant influx of vessels that had been left to drift at sea. The response put forward in 2014 (fight to counter traffickers and illegal immigration, humanitarian support) and the promotion of the Dublin Rules (with proposals for modification consequently in 2016²) left responsibility in the hands of the countries on the Union's periphery. The latter, which found themselves on the front line, (Italy with Lampedusa, the Greek islands) increasingly expressed their need for solidarity in the face of this inflow. But a worsening in the zones of conflict, notably in Syria, Iraq and also in Eritrea continually increased arrivals in Europe. The first host country, Germany, totalled 1.09 million³ migrants in 2015 477,000 of whom were asylum seekers⁴. After the "Willkommen Politik", maritime or land access and the lack of external borders served as a magnet for all migrants coming to Europe. It has to be admitted that Germany had to find itself in a position of asking for solidarity before more incisive solutions were sought.

The crisis was deemed a European priority when it became a continental issue. This detail contributed towards growing tension on the part of public opinion and the authorities of in the countries of the East and the South of the Union. Indeed there has been a great deal of dissension between the States that had been calling for several months, even years, for European solidarity (Greece and Italy) and those who perceived,

and continue to perceive – solidarity as a "constraint", as illustrated by the failure of the European Council on 25th and 26th June 2015 which was partly devoted to the refugee crisis.

In this context the Commission's proposals (action plan with Turkey, relocation and resettlement procedures, reform of the European asylum regime) overlapped with "regional" often defensive responses, such as the re-introduction of temporary internal border controls and the anarchic transfer of migrants.⁵

Thus, the partnership with Turkey has become the cornerstone of the European system to manage migration.

1. TURKEY, AN INEVITABLE PARTNER

A. The measures

The action plan

On 5th October 2015 the European Commission put forward a draft action plan⁶ that aimed help refugees and their host communities in Turkey and to strengthen cooperation to prevent illegal flows of migrants entering the European Union. This plan was adopted during the EU/Turkey Summit on 29th November 2015. It sets out a series of actions to implement both by Turkey and the EU.

On this occasion the European Union committed to three specific chapters: financial aid, the liberalisation procedure for short stay visas and the launch of negotiations over chapters as part of Turkey's accession to the EU (whilst discussions had been frozen since 2006 following dispute over Cyprus).

1. Frontex, 540 000 migrants arrived on Greek islands in the first 10 months of 2015, 10th November 2015

2. European Commission communication on the reform process of the European asylum regime, 6th April 2016

3. Euractiv, Confirmation : Germany welcomed 1 million refugees in 2015, 6th January 2016

4. Bloomberg, Germany saw 1.1 million migrants in 2015 as debate intensifies, 6th January 2016

5. This part takes up and develops "Crise de réfugiés: mal de crâne national, casse-tête européen, » Charles de Marcilly, Telos 2nd December 2015.

6. This joint draft action plan was published following several meetings including a working EU/Turkey dinner on 17th May 2015 with Federica Mogherini, Johannes Hahn, Volkan Bozkir and Mevlüt Çavuşoğlu ; an informal European Council on 23rd September and the meeting between Donald Tusk and Recep Tayyip Erdoğan

In particular the agreement suggested the following⁷:

1) Supporting Syrians under international protection and the Turkish host communities:

a. The EU's commitments

- Providing significant financial aid to improve Turkey's domestic situation via humanitarian association (not direct financing to the government);
- Continued provision of assistance beyond the 4.2 billion € already mobilised by the EU for Syrian refugees in Lebanon, Jordan, Iraq and the displaced within Syria itself;

b. Turkey's commitments

- Implementing legislation pertaining to international protection;
- Registering migrants and facilitating their identification;
- Facilitating refugee access to public services (education, healthcare, economic participation);
- Taking care of vulnerable people

2) Strengthening cooperation to prevent illegal immigration

a. The EU's commitments

- Communicating on illegal immigration and its dangers;
- Informing migrants of the "legal" entry procedures into Europe;
- Strengthening Turkish capabilities in the fight to counter human trafficking via coast guard patrols and monitoring capabilities ;
- Encouraging cooperation by the Member States and Turkey regarding return and reintegration procedures;
- Deployment of a Frontex liaison office in Turkey;
- Participating in the development of an asylum, migration, visa system and effective integrated borders.

b. Turkey's commitments

- Strengthening Turkish interception capabilities;
- Cooperating with Greece and Bulgaria to prevent illegal immigration;
- Accelerating readmission procedures of illegal migrants who are not in need of international protection;
- Ensuring the grant of refugee status to those involved;
- Doing more to counter criminal networks;
- Increasing information exchange and cooperation with the EU and its Member States;
- Modifying the visa procedures with countries at the origin of the highest levels of illegal immigration;
- Stepping up cooperation with Frontex;
- Deployment of a Europol liaison office

The facility programme in support of refugees in Turkey

The summit of 29th November also provided an opportunity to review the facility programme in support of refugees discussed on 12th November 2015 in La Valette. The La Valette Summit on migration organised by Pierre Vimont, brought together the European and African heads of State and government in view of strengthening cooperation and rising to the challenges and using the opportunities offered by migration. The summit witnessed the formal launch of the emergency trust fund in support of stability and the fight to counter in-depth causes of illegal migration and of the phenomenon of displaced people in Africa set up by the EU to a total of 1.8 billion €. ⁸

The facility programme in support of refugees is the response to the request for financial aid for Turkey. It suggests financing of actions both via the European budget and the contributions of the Member States. With a budget of 3 billion €, the first actions were to be financed as of 1st January 2016 (financing started in March). However the leaders of Europe specified that these resources were to pass via intermediaries (NGOs) and for them to be specifically designed to

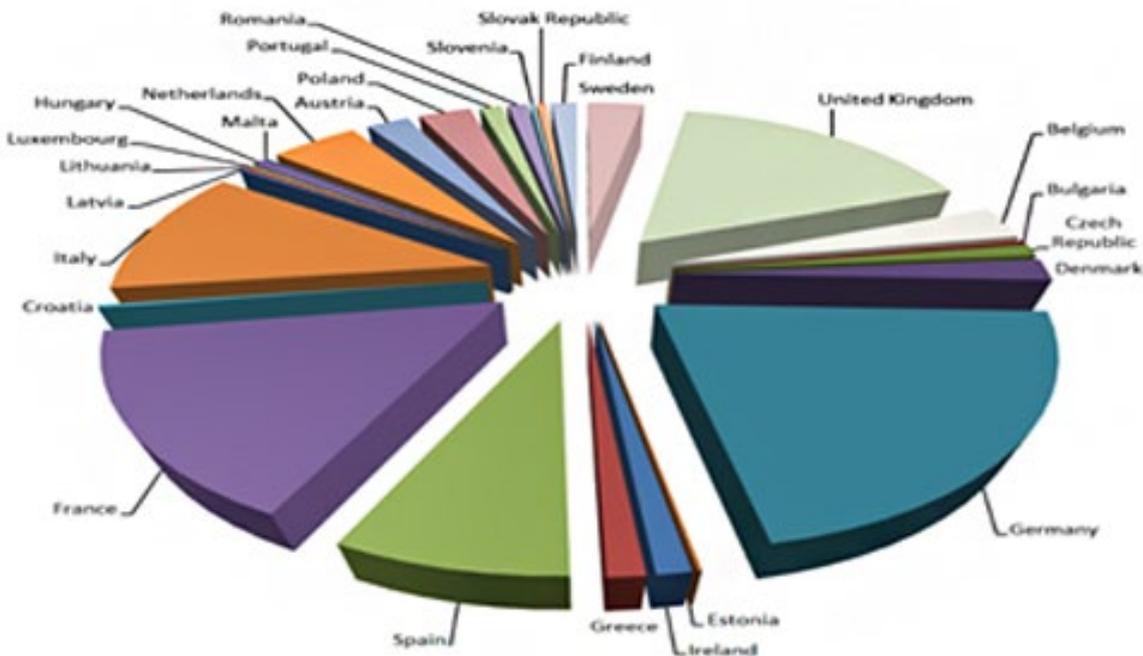
7. European Commission, « EU-Turkey joint action plan », 15th October 2015

8. The Action Plan, La Valette Summit, European Council, 11th and 12th November 2015



Council of the European Union

Member state	National contribution for the Turkey Refugee Facility ⁽¹⁾⁽²⁾ (€ million)
Belgium	57.6
Bulgaria	5.9
Czech Republic	20.4
Denmark	38.4
Germany	427.5
Estonia	2.8
Ireland	22.9
Greece	25.1
Spain	152.8
France	309.2
Croatia	5.9
Italy	224.9
Latvia	3.5
Lithuania	5.2
Luxembourg	4.3
Hungary	14.7
Malta	1.1
Netherlands	93.9
Austria	45.6
Poland	57.0
Portugal	24.4
Romania	21.6
Slovenia	5.2
Slovak Republic	10.5
Finland	28.4
Sweden	61.3
United Kingdom	327.6
Total	2000,0⁽³⁾



improve the refugee reception conditions.

On 3rd February 2016 the 28 Member States agreed on the way to provide 3 billion € to Turkey. This was criticised because the action plan⁹ and facility programme of 29th November 2015 are political declarations and commitments are based on a voluntary “give-give” foundation that appears to be a weak, if not inexistent, legal framework.

Every budgetary measure should normally be approved by the European Parliament. However, the La Valette plan and the methods to finance the 3 billion € for Turkey followed a special procedure.

On 25th November Parliament adopted a resolution on the Council’s position on the European Union’s draft amended budget n°8/2015 for the year 2015¹⁰ which led to a 9.4 billion € reduction in Member States’ contributions to the Union budget. It noted the absence of any strong compromise on the use of reimbursements generated by the amended budget and counted on the fulfilment by the States of their contribution commitments to the refugee settlement programme.

With this legal “pirouette” the Council removed the financial agreement from all legal basis: the Union’s financial commitments are transferred to national level which not only helps avoid any official commitment on the part of the EU’s budget, which would have necessarily required a legal procedure with the Parliament’s approval, but it also allows each Member State decision-making sovereignty as to the amounts to devote to the programme.

On 31st May, 240 million €¹¹ were released in support, amongst other things, of the work undertaken by the HCR, the International Red Cross and other humanitarian organisations. The envelope is due to total 1 billion € by July 2016.¹²

B. Political Commitments

Visa liberalisation

Dialogue with Turkey over the liberalisation of its short stay visas started on 16th December 2013. This dialogue is based on a road map detailing the conditions that third States must fulfil in order for the Commission to propose to the European Parliament and the Council

an amendment of regulation n° 539/2001¹³ to enable their citizens to travel without a visa for 90 days over a period of 180 days for professional, tourist or family reasons in the Schengen area¹⁵.

From a legal point of view once Turkey has fulfilled all of the conditions set down in the roadmap the European Commission should present a visa exemption proposal for Turkish citizens and submit it to the European Parliament and the Council for them to amend regulation n° 539/2001. However the EU is not legally bound to respect the deadlines set out by its political commitments. During the summit 29th November 2015 the leaders of Europe and Turkey agreed to accelerate the implementation of visa liberalisation so that a possible decision could be taken in October 2016. When the EU-Turkey agreement was signed on 18th March last the EU committed to stepping up Turkish visa the liberalisation process in order to reach agreement by July 1st, whilst October 2016 was the deadline set in November 2015.

The 72 criteria

Compliance with 72 criteria is necessary to obtain short stay visa liberalisation in Europe. The Commission has published three reports¹⁵ on Turkey’s compliance with European requirements. These reports focus on five blocks: document security, migratory management, public order and security, fundamental rights and the resettlement of migrants. According to the report dated 4th March the worked achieved by Turkey between 2013 and the summit of 29th November 2015 had been particularly slow and only about 25 criteria had been respected. However and according to the European Commission real efforts had been made since then notably with the Turkish parliament’s acknowledgement of the right of all Europeans to enter its territory, including the Cypriots. Moreover Turkish legislation was modified so that temporary protection would be granted to Syrians sent back from Greece. And so on publication of the third report on 4th May the European Commission supported the principle of visa exemption for Turkey, whilst noting that the legislation on terrorism, the fight to counter corruption, the protection of data and legal cooperation were the

9. European Commission, EU-Turkey joint action plan, 15 octobre 2015

10. European Parliament, Draft Amended Budget n°8/2015 : own funds and European Controller of Data Protection, 25th November 2015

11. European Commission, Facility for Refugees in Turkey: €47 million to strengthen migration management and to support education of Syrian refugees, 28th May 2016

12. European Commission Facility for Refugees in Turkey , the steering committee accelerates and extends its implementation 12th May 2016

13. Regulation n°539/2001 establishing the third countries whose citizens are subject to a visa to cross the Member States’ external borders and the list of those whose citizens are exempted of this obligation 15th March 2001

14. European Commission, “Draft regulation by the European Parliament and the Council modifying the regulation (EC) n°539/2001 establishing the list of third countries whose citizens are obliged to have a visa to be able to cross the external borders of the Member States and the list of those whose citizens are exempted from this obligation.” 4th May 2016

15. European Commission reports presented on 20th October 2014, as well as 4th March and 4th May 2016.

last criteria to be fulfilled¹⁶. At present only 10% of Turks are said to have a passport¹⁷ But the Commission announced in a press release on 2nd June 2016 that two criteria will not be met before June¹⁸.

- This involves improving existing biometric passports in order to include security details in line with European standards. Given the acceleration of the visa liberalisation process it is objectively impossible for Turkey to meet this vital criteria fully in time. In the way of an intermediary solution Turkey will issue as of June 2016 biometric passports whose validity will be short and which will bear a facial image and finger prints of the holder wanting to travel to the EU without a visa. These details will be encrypted in line with international civil aviation standards. By October 2016 Turkey will be delivering passports that meet with the EU's standards. This solution however involves that only Turkish citizens holding biometric passports will be able to enter the EU without a visa.
- The second criteria which cannot objectively be met in the said time involves the full implementation of the measures included in the EU-Turkey readmission agreement, including those linked to the readmission of third countries citizens. This is simply due to the fact that these measures did not enter into force on 1st June 2016.

However the Turkish authorities, via its President, announced their firm intention not to modify their anti-terrorist legislation. Whilst the European Union accuses Ankara of having a too wide definition of terrorism¹⁹ which is leading to the repression of the opposition and the censorship of the press, the Turkish government maintains that its legislation only targets the Kurds and Islamic State in Iraq and Syria²⁰. This refusal by the Turkish President to modify the anti-terrorist law deemed non-compliant with European standards to guarantee Human Rights may cause the failure of the implementation of this decision. And then in a chain reaction the entire agreement might be brought into question.

Are we moving towards a revived accession process?

On 14th December chapter 17 of the "economic and monetary" policy was opened. As a reminder 14 negotiation chapters (out of a total of 35) have been opened to date with Turkey and only one has provisionally been closed! The revival of the accession process responds to a unilateral Turkish desire within a context of tense relations in which negotiations have been in deadlock for several years. Deadlock over the Cypriot question, the toughening of domestic policy, repeated criticism of the respect of Human Rights and the freedom of the press make any significant progress, both in the short and mid-term totally hypothetical.

C. The European Council of 18th and 19th March

Ahead of the European Council of 18th and 19th March, on 7th March Turkey accepted the rapid return of all migrants leaving Turkey for Greece and who did not require international protection, as well as the return of all illegal migrants intercepted in Turkish waters. In practice between 4th April and 1st June these returns were based on the Greece-Turkey readmission agreement. As of June 1st the EU-Turkey readmission agreement entered into force, following the implementation of measures pertaining to the readmission of citizens from third countries.²¹

During the Council of 18th and 19th March the following additional actions were defined²²:

- All new illegal migrants leaving from Turkey to reach the Greek islands as of 20th March (effective on 4th April) will be sent back to Turkey;
- For each Syrian sent to Turkey from the Greek islands, another Syrian will be settled leaving from Turkey to the EU taking into account the UN's vulnerability criteria. It is the "1 for 1" principle. With this agreement the aim is to "relieve" the Greek reception centres and reduce the worsening humanitarian situation there, but especially to counter traffickers by encouraging legal migratory routes.
 - In a first phase Europe will use the 18,000 resettlement place still available within the context of the Council of 20th July 2015.

16. European Commission, European Commission opens way for decision by June on visa-free travel for citizens of Turkey, 4th May 2016

17. According to the data quoted in the programme "On va plus loin" Public Sénat, 18th May 2016

18. European Commission, Third report on progress achieved by Turkey in the implementation of the requirements of the road map on the visa liberalisation regime, 2nd June 2016

19. Le Monde, Libéralisation des visas en Turquie : Erdogan refuse de réviser la loi antiterroriste, 7th May 2016

20. L'Orient le Jour, Ankara refuse de modifier sa loi antiterroriste, 12th May 2016

21. European Council Declaration of Heads of State and government of the EU, 8th March 2016

22. These details are taken from the EU-Turkey Declaration 18th March 2016

- If necessary a similar voluntary arrangement, limited to 54,000 people will be concluded.
- Turkey will do everything it can to avoid the formation of any further illegal migration routes, be they maritime or over land;
- The successful implementation of the roadmap on visa liberalisation will be stepped up amongst all participating Member States so that visa obligations for Turkish citizens are lifted in June 2016 at the latest, if all of the reference criteria are met.
- The European Union will accelerate the payment of the 3 billion € initially allocated under the facility in support of refugees in Turkey. Once these resources have nearly been all used up the Union will release additional financing for the facility to a total of a further 3 billion € until the end of 2018 (the legal base of this additional financing remains vague) to a theoretical total of 6 billion €.
- The presentation of a proposal by the European Commission for the opening of chapter 33 (financial and budgetary measures); the opening of this chapter still has not taken place;
- The European Union and the Member States will work with Turkey to improve humanitarian conditions in Syria.

2. BY DEFAULT, A CONTESTED AGREEMENT

A. A reduction in migratory flows observed

According to the most recent Frontex figures the number of migrants arriving in Greece in April fell by 90% in comparison with the previous months totalling fewer than 2,700 people – i.e. the equivalent of the daily arrivals in the migratory peaks of 2015²³. This spectacular reduction is due to several factors including the EU/Turkey agreement and a stricter application of border controls by Macedonia (FRYM). Migrants are mainly Syrians, Pakistanis, Afghans and Iraqis. Now migrants are tending to use the central Mediterranean routes via Libya. For the first time since June 2015 the number of migrants arriving in Italy rose above those of Greece. However the authorities noted a 13% decline in the number of migrants between March and April 2016 and a 50% annual decrease between April 2015 and 2016.

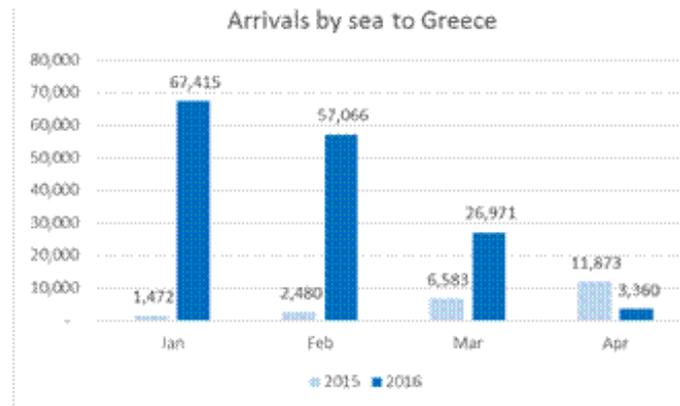
23. Frontex, "Number of migrants arriving in Greece dropped 90% in April", May 13th 2016

24. European Commission, Commission awards €25 million in emergency funding to the European Asylum Support Office for capacity building in Greece, May 24th 2016

25. European Parliament resolution 14th April on the 2015 report on Turkey <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0133+0+DOC+PDF+V0//FR>

In terms of relocation the European Commission deemed the most recent figures inadequate.

Reduction in arrivals in Greece following the agreement, May 2016 (Source: IOM)



In addition we might highlight the fact that following the EU-Turkey Agreement the Greek administration needed strong support. Transformed into a "temporary detention" area for many migrants and refugees, Greece is facing many challenges. From a human resources point of view, it needs experts, interpreters, doctors and legal experts. Asylum procedures require legal assistance which is still in short supply. The courts are overwhelmed whilst legally migrants whose request has been rejected are allowed to present an appeal. Therefore, the European Commission has provided emergency financial aid of 25 million €²⁴ Designed for the European Asylum Support Bureau this package is supposed to enable the recruitment of new teams and the opening of new hotspots for an improved management of asylum requests.

B. Efficacy still needs to be shown Political and institutional concern

The European Parliament adopted its annual report on Turkey on 14th April last²⁵. It denounced the downturn in the respect of Human Rights, attacks on the freedom of the press (for example the legal control of the newspaper Zaman and the legal proceedings taken against the author of the German song which ridiculed Erdogan), as well as the revival of hostilities against

the Kurds.

Germany and France put forward an emergency mechanism enabling the re-introduction of visas in the event of a massive influx of Turks or the non-respect of the 72 criteria. Turkey did not oppose this if this mechanism applied to all countries and not just itself. However, according to article 1a of regulation no. 539/2001, the EU can already suspend visa exemption if the required criteria are not being fulfilled. Thus, this measure appears to be a political strategy to facilitate an agreement in Council. Once visas have been liberalised it seems highly unlikely that the Union will go back on this, except in exceptional circumstances. On 22nd March the HCR expressed its concern about the implementation of the agreement before Greece has been equipped with the necessary infrastructures to accommodate refugees and follow up their requests.²⁶ For the Migratory Policy Institute (MPI) the agreement of 18th March means that the protection of populations is a fungible task, leaving the refugees with fewer and fewer alternatives.²⁷

The legality of the agreement brought into question

The legality and the legal content of the agreement of 18th March have been greatly criticised. The Defender of French Law, Jacques Toubon, stressed before the National Assembly's Laws Committee that the EU/Turkey Agreement of 18th March was not "legally correct".²⁸ In effect the latter "could only be implemented if Turkey was deemed to be a safe country". The Geneva Convention and the directive on asylum procedures that entered into force on 21st July 2015 consider a country of origin safe only if it has a democratic system and if there is not armed conflict or persecution.

Moreover the diplomatic issue at stake is real. It was for a reason that the Turkish President insisted on Turkey being added to the European list on his visit to Brussels on 13th October last even though according to the Commission 23.1% of asylum requests on the part of Turkish citizens were justified in 2014. Consequently, to be on this list is a political stake.

For Turkey one measure is still a problem. Indeed to be a safe country a State has to have ratified the Geneva Convention without setting any geographical

limitation. This is not the case with Turkey. The latter has ratified the Geneva Convention but has not adopted all of the modifications, and notably the one regarding geographic limitation. Turkey continues to advocate only the protection of Europeans, thereby excluding *de facto* Syrians and other nationalities. The latter cannot ask for refugee status. However the Turkish asylum system has no structure and there are no integration mechanisms.

Moreover the European Court of Human Rights prohibits "the return of a person to a country, including if it is deemed safe, if there is a risk of the latter itself sending this person to another country deemed dangerous to that person, that of his/her nationality or residence." "But this might be precisely the case for people of Syrian nationality ... I believe that the international, European nature of this agreement seriously deserves to be brought into question," concluded the Mr. Toubon.²⁹

The legality of the agreement has also been challenged by organisations present in the field. On 23rd March, John Dalhuisen, Deputy Director of the Europe and Central Asia Programme of Amnesty International declared "the ink had not even dried on the EU/Turkey agreement before several dozen Afghan men and women had already been sent back to a country in which their lives might be in danger."³⁰ The International Centre for Peace and Human Rights (ICPHR) indicates that the agreement's legality runs on a knife edge taking advantage of the ambiguity of international terms and principles.³¹

C. Legitimate doubt regarding Turkey's good faith

Several elements bear witness to a hardening of Ankara's domestic policy but also a determination to launch diplomatic confrontation.

Over the last few months the freedom of the press and the freedom of expression in Turkey have been challenged on several occasions. In October 2015 the media of the Koza Ipek group were placed under judicial control. The decision of the Constitutional Court demanding the liberation of Can Dündar and Erdam Gül du Cumhuriyet was even refused. At the beginning of March one of the main opposition newspapers,

26. UNHCR, *UNHCR redefines role in Greece as EU-Turkey deal comes into effect*, 22 March 2016

27. Migration Policy Institute, *The Paradox of the EU-Turkey Refugee Deal*, March 2016

28. *Le Figaro*, *Accord UE-Turquie, la légalité mise en doute*, 22 Mar 2016

29. *National Assembly*, *Compte rendu intégral*, 23 March 2016

30. *Amnesty International*, *EU/Turkey Agreement : the law already broken* 23rd March 2016

31. *ICPHR*, *The Agreement between the EU and Turkey : contested legality*, 6th April 2016

Zaman, was placed under the government's control³². Likewise the TV channel IMC TV was prevented from broadcasting.

The dismissal of Ahmet Davutoglu on 22nd May – who was replaced by Binali Yildirim – and the vote on the suspension of parliamentary immunity criticised by the European Parliament³³ simply confirmed the Turkish President's path towards a presidential regime with a re-balancing of power in his favour.

Finally a succession of provocations in the media by the Turkish President lead us to doubt seriously Turkey's absolute desire to implement the measures set out in the agreement.

The Union is caught in a trap of false stability. The latter absolutely needs Turkey to reduce the migratory flows and to control them. Undermined by the economic crisis whose lacuna are still extremely present and national dissidence which are symptoms of a challenge made against the solidarity of its Member State –, even though the crisis is not the cause but revelatory of dissension between the Member States³⁴. Europe's room to manoeuvre at international level is limited.

Without an alternative plan to cooperation with Turkey the European Union has no other choice but to bend to the Turkish President's conditions and whims. However, how far Erdogan is capable of going? Caught in a geopolitical stranglehold with the opening of fronts with Russia, Syria and the European Union the next few months will be decisive for his political credibility. Also the strategy of attrition is real for the European Union borne both by the democratic cost of Europe's inadequacy and the reality of dependency, which is politically dangerous, diplomatically unsustainable and yet difficult to avoid.

32. Cengiz Aktar *La Turquie et le nouveau critère de Copenhague : l'asile I, 14th march 2016* "http://www.robert-schuman.eu/fr/doc/divers/turquie-fr-14032016.pdf

33. European Parliament "The withdrawal of the immunity of 138 Turkish MPs undermines the primacy of law deem MEPs" 9th June 2016 http://www.europarl.europa.eu/news/fr/news-room/20160608IPR31206/Le-retrait-de-l'immunit%C3%A9-de-138-d%C3%A9put%C3%A9s-turcs-sape-la-primaut%C3%A9-du-droit

34. Jean-Louis Bourlanges "L'Europe au miroir de Schengen" 29th March 2016

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