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## IKV BRIEF

# VISA LIBERALISATION DIALOGUE BETWEEN TURKEY AND THE EU: THE ROAD SO FAR

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## VISA LIBERALISATION DIALOGUE BETWEEN TURKEY AND EU: THE ROAD SO FAR

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In accordance with the Readmission Agreement which was signed by Turkey and the EU on 16 December 2013, it was decided to commence a Visa Liberalisation Dialogue (VLD). Turkey and the European Commission have been at the negotiation table for eight years. Although Turkey had already fulfilled 66 of the 72 criteria embodied in the Visa Liberalisation Roadmap, the negotiations over visa liberalisation for Turkish nationals have almost stalled. There are still several problems to be solved yet which require the existence of a favorable environment for restoring mutual trust between both sides. This brief note, which aims to evaluate the stage reached in 2022 on the VLD, will examine Turkey's performance in the remaining criteria, mutual expectations, the approach of the EU and the negotiations as a whole.

### **The Background of Visa Liberalisation Dialogue**

The beginning of the free movement and visa liberalisation agenda between Turkey and the EU goes back to the initial relations established between the two parties. Even before the signing of the Ankara Agreement, Turkey became a party to the "European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 025)"<sup>1</sup>. Turkey became the 13th Member State of the Council of Europe on 13 April 1950. It signed and ratified the Council of Europe Agreement on 25.05.1961 and put it in force on 01.06.1961. The Agreement aimed to facilitate personal travel of nationals of the Parties concerning visits of not more than three months duration between the signatory States based on the possession of a valid passport and documents which were listed in the appendix of the Agreement<sup>2</sup>.

The issue of free movement also constituted an important aspect of Turkey-EU relations both within the scope of the Association and accession perspectives. The Ankara Agreement which aimed to establish the basis of an Association between Turkey and the EEC of the time embodied provision for the four freedoms which formed the basis of the Common Market. Free movement of workers and free movement of services were part of these freedoms. Relevant provisions were agreed in Articles 12 and 14 of the "Other

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<sup>1</sup> Council of Europe, European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe Paris, 13.XII.1957, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=025>

<sup>2</sup> It was also stated that: "This Agreement shall in no way prejudice the provisions of any domestic law and bilateral or multilateral treaties or agreements in force or to enter into force, whereby more favourable terms are applied to the nationals of other Parties. Ibid.



Economic Provisions” chapter of the Agreement.<sup>3</sup> Pursuant to Article 9 of the Ankara Agreement, any form of discrimination based on nationality is prohibited to avoid jeopardizing the accomplishment of the objectives of the Agreement. The second and highly important one is Article 41(1) of the Additional Protocol, which came into force in 1973 and aimed to prevent the contracting parties from imposing new restrictions on the freedom of establishment and the freedom to provide services. This provision, which is also referred to as the standstill clause, “lays down a precise and unconditional principle that is sufficiently operational to be applied by a national court and therefore capable of governing the legal position of individuals”.<sup>4</sup> In consequence, this provision has got “direct effect” which means “individuals to which it applies have the right to rely on it before the courts of Member States”. However, a Turkish citizen can use Article 41(1) if this person benefits from freedom of establishment or freedom to provide services. For the first case, that person must be someone who is “self-employed” on a stable and permanent basis in an EU Member State. But for the latter, that person must be the employee of a natural or legal person providing services as well as a “self-employed” person in an EU Member State on a temporary basis. In other words, the standstill clause might be applicability, inter alia, “when the relevant activity is complementary to an economic activity”.<sup>5</sup> This provision had also been strengthened by Association Council Decisions 2/76 and 1/80 and is applicable to substantive or procedural clauses for the first entry of Turkish nationals into Member States.<sup>6</sup> Turkish

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<sup>3</sup> Agreement Establishing an Association Between the European Economic Community and Turkey, 12 September 1963, *Official Journal of the European Communities*, No: L 361/29, Retrieved from [https://eur-lex.europa.eu/resource.html?uri=cellar:f8e2f9f4-75c8-4f62-ae3f-b86ca5842eee.0008.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f8e2f9f4-75c8-4f62-ae3f-b86ca5842eee.0008.02/DOC_2&format=PDF)

#### *Article 12*

The Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them.

#### *Article 14*

The Contracting Parties agree to be guided by Articles 55, 56 and 58 to 65 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom to provide services between them.

<sup>4</sup> Case C-37/98 (Court of Justice) *The Queen v Secretary of State for the Home Department, ex parte Abdulnasir Savas* [2000] ECR I-2927, para 54, retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61998CJ0037&from=en> on 23 February 2022.

<sup>5</sup> İlke Göçmen, “Avrupa Birliği Hukuku Çerçevesinde Avrupa Birliği’ndeki Türk Vatandaşları ve Aile Birleşimi”, *DEÜ Hukuk Fakültesi Dergisi*, 16(1), 2014, pp. 73-121.

<sup>6</sup> İlke Göçmen, “Vize Serbestisi Diyalogu”, in İktisadi Kalkınma Vakfı and ATAUM (ed.), *Avrupa Birliği Ansiklopedisi*, (İstanbul: Anadolu), December 2021, No: 320, pp. 1117-1119.



citizens can bring the visa requirement itself to trial under certain clauses within the standstill provisions, but these provisions are quite restricted in practice.

These articles, especially Article 41(1) of the Additional Protocol, lost its applicability due to the stipulation of visa requirement first by Germany and France on 5 October 1980, then Belgium, Netherlands and Luxembourg later on 1 November 1980.<sup>7</sup> In fact, Turkish citizens were exempt from visa requirement before the implementation was launched by Council of Europe after the “European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe” that was signed on 13 December 1957.<sup>8</sup> Under this agreement, Turkish citizens could travel to the Member States of the Council of Europe as tourists without a visa.

The political instability in Turkey that had risen to a climax in 1980 gave way to an increasing number of Turkish citizens leaving the country and seeking refuge in European countries such as Germany. In order to prevent citizens who were charged and/or tried for political reasons from leaving the country, the Turkish government wanted to suspend the Council of Europe Agreement ETS No 025. It was also seen as necessary by the German government to control the entry of Turkish nationals into Germany due to the increasing number of those seeking asylum. Although the visa requirement was seen as a temporary measure and noted that it would be re-evaluated after three years, it became a permanent measure which was later simulated by other Member States of the Council of Europe and also the EU. In order to prevent a possible influx of political migrants due to the political turmoil in Turkey, Germany issued a declaration related to the implementation of the Agreement with respect to Turkish citizens on 10 July 1980. Germany notified the Council of Europe secretariat that it would introduce a general obligation for Turkish citizens to obtain a visa to enter Germany as from 5 October 1980 and that the 1953 Germano-Turkish Agreement on visas was terminated. The German government also referred to a previous declaration made by Turkey by way of which it had suspended application of the Agreement in accordance with Article 7 thereof. The reason for this measure was provided by the German authorities as being linked to questions of public order:

“This step was considered necessary for reasons of ‘ordre public’. The number of Turkish nationals crossing the frontier of the Federal Republic of Germany with the intention of circumventing residence and domicile regulations by abusing the right to asylum increased extremely sharply in

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<sup>7</sup> Kees Groenendijk, Elspeth Guild, “Visa Policy of Member States and the EU towards Turkish Nationals After Soysal”, 2012, 3<sup>rd</sup> edition, 257 (*Istanbul: İktisadi Kalkınma Vakfı*), p. 82

<sup>8</sup> Council of Europe, “European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe”, 13 December 1957, *European Treaty Series – No. 25* Retrieved from <https://rm.coe.int/1680064588> on 23 December 2021.



the first few months of 1980. Closer supervision of entry into the territory of the Federal Republic of Germany is therefore essential. After a period of three years the Federal Republic of Germany will reconsider whether it is still necessary to make visas compulsory for Turkish nationals.”<sup>9</sup>

Then five EU members, Belgium, France, Germany, Luxembourg and the Netherlands, developed a new border control system with the Schengen Agreement which was signed on 14 June 1985. This system was operated separately from EU law until 1999. With the Schengen Implementation Agreement signed in 1990, the Member States within Schengen Area decided to abolish border controls on persons and implement a common border control system. The abolition of border controls on persons under Schengen Area, officially took place on 20 March 1995. The fact that Turkish citizens are faced with the visa requirement and thus being exposed to discrimination has become institutionalized by this amendment.

Turkey aimed to make use of the legal rights embodied in the Association Agreement and the Additional Protocol by bringing cases before the European Court of Justice (ECJ). Two of the many cases were brought to the ECJ based on the aforementioned articles, were striking. *Soysal case* in 2009 is related to the “freedom to provide services” provision.<sup>10</sup> Owing to international agreements with third countries is one of the primary sources of EU institutional law, the Schengen Regulation in which Turkey is on Annex I, contradicts a part of primary source within this scope. The *Soysal case* has resulted in favour of two Turkish nationals. In accordance with the ECJ’s judgment dated 19 February 2009,<sup>11</sup> it has been stated that visa requirement applied to a Turkish citizen who was a service provider from Germany contradicted with the law by referencing to Article 41(1) of the Additional Protocol. To put it another way, the relevant article of the Additional Protocol bans introducing new restrictions, including the visa requirement of those Member States that recognised right of establishment and freedom to provide

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<sup>9</sup> The Federal Republic of Germany, “Declaration contained in a Note Verbale of the Permanent Representation, dated 9 July 1980, registered at the Secretariat General on 10 July 1980 - Or. Fr.”, Council of Europe, 10 July 1980, Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=025&codeNature=0> on 23 December 2021

<sup>10</sup> For a detailed analysis of *Soysal Case*, see; İlke Göçmen, “To Visa or Not to Visa: That is the (Only) Question, or is it? – Case C-228/06, Mehmet Soysal and Ibrahim Savatli v. Bundesrepublik Deutschland [2009]”, *Legal Issues of Economic Integration*, 37(2), 2010, pp. 149-162 and A. B. Bilgin, “Adalet Divanı’nın Soysal Kararına İlişkin İKV Değerlendirmesi”, *İktisadi Kalkınma Vakfı*, Retrieved from <https://www.ikv.org.tr/images/upload/file/bilginotu.pdf> on 12 November 2021.

<sup>11</sup> Case C-228/06 Mehmet Soysal v Ibrahim Savatli v Bundesrepublik Deutschland, European Court of Justice, 19 February 2009, Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62006CJ0228&from=en> on 9 February 2022.



service of Turkish nationals before 1973.<sup>12</sup> The result of the *Soysal* case increased hopes for lifting visas towards Turkish citizens due to the functioning of ECJ on the axis of case law.

Following the *Soysal* Case, the European Commission asked the Member States whether they implemented a visa requirement from Turkish citizens at the time of the entry into force of the Additional Protocol or of their membership to the EC/EU. Only two Member states responded with a negative reply saying that they did not impose a visa requirement at the time. These two countries were Germany and Denmark. This meant that these countries were in breach of the standstill clause 41(1) in requiring a visa from Turkish citizens traveling to their territory for the purposes of service provision. In order to alleviate this problem, Germany lifted the visa requirement for service providers. However these citizens of Turkey would still have to apply to the German authorities in order to ascertain whether they would qualify for visa waiver and thus prove that they are “service providers” which meant that actual result of the process did not amount to a real improvement in the visa issue.<sup>13</sup> The German government announced the introduction of a new visa-exemption regulation for truck drivers, athletes and artists on 2009.<sup>14</sup>

The gains achieved in the *Soysal* case in terms of service providers could not be taken one step further due to the result of *Demirkan* case. Leyla Ecem Demirkan, whose visa application to visit her family living in Germany was rejected in 2007, sued Germany to the Berlin Administrative Court under Rolf Gutmann’s attorneyship. In 2009, the Berlin Administrative Court dismissed the case, judging that Demirkan did not have the right to enter Germany without a visa by giving a decision that it was not possible for Demirkan to rely on the “standstill” provision in Article 41(1) of the Additional Protocol and that the “standstill” provision did not grant Turkish nationals a right of free movement apart from an economic activity. The Berlin Brandenburg Higher Administration Court, which examined the Demirkan’s petition of objection, took the case to the ECJ. ECJ decided that travelling to the EU as a “service recipient” would not be contrary to the visa requirement. Following the legal opinion of Pedro Cruz Villalón, who served as Advocate General, ECJ stated that the goal and scope of Article 41(1) of the Additional Protocol

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<sup>12</sup> Emirhan Göral, Muzaffer Dartan, “The Customs Union in the Context of EU-Turkey Relations: An Evaluation of Current Debates”, *Marmara Journal of European Studies*, (24)6, 2016, p. 21-22.

<sup>13</sup> Kees Groenendijk, Elspeth Guild, “Visa Policy of Member States and the EU towards Turkish Nationals After *Soysal*”, 2012, 3<sup>rd</sup> edition, 257 (*Istanbul: İktisadi Kalkınma Vakfı*), pp. 19-20.

<sup>14</sup> “Germany Makes a Good Start”, *Hürriyet Daily News*, 9 June 2009, Retrieved from <https://www.hurriyet.com.tr/gundem/germany-makes-a-good-start-11823742> on 25 February 2022.





differs fundamentally from the ones of Article 56 of the Treaty on the Functioning of the EU (TFEU) in terms of implementation of provisions for service recipients.<sup>15</sup>

IKV had been a close observer and analyst of the judicial process and its aftermath and has advocated the rights of Turkish nationals at many different platforms. The then IKV Chairman Halûk Kabaalioğlu led the follow-up of this process from the beginning to the end, organized several seminars,<sup>16</sup> paid several visits to EU Commissioners, regularly expressed his and IKV's views on the free movement right of persons, the situation of service recipients and both cases that were taken to the ECJ.<sup>17</sup> Undoubtedly, one of the most important works of IKV was the "Visa Hotline Project" that was launched on 17 November 2009 by IKV in cooperation with TOBB (Union of Chambers and Commodity Exchanges of Turkey) and ECAS (European Citizen Action Service).<sup>18</sup> IKV aimed to focus on the problems of Turkish citizens arising from efforts to obtain Schengen Visa and to explain them with the political, economic and social aspects of the readmission process. "Visa Hotline Project", whose duration time was four years, divided into two phases. In the first phase, a report was prepared in order to enable the necessary steps to tackle problems arisen from Schengen Visa requirement and demonstrate the unfair and discriminatory treatments against Turkish nationals. The second phase of the project covered the discussions held by the experts at various meetings both in Turkey and in

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<sup>15</sup> Case C-221/11 Leyla Ecem Demirkan v Bundesrepublik Deutschland, European Court of Justice, 24 September 2013, Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CJ0221&from=en> on 9 February 2022.

<sup>16</sup> For an example of the organised seminars, IKV assisted the organisation of the seminar titled "Visa-Free Travel for Turkish Nationals: Readmission and Beyond" hosted by MÜSİAD with the cooperation of European Stability Initiative (ESI).

<sup>17</sup> For some the views of Kabaalioğlu on Soysal Case, see: "Professor: Visas for Turkish Citizens 'Against Spirit of EU integration'", *EurActiv*, 29 October 2009, Retrieved from <https://www.euractiv.com/section/enlargement/interview/professor-visas-for-turkish-citizens-against-spirit-of-eu-integration/> on 11 February 2022; for publications on free movement of persons, see: (1) Halûk Kabaalioğlu, "Turkey-EU Customs Union: Problems and Prospects", *DEÜ SBE Dergisi*, 12(2), 2010, pp. 47-57. (2) Piet Jan Slot, Narin Idriz, "Free Movement of Persons Between Turkey and the EU: The Hidden Potential of Article 41(1) of the Additional Protocol", in Halûk Kabaalioğlu, Andrea Ott, Allan F. Tatham (ed), *EU and Turkey: Bridging the Differences*, (İstanbul: Economic Development Foundation), Publications No: 250, 2010, pp. 67-89; "IKV Press Release on the ECJ Decision on the Demirkan Case: A Legal Judgment with Political Shades", *IKV*, 24 September 2013, Retrieved from [https://oldweb.ikv.org.tr/print\\_en.asp?id=575&baslik=IKV%20PRESS%20RELEASE%20ON%20THE%20ECJ%20DECISION%20ON%20THE%20DEMIRKAN%20CASE%20-%20%20A%20LEGAL%20JUDGMENT%20WITH%20POLITICAL%20SHADES](https://oldweb.ikv.org.tr/print_en.asp?id=575&baslik=IKV%20PRESS%20RELEASE%20ON%20THE%20ECJ%20DECISION%20ON%20THE%20DEMIRKAN%20CASE%20-%20%20A%20LEGAL%20JUDGMENT%20WITH%20POLITICAL%20SHADES) on 11 February 2022.

<sup>18</sup> "Visa Hotline Project": Final Report, *Economic Development Foundation*, March 2010 Publications No: 231, ISBN: 978-605-5984-25-0.



the EU Member States on economic, judicial and humanitarian aspects of the problems Turkish citizens faced due to the visa requirement.

One of the most significant among them is the seminar hosted by IKV and attended by Prof. Jo Shaw, Prof. Nanette Neuwahl, Asst. Prof. Katharina Eisele, Res. Assoc. Nina Westoby and senior jurist and lawyer of Soysal and Demirkan cases in ECJ Rolf Gutmann on 8 October 2013.<sup>19</sup> In the seminar titled “The Principle of Non-Discrimination in the European Union and Rights of Turkish Nationals”, Kabaalioğlu stated that ECJ, which delivered a judgment as the visa-free entry rights of Turkish truck drivers to Germany with the status of “service providers” in the Soysal Case, was in a contradiction from its original interpretation in the Demirkan case by getting affected from political influence. After this development, visa liberalisation negotiations started to be conducted not within the framework of Association law, but with a new process, VLD.<sup>20</sup>

Following the failure of the legal process to produce any concrete results in terms of visa liberalisation, Turkey agreed to signing the readmission agreement and in return starting the VLD with the EU. Hence, the issue was linked to Turkey’s cooperation with regards to the fight against irregular immigration. IKV continued its activities in this issue publishing regular analyses and reports regarding visa liberalisation and refugee cooperation.

### **Stages and Important Notes of Visa Liberalisation Dialogue**

VLD process has started for negotiations between Turkey and EU in parallel with the Readmission Agreement on 16 December 2013.<sup>21</sup> The VLD is completely different from the legal and institutional mechanism covered by the Turkey-EU Association Agreement. Negotiations are conducted on the basis of Regulation (EC) No. 539/2001. According to

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<sup>19</sup> For accessing the widespread press coverage of this seminar, see: Didem Eryar Ünlü, “Büyük Mahkemeler de Yanılırlar”, *Dünya Gazetesi*, 10 October 2013, Retrieved from <https://www.dunya.com/kose-yazisi/quotbuyuk-mahkemeler-de-yanilirlarquot/17888> on 11 February 2022; “İKV'nin Düzenlediği 'Avrupa Birliği'nde Ayrımcılığın Önlenmesi İlkesi Ve Türk Vatandaşlarının AB'deki Hakları' Başlıklı Seminerle İlgili Basında Yer Alan Haberler”, *İKV*, 9 October 2013, Retrieved from <https://oldweb.ikv.org.tr/print.asp?id=3500&baslik=%DDKV%92N%DDN%20D%DCZENLED%DD%D0%DD%20%92AVRUPA%20B%DDRL%DD%D0%DD%92NDE%20AYRIMCILI%D0IN%20%D6NLENMES%DD%20%DDLKES%DD%20VE%20T%DCRK%20VATANDA%DELARININ%20AB%92DEK%DD%20HAKLARI%92%20BA%DELIKLI%20SEM%DDNERLE%20%DDL%DDL%DD%20BASINDA%20YER%20ALAN%20HABERLER> on 11 February 2022.

<sup>20</sup> Çiğdem Nas, Yonca Özer, "Readmission and visa liberalization Two sides of the same coin?", in Ç. Nas and Y. Özer (ed.), *Turkey and EU Integration: Achievements and Obstacles*, (Oxfordshire: Routledge), 2017, pp. 145-161.

<sup>21</sup> “First Meeting of the EU-Turkey Visa Liberalization Dialogue Agreed Minutes”, *Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs*, Retrieved from [https://www.ab.gov.tr/files/sib/19\\_agreed\\_minutes\\_ve\\_annotated\\_roadmap.pdf](https://www.ab.gov.tr/files/sib/19_agreed_minutes_ve_annotated_roadmap.pdf) on 01 November 2021





the Regulation, the implementation of visa exemptions for third country citizens holding a biometric passport in line with EU standards for short stays up to 90 days within any 180 days is included in the Schengen Regulation.<sup>22</sup> Countries that fulfil the criteria set by the EU will be transferred to Annex II based on Article 1(2), from Annex I which is subject to Article 1(1) of this Regulation. However, this Regulation was abolished with the Regulation (EU) 2018/1806 of the European Parliament (EP) and of the European Council which titled “listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement” that came into force on 14 November 2018. The final decision will be made ratification of the proposal for Turkey with the ordinary legislative procedure that EP and Council jointly participated.

Within the framework of VLD between Turkey and EU, Turkey has to fulfil the requirements determined by EU titled “the Roadmap towards a visa free regime with Turkey”. This Roadmap comprises 72 criteria that are divided into five blocks:

Block 1: Document Security,

Block 2: Migration Management,

Block 3: Public Order and Security,

Block 4: Fundamental Rights

Block 5: Readmission of Irregular Migrants.

The monitoring process of Turkey’s performance regarding the fulfilment of the requirements is being held by the Commission. The Commission has published three reports; however, the third and the latest one was on 4 May 2016.

In considering the First Progress Report<sup>23</sup> that was published on 20 October 2014, the performance of Turkey was criticised especially on the blocks of Migration Management<sup>24</sup> and Public Order and Security<sup>25</sup>. Despite of this, the report was

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<sup>22</sup> Article 6 of the Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0399-20190611> on 25 December 2021.

<sup>23</sup> EUR-Lex – 52014DC0646 REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap, Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0646> on 06 November 2021.

<sup>24</sup> Two of the benchmarks were fulfilled, two of the benchmarks were not fulfilled out of 28 and others were almost or partially fulfilled.



welcomed by Turkish authorities and indicated that Turkey made remarkable progress. The importance of this progress was stressed as:<sup>26</sup>

“The first years of the visa liberalisation dialogue paved the way for many important achievements in Turkey. First, a comprehensive Law on Foreigners and International Protection came into force in April 2014. Turkey, herewith, for the first time adopted legislation on international protection that provides detailed and broad protection to foreigners. However, reforms for visa liberalisation have been the impetus to meet the requirements of 21<sup>st</sup> century, such as e-visa, high-tech biometric security measures, and the development of technological infrastructure in visa/consulate affairs. Perhaps one of the most precious achievements of the first years of the process was the becoming of the Directorate General of Migration Management, established under the umbrella of the Prime Ministry, Turkey’s “pupil in migration management”, into an effective agency with over 3000 personnel operating in Turkey’s 81 provinces.”

The Statement of Turkey and EU on Meeting of Heads of State or Government with Turkey has been published on 29 November 2015.<sup>27</sup> Intensifying irregular migration to Europe lies behind the agenda of this Summit. The EU started to search for ways to accelerate measures to prevent irregular migration flows. Meanwhile, the number of refugee crossings over the Eastern Mediterranean Route reached 885,386 in 2015.<sup>28</sup> Promising to provide financial and technical incentives to Turkey and to increase the political dialogue, the EU desired the full implementation of the Readmission Agreement to be accelerated as soon as possible with the Joint Action Plan announced in October.<sup>29</sup> In the fifth article of this statement, it is explicitly expressed that an agreement has been

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<sup>25</sup> Two of the benchmarks were fulfilled, two of the benchmarks were not fulfilled out of 21 and others were almost or partially fulfilled.

<sup>26</sup> Ahmet Ceran, “Vize Serbestliği Diyaloğunda Hasar Kontrolü: Vizesiz Avrupa Neden Hayal Değil?”, *İKV Değerlendirme Notu 196*, İktisadi Kalkınma Vakfı, March 2017, Retrieved from [https://www.ikv.org.tr/images/files/ikv\\_degerlendirme%20notu\\_196 .pdf](https://www.ikv.org.tr/images/files/ikv_degerlendirme%20notu_196.pdf) on 03 November 2021.

<sup>27</sup> “Meeting of heads of state or government with Turkey - EU-Turkey statement”, *European Council*, 29 November 2015, Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2015/11/29/eu-turkey-meeting-statement/> on 31 October 2021.

<sup>28</sup> ANSA, “The Main Migration Routes to the European Union”, *InfoMigrants*, 11 November 2021, Retrieved from <https://www.infomigrants.net/en/post/36391/the-main-migration-routes-to-the-european-union#:~:text=The%20Eastern%20Mediterranean%20Route%20leads,it%20is%20much%20less%20fremented>. on 13 February 2022.

<sup>29</sup> “EU-Turkey Joint Action Plan”, *European Commission*, 15 October 2015, Retrieved from [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_15\\_5860](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860) on 10 February 2022.



reached between Turkey and EU that the Readmission Agreement will be fully applicable from June 2016. In addition to that, both parties were welcoming the announcement regarding the opening of Chapter 17: Economic and Monetary Policy to negotiations. It was also stated that if the criteria would be met, the visa requirements for Turkish citizens to travel to the Schengen Area would be lifted until October 2016. Again, in this declaration, both sides declared that they would take measures against the flows of irregular migrants and improve the level of cooperation with the Joint Action Plan.

On 4 March 2016, Commission published its second report. Unlike the First Report, Turkey had made a striking progress on other blocks. In Block 1 Document Security, Turkey performed well. The most nontrivial topic in the Block 1 was undoubtedly biometric passports. In order to provide visa liberalisation, the passports of Turkish citizens should have biometric security marks, including fingerprints and should comply with ICAO standards and Council Regulation 2252/2004. On the withdrawal and renewal of passports not in line with this Regulation, the Commission appreciated Turkey's performance and welcomed the introduction of the project regarding biometric passports with EU support under IPA funds. In 2021, Turkey has fulfilled all the criteria in this block. In total, Turkey fulfilled 62 criteria out of 72 and made a clear advance on institutional capacity. Some of the advances on the latter were:<sup>30</sup>

- The strengthening operational capacity of the General Directorate of Migration Management, the achievements on demilitarization and modernisation of Integrated Border Management Strategy and improvement on the level of cooperation with relevant EU units such as Frontex,
- Temporary protection status was provided to Syrians who entered Turkey with mass migration and access to basic services was ensured for Syrians and all foreigners under protection,
- Tightening visa policy to countries such as Iraq, Syria and Libya,
- Readmission agreements with 14 countries which is the source of irregular migration, began to be negotiated,
- Taking into account the EU standards, the capacity of the e-visa system has been increased,
- The Council of Europe regulations in critical areas such as cyber security (ratification of Council of Europe Convention on Cybercrime), fight against money laundering and human trafficking were undertaken by Turkey and action plans were commenced in areas such as the fight against organized crime,

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<sup>30</sup> Ahmet Ceran, "Vize Serbestliđi Diyalogunda Hasar Kontrolü: Vizesiz Avrupa Neden Hayal Deđil?"; A. Ceran (2016), "İkinci Raporun Ardından: Vize Serbestliđi Diyalogunda Öne Çıkanlar", *İKV Deđerlendirme Notu 177*, İktisadi Kalkınma Vakfı, March 2016 Retrieved from [https://www.ikv.org.tr/images/files/IKV%20Deđerlendirme\\_177.pdf](https://www.ikv.org.tr/images/files/IKV%20Deđerlendirme_177.pdf) on 03 November 2021.



- The capacity of the Financial Crimes Investigation Board (*Mali Suçları Araştırma Kurulu* - MASAK) was strengthened,
- The draft bill for Protocol 7 to the European Convention on Human Rights (ECHR) was ratified by GNAT.

With the Third Progress Report that was published on 4 May 2016, Turkey also fulfilled all the benchmarks in Block 2: Migration Management. One of the most persistent knots of this has been solved with the approval of the internal Turkish legislation on protection for refugees by the Commission even though the decision of Turkey to maintain geographical limitations to the Geneva Convention. In the Annotated Road Map which is an Annex of “First Meeting of the EU-Turkey Visa Liberalization Dialogue Agreed Minutes”, Turkish officials have declared that the lifting of geographical limitations can only be possible after EU accession.<sup>31</sup> Turkey showed solid progress on legislative and institutional arrangements on almost all benchmarks in a period as little as two months. By this, Turkish citizens obtained an important chance accessing Schengen Area due to the fulfilment of 66 criteria out of 72.

### **Current Status in Remaining Criteria**

Although the progress of Turkey was found promising by Commission and thus Commission proposed the introduction of visa exemption for Turkish nationals to the EP, declaring that Turkey showed a solid progress and could complete the remaining benchmarks. Turkey has prepared a proposal for an amendment of Regulation No 539/2001 in order to realize its transfer from Annex I to Annex II on the same day the Third Progress Report was published. However, EP rejected the proposal of the Commission, stating that it would not even deliberate until all benchmarks were completed. The proposal of Commission was also the closest Turkey could get to obtain visa exemption for its citizens.

In addition to that, there seemed some structural obstacles that were hard to tackle for Turkey. First of all, the negotiations and agenda on visa liberalisation dialogue are apparently on standstill. Following that, on 7 March 2016, leaders of Turkey and EU Member States have issued a statement. In this statement, it is indicated that leaders of both parties have agreed on to accelerate the implementation of the visa liberalisation roadmap, in return for the provision that “for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU”. On 18 March 2016, Turkey-EU Statement, also known as 18 March Agreement has been published and comprised of the EU’s promises to implement the Voluntary Humanitarian Admission Scheme, to speed up the disbursement of the allocated three billion euros, to continue in negotiations for the modernisation of the Customs Union

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<sup>31</sup> Çiğdem Nas, “Türkiye-AB İlişkilerinde Geri Kabul ve Vize Serbestliği: Hareketliliğin Önemi”, *Marmara Avrupa Araştırmaları Dergisi*, 23(2), 2015, p. 182



and to make progress in the accession negotiations in return of the readmission of irregular migrants crossing from Turkey into Greek islands as from 20 March 2016. More importantly, this agreement once again stated that with the completion of all benchmarks, the fulfilment of the visa liberalisation roadmap will be accelerated to lift the visa requirements for Turkish people, “at the latest by the end of June 2016”. This argument was perceived as the completion date of the VLD by Turkish side, but this became the final promising and technical joint statement regarding this process. Yet the progress momentum of Turkey did not last a long time. There are several political reasons behind of this fact. Turkey accused the EU of not keeping its promises on financial support, visa liberalisation, the modernisation of the Customs Union, resettlement of 70 thousands of Syrian refugees from Turkey to the EU annually, and progress in Turkey-EU accession negotiations. After that, Turkey decided to suspend its obligations under the Readmission Agreement for third country nationals.<sup>32</sup> On the other hand, the EU criticized Turkey’s movement away from Europe in terms of not fulfilling the political criteria for accession to the EU anymore. Problems in terms of democracy, human rights, fundamental freedoms and rule of law were criticized in consecutive reports of the European Commission<sup>33</sup> and the EP<sup>34</sup>. These developments led to the stalemate of relations and escalated the distrust between Turkey and the EU.

Secondly, there are six remaining benchmarks for the fulfilment of the visa liberalisation roadmap. Turkey has established working groups within the body of the Ministry of Foreign Affairs Directorate for EU Affairs for each benchmark.

The first benchmark “implementing the National Strategy and the Action Plan on Fight against Corruption and the Recommendations of GRECO” requires the implementation of the recommendations of Group of States against Corruption (GRECO) which is a monitoring body of the Council of Europe on anti-corruption principle. These recommendations include a comprehensive strategy for combat corruption such as financing of political parties, codes of conduct for parliamentarians and public officials, compliance with transparency-based codes of conduct in public tenders etc. Presidential circulars or decrees were not perceived as sufficient, as this benchmark also requires an

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<sup>32</sup> “Çavuşoğlu: Geri Kabul Anlaşması’nı Askıya Aldık”, *DW Türkçe*, 22 July 2019, Retrieved from <https://www.dw.com/tr/%C3%A7avu%C5%9Fo%C4%9Flu-geri-kabul-anla%C5%9Fmas%C4%B1n%C4%B1-ask%C4%B1ya-ald%C4%B1k/a-49699277> on 11 February 2022.

<sup>33</sup> EU Commission, “Commission Staff Working Document: Turkey 2016 Report”, 9 November 2016, COM(2016) 715 final, retrieved from [https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-12/20161109\\_report\\_turkey.pdf](https://ec.europa.eu/neighbourhood-enlargement/system/files/2018-12/20161109_report_turkey.pdf) on 25 February 2022.

<sup>34</sup> European Parliament, “European Parliament Resolution of 6 July 2017 on the 2016 Commission Report on Turkey”, 6 July 2017, 2016/2308(INI), retrieved from [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0306\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0306_EN.html) on 25 February 2022.



independent institution. Moreover Turkey has to make regulations that should take into account the remaining 10 of the 17 recommendations made in the third round of evaluation and 20 of the 22 recommendations made in the fourth round of evaluation in the Interim Compliance Report.<sup>35</sup>

The second one is the “provide effective judicial cooperation in criminal matters to all the EU Member States, including in extradition matters inter alia by promoting direct contacts between central authorities”. This criterion is also one of the partially fulfilled benchmarks, which is easier to fulfil completely from a technical aspect rather than others. The contents of this benchmark such as the fight against terrorism, drug trafficking and human trafficking are critical transnational issues that require judicial cooperation. The main issue to tackle here is the possible recognition of GCASC. Yet, Turkey is offering some proposals to solve this problem such as ensuring this cooperation through EU institutions (e.g. Eurojust), intermediary countries or international organizations in unofficial ways that will not adversely affect the status of parties.<sup>36</sup>

The third remaining benchmark is “conclude new cooperation agreements with EUROPOL and fully and effectively implement an Operational Cooperation Agreement” which is difficult for Turkey to make progress for fulfilment. In order to provide the requirements of Operational Cooperation Agreement, Turkey should exchange personal data with the parties to the Agreement. Therefore, the current Turkish legislation is not in line with EU standards. Turkey should directly change its regime on protection of personal data and start the exchange process with EUROPOL after signature. In addition to that, there is also a technical obstacle from the perspective of EU side. In order to sign an agreement with Turkey, the EUROPOL shall have the authorisation of both the EU Council and Parliament.

The fourth one titled “adopt and implement legislation on the protection of personal data in line with the EU standards, in particular as regards the independence of the authority in charge of ensuring the protection of personal data” is relevant to the previous benchmark. Turkey was very close to fulfilling this criterion. The requirements were ratified; the independent authority has been established by Turkey. Yet, EU amended its legislation into one of the first regulations such as protection of personal

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<sup>35</sup> “Turkey - Second Interim Compliance Report of Fourth Evaluation Round / Second Addendum to Second Compliance Report of Third Evaluation Round”, *Council of Europe*, 18 March 2021, Retrieved from <https://www.coe.int/en/web/greco/-/turkey-second-interim-compliance-report-of-fourth-evaluation-round-second-addendum-to-second-compliance-report-of-third-evaluation-round> on 15 November 2021.

<sup>36</sup> Ahmet Ceran, “Vizesiz Avrupa Hayalinin Önündeki Son 5 Kritere Derinlemesine Bakış”, *İKV Değerlendirme Notu 183*, İktisadi Kalkınma Vakfı, May 2016, Retrieved from [https://www.ikv.org.tr/images/files/degerlendirme183\\_aceran2.pdf](https://www.ikv.org.tr/images/files/degerlendirme183_aceran2.pdf) on 02 November 2021.





data by determining a time limit for the exchange in 2019. This benchmark probably is the most important one in Block 3: Public Order and Security because it aims to prevent transnational crimes.

The fifth remaining benchmark is “revise – in line with the ECHR and with the European Court of Human Rights (ECtHR) case law, the EU *acquis* and EU Member States practices – the legal framework as regards organised crime and terrorism, as well as its interpretation by the courts and by the security forces and the law enforcement agencies, to ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice”. This topic is highly critical for Turkey. EU demands an amendment in Turkish legislation since the broad conception of terror by referring to the 2002/475/JHA Council Framework Decision that was amended in 2008. According to the Commission reports, this law was enacted as highly open to misinterpretation and manipulation and thus, freedom of expression and right to association could be arbitrarily restricted.

The final one is generally regarding “Block 5: Readmission of Irregular Migrants”. Turkey has temporarily suspended the obligations that came from the 18 March Agreement. The number of refugees readmitted by Turkey until the suspension was 2,139.<sup>37</sup> But, Turkey is still at full capacity, especially in considering of DGMM, to implement the provisions of agreement when the dialogue becomes re-accelerated. Concerning the last Annual Migration Report of DGMM in 2016, a sharp increase happened in the number of irregular migrants held and migrant smugglers caught in Turkey between 2014 and 2016.<sup>38</sup> Although the DGMM haven’t published a new annual report on this scope after 2016, it continues to meet its duties. The Directorate has started to publish the Annual Report on Combating Human Trafficking in 2017.<sup>39</sup> According to the report of Daily Sabah, at least 38250 irregular migrants were held only in Istanbul from January to August 2021.<sup>40</sup> On the other hand, the latest data shows that

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<sup>37</sup> “Return Statistics”, Ministry Interior of Turkey Presidency of Migration Management, 10 February 2022, Retrieved from <https://en.goc.gov.tr/return-statistics> on 13 February 2022.

<sup>38</sup> “2016 Türkiye Raporu”, *Ministry of the Interior of Turkey Republic Directorate of Migration Management*, 2017, Retrieved from [https://www.goc.gov.tr/kurumlar/goc.gov.tr/YillikGocRaporlari/2016\\_yiik\\_goc\\_raporu\\_haziran.pdf](https://www.goc.gov.tr/kurumlar/goc.gov.tr/YillikGocRaporlari/2016_yiik_goc_raporu_haziran.pdf) on 16 November 2021.

<sup>39</sup> See: “Türkiye’nin İnsan Ticaretiyle Mücadele Yıllık Raporları”, *Ministry of the Interior of Turkey Republic Directorate of Migration Management*, Retrieved from <https://www.goc.gov.tr/turkiyenin-insan-ticaretiyle-mucadele-yillik-raporlari>

<sup>40</sup> “At least 38,250 irregular migrants held in Istanbul so far in 2021”, *Daily Sabah*, 18 August 2021, Retrieved from <https://www.dailysabah.com/politics/at-least-38250-irregular-migrants-held-in-istanbul-so-far-in-2021/news> on 16 November 2021.



the number of illegal border crossings to the EU via the Eastern Mediterranean Route was 1,460,363 since 2011<sup>41</sup>, while Turkey has detected at least 1,655,346 irregular migrants during the same period.<sup>42</sup> It can be clearly detected here that these numbers have decreased radically after the joint action plan and agreements implemented in 2015 and 2016. The numbers of illegal border crossings decreased from 885,386 at the end of 2015 to 182,277 in 2016, 42,319 in 2017 and 20,373 in 2021. This means that Turkey is still bound to the strategy against irregular migration and decision to maintain the cooperation with EU and UNHCR on this topic.

### **Evaluation of VLD Process**

As mentioned above, even the fulfilment effort of criteria for visa liberalisation created a lot of opportunities for the improvement and modernisation of the institutional capacity of Turkey. In addition to these developments, it is considered important to discuss the benefits that visa liberalisation will bring to Turkey. At the end of this dialogue process, Turkish citizens will benefit from visa exemption. First of all, the technical follow-up of transnational crimes will be carried out in a more comprehensive and systematic way by exchanging personal data information and improving the level of cooperation with Member States. Whether Turkey is a part of the route, to prevent transnational criminal organizations such as migrant smugglers, drug traffickers and global terrorists and to achieve the least damage, this exchange is an issue of great importance. Therefore, Turkey's success at the end of the negotiations will positively affect border securities both Turkey and EU in this context.

Secondly, VLD has positive effects for both parties, including the measures to be taken to improve the migration management capacity in Turkey in line with the relevant benchmarks. Turkey's being able to cope with irregular migration and convergence of its capacity to EU standards in follow-up would be also beneficial for the EU. Turkey's control over irregular migration from the Middle East is also important as well as re-implementation of the Readmission Agreement for preventing the flows of migrants entering the EU's borders.

Thirdly, the visa requirement for Turkish people causes injustices on the basis of economic, political and financial costs. For instance, more than 906 thousand Turkish

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<sup>41</sup> "Migratory Routes: Eastern Mediterranean Route", *Frontex*, Retrieved from <https://frontex.europa.eu/we-know/migratory-routes/eastern-mediterranean-route/> on 13 February 2022.

<sup>42</sup> "Irregular Migration", *Ministry Interior of Turkey Presidency of Migration Management*, 10 February 2022, Retrieved from <https://en.goc.gov.tr/irregular-migration#> on 13 February 2022.



people applied to have a Schengen visa in 2019.<sup>43</sup> With a simple measurement, it costs more than 54 million euros for the applicants. According to İKV Chairman Ayhan Zeytinoğlu, the expenses spent in 2015 on Schengen visa, could be directly used in more than 10 different humanitarian aid projects.<sup>44</sup> At the same time, the possibility of carrying out financial and commercial relations directly into people-to-people contact, instead of a virtual platform, will minimize transaction costs for both parties. Therefore Turkish citizens who want to work, travel and study in Europe would get rid of both time and material costs and paperwork by obtaining the right to enter the Schengen Area without a visa.

Year	C-type visa applied for	Visa fee	Total cost
2009	484 209	60 euro	29.05 million euro
2010	559 946	60 euro	33.60 million euro
2011	624 361	60 euro	37.50 million euro
2012	668 835	60 euro	40.13 million euro
2013	779 464	60 euro	46.80 million euro
2014	813 339	60 euro	48.80 million euro
2015	900 789	60 euro	54.05 million euro
2016	937 487	60 euro	56.25 million euro
2017	971 710	60 euro	58.30 million euro
2018	879 240	60 euro	52.75 million euro
2019	906 862	60 euro	54.41 million euro
2020	229 000	80 euro	18.32 million euro
<b>TOTAL</b>	<b>8,526,242</b>	<b>60 euro (80 euro after 2.2.2020)</b>	<b>529.96 milion euro</b>

Undoubtedly, one of the reasons of the prejudices against Turkish people in the basis of potential “Turkish influx into Europe” is the number of asylum applications made from Turkey to Europe. According to the answer of Federal Ministry of the Interior of Germany to the parliamentary question submitted by the Left Party (*Die Linke*), 10,356 asylum applications were made from Turkey to Germany in 2018, 10,833 in 2019 and

<sup>43</sup> “Statistics Reveal Schengen Consulates Received Almost 17 Million Applications in 2019”, *Schengen Visa Info*, 06 May 2020, Retrieved from <https://www.schengenvisainfo.com/news/statistics-reveal-schengen-consulates-received-almost-17-million-applications-in-2019/> on 13 December 2021.

<sup>44</sup> Ayhan Zeytinoğlu, “Visa Liberalisation for All Citizens Should Be a Priority”, *İktisadi Kalkınma Vakfı*, 24 March 2017, Retrieved from <https://www.ikv.org.tr/ikv.asp?id=1828> on 13 December 2021.



5,782 in 2020.<sup>45</sup> A total of 47,7% of Turkish asylum seekers were accepted. In the report prepared by the European Union Agency for Asylum (EUAA), it is announced that approximately 71,400 asylum applications were made to the EU in November 2021, of which 2571 (3.6%) were made by Turkish nationals.<sup>46</sup> This percentage places Turkish people in sixth rank behind Afghans, Syrians, Iraqis, Venezuelans and Pakistanis. In addition to that, the news that many of the Turkish citizens who went to Europe with the grey passports provided by the municipalities in Turkey as part of temporary travel did not return, became a very hot issue. According to the statement made by the Minister of Interior Süleyman Soylu, 804 of the 2,872 people who went Europe as a group from the municipalities after 2018 did not return despite the expiry of their passports.<sup>47</sup>

Here, the prejudices that form the basis of the phenomenon of “Turkish influx into Europe”, which is one of the most salient campaigns of far-right populism and an illusory political threat that accelerates the decision of Brexit process, should be re-evaluated. The scope of visa exemption to the Schengen Area allows up to 90 days travel for non-Schengen Area citizens and requires a different legal regulation from work and residence permits. In addition to this, the EU developed a mechanism titled “Visa Suspension Mechanism” in 2013<sup>48</sup> and fortified it in 2017.<sup>49</sup> Following this, if there is an increase of more than 50% in irregular migration or asylum applications from a country benefiting from visa liberalisation, a decrease in cooperation in readmission or a rise in security risk for member countries, there is a right for the member states to temporarily

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<sup>45</sup> “Türkiye’den İltica Başvurularının Yarısı Kabul Edildi”, *DW Türkçe*, 11 February 2021, Retrieved from <https://www.dw.com/tr/t%C3%BCrkiye-den-iltica-ba%C5%9Fvurular%C4%B1n%C4%B1n-yar%C4%B1s%C4%B1-kabul-edildi/a-56534927#:~:text=T%C3%BCrkiye'den%20990%20ki%C5%9Fi%20Mavi,784%20ki%C5%9Fi%20iltica%20ba%C5%9Fvurusu%20yapt%C4%B1> on 14 February 2022.

<sup>46</sup> “Latest Asylum Trends”, *EUAA European Union Agency for Asylum*, 28 January 2021, Retrieved from <https://euaa.europa.eu/latest-asylum-trends-asylum> on 14 February 2022.

<sup>47</sup> “Soylu: Gri Pasaportla Gidip Dönmeyenlerin Sayısı 804”, *Euronews*, 29 April 2021, Retrieved from <https://tr.euronews.com/2021/04/29/soylu-gri-pasaportla-gidip-donmeyenlerin-say-s-804> on 14 February 2022.

<sup>48</sup> European Union, “Regulation (EU) No 1289/2013 of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement”, 11 December 2013, retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1289&from=EN> on 25 February 2022.

<sup>49</sup> European Commission, “Visa Liberalisation: Commission Reports on Continued Fulfilment of Requirements by Western Balkans and Eastern Partnership Countries”, 4 August 2021, Retrieved from [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3965](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3965) on 25 February 2022.



suspend the visa exemption against that country.<sup>50</sup> Furthermore, this regulation also gives the Commission the right to activate the visa suspension mechanism if it considers that some conditions in the visa roadmap are no longer fulfilled. For instance, the Netherlands applied to Commission to suspend the visa exemption of Albania in 2019 due to the increase in the crimes of Albanian citizens.

The roadmap that Turkey has to fulfil is conducted on a different scale as a separated bargaining table from the accession negotiations. But it is worth stressing that some of the criteria in the roadmap are not different from the Commission's suggestions on the chapters in the accession negotiations. For example, Chapter 24: Justice, Freedom and Security has got many elements in common with the obligations of Turkey in the Readmission Agreement, 18 March Agreement and the VLD. As a matter of fact, with the completion of the VLD roadmap, Turkey expected that an important step will be taken for the accession and Chapter 24 would be opened to negotiations. Unfortunately, this chapter has not been open to negotiations yet despite the implementation of these criteria in the VLD and is still situated in the chapters blocked by the GCASC. However, EU can eliminate this arbitrary practice of GCASC and open Chapter 24 for negotiations to help improve Turkey's performance on the notions of democracy and rule of law that it has always been criticised.<sup>51</sup>

Among the countries with visa liberalisation (Annex II), there are EU candidates Albania, Montenegro, North Macedonia and Serbia; countries within the scope of the neighbourhood policy such as Georgia, Moldova and Ukraine; many island countries such as Panama, Samoa and Tuvalu, and countries from different continents such as Argentina, Australia, Singapore and UAE.<sup>52</sup> This indicates that the EU conducts and concludes the visa liberalisation dialogue on a very wide spectrum. Turkey's performance on the notions of democracy and rule of law could not be excused for the completion of VLD because of the conditions of Georgia and Ukraine who achieved to enter into Annex II as haven't got a successful performance on these notions. In addition

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<sup>50</sup> Yeliz Şahin, "Komisyondan Batı Balkan ve Doğu Ortaklığı Ülkeleri Vize Serbestliği Değerlendirmesi", İktisadi Kalkınma Vakfı Dergisi, 268, October 2021, p. 23

<sup>51</sup> For a statement by EU regarding these issues; see: Article 16 of Statement of the European Council meeting of 25-26 March 2021, European Council, Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2021/03/25/statement-of-the-members-of-the-european-council-25-march-2021/> on 13 November 2021.

<sup>52</sup> For an extended list of countries without visa requirement, see: European Union, "Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018: Listing the Third Countries Whose Nationals Must Be in Possession of Visas When Crossing the External Borders and Those Whose Nationals Are Exempt from That Requirement" amended by Regulation (EU) 2019/592 of the European Parliament and of the Council of 10 April 2019, 01.01.2021, Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018R1806-20210101&from=EN>



to this, the third countries whose nationals are exempt from the visa requirement cannot be categorized in a sense of major political priorities. Therefore it is the undue attitude to pay attention to the discourses of opposite groups against visa exemption of Turkish nationals who also perceive a VLD to be completed with Turkey as a threat and constantly bring it up in the Parliament.

Similar to the debates on Chapter 24, many of the promises given by the EU to Turkey have not been fulfilled. The first of these is the completion of the allocation of 6 (3+3) billion euros in total in December 2020 instead of should the end of 2018. As a result of Turkey's suspension of its obligations under the Readmission Agreement after the coup attempt in 2016, the issue of visa exemption for Turkish citizens, which was expected to start in October 2016, has also been suspended by EU. This situation led to the cessation of the visa liberalisation negotiations, deepening of mutual distrust. The aforementioned distrust is so deep that Turkish authorities and Turkish people believe that visa liberalisation will not be possible even if the requirements are met. Ultimately, the decision regarding visa liberalisation with Turkey will be approved with a qualified majority in EU Council, which is hard to achieve. Even if the EU Council will decide in favour of Turkey, there is still the approval of Parliament, which in recent years reiterated its demand to suspend negotiations with Turkey. For example, even though the Commission stated that Kosovo fulfilled all the benchmarks in the roadmap for visa liberalisation in July 2018 and the Parliament approved the visa liberalisation of Kosovo in November 2021, the EU Council is still pending its decision. On the other hand, while the Turkish side frequently reiterates its expectations for visa liberalisation, the attitude of the EU is perceived as an example of "carrot and stick" policy. This is due to the EU's use of democracy and rule of law within the scope of conditionality, regardless of the context. Undoubtedly, Turkey should take concrete steps on improving its performance of those vital principles, but if the EU's stance will be changed on this issue as not taking it as a "carrot", the EU can be more supportive of Turkey to make progress.

Nevertheless, Turkey calls on the EU to take concrete steps mutually to reactivate the VLD and bring it to a conclusion. The Turkish side has made many statements that it maintains its institutional capacity and its willingness to take concrete steps in this regard. In 2021, many statements have been made on this topic. One of them is the Deputy Minister of Foreign Affairs and Director for EU Affairs Ambassador Faruk Kaymakcı's article titled "Turkey and the EU" published on 11 September 2021 in The Economist Weekly Newsletter.<sup>53</sup> Another example was the press statement of Foreign

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<sup>53</sup> Faruk Kaymakcı, "Deputy Minister of Foreign Affairs and Director for EU Affairs Ambassador Faruk Kaymakcı's Article Published in The Economist Weekly Newsletter", *Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs*, 22 September 2021, Retrieved from <https://ab.gov.tr/deputy-minister-of-foreign-affairs-and-director-for-eu-affairs-ambassador-faruk-kaymakcis-article-published-in-the-econo-52713-en.html> on 15 November 2021.





Minister of Turkey Mevlüt Çavuşoğlu, after his two-day visit to Brussels, in which he stated that as a result of the examination he conducted with his colleagues, four of the benchmarks remained and that they would continue to take all necessary steps.<sup>54</sup> Making a joint press statement with his Slovakian counterpart on 16 March 2021, Çavuşoğlu reiterated Turkey's desire to make concrete progress regarding visa liberalisation, emphasising that the EU should listen to Turkey's demands for modernisation of migration agreement.<sup>55</sup> Additionally, he noted that the initiated steps such as Judicial Reform, Action Plan on Human Rights and Economic Reform would be supportive for fulfilling the remaining criteria.

However, the most important one of the developments was perhaps the Presidential Circular No: 2019/19 on the "Visa Liberalisation Dialogue Process with EU" published in No: 30892 of the Official Gazette on 18 September 2019. With this circular, it was stated that the works towards fulfilling the criteria coded in the Visa Liberalisation Roadmap for Turkey should be accelerated and the continuity for this should be ensured.<sup>56</sup> In this context, the Ministry of Foreign Affairs continues its cooperation meetings under the leadership of the Directorate of EU Affairs,<sup>57</sup> with the contributions of ministries, especially Ministry of Justice and Ministry of the Interior.

### **New Amendment Proposals within the Scope of the Schengen Area and EU Visa Policy**

While the VLD with Turkey continues, the EU develops new reforms to partially tighten its legislation, functioning and instruments on its visa policy. At the same time, these reforms also mean that the EU desires to reduce the costs only for itself and to increase the capabilities against security threats. These new amendments consist of European Travel Information and Authorisation System (ETIAS) and so-called "Schengen Reform".

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<sup>54</sup> Büşra Nur Bilgiç Çakmak, "EU, Turkey to work on new roadmap: Top Turkish diplomat", *Anadolu Agency*, 22 January 2021, Retrieved from <https://www.aa.com.tr/en/europe/eu-turkey-to-work-on-new-roadmap-top-turkish-diplomat/2119665> on 14 November 2021.

<sup>55</sup> "Turkey, EU can make improvements in visa liberalization talks: FM", *Daily Sabah*, 16 March 2021, Retrieved from <https://www.dailysabah.com/politics/eu-affairs/turkey-eu-can-make-improvements-in-visa-liberalization-talks-fm> on 14 November 2021.

<sup>56</sup> "AB ile Vize Serbestisi Diyalogu Süreci", *T.C. Resmî Gazete*, Cumhurbaşkanlığı Genelgesi 2019/19, 30892, p. 68, Retrieved from <https://www.resmigazete.gov.tr/eskiler/2019/09/20190918.pdf>

<sup>57</sup> "A coordination meeting on Turkey- EU Visa Liberalization Dialogue was held under the chairmanship of Deputy Minister of Foreign Affairs and Director of EU Affairs Ambassador Faruk Kaymakçı", *Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs*, 27 May 2021, Retrieved from <https://www.ab.gov.tr/a-coordination-meeting-on-turkey-eu-visa-liberalization-dialogue-was-held-under-the-chairmanship-of-deputy-minister-of-f-52566-en.html> on 16 November 2021.



European Commission has put forward a solution in order to reduce margin of error and to address security concerns arose from terrorism and migration crisis: ETIAS.<sup>58</sup> This regulation will be an IT-integrated electronic system that will be used to detect security, irregular migration and epidemic risks that may be posed by visa-exempted countries, and to monitor regularly the visa-free travel beneficiaries that do not pose a risk to cross the European borders. ETIAS will determine whether the applicant can be allowed to enter the Schengen Area country up to 90 days and will confirm that the applicant do not pose a security threat. For this, it will collect, follow and update the necessary information about the travellers. However, the information collection process will be applied one-sidedly. To put it simply, only “Schengen States” will collect the data of the citizens of the countries that have the right to visa-free travel to the Schengen Area (Annex II).

ETIAS was proposed by the Commission in 2016 and is expected to be implemented until the end of 2022. The then President of the European Commission Jean-Claude Juncker stated that on 14 September 2016:<sup>59</sup>

“We need to know who is crossing our borders. (...) Every time someone enters or exits the EU, there will be a record of when, where and why. By November, we will propose a European Travel Information System – an automated system to determine who will be allowed to travel to Europe. This way we will know who is travelling to Europe before they even get here.”

The only thing that has changed since this statement was the addition of “Authorisation” to the name of the system to be implemented. The main reason behind ETIAS has always been security. Its purpose has been preventing the entry of travellers who will endanger the security of the countries within the Schengen Area before their travel, and more importantly, to acquire the data of the citizens of the countries with visa exemption. In summary, Schengen States aim to shorten application period, to accelerate the detection and reduction of international crime and terrorism, to control irregular migration and strengthen the EU visa policy. However, this system will not be concerned by Turkey if it fulfils the remaining

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<sup>58</sup> European Commission, “EUR-Lex - 52016PC0731 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624 COM/2016/0731 final - 2016/0357 (COD)”, 16 November 2016, Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:731:FIN> on 15 February 2022.

<sup>59</sup> European Commission, “State of the Union Address 2016: Towards a Better Europe – a Europe that Protects, Empowers and Defends”, 14 September 2016, Retrieved from [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_16\\_3043](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_16_3043) on 15 February 2022.



obligations of VLD Road Map and enters Annex II. Because Turkey completed the regulations regarding biometric passports and will have fulfilled the benchmark of “provide effective judicial cooperation in criminal matters to all the EU Member States, including in extradition matters inter alia by promoting direct contacts between central authorities”.

As it is known, France took over the Presidency of the EU as of 1 January 2022. In the announced priorities, great importance was attributed to the revision of the Schengen regulation. At this point, it is expected that the relevant revision will be brought into force in reference to defence and sovereignty within the six-month period of the French Presidency. This revision contains introducing new rules and common tools to control the European borders. Besides the security threats, the lessons taken from the COVID-19 pandemic seem to be very effective in taking it to priorities to be enforced. Speaking at the meeting where “New Rules” was announced,<sup>60</sup> Commissioner for Home Affairs Ylva Johansson stressed that the pandemic has shown the importance of the Schengen Area for European economies and societies and that the EU provides new tools for common border controls as a last resort, to draw attention to the effects of the pandemic. The focus of the EU is to tighten visa policy and prepare a prescription to implement in case of a public health crisis as well as taking one more step close to the goal of “fully sovereign Europe”. Under the “New Rules”, Member States will have alternative tools at the EU’s borders such as more frequent, operational and co-operational police checks in borders, tools for facilitating crossings of cross-border workers and guaranteeing the smooth transit of essential goods. Member States will prepare a six-month risk analysis report and be able to impose restrictions on border crossings in cases where migrants are “instrumentalised for political purposes”. Finally, making an analogy with Eurozone, French President Emmanuel Macron proposed the establishment of the “Schengen Council” that would facilitate the joint decision-making and coordination in times of crisis regarding migration, asylum or public health.<sup>61</sup>

### **Conclusion: There is Not Enough Ground for Despair**

Although the Visa Liberalisation Dialogue (VLD) between Turkey and the EU has continued since 16 December 2013, the visa requirement issue dates back to the past.

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<sup>60</sup> European Commission, “Schengen: New Rules to Make the Area Without Internal Border Controls More Resilient”, 14 December 2021, Retrieved from [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6821](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6821) on 15 February 2022.

<sup>61</sup> Georgi Gotev, “Macron Seeks Reform of Schengen Mirroring the Eurozone”, *EurActiv*, 3 February 2022, Retrieved from <https://www.euractiv.com/section/justice-home-affairs/news/macron-seeks-reform-of-schengen-mirroring-the-eurozone/> on 15 February 2022.



With the decision on visa requirements by five Member States and the implementation of a permanent border control system with the Schengen Agreement signed in 1985, Turkish citizens are obliged to have a visa to travel within the borders of the EU. Turkey's main argument with respect to taking a stand against visa requirement was the "standstill" clause in Article 41(1) of the Additional Protocol. Under this provision, although Turkey gained achievement in the first case was referred to ECJ, another decision was taken against Turkey, which turned into case law in the second case.

With the launch of the VLD in parallel with the Readmission Agreement, the EU has committed that Turkish citizens would benefit from visa exemption in exchange for a Roadmap of 72 criteria that Turkey must fulfil. As stated in the Third Progress Report, which is the last published progress report, in 2016, Turkey still has six criteria to fulfil.

A necessary revision in the definition of terrorism may be quite possible shortly. Maintaining a concept open to interpretation and even applying it in a broad perspective in practice is not something that can be in favour of anyone, and causes it to be even diluted. Therefore, it is useful to state that the arrangements to be made in this regard are also reasonable for Turkey. In addition, the first-ever High Dialogue<sup>62</sup> and agreed points on migration and security between Turkey's Minister of Interior Soylu and European Commissioner for Home Affairs Ylva Yohansson on 12 October 2021 raised hopes for the re-implementation of the provisions of the Readmission Agreement. The other technical barriers for visa liberalisation are "cooperation with EUROPOL" and "adopting a new legislation on the protection of personal data" which can be easily solved with the comprehensive alternative suggestions of Turkey and so on. However, Turkey and the EU launched negotiations for an agreement regarding the exchange of personal data with EUROPOL on 30 November 2018. But, no further development in the negotiations could be achieved.

Although the visa liberalisation dialogue process, which Turkey has been carrying out with the EU for about eight years, has not come to an end yet, there is no room to be hopeless. Turkey keeps its hopes and technical capacity quite high despite and to a degree because of the conditionality policy<sup>63</sup> it has faced. As stated above, Turkey's

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<sup>62</sup> "First Turkey-EU High-Level Migration and Security Dialogue Held in Ankara", *IKV Monthly*, 78: November 2021, Retrieved from [https://www.ikv.org.tr/images/files/IKV\\_Monthly\\_No78\\_November\\_2021.pdf](https://www.ikv.org.tr/images/files/IKV_Monthly_No78_November_2021.pdf) on 15 December 2021.

<sup>63</sup> For a statement of Charles Michel regarding conditionality; *"The conclusions are based on the idea that, first, we have decided to task the Commission and the High Representative to propose a possible positive agenda, but conditional. It means that we hope that Turkey will maintain moderate behaviour, positive behaviour, in the next weeks and in the next months."* See: <https://www.consilium.europa.eu/en/press/press-releases/2021/03/25/remarks-by-president-charles-michel-following-the-video-conference-of-the-members-of-the-european-council-25-march-2021/> on 15 November 2021.



possibilities and solution proposals are ready for the remaining six benchmarks. Additionally, the VLD, which was offered in return for the Readmission Agreement, was to be completed in 2016, as stated in the 18 March Agreement. Although financial aid continues to come from the EU, the irregular migration agenda also continues by spreading to new regions, as seen in the instances of Afghanistan and Belarus. In the report published by the World Bank, it is predicted that 216 million people will be forced to migrate due to water scarcity, declining soil productivity, sea-level rise and climate change as a whole, by 2050.<sup>64</sup> Therefore, it is quite misleading to expect that the immigration problem will alleviate unless a permanent solution is found. Considering Turkey's successful struggle against irregular migration and its intention to continue cooperation, it is essential and rational to re-establish the relations between Turkey and the EU based on mutual trust.

Turkish side continuously declares its intention for the revitalization of negotiations on visa liberalisation and its preparedness for the completion of VLD. The last of these is the statement made by President Erdoğan on 18 November 2021.<sup>65</sup> In his statement, President Erdoğan emphasized that the EU should approach its relations with our country from a strategic perspective, should take concrete steps, and stressed the urgency of starting the visa liberalisation actions as soon as possible. In addition, reviving Turkey-EU relations in line with positive agenda and the Green Deal can be crowned with the progress on modernisation of Customs Union and especially visa liberalisation. And also, visa liberalisation can add a significant dynamism for spilling over the process and gaining momentum towards improving the hope for the accession of Turkey into EU. In other words, visa liberalisation still has the potential to restore the trust between two parties.

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<sup>64</sup> "Groundswell Report: Climate Change Could Force 216 Million People to Migrate Within Their Own Countries by 2050", *World Bank*, 13 September 2021, Retrieved from <https://www.worldbank.org/en/news/press-release/2021/09/13/climate-change-could-force-216-million-people-to-migrate-within-their-own-countries-by-2050> on 14 December 2021.

<sup>65</sup> "Vize Muafiyeti Bir An Önce Başlatılmalı", *Hürriyet*, 18 November 2021, Retrieved from <https://www.hurriyet.com.tr/gundem/vize-muafiyeti-bir-an-once-baslatilmali-41941769> on 14 December 2021.

