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Between the legacy of nation-state and forces of globalisation:
Turkey's management of mixed migration flows

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Abstract

Turkey, at the crossroads of Europe, Middle East and Asia, has confronted with mounting pressures of mixed migration flows in recent decades. This paper aims to explore Turkey's contemporary approach to migration management by focusing on the adoption of the country's first comprehensive immigration law (Law on Foreigners and International Protection) and the signing of the readmission agreement with the European Union in 2013. This incorporates an analysis of both policy continuities and changes in migration management in Turkey, while also providing an understanding of the interplay between internal and external factors, namely internationalisation and Europeanisation processes and the responsiveness of domestic actors to such pressures. The paper argues that migration policies driven solely by state-centric concerns are becoming increasingly inefficient in responding to the challenges caused by interlinked pressures of globalisation and multi-layered migratory flows. As Turkey's role as a transit and receiving country grows, issues of international migration, and irregular migration in particular, are becoming dynamic topics in defining its role in a globalised world and as well as the trajectory of its relations with the EU.

Keywords

Introduction

Increasingly confronted by the interlinked pressures of transnational migration, globalisation and Europeanisation, developing a comprehensive approach to migration management has become a pressing domestic policy issue in Turkey. While population movements into and from Turkey have continuously taken place since the early years of its nation-state building process, the country's migration profile has rapidly changed in scope and nature due to incoming mixed migration flows in recent decades. Along with Syria and Lebanon, Turkey is situated on the East Mediterranean route, one of the five major global irregular routes of mixed migration flows, transiting the Middle East towards the Mediterranean region and Europe.[1] The numbers of detected irregular migrants at the southern borders of the European Union (EU) using the East Mediterranean route has steadily increased from 10,000 in 2004 to above 50,000 in 2011 (see Figure 1, p.3).

Since the early 1990s, Turkey has gradually started transforming its approach to migration management by becoming parties to international treaties, participating in regional and international networks, and strengthening its institutional ties with international organisations working on migration and asylum. And throughout the 2000s, this transformation has become closely intertwined with the European Union (EU) accession process since the adjustment to the EU *acquis* in the field of migration and asylum has become a pre-condition for joining the EU. Despite the slowdown in accession talks due to a number of domestic and external factors since 2006, the launch of the Positive Agenda in December 2011 was considered as a crucial step for its potential to revitalise the accession negotiations through enhanced cooperation in a number of areas including migration and visas. In its efforts to comply with the EU law and as well as to deal with domestic challenges, Turkey adopted the Law on Foreigners and International Protection (hereafter the new law) in April 2013, a remarkable turning point towards the establishment of an effective institutional and legislative framework for migration management. Furthermore, Turkey's status as a major country of transit to the EU adds further pressure on domestic policy formation given that the EU has intensified its efforts to transfer responsibility to non-EU countries of origin and transit in the general framework of EU's external migration policy. The signing of the EU-Turkey Readmission Agreement in December 2013 illustrates this point since the EU's incentive to initiate visa-liberalisation talks with Turkey as a parallel process has surmounted earlier domestic persistence to policy change in this particular field.

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[1] 2010 Mediterranean Transit Migration (MTM) Map on Irregular and Mixed Migration Routes, available at: https://www.imap-migration.org/index.php?id=457.

Figure 1: 2010 Mediterranean Transit Migration (MTM) Map on Irregular and Mixed Migration Routes
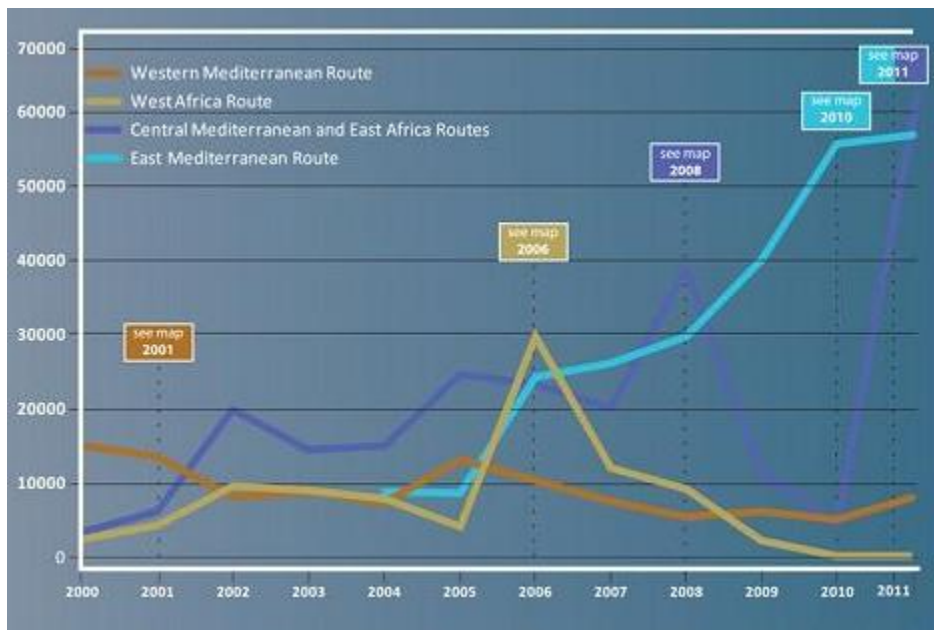
Source: International Centre for Migration Policy Development (ICMPD), 2014

This study intends to examine how Turkey as a country of emigration, immigration, and transit migration responds to challenges concerning migration management by tracing the processes that led to the adoption of the new law and the signing of the EU Readmission Agreement. Before proceeding to the discussion of these two policy developments that were continuously pinpointed in the EU Commission Progress reports as areas where domestic arrangements are required, the first section provides a brief overview of Turkey's migration profile. Following Knill's (2005) conceptualisation of policy convergence as 'any increase in the similarity between one or more characteristics of a certain policy (policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time', the second section outlines the external effects of the EU migration regime and its influence mechanisms as a framework for analysis. The third section incorporates an analysis of both policy continuities and changes in migration management in Turkey, while also providing an understanding of the interplay between internal and external factors, namely internationalisation and Europeanisation processes and the responsiveness of domestic actors to such pressures. It argues that the EU has played a pivotal role in strengthening migration management in Turkey and its influence has interacted with Turkey's own transformation process. As will be elaborated further in this paper, the process leading to the adoption of the new law has initiated a period of internalisation in which there is more awareness and acknowledgment of domestic problems among state agencies and the emerging collaborative framework between state and non-state actors contributes to this process.

Methodology

The paper relies on secondary literature, a large range of primary documentary sources from the EU, Turkey, and non-governmental organisations (NGOs). It also presents original empirical material by incorporating the findings of twenty-two semi-structured interviews conducted with public officials, IGO and NGO representatives (including lawyers and academics who also work for the NGOs) between January 2013 and January 2014. Public officials include representatives from the Turkish Ministry of Interior, Turkish Ministry of Foreign Affairs, Turkish Ministry of EU Affairs, the General

Directorate of Security –including police officers from the foreigners' department and border management units–, and members of the Turkish Parliament Human Rights Committee (nine interviewees in total). IGO interviewees include staff members of the International Organisation of Migration (IOM) mission to Turkey and the United Nations High Commissioner for Refugees (UNHCR) Turkey Office (four interviewees in total). NGO interviewees include the representatives of organisations comprising the 'Coordination for Refugee Rights': Helsinki Citizens Assembly, Human Rights Research Association, Human Rights Association, Human Rights Agenda Institution, Association for Human Rights and Solidarity with the Oppressed, Association for Solidarity with Refugees, and Amnesty International Turkey (nine interviewees in total).

The objective of conducting in-depth semi-structured interviews was to explain causal relationships, understand individual experiences on recent policy developments, and to highlight the opinions and attitudes of actors who may have exerted influence over the domestic policy agenda. Accordingly, the selection of interviewees followed purposive sampling and snow-ball sampling based on the criteria that the interviewee was either actively involved in the drafting process of the new law or in the consultation process prior to the signing of the EU readmission agreement. The process-tracing method is used in the analysis of interviews with the aim of finding sequences and mechanisms in the analysis of events –drafting process of the new law and the signing of the readmission agreement- so as to understand causal processes. As Brady and Collier suggest (2010), process tracing backward from observed outcomes to potential causes – as well as from hypothesized causes to subsequent outcomes- has allowed uncovering variables that have not been previously considered by the author, *i.e.* the internalisation process since 2008 that has generated the idea and discourse among domestic actors that Turkey needs to have an effective migration management system on its own even in the absence of pressures emanating from external factors.

1. Background: Turkey's migration profile

In the European migratory regime, Turkey is traditionally depicted as a migrant-sending country due to large-scale emigration of Turkish nationals to Western European countries as part of labour migration schemes starting from the early 1960s.[2] Later expanding with movement of families of labour migrants, asylum-seekers and professionals, data compiled by İçduygu *et al.* (2013:4) indicates an annual number of 100,000 emigrants leaving Turkey in the mid-1990s. While this number has stabilised between 50,000 and 60,000 in recent years, the number of asylum applications by Turkish citizens to various EU countries also demonstrates a steady decline, from more than 40,000 asylum applications in 1995 to 28,000 in 2000 (Kirişçi 2014), which further decreased to 6212 in 2012 and 5640 in 2013, respectively.[3] Given that the number of migrants to Turkey has surpassed the number of migrants from Turkey in 2010 (İçduygu *et al.* 2009:1), Turkey's predominantly migrant-sending position is increasingly accompanied by its status as a country of immigration and transit (Kirişçi 2003).

Indeed, Turkey has a long tradition of accepting migrants and refugees especially of Turkish origin and culture (Kirişçi 1996: 387), which could be categorised as the 'old immigration patterns' into and through Turkey (Suter 2013:5). It is estimated that more than 1.6 million Turks and Muslim ethnic

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[2] The population of Turkish nationals currently living in Western Europe is around four million, constituting the largest immigrant community in EU-27. See, Turkish Ministry of Foreign Affairs, 'Turkish citizens living abroad', available at: http://www.mfa.gov.tr/the-expatriate-turkish-citizens.en.mfa

Also see, EURSTAT, 'Main countries of origin of non-nationals in the EU-27', available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/File:Main_countries_of_origin_of_non-nationals,_EU-27,_1_January_2012_(1)_(million)_YB14.png

[3] Eurostat asylum statistics, available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/File:Countries_of_origin_of_(non-EU)_asylum_seekers_in_the_EU-28_Member_States,_2012_and_2013_YB15.png

groups from the Balkans, Caucasus and Central Asia immigrated to Turkey between 1923 and 1995 (Kirişçi 2000). Accordingly, one of the defining features of the Turkish state's policy towards migrants, refugees and asylum-seekers has been the policy's close linkage to the notion of national identity that relies on the perception of one common Turkish culture (Kirişçi 2000: 49). The use of terminology to differentiate between a 'migrant' (göçmen) and a 'foreigner' (yabancı) in the Turkish legal context illustrate this linkage. According to the 1934 Law on Settlement, one of the major legal sources of Turkish immigration law for decades, only a 'person of Turkish descent and who is attached to Turkish culture' could possibly migrate and settle in Turkey or acquire refugee status (Kirişçi 2001:73).[4] The new law on settlement (2006) adopted during the EU accession process preserves this definition; however, it only refers to the admission and settlement of migrants, not refugees.[5] Foreigner, on the other hand, is used to define a person 'who has no citizenship bond with the State of Republic of Turkey' and their status has been regulated by various legislations such as the Passport Law (1950), the Law on Residence and Travel of Foreigners (1950) until the adoption of one single body of law, the Law on Foreigners and International Protection (2013).[6] As examined in this study, the new law is designed to enhance Turkey's administrative and institutional capacity so as to cope with the pressures of 'new immigration patterns' (Suter 2013:5) of regular and irregular migrants from diverse nationalities. With reference to irregular movements, which are often inter-linked, irregular labour migration, transit migration and asylum flows have significantly increased in the last three decades.[7] (see, Figure 2, p.9). Turkey's relatively prosperous and stable profile in contrast to continuing political and social upheavals in neighbouring regions, and the application of liberal and flexible visa policies towards the neighbouring countries all contribute to Turkey's position as a destination/transit country. Furthermore, increasing immigration controls and restrictive entry measures implemented by the European countries in comparison to difficulties associated with establishing effective controls at Turkey's eastern and south-eastern borders are often considered among factors generating irregular migration movements towards Turkey (İçduygu 2004:89-90).

A number of case studies tackle the gender, nationality and sectoral dimensions of irregular labour migration in Turkey (see, Ünal 2008; Eder and Öz 2010; Suter 2013). One major group within this category are the circular/shuttle migrants coming mainly from the Common Wealth of Independent States (CIS) and the Balkans, who either engage in suitcase trade or find employment in households, sex and entertainment businesses, agriculture and construction sectors (İçduygu and Yükseker 2012). Turkey is also a transit country for various Asian and African nationals, ranging from Iraq, Pakistan to Somalia and Mauritania, who intend to continue their journey towards EU countries. While some scholars focus on factors explaining the transit movements through Turkey (see, Koser-Akçapar 2004; Suter 2013), some others highlight that Turkey has become more than a 'stepping stone country' for particular nationals. In the case of sub-Saharan migrants, for instance, Fait (2013) demonstrates that Turkey's growing economic and diplomatic ties with a number of African countries, hence the possibility of obtaining a visa easily, leads to an increasing number of transit migrants from this region to consider Turkey as a country of settlement both for legal and illegal stay. The apprehension figures give a rough estimate on the numbers of irregular migration in Turkey; however, there is no accumulative data on different forms. According to the figures provided by the Ministry of Turkish Foreign Affairs and the EU Commission progress reports, the number of irregular migrants apprehended by Turkish authorities was around 95,000 in 2001 and 2002. In 2012, the apprehension numbers were decreased to 47,510, yet still indicating an increase of 7 per cent compared with

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[4] Law on Settlement, No.2510, 14 June 1934, Official Journal No. 2733

[5] Law on Settlement No. 5543, 19/9/2006 available at: http://www.resmigazete.gov.tr/eskiler/2006/09/20060926-1.htm

[6] Law on Foreigners and International Protection, No. 6458/2013, available at: http://www.refworld.org/docid/5167fbb20.html

[7] A comprehensive data set compiled by İçduygu (2011) provides further insight into the key features of irregular migration flows towards Turkey and from Turkey to Europe, which also indicates a declining trend in the last decade. According to these figures, 55,000 irregular migrants were apprehended annually between 1995 and 2009.

2011(See Figure 3, p.10). [8] Based on apprehension figures in relation to countries of origin, İçduygu and Yükseker (2012:448) argue that controlling transit migration has been more effective than reducing circular labour migration since labour migrants often enter Turkey legally unlike many transit migrants. As they elaborate further, this partly stems from the fact that Turkey's visa regime facilitates irregular labour migration from the CIS whereas tougher visa rules for Asian, Middle Eastern and sub-Saharan countries result in more illegal entries by nationals from these regions (İçduygu and Yükseker 2012:448).

The 'migration-asylum nexus' is also evident due to the deficits of the Turkish asylum system, thus blurring the distinction between asylum seekers and irregular migrants.[9] Turkey grants refugee status based on the geographical limitation invoked in the 1951 Convention relating to the Status of Refugees. This procedure results in the application of a two-tier asylum policy, in which only European nationals (Convention refugees) are able to attain refugee status. For refugee status determination of non-European nationals (non-Convention refugees), the Turkish authorities work in collaboration with the UNHCR to find them a third country for resettlement. While this lengthy process leads to a 'legalised transit' phase for those awaiting resettlement, there are cases where rejected asylum seekers continue to stay in Turkey or become irregular transit migrants (İçduygu and Yükseker 2012:449; Fait 2013:26). According to UNHCR's statistics, the number of asylum applications Turkey received over the past two years has exceeded 50,000 (mainly from Iraq, Iran and Afghanistan), signifying a substantial increase compared to the total number of 31,000 asylum applications received between 1997 and 2007 (İçduygu and Yükseker 2012:449). [10] Given Turkey's complex migration situation, the following sections will elaborate on the multifaceted aspects of its management within the context of EU-Turkey relations.

Figure 2: Irregular Migrants, Transit Migrants and Irregular Labour Migrants in Turkey, 1995-2009, Top Ten Source Countries

Irregular Migrants		Transit Migrants		Irregular Labour Migrants	
COUNTRY	TOTAL MIGRATION	COUNTRY	TOTAL MIGRATION	COUNTRY	TOTAL MIGRATION
Iraq	129 454	Iraq	129 454	Moldavia	55 022
Pakistan	69 660	Pakistan	69 660	Georgia	25 344
Afghanistan	59 281	Afghanistan	59 281	Rumania	24 168
Moldavia	55 022	Iran	28 432	Russian Federation	20 470
Iran	28 432	Palestine	25 398	Ukraine	20 566
Palestine	25 398	Bangladesh	21 593	Azerbaijan	17 382
Georgia	25 344	Somalia	21 533	Bulgaria	12 831
Rumania	24 168	Mauritania	15 690	Germany	7 929
Somalia	21 533	Syria	11 147	Armenia	6 805
Bangladesh	21 593	Burma (Myanmar)	10 569	United Kingdom	5 998
Others	336 609	Others	79 746	Others	138 045
TOTAL	796 494	TOTAL	461 934	TOTAL	334 560

Source: Compiled by İçduygu (2011) based on data from the Bureau for Foreigners, Borders and Asylum at the Directorate of General Security of the Ministry of Interior

[8] Main documents on Turkey's EU accession process are available at: http://www.ab.gov.tr/index.php?p=123&l=2

[9] For a detailed discussion of the issue, see Soykan (2010) 'The migration-asylum nexus in Turkey', available at: http://www.nottingham.ac.uk/sociology/prospective/postgraduate/enquire/enquire-pdfs/5th-soykan.pdf

[10] See, UNHCR asylum statistics on Turkey (for non-Syrian refugees), available at: http://www.unhcr.org.tr/?lang=en&content=178

Figure 3: Apprehension numbers provided by the Turkish authorities

Year	Apprehended Illegal Migrants	Apprehended Human Smugglers
2000	94,514	850
2001	92,365	1155
2002	82,825	1157
2003	56,219	937
2004	61,228	957
2005	57,428	834
2006	51,983	951
2007	64,290	1242
2008	65,737	N/A
2009	34,345	1027
2010	32,667	750
2011	44,415	N/A
2012	47,510	N/A

Source: Compiled by the author based on the data from the Turkish Ministry of Foreign Affairs and EU Commission Progress Reports on Turkey, 2014

2. Framework for analysis: The external effects of the EU migration regime and its influence mechanisms

In an attempt to conceptualise how international processes, actors and institutions contribute to domestic policy change and cross-national policy convergence, Bush and Jorgens (2005:862) suggest looking at the effects of three international policy convergence mechanisms. The first mechanism concerns the *harmonisation* of domestic policies through international agreements or supranational law, while the second mechanism involves *imposition* of policies from forceful coercion to economic and political conditionality. The imposition of policies may indicate 'coercive policy transfer' in exchange of various incentives offered by the external actors, which they illustrate with the example of EU membership conditionality. As Bush and Jorgens (2005: 863) elaborate further, 'imposition occurs when external actors intentionally force nations to adopt policy innovations which they would not have adopted otherwise and do so by exploiting economic and political power asymmetries'. The third mechanism entails *diffusion* of policies through information flows rather than by hierarchical or collective decision-making within international institutions, which could also be explained as 'voluntary process transfer'. [11]

Commonly linked to the concepts of national sovereignty and national security, policies concerning migration, asylum and border controls are traditionally treated as issues falling under the domestic jurisdiction of states (Lavenex and Uçarer 2002; Triandafyllidou 2011). As a burgeoning scholarly field, new conceptual and analytical frameworks are being developed for understanding causes, effects and patterns of migration management, while at the policy-level, states increasingly seek for policy solutions, engage in processes of policy learning and policy transfer with the intention of adapting better practices to their domestic contexts. With particular reference to the countries of the European migration regime, a broad range of comparative and interdisciplinary studies have addressed historical

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[11] For various conceptualisations of policy convergence, policy transfer and policy diffusion, see Knill (2005) and Holzinger and Knill (2005).

and contemporary state policies of managing regular and irregular forms of migration. While there is more emphasis on diverse nature of policy practices in earlier studies, a burgeoning scholarly literature reflect upon converging migration policies across Europe that have simultaneously developed with the process of deepening and widening European integration since the mid-1980s (see, Castles and Miller 1993; Collinson 1993; Fassmann and Münz 1994; Geddes 2003; Heisler 1985; Hollifield 1992; Kraller 2009; Miles and Thranhardt 1995). The EU's emergence as a transnational actor without internal borders has initiated a process of 'ad-hoc and informal cooperation' among EU member states in migration and asylum issues, which has gradually developed into an extensive policy framework (Geddes 2000; Jordan *et al*. 2003; Kirişçi 2003; Kostakopoulou 2000).

Studies providing a comprehensive analysis of the EU's migration policy and causes of policy convergence within the EU also emphasise that the common migration regime has developed simultaneously with a strong external dimension (Boswell 2003; Geddes 2005; Lavenex 2006). As Lavenex and Schimmelfennig explain (2009:792), like in various domestic policy fields, this transfer process of EU rules and policies to third countries and international organisations in the area of migration is an integral part of the EU's external governance models, 'which can also emerge spontaneously when mutual interdependence is high and adaptation to EU templates meets the interest of third countries or international organisations'. Accordingly, the growing emphasis on policies outside the territory of the Union such as combating irregular migration has naturally linked sender and transit countries of migrants to EU policies and institutions (Lavenex and Uçarer 2002:2). One of the early externalisation instruments for controlling migration flows to Europe was strengthening the return dimension of migration policy through the conclusion of multilateral readmission agreements with third countries (Lavenex 2006).[12] Since the competence to negotiate and conclude readmission agreements with third countries was conferred on the European Community in 1999, the readmission and visa-facilitation agreements gained increasing importance in the EU's external relations.[13] Readmission agreements have become effective technical instruments for transferring responsibility to non-EU countries of origin, transit and destination in the control/management of irregular migration (Kruse 2006).

Recent scholarly work also demonstrates the shift towards 'management of migration' is closely linked to the emergence of 'good governance' discourse at the EU level (See, İçduygu 2011). Even though challenges faced by the EU Member States in coping with pressure of migration are no less significant than before and control measures still prevail, the migration management rhetoric also entails establishing stronger cooperation with third countries, thus transferring responsibility through offering concrete incentives. Linking readmission agreements to visa facilitation agreements, for instance, provides a strong incentive for the third country in terms of creating opportunities for mobility, while also benefiting the EU in terms of preservation of security and reducing risks of irregular migration.[14] As will be elaborated in the following sections, recent developments in Turkey's migration policy also demonstrate a shift towards 'better management' and 'good governance' over the last decade.[15]

In exploring how the EU's external migration policy contributes to domestic policy change in a candidate state, such as Turkey – which also happens to be one of the major transit countries of irregular migration to the EU – Bush and Jorgen's (2005) second mechanism of imposition provides a plausible point for analytical departure. However, as Lavenex (2002) suggests with particular reference to the external effects of the EU migration regime, the policy transfer could either take place

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[12]   'The first multilateral readmission agreement was signed between the Schengen states and Poland in 1991'. For a comprehensive discussion, see S Lavenex (2006)

[13]   Title IV, Article 63 Treaty establishing the European Community.

[14]   European Commission, 'Evaluation of EU Readmission Agreements', COM (2011) 76 final, February 2011, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF

[15]   Also see, Elitok (2012)

voluntarily or by direct imposition. In the case of voluntary policy transfer, the process could encompass variety of modes from policy diffusion, policy convergence, policy learning to lesson drawing. If the policy transfer occurs either through direct imposition or conditionality, the intensity of adjustment may take different degrees. The most complete form of adaptation may be referred to as when the third country entirely copies/ transfers policy norms, instruments, programmes and institutional structures (Lavenex 2002). In the case of Turkey, the scope and contents of policy transfer in migration is largely shaped by the country's accession process to the EU, hence its Europeanisation process. Thus, incorporating a bottom-up approach into a top-down perspective of Europeanisation allows focusing not only on the policy outcomes, but also on the domestic effects. This overall helps to achieve 'a more precise assessment of the degree to which Europeanisation may have caused or reinforced a process of change' (Bull and Baudner 2004:1058).

Several studies have addressed Turkish state's policies of managing regular and irregular forms of migration within the context of EU-Turkey relations (Kirişçi 2003; İçduygu 2011; Özçürümez and Şenses 2011). This study elaborates on recent policy developments in Turkey taking into account Knill and Lehmkuhl's (2002) classification of three mechanisms of Europeanisation. While these are presented as analytically distinctive mechanisms, Knill and Lehmkuhl (2002:276) also emphasise their potential interdependence within a particular policy area, thus the presence of hybrid forms of Europeanisation, implying that the three mechanisms of Europeanisation may mutually bolster or weaken each other. The first form of Europeanisation focuses on *institutional compliance* where EU policies are highly prescriptive and their adoption requires fulfilment of specified measures by member and candidate states (Knill and Lehmkuhl 2002: 257). More precisely, EU policy stipulates a model for domestic structures, leaving limited institutional discretion for states when deciding the specific arrangements for compliance with EU requirements (Knill and Lehmkuhl 2002: 257-8). The second mechanism refers to changes in *domestic opportunity structures*, which may alter distribution of power and resources between domestic actors. While these adjustments pose challenges to the domestic equilibrium, the Europeanisation mechanism does not prescribe any distinctive institutional model, but instead aims to achieve certain policy objectives in a less direct way (Knill and Lehmkuhl 2002: 258). The third mechanism of Europeanisation is through *framing domestic beliefs and expectations of domestic actors*, which trigger adjustments to EU policies even more indirectly. Changes in domestic beliefs may modify strategies and preferences of domestic actors, reinforcing a stronger support for broader European reform objectives, which potentially lead to subsequent institutional adaptations (Kohler-Koch 1999). While the first two mechanisms are mostly related to policy transfer, policy learning plays an important part in the third mechanism.

3. Management of migration in Turkey: recent developments, new challenges

As İçduygu and Aksel suggest (2012:12), development of migration management strategies in Turkey could be assessed in four consecutive periods: the fertilisation period from 1979 to 1987, the maturation period between 1988 and 1993, the saturation period from 1994 to 2000/2001, followed by the period of degeneration since 2001 onwards. As will be discussed below, this study limits the period of degeneration to 2008 and suggests that a new period of internalisation begins from 2008 onwards.

The fertilisation period is mainly characterised by the arrival of Iranian transit migrants following the Iranian Revolution of 1979 who stayed in Turkey until they migrated to a third country, while the maturation period encompasses various forms of migratory flows including the circular labour migrants from the Soviet Republics and the massive influx of asylum seekers from Iraq and Bulgaria (İçduygu and Aksel 2012). Accordingly, the saturation period from 1994 is marked the pursuit of more

active migration control strategies with the adoption of the 1994 Regulation on Asylum. [16] The Regulation, predominantly reflecting the security concerns of the Turkish authorities over increasing migration and asylum flows, is the first legal source in Turkish national law governing the status of refugees and asylum seekers from outside of Europe without lifting the geographical limitation. Although the Regulation intended to bring some improvements, its implementation has been problematic due to lack of experience, knowledge and awareness of Turkish authorities to carry out the process of refugee status determination (Kirişçi 2001:81). Thus, cases of deportations breaching the principle of non-refoulement and the strict rules introduced by the Regulation for access to asylum procedures drew widespread international criticism during this period, presumably having an impact on the emergence of a close cooperation framework between the Turkish authorities and the UNHCR Representation in Turkey from this period onwards (Kirişçi 2003: 86-7). Indeed, there are further indicators that the international actors became more involved in assessing/supporting Turkey's governance of migration since the International Organisation of Migration (IOM) also opened two offices in Turkey in 1991 and 1994.[17] From 1997 onwards, improvements in the implementation of the 1951 Convention, revision of the 1994 Regulation for fair procedures (in 1999) are among some of the developments highlighting early harmonisation efforts with international norms and standards during the saturation period. In his comprehensive study on the development of institutional ties between Turkey and the UNHCR, Kirişçi (2001) demonstrates that the UNHCR has played pivotal role in this process by 'winning the trust and goodwill of Turkish officials', conducting training and education programmes, encouraging the emergence of civil society groups advocating the rights of refugees and asylum-seekers, thus contributing to the policy-learning process.[18] Furthermore, Turkey's ambition to become a member to the EU has been materialised with the declaration of its candidacy status in 1999, incorporating the EU dimension to the management of migration. As will be elaborated in the following sections, developments resulting from internationalisation during the saturation period, such as the growing role and activities of the UNHCR, ratification of international treaties and the emergence of national advocacy networks gained more significance with the intensification of the Europeanisation process in the succeeding degeneration period.

Starting from 2000/2001, the groups of irregular migrants in Turkey further diversified, as discussed earlier, including migrants mainly coming from Ukraine or Moldova working in farming, construction sectors or employed as domestic workers; those coming from the Middle East (mostly Iranians and Iraqis) and Asia (mostly from Afghanistan, Bangladesh and Pakistan), who often consider Turkey as a transit zone while they try to enter Europe.[19] Another group of irregular migrants includes the rejected asylum seekers, who look for job opportunities rather than going home and wait to migrate to another country.[20] The reason why İçduygu and Aksel (2012) refer to this period as 'degeneration' could be related to the growing concerns over issues of irregular migration, trafficking and smuggling affecting Turkey in the early 2000s, and yet the lack of legal and political strategies to cope with these pressures. This could be elaborated further with reference to the EU's 2001 Progress Report on Turkey, which states 'serious concern about illegal migration flows in Turkey', 'no progress in the ratification of international instruments pertain to combating illegal migration', while highlighting the absence of minimum standards for eliminating trafficking despite the fact that the

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[16] The 1994 Regulation on Procedures and Principles related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country, No: 94/6169, the Official Gazette, No. 22127, 30 November, 1994.

[17] Turkey became a full member of IOM in 2004. Further information available at: http://www.turkey.iom.int/

[18] Kirişçi (2001:88) also draws attention to the behind-the-scenes role of individual governments, especially the United States, Canada, Australia and the Netherlands, in pushing the Turkish authorities for improving its migration management strategies.

[19] See, IOM (2008) 'Migration in Turkey: A country profile', International Organisation for Migration. Available at: http://www.turkey.iom.int/documents/migration_profile_turkey.pdf?entryId=10260

[20] See, IOM (2008)

country has become a 'destination and transit country for trafficking of human beings'. [21] The Turkish government promptly introduced new articles to the Penal Code in August 2002 criminalising human smuggling and trafficking –which did not exist before-, and introduced stricter controls at borders and ports. And in line with the EU acquis, the government later adopted a new Criminal Code in 2005, specifying penalties for migrant smuggling from three to eight years imprisonment and for human trafficking eight to twelve years imprisonment and a monetary fine (Articles 79-80: Unlawful Transfer of Immigrants to a Country and Human Trade). [22] In dealing with irregular labour migration, new legislation was also introduced in 2003 for facilitating legal employment opportunities for foreigners, increasing penalties for unregistered employment and centralising the system under the Ministry of Labour and Social Security.[23] Accordingly, the period of degeneration is mainly shaped by the development of legal mechanisms replacing existing domestic arrangements in accordance with the EU requirements, thus reflecting the features of Europeanisation by *institutional compliance*. Aligning the legal and institutional framework with the EU acquis gained further precedence with the establishment of a special task force in 2002, which produced three strategy papers on migration, asylum system (legal and institutional framework) and external borders (integrated border management), subsequently followed by the adoption of the 2005 National Action Plan on Asylum and Migration. To facilitate the implementation of the National Action Plan, Turkey also collaborated with EU member-states through two twinning projects: one for the alignment with migration and asylum legislation (Denmark and the UK) and the other on the integrated border management system (France and the UK).

Findings of this study indicate that one of the major turning points for the transformation of Turkey's approach to migration management took place with the establishment of the Asylum and Migration Bureau, initiating the period of internalisation in 2008.[24] The main tasks of the Bureau were increasing the administration capacity and drafting the law on migration and asylum. After a long consultation and drafting process, the 'Law on Foreigners and International Protection' was submitted to the Turkish Parliament in May 2012, which was approved by Turkey's former President Abdullah Gül on 10 April 2013. The law came into force a year later, and the authorities are currently working on supplementary legislation on irregular migration management, integrated border management and other interrelated matters. As can be seen from the parliamentary proceedings during the passing of the law, the incumbent Justice and Development Party (AKP) government had the support of the main opposition parties since the latter were actively involved in the process through the sub-committee meetings. As stated by a member of the parliament from the Peace and Democracy Party (BDP) to the General Assembly, 'The law on Foreigners and International Protection represents an important milestone for Turkey's ongoing reform preparations in the area of foreigners, migration and asylum, in which the EU process especially has an impact in the past five years'. In the words of a member of the parliament from the Nationalist Action Party (MHP), 'compiling various arrangements under secondary legislation under one bill should have been done long time ago, but it is still a valid decision. Similarly, the establishment of the Directorate ends the chaos of managing migration through separate institutions that have no specialist staff on the issue… This bill is in Turkey's national

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[21] Available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf

[22] Criminal Code, law No. 5237, available at: http://legislationline.org/documents/action/popup/id/6872/preview

[23] Law on the Work Permit for Foreigners, No. 25040, available at: http://www.csgb.gov.tr/csgbPortal/ShowDoc/WLP+Repository/yabancilar/dokumanlar/ing_4817
In 2006, the Ministry of Labour adopted a plan called 'Fighting Unregistered Employment'. The KADIM project aimed at reducing the number of workers employed unregistered through enforcement of penalties and public awareness of the disadvantages of unregistered employment, which targets two groups: unregistered Turkish workers and irregular foreign workers.

[24] Bureau on Development and Implementation of the Legislation on Asylum and Migration and Administrative Capacity

interests and we are supporting it'. [25] In addition to the striking consensus among representatives of the Turkish political parties who are very often at odds with each other, the drafting process of the new law extensively contributed to the emergence of a constructive dialogue between the state and non-state actors in the field of migration and asylum. The representatives of the Coordination for Refugee Rights were actively involved in the consultation process and as confirmed by a representative from the Coordination, this was also 'something extraordinary for law-making process in Turkey since it is mostly bureaucrats, not civil society actors who get involved in such processes'.[26] In the words of a respondent from the Bureau who was one of the coordinators of the drafting process of the legislation,

> 'We included as many actors as possible. Civil society organisations, related ministries, academics, the IOM and the UNHCR, the Council of Europe and the EU, they were all part of the consultation process. We worked carefully on transposing international treaties into national law, which was not done after Turkey signed the treaties. It is a comprehensive and pluralistic legislation. Recent developments at the EU level have also been influential but the legislation is never a copy of any EU acquis, or a copy of a country's law. It is based on internal dynamics of Turkey, not drafted only for the EU or any other party, but drafted for Turkey, Turkey's needs'. [27]

According to NGO representatives, this inclusive approach has facilitated the creation of an effective dialogue process between governmental and non-governmental agencies, which in return led to a shift in elite discourse signalling an internalisation process. As noted by a member of the Coordination of Refugee Rights,

> 'Until the establishment of the Bureau, migration policy-making were comprised of short-term policies and measures, which were usually implemented by subsequent governments as responses to the concerns of external actors, mainly the EU and bordering neighbouring countries. The process created the idea of establishing Turkey's own migration management system. The earlier reactionary attitude of bureaucrats is increasingly being replaced by a long process of assessing Turkey's own conditions as regards different types of migration flows'. [28]

In the words of a respondent from IOM,

> 'Turkey's own informal labour market is not really important for the EU, but it is very much important for Turkey. So there is now more awareness to undertake research and work on policy development so that Turkey effectively manages irregular migration flows. There is a growing awareness that Turkey should have more comprehensive agenda on its bilateral cooperation with countries that are sending migrants to Turkey. Turkey's changing position from a dominantly transit country to a host country is reflected in the domestic discourse, actions to regularise informal labour sector are taking place.[29]

While the UNHCR and IOM have also supported the process through projects and staff, some national NGOs express criticism over UNHCR's 'relatively non-neutral position':

> 'UNHCR has been very active in this process. Even though UNHCR should be the one keeping the balance between the state and other parties, and perhaps supporting the rights of refugees more, we have observed that it thought and acted as a state-centric actor. They are very much into the process, even clause by clause, and now there is the second legislation process and there is

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[25] Parliamentary Proceedings 24/3/80, 20 March 2013, available at: http://www.tbmm.gov.tr/develop/owa/tutanak_g_sd.birlesim_baslangic?P4=21915&P5=B&page1=34&page2=34

[26] Personal Interview, Istanbul, March 2013. Helsinki Citizens Assembly, Human Rights Research Association, Human Rights Association, Human Rights Agenda Institution, Association for Human Rights and Solidarity with the Oppressed, Association for Solidarity with Refugees, Amnesty International Turkey comprise the Coordination for Refugee Rights since 2010. Available at: http://www.ihop.org.tr/english/index.php?option=com_content&view=article&id=106:coordination-for-refugee-rights-crr-in-turkey-turkey-must-not-seal-the-borders-to-syrians&catid=1&Itemid=19

[27] Personal Interview, Ankara, January 2013.

[28] Personal Interview, Izmir, April 2013

[29] Personal Interview, Ankara, April 2013.

very an intensive cooperation among the law-makers and UNHCR. We all pressed for the enforcement of the law, obviously almost all actors involved, all the stakeholders were in favour of passing the law asap. Even the opposition party is in favour. But

as NGOs we were just more critical to come up with a better law. UNHCR, on the other hand, how can I put this, perhaps went beyond its mandate, demonstrated an unnecessary state-reflex'. [30]

According to a representative from the UNHCR, such criticisms stem from the fact that the UNHCR and the Turkish authorities work very closely due to the implementation of the geographical limitation. In the words of a respondent from the UNHCR:

'UNHCR is an inseparable part of the protection system. So, in previous periods some police officer friends were used to say 'our UNHCR' (laughs). Because, the protection that Turkey can provide to non-European people is dependent on UNHCR's capacity to resettle these people in a third country. So as long as the geographical limitation is not lifted, no way the UNHCR will be out of the system. We are an integral part of Turkey's administrative system in this. Perhaps this is not something we are supposed to be. But, to make sure that the borders are open for those who need protection, and to find long-term solution to their prblem we are part of this.' [31]

As Knill and Lehmkuhl (2002:259) address, Europeanisation by *institutional compliance* mechanism may not lead to domestic changes unless there is enough support for adjusting to EU requirements. In other words, even in the presence of 'institutional goodness of fit' between domestic adjustments and EU requirements, as a follow-up step, one has to identify whether collective domestic interests and institutional opportunity structures are in favour of domestic policy changes to actually take place (Knill and Lehmkuhl 2002:259-60). Considering high-level of consensus among domestic actors as discussed above, a combination of different mechanisms of Europeanisation could be traced in understanding the reform process taken place during the internalisation period. In explaining hybrid forms of Europeanisation, Knill and Lehmkuhl (2002: 257) assert that 'the prescription of an institutional model for domestic compliance will generally also affect domestic opportunity structures and the beliefs and expectations of domestic actors'. Most of the interviewees who took part in this study, for instance, consider the new law as a by-product of Turkey's alignment process to the EU acquis, however, not only because the EU has prescribed a specific institutional or legislative model that the Turkish authorities had to follow. Instead, the EU accession process is viewed as 'changing the domestic rules of the game' during the internalisation period since adjusting to the EU legislation would require adopting a more open, transparent and rights-based approach to migration management, active involvement of non-state actors and other stakeholders in the policy-making process. Furthermore, there is a general expectation that an effective dialogue with the EU and other international actors would enhance Turkey's institutional and administrative capacity through the financial support of the EU.[32] Accordingly, the domestic impact of the EU in this particular policy area also corresponds to both Europeanisation by *changing domestic opportunity structures* since the power and resources are redistributed between domestic actors as will be discussed below and Europeanisation by *framing domestic beliefs and expectations* since 'European beliefs and ideas might provide a focal point for domestic developments, offering potential solutions or ideas to deal with domestic problems' (Knill and Lehmkuhl 2002:263). The following sections will elaborate on the content of the new law and the EU readmission agreement.

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[30] Personal Interview, Izmir, April 2013.

[31] Personal Interview, Ankara, January 2013.

[32] Personal Interviews, Ankara and Izmir, January 2013.

Law on Foreigners and International Protection [33]

The new law serves three main purposes: (1) creating a comprehensive legal framework for the management of entry rules, visa regulations, work and residence permits, thus largely replacing the existing legislative framework; (2) widening the scope of individual rights and freedoms for refugees, asylum seekers and victims of human trafficking, which was previously regulated by secondary legislation and (3) transferring the management of international protection from security forces to a civil authority, the Directorate General for Migration Management under the Ministry of Interior, which has become fully functional in April 2014. The Directorate is in charge of implementing policies and strategies concerning both regular and irregular migration and establishing cooperation with international organisations, universities and NGOs (Article 107). It is comprised of a central, provincial and overseas organization with 3000 staff (Article 106) and the central directorate has twelve service units (Article 108): foreigners department, international protection department, department for the protection of victims of human trafficking, migration policies and projects department, adaptation and communication department, information technologies department, foreign affairs department, strategy development department, legal department, human resources department, support services department, and a training department. In the words of a respondent from the EU Ministry:

> 'The fact that police forces were in charge of managing migration made it difficult to formulate a comprehensive policy. There emerged a need for policy beyond what the police officers provide merely in terms of security needs. Secondly, there is a perceptional change among key actors who are involved in. The police forces were rather timid about this, they were always cautious about the interference of international actors. But during this process, even their approach has changed. While they were against international projects, they are now more welcoming. Thirdly, the EU's involvement brought a sudden relief for internal actors as they started admitting domestic problems and started taking the necessary steps'.[34]

According to the respondents from the IOM, the establishment of the Directorate will change the character of how Turkey approaches irregular migration. Transfer of authority from the security department to the Ministry of Interior will result in change in perceptions and more clarified roles for institutions, in which the Ministry of Foreign Affairs would be responsible for the readmission agreements for regional/international cooperation, while security forces would undertake their roles in border management in collaboration with civil authorities and the Ministry of Labour will take care of labour-related arrangements. As argued by a respondent, the transfer of authority from security forces to a civilian unit institutional framework would not only desecuritise migration management, but also diminish the impact of hierarchical order in migration governance. It also provides the opportunity to launch an expert-based management system where recruited public officers would be trained to become migration specialists, and will not be reallocated to another field unlike practices often encountered in various public services.

The law has been criticised on several grounds, as well. Firstly, the lack of emphasis on economic dimension of migration is considered as a drawback, which Turkey needs to develop as an effective strategy if it wants to attract high-skilled migration and reverse brain drain. It is argued that the newly introduced procedures for obtaining work and residence permits are still inadequate for attracting skilled migrants and as well as integrating them into the host community.[35] Secondly, despite a campaign held by nine human rights organisations in 2011 and their efforts for the inclusion of sexual orientation and gender identity under the provision prohibiting discrimination (Article 4), the final text

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[33] Law no. 6458 on Foreigners and International protection has been published in Official Gazette on 11 April 2013, No: 28615, available at: www.unhcr.org.tr/uploads/root/law_on_foreigners_and_international_protection.pdf

[34] Personal Interview, Ankara, January 2013.

[35] Personal interview, Ankara, April 2013.

of the Law did not make a reference to this.[36] Thirdly, the Law maintains the geographical limitation to the 1951 Geneva Convention despite the de-facto situation that most asylum applicants to Turkey come from non-European countries.[37] As a matter of fact, the law differentiates between refugee status ('events occurring in European countries'- Article 63), conditional refugee status ('events occurring outside European countries-Article 64) and subsidiary protection ('a foreigner or a stateless person who could neither be qualified as a refugee or a conditional refugee'-Article 65). Since the EU has re-emphasised lifting the geographical limitation as a priority area in the revised Accession Partnership Document of 2008,[38] the domestic resistance in this policy aspect leads to limited policy convergence. Respondents from the Coordination for Refugee Rights (CRR) criticise the decision for humanitarian reasons that Turkey should take more responsibility in protecting the rights of refugees.[39] Several public officers, on the other hand, underline the necessity of keeping it due to Turkey's geostrategic position, thus reflecting divergence of national interests from the EU conditionality. A respondent from the Migration Bureau underlines that the Europeanisation may not be reinforced in this specific area since lifting the geographical limitation and adoption of the EU acquis should be treated as two separate processes. In the respondents' words:

> 'We have difficulty in understanding this. The geographical limitation and the relations with the EU are two separate topics and should not be dealt as a whole. If there is willingness on the side of political actors, this limitation could be removed immediately. From our perspective, it should always remain, because we are close to the source countries of illegal migration, not Europe. We are close to that part of the world. So, once you remove the limitation, the number of those who are abusing the law will increase, passing via Turkey to Europe by using illegal means.'[40]

A respondent from the IOM highlight the prevailing role of domestic elites and assert that it can be removed anytime if it serves Turkey's interest:

> 'It's all about the elites, how they perceive it (geographical limitation). They have the maximum manoeuvre. It is also wrong to assume the European migration policy as a block of practices replicated by these countries. Everybody leave some parts out. When we discuss readmission agreements, Turkey is assessing the impacts of readmission agreement from its perspective, and it wants to opt out from some articles'.[41]

There is also a growing concern that the capacity-building measures designed during the drafting process of the Law will not be sufficient to meet the demands of increasing flow of irregular migrants arriving in the last few years. While the total population of refugees and asylum seekers in Turkey is already expected to arise from 1,053,690 (December 2013) to 1,695,930 by the end of 2015, these numbers do not include the Syrian refugees in Turkey, who continue to arrive in masses since the eruption of the Syrian conflict in 2011.[42] As asserted by civil society representatives, the urgent and mounting administrative and financial distress caused by the influx of Syrian refugees would pose serious challenges to the operation of the Directorate of Migration Management.[43] They suggest that

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[36] For details of the campaign see, Amnesty International website, available at: http://www.amnesty.org.tr/ai/node/1711 Such discriminatory measures and practices are repeatedly raised by the EU, see 2013 Turkey Progress Report, European Commission available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf

[37] '2014 UNHCR country operations profile-Turkey', UNHCR, available at: http://www.unhcr.org/pages/49e48e0fa7f.html

[38] Available at: http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Apd/Turkey_APD_2008.pdf

[39] Personal interviews Izmir, Ankara, Istanbul, April 2013.

[40] Personal interview, April 2013, Ankara.

[41] Personal interview, April 2032, Ankara

[42] See, UNHCR 2014 planning figures for Turkey, available at: www.unhcr.org/pages/49e48e0fa7f.html

[43] For a comprehensive analysis of the issue see Memişoğlu and Ilgıt (2014) 'Syrian Refugees in Turkey: An Analysis of Multifaceted Challenges' (under review for publication).

the Turkish authorities need to keep adjusting the legal and policy framework according to the rapidly changing dynamics through: (1) enhanced dialogue between central and local administrative units, (2) increasing coordination with NGOs in order to identify long-term solutions for the social, economic needs and rights of all refugees and (3) advanced cooperation with the EU (both technically and financially) and other international organisations.

The signing of the EU readmission agreement

Turkey's status as a major transit country for irregular migration flows to Europe has also intensified the development of management strategies within the general context of EU-Turkey relations. [44] As recently addressed in a resolution adopted by the Council of Europe in 2013, the mounting pressures of asylum and irregular migration in the Eastern Mediterranean poses serious challenges to Turkey and Greece since the former has become the main country of transit where the main flow is directed towards the latter.[45] While referring to improvements in migration and asylum systems in both countries, the resolution emphasises the necessity of enhancing burden-sharing capacities at the European level since neither Greece nor Turkey has the sufficient resources to cope with the pressures of mixed migratory flows. Various human rights bodies have also provided detailed assessments of human rights violations associated with border crossings in the region, including push-back operations, prolonged detention periods in Greece, difficulties of accessing protection in Turkey, thus calling the EU member-states to take collective responsibility for tackling humanitarian issues at its external borders. [46] The necessity that the EU extends its support mechanism beyond measures that solely enhance border control and increase detention capacity in the two countries gains further importance in light of readmission agreement recently concluded between Turkey and the EU.

Until reaching a final settlement on the terms of the readmission agreement in 2011 and initialling it a year after, seven formal negotiations took place since May 2005. The agreed text was finally signed on 16 December 2013, also initiating the EU-Turkey visa liberalisation dialogue. Despite the reluctance of the Turkish side to conclude a readmission agreement with the EU 'because of fears of becoming a buffer zone and dumping ground for irregular migrants' (Burgin 2012:884; Kirişçi 2004:12), the prospect of a visa liberalisation process has balanced the negative consequences of concluding the readmission agreement. The visa issue in EU-Turkey relations has been on Turkey's domestic political and public agenda especially since the mid-2000s, causing discontent among businessmen, university students, academics and journalists due to a number of difficulties associated with obtaining Schengen visas by Turkish nationals (Kirişçi 2014:2). The issue becomes further contested from a legal perspective since the 2009 ruling by the European Court of Justice (the *Soysal* case) reassures the rights enshrined in the 1963 EU-Turkey Association Agreement and its Additional Protocol, giving a 'personal right to any Turkish national who wishes to come to the EU to provide services, to enjoy access to the territory of any member state on the basis of the same conditions which applied either in 1973 or on the date when the relevant member state joined the EU' (Özler 2012: 124).[47] Moreover, it is often raised among Turkish political circles that visa liberalisation for Turkey

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[44] 'In 2012, 56 per cent of detections of irregular entry into the EU occurred on the Greek-Turkish border'. See, Frontex Risk Analysis Network (FRAN) Quarterly, Issue 2, April-June 2012, available at: www.frontex.europa.eu.assets/Publications/Risk_Analysis/Fran_Q2_2012_pdf.

[45] See, Council of Europe, 'Migration and asylum: mounting tensions in the Eastern Mediterranean', 2013, available at: http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19467&Language=EN.

[46] Various reports by Human Rights Watch and Amnesty International address these issues in detail. See, Human Rights Watch, 'EU: Improve Migrant Rescue; Offer Refuge', October 2013, http://www.hrw.org/news/2013/10/23/eu-improve-migrant-rescue-offer-refuge. See, for example, Amnesty International, 'Frontier Europe: Human Rights Abuses on Greece's Border with Turkey', July 2013, available at: http://www.amnestyusa.org/sites/default/files/greece_embargoed_until_7am_tomorrow.pdf

[47] For a detailed discussion of the issue, see Memişoğlu and Bilgin (2014) 'Visa liberalisation for Turkish citizens in light of EU Readmission Agreement and European Court of Justice Rulings' (under review for publication).

would not lead to a potential influx of Turkish immigrants to the EU. In the words of President Recep Tayyip Erdoğan, 'no one should be concerned when the visas are lifted. Thanks to the country's dynamic economy over the past ten years, Turkey is no longer an exporter of labour; instead, the country has now become a destination for jobseekers'.[48] Such domestic dynamics led the Turkish government to push further for visa liberalisation in exchange of signing the readmission agreement.

In explaining domestic change with reference to Europeanisation mechanisms, Knill and Lehmkuhl (2002:259) remind us to ask 'to what extent do domestic actors who support policy change have sufficient powers and resources to guarantee that their interests prevail'. In the words of a respondent from the Turkish Ministry of EU,

> 'The cost of an irregular migrant (living expenses daily) is between 40 and 80 euros. No matter 5 or 500 people are re-admitted after signing the agreement, this comes with fixed costs, establishing centres, employing special officers, etc. It is a costly process; yet we are ready to make concessions, improve border controls. But we have created conditionality. We would ratify and implement the agreement, but the EU should give what we deserve in relation to visa liberalisation'.[49]

Turkey's bargaining approach of signing the readmission agreement in exchange of visa-liberalisation process, however, has been criticised by representatives of national-NGOs on humanitarian grounds,

> 'Re-admitting, re-admitting, like a tennis ball. After a month, the migrant is back in Afghanistan facing a life-threatening situation. Let's say, the readmission agreement is signed, the EU has responded to all Turkish demands and the visa liberalisation is complete. This is very ugly. Just because I will drink coffee with pleasure in France, why would people be sent to death? This matter frustrates me'.[50]

The EU, on the other hand, also remained hesitant to offer a visa-free regime to Turkey even though it lifted the short-term Schengen visa requirement for other candidate states (Macedonia, Montenegro and Serbia) in 2009 and 2010. The EU's irreconcilable approach, reflected by the Justice and Home Affairs Council's refusal of commencing visa liberalisation dialogue with Turkey in February 2011, was majorly shaped by the electoral concerns of the EU interior ministers and fears over arrival of increasing number of migrants and asylum seekers from Turkey (Stiglermayer 2012:103). Coupled with increasing awareness surfacing at the EU level that the fighting against irregular migration would require an urgent dialogue with Turkey, the EU Commission's roadmap document for visa-free regime with Turkey identifies four key areas of compliance with EU standards (document security, migration and border management, public order and security, fundamental rights) in addition to setting specific standards for the readmission of irregular migrants.[51] Once Turkey fulfils these conditions, the Schengen visa obligations will be lifted for Turkish citizens after a qualified majority voting by the Council of the European Union and the European Parliament.[52]

As set out in the agreement, readmission obligations are fully reciprocal, which implies that all contracting states must be prepared to readmit people on the same terms. While this is a general

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[48] See, 'Turkey, EU displays mutual willingness for revival of ties', Hurriyet Daily News, 16 December 2013, available at: http://www.hurriyetdailynews.com/turkey-eu-display-mutual-willingness-for-revival-of-ties.aspx?pageID=517&nID=59635&NewsCatID=351

[49] Personal interview, Ankara, January 2012.

[50] Personal interview, Izmir, April 2013. The respondent raises similar concerns in his own article published recently. See 'What does the readmission agreement signify?', December 2013, available at: www.todayszaman.com/news-334601-what-does-the-readmission-agreement-signifyby-tanerkilic-.html

[51] 'Roadmap towards a visa-free regime with Turkey', the European Commission, 16/12/2001. Available at:http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf

[52] 'Cecilia Malmström signs the Readmission Agreement and launches the Visa Liberalisation Dialogue with Turkey', European Commission, IP/13/1259, 16/12/2013, available at: http://europa.eu/rapid/press-release_IP-13-1259_en.htm

characteristic of the Community readmission agreements, which prescribe a standardised model for institutional compliance, the reciprocity argument raises questions in practice, since the Community is likely to benefit more than the other party given that the numbers of EU citizens illegally residing in third countries would be lower than the opposite (Kruse 2006: 122; Schieffer 2003:356; Coleman 2009: 2). The agreement specifies the categories that fall under the obligations of readmission for Turkey: (1) Turkey's own nationals, including former own nationals who have either been deprived of or renounced their Turkish nationality, (2) the spouses and minor unmarried children of own nationals, (3) third-country nationals and stateless persons, including those who are holders of a valid visa issued by Turkey entering the territory of a Member State directly from the territory of Turkey; holders of a residence permit issued by Turkey, and those who illegally and directly entered to the territory of the Member State after having stayed on, or transited through the territory of Turkey.[53]

The readmission obligation does not cover third country national or stateless persons who have only been in airside transit via Turkey. It also does not include those who enjoy a visa free access to the territory of the requesting Member State and those who are holders of a visa or a residence permit of the Member State. As noted by a respondent from the Turkish Ministry of EU Affairs, the inclusion of non-nationals into the readmission agreement was an issue of disagreement during the four negotiation talks between 2005 and 2006 leading to a state of deadlock until 2009, since there is no equivalent international law obligation to readmit non-nationals (including transit migrants).[54] While Coleman (2009:27-49) provides a detailed account on the readmission obligations of different categories of persons under international law, some scholars argue that the international legal notion of 'good neighbourly relations' and the idea of European solidarity may establish this obligation and the EU is actually seeking to transform international law by creating this obligation through state practice (Kruse 2006:121-22; Roigh and Huddleson 2007:364). The agreement is complemented by joint declarations on the cooperation in the area of visa policy, on Article 7(1) emphasising that efforts should first prioritise returning the person to the country of origin, and a joint declaration on technical assistance ensuring that the EU will increase its financial assistance to support Turkey's implementation of the agreement. The EU's assistance will contribute to Turkey's institution and capacity building, including the purchase of border surveillance equipment, establishment of reception centres and border police structures, and support to training activities. The readmission obligations for third country nationals or stateless persons will become applicable three years after the agreement enters into force.

The motives leading to the signing of the EU readmission agreement could also be linked to Turkey's own transformation process, as previously mentioned, which necessitates the development of a comprehensive approach to migration management. Recalling Knill and Lehmkuhl's (2002:259) argument that adjustments to European requirements can only be expected 'if they are facilitated by conditions prevailing in the domestic context', it is crucial to stress that all public officials participated in this study describe establishing a closer framework for cooperation with the EU as 'necessary' in order to enhance Turkey's administrative capacity for migration and asylum systems and border management. While some address this necessity in terms of increased financial and technical EU support to achieve domestic objectives, which is also asserted in the final text of the readmission agreement, some others highlight that it is necessary for addressing long-standing domestic problems. As noted by a respondent from the border control unit, the EU pressure may eventually create the much-needed political will for admitting the root causes of ineffective management of border controls, such as smuggling, human smuggling, lack of coordination among law-enforcement units, rather than

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[53] 'Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation', European Commission COM(2012) 239 final, 2012, available at:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0239:FIN:EN:PDF

[54] Personal interview, January 2013, Ankara.

frequently associating ineffectiveness with 'unfeasibility due to practical and infrastructural problems'.[55]

With reference to the strategies developed by the Turkish state for the implementation of the EU readmission agreement, a respondent from the Ministry of Foreign Affairs asserts that the Ministry has prioritised the implementation of the Law on Foreigners and International Protection and the adoption of effective measures and practices for border management in line with the 2006 National Action Plan for the Implementation of Turkey's Integrated Border Management Strategy. [56] The Ministry has also increased the pace of concluding parallel readmission agreements with countries of origin and transit and as well as assisting voluntary return programmes. While Turkey has so far concluded readmission protocols/agreements with Greece (2001), Syria (2001), Kyrgyzstan (2003), Romania (2004), Ukraine (2005), Pakistan (2010), Nigeria (2011), Russian Federation (2011), Yemen (2011), Bosnia-Herzegovina (2012) and Moldova (2012), Iraq, Pakistan, Afghanistan, Moldova, Iran, Palestine, Georgia, Romania, Somalia and Bangladesh appear as the top ten source countries of irregular migrants in Turkey between 1995-2009 (İçduygu 2011:5). A thorough assessment of existing bilateral readmission agreements is also taking place at the ministerial level with the intention of identifying major strengths and weaknesses.[57] Although it would be unrealistic to assume that the transitional period of three years for the implementation of the EU Readmission agreement would be sufficient enough to complete the entire restructuring of administrative and policy mechanisms of migration management, the effective implementation of the new law and the efficient working of the Directorate could be prioritised for the establishment of a fair and efficient migration and asylum management system.

Conclusion

As part of its efforts to cope with growing pressures of mixed migration flows, Turkey's approach to migration management is being reformulated in parallel with developments taking place at the European and global levels. The country's accession process to the EU, in particular, has given impetus to migration policy reforms whereby development of legal, administrative and institutional mechanisms in alignment with the EU *acquis* gained precedence since the early 2000s. Turkey's status as a main transit country also reinforces the EU pressure on domestic actors to target irregular migration with effective policies, which coincides with increasing efforts at the EU-level to transfer responsibility to non-EU countries of origin and transit. Accordingly, analytical framework developed in this study elaborated on Knill and Lehmkuhl's (2002) three mechanisms of Europeanisation in an attempt to explain the external effects of the EU migration regime on Turkey. By focusing on priority areas for domestic policy action that were regularly addressed in the EU Commission progress reports, the paper explored the processes that led to the adoption of Turkey's first immigration law and the signing of the EU Readmission Agreement in 2013.

In order to provide a general overview of both policy continuities and changes in migration management, it initially opened up İçduygu and Aksel's (2012) analysis of consecutive periods (fertilisation period, maturation period, saturation period and degeneration period) that portray varying migration flows to Turkey since 1973. Based on empirical findings, the study later suggested that the establishment of the Asylum and Migration Bureau in 2008 marks the beginning of an internalisation period, in which the institutional and legal reforms in meeting EU accession criteria is accompanied by an internal process of bringing civil components into migration management. The Bureau's inclusive approach during the consultation process of the Law on Foreigners and International Protection, in particular, is considered vital in initiating a constructive a dialogue between state and non-state actors,

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[55] Personal interview, Ankara, April 2013.

[56] Personal interview, Ankara, April 2014.

[57] Personal interview, Ankara, April 2014

which in return led to a shift in elite discourse highlighting Turkey's own need to have a migration regime to address new challenges. Furthermore, there is a general expectation that an effective dialogue with the EU would enhance Turkey's institutional and administrative capacity. Accordingly, the EU impact on domestic policy context during the internalisation period is conceptualised as a mixture of different mechanisms of Europeanisation, in which *institutional compliance* mechanism also triggers *changes in domestic opportunity structures* and *framing domestic beliefs and expectation of domestic actors.* The discussion of the new law also exposed the domestic resistance to lifting the geographical limitation despite the EU requirement, which leads to limited policy convergence in this particular policy aspect. The signing of the EU Readmission Agreement is another major policy development that took place in the internalisation period and this study mainly emphasised its close linkage to the visa liberalisation process, which has become a bargaining issue between the EU and domestic political actors. While the EU comes closer to achieving its policy objective of controlling irregular migration flows by transferring responsibility to Turkey upon concluding the readmission agreement, the picture is far more complex for Turkey. Establishing a visa-free regime with the EU still depends on the outcome of qualified majority voting by the Council of the EU and the European Parliament once Turkey complies with EU standards outlined in the EU Commission roadmap document. What further challenges will arise in the implementation of Turkey's new immigration law and the EU readmission agreement remains uncertain, which necessitates conducting further research in light of rapidly changing policy context due to the Syrian refugee crisis. However, as a central actor of the European migratory regime, the dynamics of international migratory movements will continue to shape Turkey's unique status as a country of origin, transit and destination. And migration management will continue to be a dynamic topic defining its role in the globalised world and as well as the trajectory of its relations with the EU

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