



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director-General

Mr. Vasileios Papadopoulos
Secretary-General
General Secretariat for Population
and Social Cohesion
2 Evangelistrias str.
10563 Athens

Brussels, 5th May 2016

Dear Mr. Secretary-General,

Taking account of the indications contained in the letter from the UNHCR of 4 May 2016 in response to a request from the Greek authorities of 27 April 2016 about the situation of Syrian nationals in Turkey, I am pleased to share with you considerations set out below, with a view to facilitating the implementation by the Greek authorities of the EU-Turkey Statement of 18 March 2016. The considerations are based on the information which is at the disposal of the Commission concerning the relevant legal framework applicable in Turkey and its application, including information obtained in the context of the ongoing visa liberalisation dialogue between the European Commission and the Turkish authorities.

In accordance with the EU-Turkey Statement, applications for asylum of migrants arriving from Turkey into the Greek islands after 20 March 2016 will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive (2013/32), in cooperation with EASO. Migrants whose application has been found inadmissible, including in accordance with Article 33 (2) (b) or (c) of the said directive, will be returned to Turkey.

According to Article 33 (2) (b) of the Asylum Procedures Directive, the Greek authorities can declare an application for asylum inadmissible, where they consider Turkey as a first country of asylum for a particular applicant, in accordance with Article 35 of the Asylum Procedures Directive, because the applicant has been recognised in Turkey as a refugee and can still avail himself/herself of that protection or otherwise enjoys sufficient protection in Turkey, including benefiting from the principle of non-refoulement.

According to Article 33 (2) (c) of the Asylum Procedures Directive, the Greek authorities can declare an application for asylum inadmissible where they consider Turkey to be a safe third country for the applicant in accordance with Article 38 of the Asylum Procedures Directive, because: life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; there is no risk of serious harm as defined in the Qualification Directive (2011/95); the principle of non-refoulement in accordance with the Geneva Convention is respected; the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention. This provision may be applied, where there is a connection between the applicant and Turkey on the basis of which it

would be reasonable for that person to go to Turkey. The Greek authorities are moreover required in each case, before making any such inadmissibility decision, to be satisfied that Turkey constitutes a safe country for the individual concerned in the light of the asylum applicant's particular circumstances.

Let me recall in this context that the Commission indicated, in a Communication adopted two days before the EU-Turkey Statement, that it considers that transit through Turkey suffices for a sufficient connection to be established (see COM (2016) 166 final, page 3). Furthermore, the Commission indicated in the same Communication (as already in COM (2016) 85 final, page 18) that it considers that Article 38 of the Asylum Procedures Directive does not require ratification of the Geneva Convention without geographical limitations. It only requires that protection equivalent to the Geneva Convention is afforded to returnees.

In that Communication, the Commission moreover sets out clearly what legislative and other measures needed to be taken by Turkey in order to allow Greece to declare an application for asylum inadmissible in accordance with Article 33 (2) (b) or (c) of the Asylum Procedures Directive. Following the subsequent regulatory amendments adopted by Turkey (Regulation amending the Temporary Protection Regulation (Cabinet Decree no 2016/8722 of 6 April 2016), Regulation on work permit of international protection applicants and international protection status holders (Official Journal of 26 April 2016)) in conjunction with the assurances provided by Turkey by letters of 12 April 2016 (2016/70946263-AVBIR DT/10779625) and 24 April 2016 (2016/70946263-AVOIR DT/10830418) for Syrian and non-Syrian nationals respectively, which have been transmitted to you, the Commission considers that Turkey has taken all the necessary measures identified in the aforementioned Communication. In this context, let me highlight that the European Court of Human Rights in consistent case law has recognised that assurances, such as those provided by Turkey in relation to Syrian and non-Syrian nationals, constitute a relevant factor which the Court will consider in any examination of whether a person faces a real risk of ill-treatment in the country to which he or she is to be removed (see ECHR, judgment of 16 January 2012 - 8139/09, Othman (Abu Qatada) *./. United Kingdom*; ECHR (Grand Chamber), judgment of 4 November 2014 - 29217/12 (*Tarakhel ./. Switzerland*)).

The legal framework in Turkey which establishes the protection status granted to Syrians found to be entitled to temporary protection is the Temporary Protection Regulation, in conjunction with the Regulation on work permits of foreigners under temporary protection (Official Journal of 15 January 2016). The protection which this legal framework affords appears to suffice to be considered as sufficient protection or protection equivalent to that foreseen by the Geneva Convention.

The legal framework in Turkey which establishes the protection status granted to non-Syrians found to be entitled to (conditional) refugee status in accordance with the Law on Foreigners and International Protection is part three, section three of the Law on Foreigners and International Protection, in conjunction with the Regulation on work permit of international protection applicants and international protection status holders (Official Journal of 26 April 2016). It should also be noted that, in the assurances provided by Turkey by letter of 24 April 2016 (2016/70946263-AVOIR DT/10830418), it is indicated that each non-Syrian who seeks international protection in Turkey will enjoy protection from refoulement in line with international standards. The protection which this legal framework, combined with the aforementioned assurances, affords

appears to suffice to be considered as equivalent to the protection foreseen by the Geneva Convention.

For Syrians, the legal framework in Turkey which provides a basis for ensuring effective access to sufficient protection, or to protection equivalent to that foreseen by the Geneva Convention, is Provisional Article 1 of the Temporary Protection Regulation (cabinet decree no 2014/6883 of 13 October 2014), as amended by Cabinet Decree no 2016/8722 of 6 April 2016), in conjunction with the assurances provided by Turkey by letter of 12 April 2016 (2016/70946263-AVBIR DT/10779625). Those assurances make it clear that all Syrians returned to Turkey who previously enjoyed the temporary protection status, or who transited Turkey and did not previously enjoy the protection status and do not have a profile that could bring them under the scope of exclusion clauses will be granted the status, irrespective of whether they had previously enjoyed it before leaving Turkey.

For non-Syrians, the legal framework in Turkey which provides a basis for ensuring access to protection equivalent to that foreseen by the Geneva Convention, is Articles 65 ff of the Law on Foreigners and International Protection (law no 6458 of 4 April 2013), in conjunction with the assurances provided by Turkey by letter of 24 April 2016 (2016/70946263-AVOIR DT/10830418).

In practice, as regards non-Syrians, Turkey has started to implement a roadmap aimed at reducing the backlog of pending applications for international protection by a significant number per month (12.000 to 13.000 applications), with a first very significant reduction (31.000 out of 140.000 applications) already noted, which is expected to allow for a total elimination of the backlog by the end of the year and the processing of any new applications for international protection within a maximum of 6 months of registration, which is expected to take place within a reasonable period of time of the submission of the application, in accordance with Article 78 (1) of the Law on Foreigners and International Protection and the assurances provided by letter of 24 April 2016.

Finally, the Turkish authorities have made a commitment to allow the European Union to regularly monitor the situation of Syrians and non-Syrians returned to Turkey, including access to refugee camps and centres. The first visit is planned to take place at the beginning of May 2016.

Equally, on 29 April 2016, Turkey and UNHCR concluded Standard Operating Procedures on ensuring access to removal centers by UNHCR, which foresees inter alia the monitoring of Turkey's practices in relation to international protection procedures.

I hope that the Greek authorities will find the considerations set out above useful for the carrying out of the individual assessments of whether to consider Turkey as a first country of asylum or as a safe third country within the meaning of the aforementioned provisions, for both Syrian and non-Syrian applicants for asylum who had irregularly crossed into the Aegean Islands via Turkey as of 20 March 2016.

Yours sincerely,

e-Signed

Matthias RUETE