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NOTE

from: Presidency
to Working Party on Integration, Migration and Expulsion/Mixed Committee
(EU-Iceland/Norway/Switzerland/Liechtenstein)
on 12 March 2012
Subject: Synthesis on Member States' practical experiences based on delegations'
responses to questionnaire discussed at the Working Party meeting on 1 February
2012

Delegations will find attached a synthesis from the Presidency on the above topic. This compilation is based on the replies submitted by delegations to the questionnaire drawn up by the Presidency regarding Member States' practical experience with readmission to Turkey.

Draft Presidency paper

Member States' practical experiences with readmission to Turkey

1. Introduction

1.1 EU strategy on readmission

In the Council Conclusions of 9-10 June 2011 defining the EU strategy on readmission, the Council has recognized the significant added value of EU readmission agreements as tools of an effective return policy in order to prevent and tackle illegal immigration.

Effective readmission agreements ensure that persons staying illegally, and thus in no need of international protection as determined by the competent national authorities applying the relevant laws and procedural safeguards (including the respect of the principle of non-refoulement), may be returned swiftly and without unnecessary delay to countries of origin or transit.

In the above mentioned Council Conclusions, the Council has underlined the importance of continuing negotiations with countries of origin and transit, and has urged the Commission to make further appropriate steps when negotiations stall.

In this respect, the Council has called on Member States to continue giving the Commission full political and diplomatic support in the course of the negotiations as well as to provide the Commission with their national expertise.

1.2 EU readmission agreement with Turkey

Due to its crucial geographical position between Europe on the one hand and the Middle East and Central Asia on the other, and in particular its long maritime and land borders to the European Union, Turkey is a key partner for the European Union in its efforts to combat illegal migration.

In 2002, the Council adopted negotiating directives for a readmission agreement with Turkey. The talks started only in 2005 and were stalled again in December 2006. Following the significant growth of the illegal migration flow through Turkey and major efforts made by the Commission in 2009, the negotiations were re-launched in February 2010. After several rounds, the negotiations were finalized at the negotiators level on 14 January 2011.

The outcome of the negotiations between the Commission and Turkey was endorsed by the JHA Council held on 23-24 February 2011.

Due to political reasons, Turkey has not yet accepted to conclude the agreement.

2. Preliminary remarks

Recalling the Council's request to Member States to continue providing the Commission with their national expertise, an overview of delegations' practical experiences with existing bilateral readmission agreements and/or informal return arrangements with Turkey may prove helpful to the Commission when reflecting on further appropriate steps with a view to the conclusion of an EU readmission agreement with Turkey in conformity with the Council Conclusions of 9-10 June 2011 defining the EU strategy on readmission.

Furthermore, a synthesis on delegations' practical experiences regarding readmission to Turkey has been deemed useful by the Presidency, as the results and information that may follow from it are apparently not available elsewhere.

The Presidency intends for this synthesis to provide the Commission with best practices and experiences from Member States and further to be a tool for the Commission in the course of the negotiations.

The synthesis is based on a questionnaire presented to the Member States by the Presidency.

In the questionnaire, the Presidency specified the relevant Council Conclusions of 9 – 10 June 2011 defining the European Union Strategy on Readmission. Having pointed out the context, and using the Council Conclusions as a stepping stone, the Presidency asked specific questions concerning the Member States' measures and best practices with regard to Turkey that in turn may be useful as background information for the Commission in its negotiations with Turkey.

This context approach was supplemented by questions in regard to Member States' statistics etc. in performing readmission of Turkish nationals and third country nationals to Turkey.

A total of 18 Member States have replied to the questionnaire: Belgium, The Czech Republic, Denmark, Estonia, Germany, Hungary, Iceland, Liechtenstein, Lithuania, Netherlands, Norway, Poland, Romania, Slovenia, Slovakia, Sweden, Switzerland, and the United Kingdom.

Examination of Member States' replies on the questionnaire points out some common tendencies in relation to readmission to Turkey from Member States.

The common tendencies may be summarized as follows:

- Nearly all responding Member States do not have a readmission agreement or other bilateral agreement with Turkey regarding readmission.
- Nearly all responding Member States are however able to carry out returns to Turkey.
- Nearly all responding Member States are able to effect both voluntary and by forced returners.
- Most responding Member States only return Turkish Nationals to Turkey.
- Two Member States have a bilateral readmission agreement with Turkey; two Member States have other arrangements with Turkey regarding readmission.
- Regarding the statistics provided by Member States on completed returns to Turkey in 2010 and 2011 as well as on Turkish Nationals and third country nationals to be readmitted, the answers and data varies. Thus, it may prove difficult to draw a general picture as a consequence of Member States statistical information.

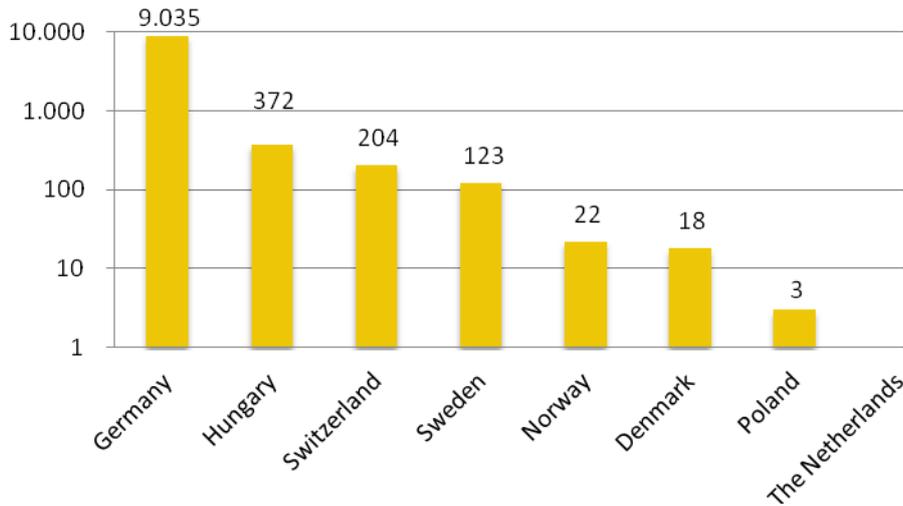
3. Statistical information

Most Member States have provided statistics on completed returns of Turkish Nationals to Turkey in 2010 and 2011 as well as on the number of Turkish Nationals to be readmitted.

As the data below will show, the answers and data vary, and as a result no general picture may easily be drawn.

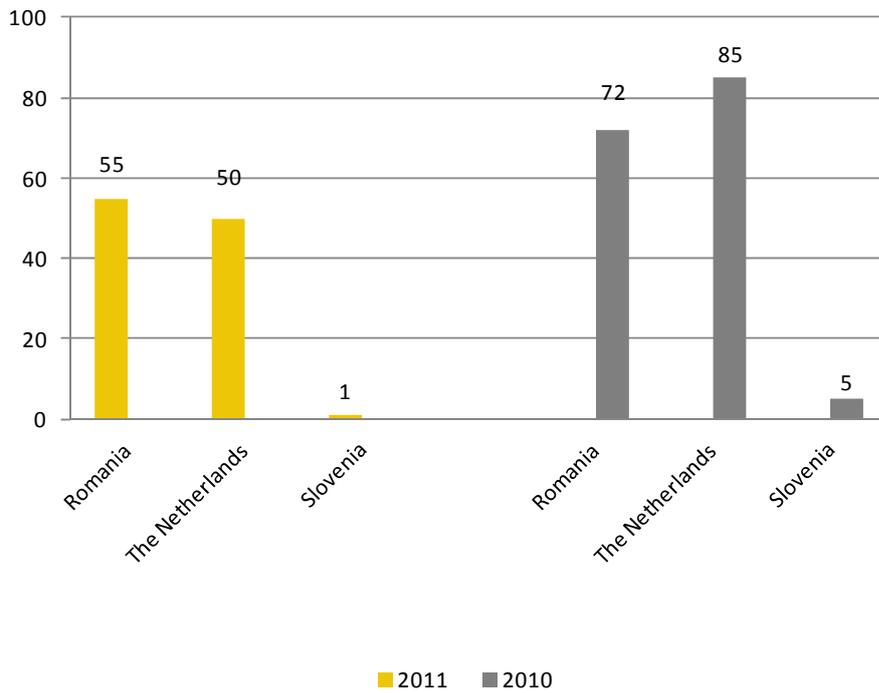
The statistics provided by Member States:

Figure 1: Number of Turkish Nationals to be readmitted to Turkey due to final return decision (2010):



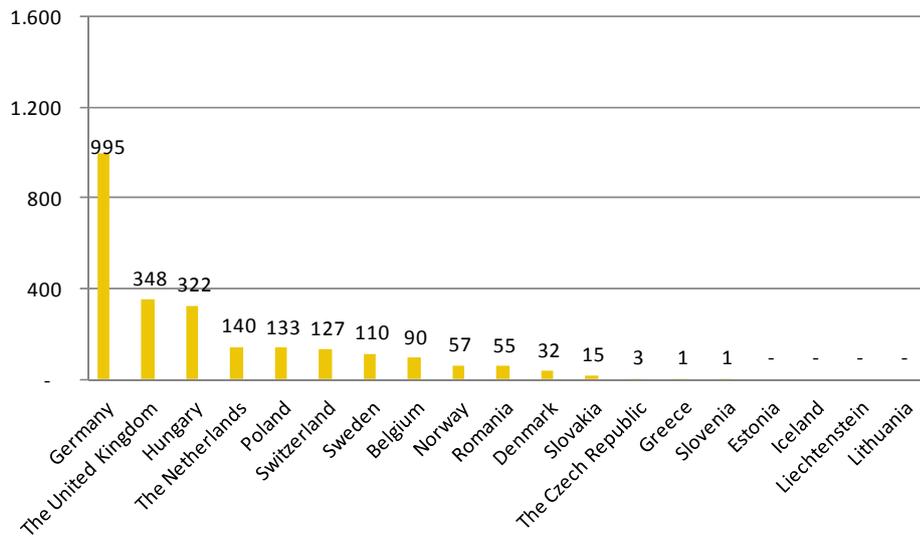
Remarks: **The Netherlands** replied that in 2009 the number of Turkish Nationals to be readmitted to Turkey was approximately 2500. **Norway** replied that by the end of 2011 22 Turkish Nationals were living in asylum reception centers and that the number of asylum seekers with Turkish citizenship who got a final negative decision on their asylum application in 2011 was 72. In addition to these, there are Turkish citizens who have return decisions because they are expelled and persons who have overstayed their visa.

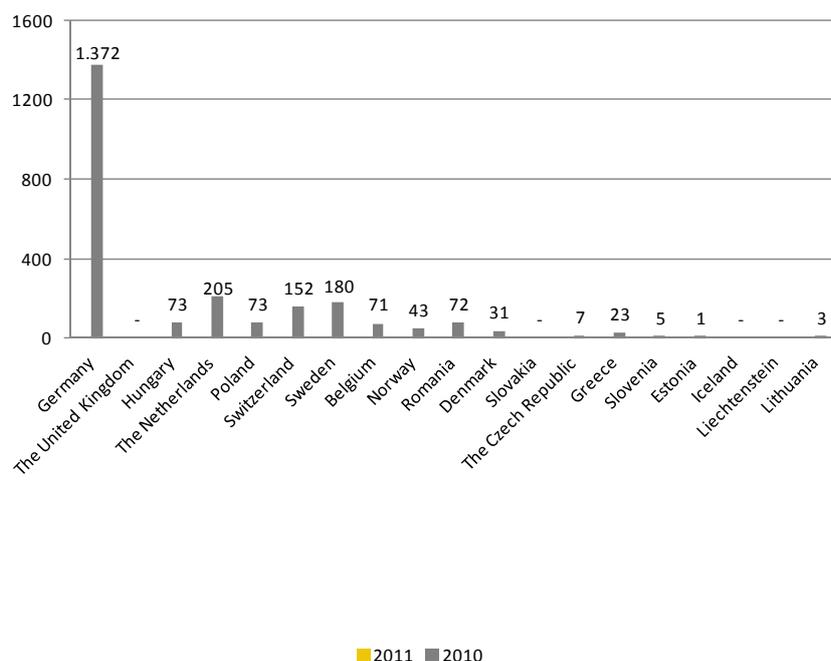
Figure 2: Number of approved readmission requests with Turkey in 2010 and 2011:



Remarks: **Greece** replied that in 2010 Turkey accepted the readmission of 1.457 third country nationals and in 2011 Turkey accepted the readmission of 1.552 third country nationals

Figure 3: Number of Turkish Nationals, who have effectively been removed to Turkey from Member States in 2010 and 2011:





Remarks: Numbers above include both voluntary and forced returns. **The United Kingdom** replied that there were 186 enforced returns between January and September 2011. There were 3 assisted voluntary returns and 159 other voluntary departures for the same period. The United Kingdom also remarked that official statistics do not show how many if any of these were transiting through Turkey. Numbers of transits are likely to be minimal, and the only regular transit route through mainland Turkey is to the Turkish republic of Northern Cyprus.

4. Practices of Member States

4.1 Countries with no bilateral agreement or MoU and their ability to return

16 out of the 18 Member States that replied to questionnaire do not have a readmission agreement, a MoU or any other bilateral agreement with Turkey that includes an agreement or clause on readmission.

Nearly all (15 out of the 16 Member States with no readmission agreement) are however able to return to Turkey. Only one Member State, **Iceland**, replied that returns are not carried out.

Figure 4: Member States with readmission agreement with Turkey

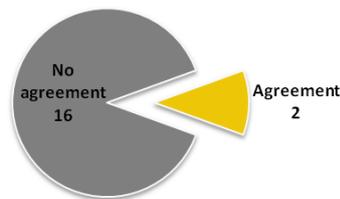
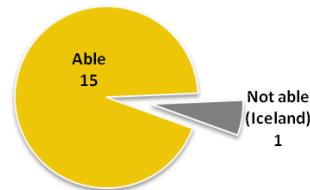


Figure 5: Able to return to Turkey with no agreement



4.1.1 Voluntary return

One Member State, **Liechtenstein**, replied that only voluntary returns are carried out.

4.1.2 Forced returns

Nearly all (14 out of the 16 Member States with no readmission agreement with Turkey) carry out forced returns to Turkey.

4.1.3 Readmission of third country nationals

10 Member States (out of the 16 Member States with no readmission agreement with Turkey) replied that only Turkish Nationals can be returned to Turkey. Two Member States did not specify.

Belgium replied that it is possible to return Turkish Nationals as well as third country nationals, but replied that third country nationals can only be returned in application of the Chicago Convention (border cases).

The United Kingdom is able to return both Turkish Nationals and third country nationals, but replied that the priority is to return third country nationals to their country of origin.

Lithuania specified that it is in principle possible to return third country nationals but in practice only Turkish Nationals are returned to Turkey.

Norway added that transits of third country nationals in Turkey are not allowed even if the returnees are escorted by police.

4.2 Bilateral readmission agreements or other arrangements

4.2.1 Bilateral readmission agreements

Two Member States have a bilateral readmission agreement with Turkey.

Greece replied that a bilateral readmission agreement with Turkey has been in place since 2002, and that “*The Greek Turkish Readmission Protocol*” is a part of a broader cooperation with Turkey.

Greece replied in connection with the above that the agreement covers both Turkish Nationals and third country nationals and that more than 200 Turkish Nationals and almost 3.500 third country nationals have been returned to Turkey since the readmission agreement entered into force. Greece specified that in 2010 and 2011 Turkey approved readmission of nearly 1.500 third country nationals. Greece also specified that in 2010 501 persons were removed to Turkey, and 23 were Turkish Nationals. In 2011 730 persons were removed to Turkey, and one was a Turkish National.

Romania replied that a readmission agreement with Turkey was signed in 2004. In February 2004, an agreement on mutual travels of own citizens was signed by Turkey and Romania, and in 2007 it was modified into a Protocol.

Romania replied that the agreement covers both Turkish nationals and third country nationals.

4.2.2 Other arrangements with Turkey

Two Member States have other arrangements with Turkey.

The United Kingdom replied that Turkey has cooperated with The United Kingdom on returns for a number of years. The United Kingdom is currently working closely on immigration initiatives as a result of the Strategic Partnership agreement signed by the respective Prime Ministers in July 2010.

Switzerland replied that an agreement is planned as a part of the future cooperation with Turkey in the field of migration. A draft readmission agreement alongside a draft visa facilitating agreement has been submitted to Turkey.

5. The relevant Council Conclusions of 9 – 10 June 2011

As mentioned above, the Presidency specified the relevant Council Conclusions of 9 – 10 June 2011 defining the European Union Strategy on Readmission in the questionnaire and – using the Council Conclusions as stepping stones – asked Member States to answer relevant questions *if* a formal/bilateral readmission agreement or other arrangement with Turkey is in place.

Most Member States have not provided the Presidency with replies to these questions since a formal/bilateral readmission agreement or other arrangement with Turkey, as mentioned above, is not in place.

As mentioned above, **Greece** and **Romania** have concluded a bilateral readmission agreement with Turkey, and **the United Kingdom** and **Switzerland** have other arrangements with Turkey in place. These countries have therefore been able to provide the Presidency with some answers to the questions raised.

In an attempt to group answers with the relevant Council Conclusion, the answers received can be summarized as follows (the relevant Council Conclusion text is in italic):

Council Conclusion 6:

“Negotiating directives should better take into account the overall relations with the third country concerned, and should, where appropriate, contain flexibility.”

Greece, **Romania** and **the United Kingdom** replied that the respective agreements with Turkey are perceived as being part of a broader cooperation with Turkey. **Switzerland** replied that the draft agreement is perceived as being a part of broader migration cooperation.

Council Conclusion 8:

“The Council acknowledges the importance of seeking to incorporate issues of readmission into a broader and coherent cooperation with third countries. The use of incentives is important, although they should not be prerequisites for launching.”

Greece, Romania and the United Kingdom replied that no incentives have been used in order to launch/sign/continue such agreements.

“Future negotiation directives could include tailor-made incentives, which may be offered to the third country concerned in order to ensure the proper level of cooperation by the third country concerned. Such incentives should be defined on a case-by-case basis and according to the particular needs of both sides. They should be proportional to the obligations assumed by the third country in question.”

Greece and the United Kingdom replied that tailor-made incentives have not been offered to Turkey, i.e. legal migration possibilities for Turkish Nationals.

Greece and the United Kingdom replied that readmission negotiations have not been opened in parallel with framework agreement negotiations regarding Turkey. **Switzerland** replied that the draft agreement has not been opened in parallel with framework agreement negotiations regarding Turkey.

The United Kingdom replied that no other agreements (including non-migration related agreements) functioned as leverage for signing a readmission agreement with Turkey. **Greece** replied that the agreement is part of a broader Police Cooperation Agreement with Turkey. **Switzerland** replied that a draft visa agreement has been submitted at the same time.

“The incentives may consist of elements of the Global Approach to Migration and/or non-migration related issues embodied into EU framework agreements with the same third country.”

Greece and **Romania** replied that financial assistance for securing adequate reception facilities for third country nationals awaiting onward readmission to country of origin has not been put in place, including through the European Return Fund. Likewise, **Switzerland** replied that a clause regarding financial assistance for securing adequate reception facilities for third country nationals awaiting onward readmission to country of origin is not a part of the draft agreement.

“The principle of conditionality should apply in an appropriate manner, including through the withdrawal of incentives when a third country does not co-operate in the effective implementation of its readmission obligation.”

Greece and **Romania** replied that sanctions/withdrawal of incentives is not a part of the agreement, if Turkey does not fulfill its readmission obligations. **Switzerland** replied that sanctions/withdrawal of incentives is not a part of the draft agreement.

Council Conclusion 9:

“The Council will continue, as a general rule, incorporating clauses on the readmission of third country nationals in the negotiating directives, with due regard to the geographical situation and transit character for illegal migration of the third country concerned.”

Greece and **Romania** replied that clauses on the readmission of third country nationals to Turkey as a transit country are part of the agreement. **Switzerland** replied that clauses on the readmission of third country nationals to Turkey as a transit country are part of the draft agreement.

Greece replied that EUR 71 per person is paid to Turkey in order for Turkey to accept the readmission of third country nationals.

Council Conclusion 10:

“The Council will continue incorporating the rules on accelerated procedure and transit operations in the negotiating directives, since it is more beneficial and would increase converging practices than having these procedural rules in the various and rather technical bilateral implementing protocols. In duly justified and exceptional cases where one or both procedures are unlikely to be used in practice in relation to a given third country, those procedures may be omitted from the EU readmission agreements.”

Greece replied that Greece intends to organize joint return flights of third country nationals with Turkey, but that funding and procedure have to be in place first.

Romania replied that Romania did make use of transit procedures until 2008. **Switzerland** replied that use of transit procedures are part of the draft agreement.

Greece replied that the agreement between Greece and Turkey foresees accelerated readmission procedures. **Romania** replied that the agreement does not foresee accelerated readmission procedures. **Switzerland** replied that the draft agreement does not foresee accelerated readmission procedures.

Council Conclusion 12:

“The Council has invited the Commission to share its conclusions drawn from the pilot projects carried out by the Commission on monitoring the impact of implementation of certain readmission agreements.”

Greece replied that the implementation of the agreement is monitored by competent authorities.

Switzerland replied that the draft agreement does not include a clause on monitoring.

Greece and **Romania** replied that there is not a ‘post-return’ monitoring mechanism in place in Turkey.

Switzerland replied that a ‘post-return’ monitoring mechanism in Turkey is not a part of the draft agreement.

“The Council has recalled that human rights standards will continue to be fully respected in the framework of return policy.”

Greece replied that the agreement does not contain a suspension clause in the event of persistent and serious risk of violation of human rights of readmitted persons to Turkey.

Romania replied that each contracting party may suspend the implementation of the agreement partially or fully for reasons of public order, health or national security. Romania added that it is stipulated that only in case of readmission transit, the requested contracting party may refuse such a request, if serious evidence of violation of human rights of the person removed exists and that according to national legislation, it is forbidden to remove if serious suspicions of threat to life, torture etc. exists in the readmitted country.

Greece and Romania replied that the agreement does not contain an explicit clause on compliance with key international human rights conventions or the standards set out in those conventions and that the principle of respect of the fundamental rights during and after the readmission of a person to Turkey is not enshrined in the agreement.

Switzerland replied that the draft agreement does contain an explicit clause on compliance with key international human rights conventions or the standards set out in those conventions, and that the principle of respect of the fundamental rights during and after the readmission of a person to Turkey is enshrined in the agreement.

6. Conclusion

This synthesis is done in an attempt to shed light on the current status of readmission from Member States to Turkey.

From the examination of the Member States' replies given on the questionnaire, it is possible to conclude that nearly all Member States are able to return Turkish Nationals to Turkey – both voluntary and forced – though only a very few countries have concluded bilateral agreements with Turkey on readmission.

Most Member States replied that it is not possible to return third country nationals to Turkey.

Finally, all four Member States, who have a formal/bilateral readmission agreement or other arrangement with Turkey, replied that the respective agreements with Turkey are perceived as being part of a broader cooperation with Turkey. Irrespective of this, no incentives have been used in order to launch/sign/continue such agreements, and tailor-made incentives have not been offered to Turkey. Two Member States link visa and police cooperation issues to the implementation of a readmission agreement.

Member States that have a readmission agreement with Turkey replied that clauses on the readmission of third country nationals to Turkey as a transit country are part of the agreement.

7. The way forward

The Presidency *presents* to the Commission this synthesis on Member States' practical experiences with readmission to Turkey with the intension to provide the Commission with best practices and experiences from Member States.

With reference to

- the Council's call on Member States to continue to give the Commission full political and diplomatic support in the course of negotiations as well as to provide the Commission with their national expertise, *as well as*
- the Council's underlining of the importance of continuing negotiations with countries of origin and transit, and the Council's urge to the Commission to make further appropriate steps when negotiations stall,

the Presidency *invites* the Commission to take into account the practical experiences of Member States, and to involve Member States on relevant issues highlighted by this synthesis.