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Turkey in the European Area of Freedom, Security and Justice

EU-Turkey Working Paper No. 3/August 2004

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Introduction

This report explores the challenges posed by Turkey's prospective membership in the EU in the Area of Freedom, Security and Justice. It analyses policy strategies for both Turkey and the EU itself in these areas, focusing in particular on border management and policies on irregular immigration as envisaged for the Schengen area.

While the final decision on opening accession negotiations with Turkey lies with the European Council in December 2004, the Turkish authorities are already working to harmonise Turkish policy and law with the European *acquis* as laid out in the Accession Partnership (AP) strategy for Turkey of March 2003 and the National Programme for the Adoption of the *Acquis* (NPAA) of July 2004.¹ This exercise covers the entire range of EU policies, including one that receives little public attention, but carries high salience both to the EU and Turkey – Justice and Home Affairs (JHA).

JHA cooperation in general and, more specifically, policies on border control and fighting irregular immigration are considered key priorities within the AP for Turkey.² The sheer length and diversity of Turkey's frontiers as well as the challenges that these two factors would involve in that country's membership of the EU are indeed fundamental questions under debate throughout the Union. These are sensitive policy issues because of the difficulty of managing such extensive land borders and coastlines,³ as well as the fears in the EU about having a future external border with countries such as Syria, Iraq, Iran and the Caucasus.

This challenge is further complicated by the fact that public opinion in the EU has in general been lukewarm towards enlargement precisely because they fear massive immigration and a weakening of border controls.⁴ This general trend is reflected in many member states by a growth in support of right-wing political parties that advocate anti-immigration agendas, and is also illustrated in the results of the recent European Parliament elections in June 2004. As a result, JHA issues and in particular policies associated with border control have become major political concerns.

¹ Turkish National Programme for the Adoption of the *Acquis*, *Official Gazette*, 24 July 2003, No. 25178 bis (Decision of the Council of Ministers dated 23 June 2003, No. 2003/5930), PRIORITY 24.2, "Continuation of the Alignment with the EU *acquis* on border management and preparation for the implementation of the Schengen *acquis*". These documents can be retrieved from www.mfa.gov.tr/grupa/ad/adc/AccessionPartnership2003.pdf and www.abgs.gov.tr/up2003/up.htm.

² See Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey, 19 May 2003, 2003/398. Commission Communication on Strengthening the Accession Strategy for Turkey, Brussels, 26.3.2003, COM(2003) 144 final.

³ Data provided by the Turkish Ministry of National Defence, General Command of Cartography, indicate that the country's land borders run 2,949 kilometres in total. The frontier to the northeast with the Commonwealth of Independent States is 622 kilometres in length; that with Iran, 560 kilometres, and 384 kilometres with Iraq. In the south is the 911 kilometres border with Syria. Turkey's borders on the European continent consist of a 203 kilometres frontier with Greece and a 269 kilometres border with Bulgaria. According to data from the Turkish Navy, Department of Navigation and Oceanography, coastlines (including the islands) run another 8,330 kilometres.

⁴ S. Carrera and A. Turmann (2004), "Towards free movement of workers in an enlarged EU?", CEPS Commentary (retrievable from www.ceps.be), April.

However, Turkey has already achieved important results in border management and preparations for the implementation of the Schengen *acquis*. As the European Commission stressed in its Regular Report on Turkey's Progress towards Accession,⁵ the country has made significant progress in developing and adopting preliminary strategies. Also, concerning external borders, the adoption of the Border Management Strategy is a crucial step forward. As the Commission points out, however, further legislative and institutional reform and improvement in training and physical infrastructure are all still necessary.

Turkey has committed itself in the NPAA to go further and deeper in the adoption of this European framework. Nevertheless, as the European Parliament recently pointed out in its Report on the 2003 Regular Report of the Commission on Turkey's Progress towards Accession,⁶ any legislative reform needs to go hand-in-hand with real implementation in practical terms. While progressively implementing all the strategies envisaged on the area of Justice and Home Affairs, Turkey has to align its legal and institutional framework in everyday practice. Yet this is not an easy task without a parallel transformation in the state of mind of all the actors involved.

This report first provides a general overview of the Schengen *acquis* as it stands at present, looking particularly at the case of readmission agreements. It then examines the issue of border protection as reflected in EU-Turkish relations, focusing firstly on the question of the actual physical control and management of Turkey's land borders with Eastern neighbours as well as its coastline, and secondly, on an analysis of Turkey's policies to combat irregular migration and their implications for asylum law and adoption of the Schengen visa regime. Special emphasis will be equally put on the importance of establishing a better understanding between the two parties and on the need to pay attention to 'confidence-building measures'.

As was the case for the new EU members and current candidate countries, Turkey will need to apply the Schengen *acquis* in full upon a future accession to the EU. However, this does not exclude the adoption of special provisions that would be compatible with Schengen laws. Indeed, a certain degree of flexibility as regards the application of the common borders regime would be advisable in light of the economic, social and geopolitical relations between Turkey and its wide neighbourhood, as well as regional particularities and sensitivities.⁷

The report will examine the experiences of Spain, Portugal and Greece, in search of examples of flexibility that might be relevant for Turkey. The Schengen regime is not as rigid as it may appear and allows some latitude to the participating countries as long as they respect the basic rules. We shall also evaluate to what extent policies such as the one advocated by the European Commission to establish a border traffic visa regime may be feasible options to be applied to Turkey. In this context, we will look at the lessons to be learnt from the current border situation between Poland and Ukraine. Finally, the report will assess Bulgaria's experience on the so-called 'Schengen negative list' and on the readmission agreements, comparing it with the case of Turkey.

2. Overview of the Schengen *Acquis*: Some Recent Developments

At its meeting in Tampere in October 1999, the European Council stressed its determination to progressively develop an Area of Freedom, Security and Justice in the European Union, using the call

⁵ European Commission (2003), *2003 Regular Report on Turkey's Progress towards Accession*, 5 November. The European Council in Cardiff in June 1998 noted that the Commission would present a report on Turkey based on Article 28 of the Association Agreement and the conclusions of the Luxembourg European Council of December 1997. The European Commission presented its first Regular Report on Turkey in October 1998.

⁶ Report on the 2003 Regular Report of the Commission on Turkey's Progress towards Accession, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, European Parliament, 19 March 2004.

⁷ For an analysis of the notion of trust in an enlarged EU, see M. Anderson (2002), "Trust and Police Cooperation", in M. Anderson and J. Apap, *Police and Justice Co-operation and the New European Borders*, The Hague: Kluwer Law International, pp. 35-46.

for action given by the Amsterdam Treaty.⁸ The abolition of border controls on persons crossing the internal frontiers represented one of the paradigms behind the ‘freedom rationale’ in this symbolic triptych.⁹

For the completion of the single market in the European Community, it was judged necessary to abolish all obstacles, barriers or in junctions preventing the movement of persons, i.e. including checks at the borders. Thus, the old internal border controls carried out by the competent national authorities for persons not holding the nationality of the sovereign state concerned needed to be abolished.¹⁰ The legal basis for doing this was provided in Article 14 of the Single European Act, which entered into force in July 1987.¹¹

However, the dismantling of border controls as well as the increased permeability of frontiers led to many anxieties about a potential increase in the level of irregular immigration and transnational organised crime, which until nowadays have been very much exploited at times of national elections.¹²

The Schengen agreement of 1985 aimed to establish, through an intergovernmental approach, the application of the principle of the free movement of persons in the European Community. Since the signing of the Schengen Convention in June 1990,¹³ most EU members have become part of the Schengen club, except for the United Kingdom and Ireland, which together with Denmark, concluded special protocols giving them the possibility to remain outside particularly sensitive Schengen provisions.¹⁴ The implementing Convention entered into force in September 1993, but it was not applied until March 1995.

The Amsterdam Treaty, which entered into force in May 1999, represented a fundamental step towards introducing part of the Schengen regime into the European Union’s legal framework. The Protocol integrating the Schengen *acquis* into the EU hence communitarised the section dealing with the Schengen borders *acquis* by inserting it within the first pillar or so-called ‘Community method/governance’. The legal basis of the acts adopted under the Schengen umbrella may be found in

⁸ See the Tampere European Council Presidency Conclusions, 15th and 16th October 1999. See also J. Apap and S. Carrera (2003), *Progress and Obstacles in the Area of Justice and Home Affairs in an Enlarging Europe*, CEPS Working Document No. 194, June.

⁹ See paragraph 2 of the Tampere Presidency Conclusions: “The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global political and economic challenges. The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives”.

¹⁰ Commission of the European Communities, White Paper from the Commission to the European Council, *Completing the Internal Market*, COM(85) 310 final, Brussels, 14th June 1985, Part One: The Removal of Physical Barriers.

¹¹ Article 14.2 of the EC Treaties provides that “The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this treaty”.

¹² See M. Anderson (2004), “The transformation of Border Controls: What is different about Europe?”, in J. Apap (ed.), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar Publishing.

¹³ ‘Schengen’ was supplemented by the Schengen Implementing Agreement 1990 which introduced various measures intended to compensate for the apparent security deficit and uncertainty resulting from the abolition of internal border controls within the EU, such as the application of controls at the common external border of the participating states, provisions on the division of responsibility with respect to asylum and provisions on police and judicial cooperation in criminal matters.

¹⁴ Notwithstanding if we look at Articles 3 and 4 of the Protocol on the Position of the United Kingdom and Ireland, both countries may have the door open to decide participating in some specific measures adopted under the regime. Lately, the European Commission has started negotiations with Switzerland regarding its potential future association.

Title IV of the EC Treaties ‘Visas, Asylum, Immigration and Other Policies related to Free Movement of Persons’ (Articles 61-68).¹⁵ Those Schengen provisions dealing with police and judicial cooperation in criminal matters remained however under Title VI of the Treaty on the European Union or the third pillar,¹⁶ and therefore any cooperation in these fields continued to be based on an intergovernmental method.¹⁷

The duality in location of Schengen law in the first and third pillars brought about an unfortunate lack of transparency and efficiency in these policies, involving different decision-making procedures, and different roles of the European Parliament and the European Court of Justice (ECJ), depending on the pillar framework¹⁸ (see Appendix 1). However, most of these negative features will change substantially with the entry into force of the EU Constitutional Treaty by 2006, which was finally adopted at the Intergovernmental Conference in June 2004.¹⁹ As a result, the complexity, ambiguity and lack of transparency inherent in the current regime will be enormously improved firstly by the abolition of the pillar division.²⁰ The European Parliament will also be more directly involved in the decision-making process thanks to the application of the so-called ‘co-decision procedure’ as provided in Article III-302 of the Constitution.²¹ Another new feature is that the ECJ has been positively assigned full competence to review and interpret JHA’s legal instruments, including those dealing specifically with judicial cooperation in criminal matters and police. Some fundamental limitations remain, however, such as the stipulation in Article III-283 of the Constitution that the ECJ shall have no jurisdiction to review the validity or proportionality of operations carried out by police or other law-enforcement services, or the exercise of the responsibilities incumbent upon member states with regard to the maintenance of law and order and the safeguarding of internal security (see Appendix 1). The challenge remains now in the diverse ratification procedures in an EU of 25.

In brief, the Schengen *acquis* is composed of the following main elements:²²

¹⁵ See for instance Article 62 of the EC Treaties: “The Council, acting in accordance with the procedure referred to in Article 67, shall within a period of five years after the entry into force of the Treaty of Amsterdam, adopt: 1. measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders. ...”.

¹⁶ Article 29 TEU provides that “The Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action...” on “...closer cooperation between police forces, customs authorities and other competent authorities in the member states...”.

¹⁷ For an in-depth study of the division of competences between the EU and national levels and the principle of subsidiarity, see P. De Hert (2004), “Division of Competencies between National and European Levels with regard to Justice and Home Affairs”, in J. Apap (ed.), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar Publishing, pp. 55-102.

¹⁸ E. Guild and S. Peers (2001), “Deference or Defiance? The Court of Justice’s Jurisdiction over Immigration and Asylum”, in E. Guild and C. Harlow (eds), *Implementing Amsterdam; Immigration and Asylum Rights in EC Law*, Oxford: Hart Publishing, pp. 267-87.

¹⁹ See the Provisional consolidated version of the Draft Treaty establishing a Constitution for Europe, CIG 86/04, Brussels 25th June 2004. See also A. Townsend (2003), *Can the EU deliver the area of freedom, security and justice?*, EPIN Working Paper No. 9, Centre for European Policy Studies, September and M. Den Boer (2004), “The European Convention and Its Implications for Justice and Home Affairs Cooperation”, in J. Apap (ed.), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar Publishing.

²⁰ See Chapter IV of the Provisional consolidated version of the Draft Treaty establishing a Constitution for Europe, titled ‘Area of Freedom, Security and Justice’, Article III-158 until III-178.

²¹ Furthermore, Article III-160 also foresees that member states’ national parliaments will ensure the compliance with the principles of subsidiarity and proportionality of the legislative initiatives dealing with judicial cooperation with criminal matters and police. They will also participate in the political monitoring of Europol, and the evaluation of Eurojust’s activities.

²² The Schengen Acquis as referred to in Article 1(2) of the Council Decision 1999/435/EC, 20 May 1999, *Official Journal* (OJ) EC, 22 September 2000. Council Decision 1999/436/EC, 20 May 1999, which determines the legal basis for each of the provisions or decisions that constitute the *acquis*, OJ L 176, 10 July 1999.

- The agreement between the Benelux countries, Germany and France on the gradual abolition of checks at their common borders, signed in Schengen in June 1985;²³
- The convention between Belgium, Germany, France, Luxembourg and the Netherlands, signed in Schengen in June 1990, implementing the agreement of 1985, with related Final Act and common declarations;
- All the accession protocols and agreements to the 1985 Agreement and the 1990 Convention, with: Italy (27 November 1990), Spain and Portugal (25 June 1991) and Denmark, Finland and Sweden (19 December 1996), Austria (28 April 1995), Norway and Iceland (18 May 1999), along with related final acts and declarations; and
- The decisions and declarations adopted by the Executive Committee, as well as acts adopted by the organs upon which the Executive Committee has conferred decision-making powers.

The policies included in the Schengen *acquis* include the listing of third countries whose nationals are exempt from or must be in possession of visas,²⁴ external border controls and cooperation between the border control services, rules on free movement of persons, visa policy, extradition and readmission agreements, security standards for travel documents, anti-drugs policies, judicial cooperation in criminal matters, Schengen Information System (SIS), etc.

The main general principles of the Schengen system are threefold:

- Creation of a common European territory without internal borders along with the establishment of a common external border;²⁵
- Entry into the Schengen zone by crossing one of the common external borders constitutes admission into the whole Schengen territory;
- Once admitted inside the common territory, a person is entitled to move freely within the whole Schengen area for a period of three months out of every six without any further checks at the internal borders of any of the participating states.²⁶

These three principles apply except in those cases in which special security concerns, such as reasons of public policy, national security and public health (so-called ‘state of emergency’ or ‘exceptionalism’). Thus, no third country national should gain access to the territory of the Schengen states, independently of having been granted a short stay visa, if s/he is considered to constitute a ‘security risk’, pursuant to Article 96 of the Convention implementing Schengen,²⁷ for any of the

²³ It is interesting to see how the Schengen system arose first from economic pressures not least from the transport industry to remove obstacles to cross-border trade with the European Union. See D. Bigo, *Polices en Réseaux*, (Paris: Presses de Sciences-Po), 1996.

²⁴ Council Regulation No 453/2003, 6 March 2003 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

²⁵ Article 2 of the Schengen Convention and the Decision of the Schengen Executive Committee SCH/Com-ex (95)20. See Commission Communication, *Towards integrated management of the external borders of the member states of the European Union*, COM(2002) 233 final, Brussels, 7.5.2002.

²⁶ Decision of the Executive Committee on the definitive versions of the Common Manual and the Common Consular Instructions, SCH/Com-ex (99) 13 of 28.4.1999, OJ L 239, 22 September 2000. See also an updated version in OJ C 313, 16 December 2002.

²⁷ Article 96 of the Convention states that 2. “This situation may arise in particular in the case of: (a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year; (b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party. 3. Decisions may also be based on the fact that the alien has been subject to measures involving deportation, refusal of entry or removal which have not been

states involved. However, the goal of free movement within the Schengen area has been made more difficult by the new security threats (international terrorism), and the use of exceptional security policies as a consequence. There seems to have emerged a sort of permanent state of emergency in the European Union after the events of 11 September 2001 in the United States and 11 March 2004 in Madrid.²⁸

As Guild points out,²⁹ the borders are no longer defined in terms of the territory which they contain but of the people moving across them. With the Schengen regime, the borders are in a legal place. The European border then is designed and determined by the particular characteristics of the individual seeking to cross the line while meeting the laws, although third country nationals may not appreciate what they are going to find at the physical or legal Schengen border.

While respecting and fully meeting the Schengen legal rules, the member states have nevertheless carefully kept a number of ‘escape gates’ or ‘open-door clauses’ to retain national competences (sovereignty) of control over their traditionally external borders whenever they consider this is necessary on grounds of national security and public policy. For example, France still frequently carries out border checks or ‘selective spotchecks’ on persons moving between France and the other Schengen states. Indeed Article 2.2 of the Schengen Convention³⁰ allows the member states to decide in a rather discretionary manner, reintroducing border checks on individuals on grounds of special security concerns at national level.³¹

The events of September 11th and March 11th have given a significant boost to the development of a security strategy in the European Union.³² Some legal acts adopted by the Council within the security package envisaged to deal with the new threats fall directly within the scope of Schengen, e.g. the strengthening of EU border controls, improved customs cooperation, the incorporation of biometric and other new technologies in travel and identification documents. The intention is to use biometric technology to store information on the behavioural and physiological characteristics of an individual, e.g. retina scan, digital fingerprints, etc. directly on the documents issued to third country nationals, such as visa and residence permits, as well as to EU citizens.³³

Thus, the Schengen *acquis* is not a static compendium of rules. On the contrary, the regime is still ‘in the making’. This ‘evolving factor’ is crucial for any state intending to accede to the EU club over the next few years, such as Turkey. The package of Schengen-related measures that exist at the moment

rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of aliens.”

²⁸ See D. Bigo (2004), “Global (in)security: The field of the professionals of unease management and the Ban-opticon”, in Jon Solomon and Naoki Sakai (eds), *Traces: A multilingual series of cultural theory*, No. 4 (Sovereign Police, Global Complicity), Hong Kong: University of Hong Kong.

²⁹ See E. Guild (2001), “Moving the Borders of Europe”, inaugural lecture delivered at the official ceremony of the assumption of the professorship of the CPO Wisselleerstoel at the University of Nijmegen, 30 May.

³⁰ See J. Apap and S. Carrera (2003), *Maintaining Security within Borders: Towards a Permanent State of Emergency in the EU?*, CEPS Policy Brief, No. 41, November, pp. 2-6.

³¹ In addition to these examples, we need to highlight the settlement of a growing number of joint centres of police and customs cooperation at the traditional external borders of the EU member states, and which involve representatives of the police services of both states. See P. Hobbing (2003), “Management of External EU Borders: Enlargement and the European Border Guard Issue”, paper presented at the Workshop on Managing International and Inter-Agency Cooperation at the Border, organised by the Geneva Centre for the Democratic Control of Armed Forces, 13-15 March.

³² See *Declaration on Combating Terrorism*, European Council, Brussels, 25 March 2004.

³³ Proposal for a Council Regulation amending regulation (EC) 1683/95 laying down a uniform format for visas and regulation (EC) COM(2003) 0558 final-CNS 2003/0218, and the Proposal for Council Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals, COM(2003) 0558 final-CNS 2003/0218.

and the significant financial burden to transpose them at national level³⁴ may vary and further develop in a significant extent until membership of a candidate state will take place.

Another feature is the Schengen Information System (SIS), which was conceived as a first step for the proper implementation of the system. The SIS established a matrix of information capable of identifying (by issuing an alert), and hence excluding, those persons who are considered security risks or threats inside the common territory. The database, which falls at the moment within the third pillar rubric,³⁵ operates in 13 member states as well as in Norway and Iceland.³⁶ It allows the national competent authorities to acquire and store a wide range of information regarding individuals and inadmissible foreigners.³⁷

In May 2001, the Council confirmed as a priority the development of the second-generation Schengen Information System (SIS II) by 2006.³⁸ One of the main objectives in developing SIS II would be to establish a system allowing the integration of new member states in the EU. Furthermore, the technology of the present SIS was judged to be outdated and hence insufficiently flexible for easily adding new functionalities and technologies.³⁹ Hence, in its Communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents, the European Commission confirmed the importance given at the Laeken and Seville European Councils⁴⁰ as well as in the Comprehensive Plan to combat illegal immigration and trafficking of human beings or the so-called 'Santiago Action Plan'⁴¹ to establish a common Visa Information System in the EU (VIS) along with the Second Generation of the Schengen Information System (SIS II) in order to better face the new forms of transnational violence identified

³⁴ According to the Commission Communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents, COM(2003) 323 final, 3.6.2003, the estimates set out in the feasibility study carried out by the European Commission for the investments costs of the Visa Information System range about €130 million to nearly €200 million. The development and operation of the biometrics module represents a high proportion of these costs. See page 5 of the Communication.

³⁵ This decision was taken due to the difficulty to achieve a political agreement on its inclusion on the first pillar framework.

³⁶ Article 6 of the Protocol integrating the Schengen *acquis* into the framework of the European Union provides for the association between the Republic of Iceland and the Kingdom of Norway with the implementation of the Schengen *acquis* and its further development on the basis of the Agreement signed in Luxembourg on 19 December 1996.

³⁷ For a precise description on how the SIS operates, see *The Schengen Information System: A human rights audit* (London: Justice, 2000).

³⁸ Commission Communication to the European Parliament and the Council, Development of the Schengen Information System II, COM(2001) 720 final. Council Regulation (EC) No 2424/2001 on the development of the Second generation Schengen Information System (SIS II) based on Articles 66 of the Treaty establishing the European Community. And the Council Decision 2001/866/JHA on the development of the second generation Schengen Information System (SIS II) based on Articles 30(1), 31 and 34 of the Treaty on European.

³⁹ See Commission Communication on the Development of the Schengen Information System II and possible synergy with a future Visa Information System (VIS), COM(2003) 771 final, Brussels, 11.12.2003, point 1.2.2.

⁴⁰ See the Seville European Council Presidency Conclusions, 21 and 22 June 2002, point 30 on Measures to combat illegal immigration, 'The European Council calls on the Council and the Commission, within their respective spheres of responsibility, to attach top priority to the following measures contained in the plan: introduction, as soon as possible, of a common identification system for visa data, in the light of a feasibility study to be submitted in March 2003 and on the basis of guidelines from the Council; a preliminary report will be presented before the end of 2002'. See also the Laeken European Council Presidency Conclusions, 14 and 15 December 2001, point 42.

⁴¹ Comprehensive Plan to combat illegal immigration and trafficking of human beings, 2002/C142/02, 14 June 2002, OJ C142/23.

as ‘international terrorism’. The future developments of a VIS,⁴² SIS II, as well as the use of biometrics and other new technologies in documents issued to third country nationals as well as to EU citizens, continue to be a highly controversial topic of discussion in the European arena.⁴³

One of the latest developments in Schengen is the Commission Proposal for a Council Regulation establishing a Community Code on the rules governing the movement of persons across borders,⁴⁴ which has been presented as a fundamental part of the consolidation and further development of the legislative side of the EU policy on integrated border management. The Community Code aims to establish a common corpus of Schengen legislation governing the movement of persons across external as well as internal borders.⁴⁵

Finally we need to point out a number of negative or controversial features of the Schengen system.

There is a lack of transparency in the regime, which is mostly due to the dual pillar system. There remain both visible and hidden barriers to this freedom inside the Schengen zone,⁴⁶ which are most of the time justified by the member states on grounds of internal security. There is a worrying lack of a framework enabling a legal challenge in search of an effective remedy against a negative decision taken by a national competent authority refusing to ‘move the barriers’, and hence to allow the person involved to enter the territory. There is a low degree of protection for individuals intending to move while the regime is being applied in practice. The legal protection conferred is left completely to the discretion of national authorities, and therefore to each of the national legislations. People, and particularly foreigners, have serious difficulties in learning the reasons why they have been refused entry and how they may challenge this decision.⁴⁷ In the new proposal establishing a Community Code on the movement of persons across borders, the procedures for refusing entry are only part of Annex VIII, and not the main corpus of the regulation. The Commission does not even mention the right to present a legal challenge against a negative decision taken for instance by a national border guard.

The whole Schengen *acquis* package must be accepted in full by all states that are candidates for admission in the European Union. This rigid and fundamental condition, which has received so much criticism due to the apparent application of ‘double standards’ in relation to old and new EU member states as well as candidate states, finds its source in Article 8 of the Protocol integrating the Schengen *acquis* into the Framework of the EU, which expressly stipulates that: “For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidate for admission”.

⁴² See Proposal for a Council Decision establishing the Visa Information System (VIS), Brussels, 12.2.2004, COM(2004) 99 final. The legal basis of the proposal is Article 66 TEC.

⁴³ See J. Apap, D. Bigo, S. Carrera, E. Guittet and R. Walker (2004), *ELISE Declaration: The aftermath of 11th March in Madrid*, retrievable from www.eliseconsortium.org.

⁴⁴ Commission Proposal for a Council Regulation establishing a Community Code on the rules governing the movement of persons across borders, Brussels, COM(2004)391. It is also interesting to look at the legal basis: Article 62.1 and 2.a of the EC Treaties.

⁴⁵ Title II of the Proposal deals with External Borders (Articles 4-17) and Title III with internal borders (Article 18-28). See particularly Chapter II of Title III, *Safeguard clause (Articles 20-28)*, which provides for the reintroduction of checks at internal borders by a Member State and the procedures in cases of emergency or cross-border terrorist threat.

⁴⁶ See for example M. Byrska (2004), *The Unfinished Enlargement; Report on Free Movement of People in EU-25*, European Citizen Action Service, ECAS, June.

⁴⁷ See the proposal on a Directive of minimum guarantees for individual freedom, security and justice in relation to decisions regarding movement of persons presented by P. Boeles, E. Bouwer, A. Woltjer and K. Alfenaar (2003), *Border control and movement of persons, Towards effective legal remedies for individuals in Europe*, Standing Committee of Experts in International Immigration, Refugee and Criminal Law, Utrecht, the Netherlands.

This report recommends however that a degree of flexibility and a more liberal regime should be applied in relation to those countries willing to accede to the European Union, such as Turkey, in the interest of the EU itself as well as that of Turkey.

2.1 Readmission agreements

Among the package of measures composing the Schengen *acquis*, the ones on irregular migration require detailed examination.⁴⁸ The so-called ‘readmission agreements’ are one of the Schengen *acquis*’ major themes and a key part of the conditionality applied to any state pursuing EU candidacy and accession. Turkey is expected to sign readmission agreements with third countries of origin as part of the pre-accession alignment procedure. Turkey has also been asked to start negotiations on a readmission agreement with the EU itself. This is a very sensitive issue indeed.

Following the lifting of internal border controls, the development of a common European repatriation policy was soon considered imperative in order to ensure a swift return of those broadly labelled as ‘illegal migrants’ to the country they came from.

Readmission agreements are one of the oldest instruments used by EU members to carry out migration controls.⁴⁹ As early as 1994, the Council agreed on a recommendation that set a harmonised compendium of guidelines with regard to readmission in the form of a ‘specimen bilateral agreement’ between an EU member and a third country.⁵⁰ The main goal of this recommendation was to facilitate the readmission of persons staying illegally on the territory of the other Contracting Party. Pursuant to its provisions, a contracting party would readmit the following categories of persons:⁵¹

- those holding the nationality of the state concerned,
- third country nationals who entered via the external frontier of that state and
- third country nationals who hold a valid visa or residence permit issued by the requested contracting party.

Already at that time, the specimen agreement was highly criticised because it did not provide adequate protection to asylum-seekers whose claims had not yet been heard, nor for the compliance by the contracting parties with any human rights international obligations, such as the European Convention for the Protection of Human Rights and the Geneva Convention Relating to the Status of Refugees.⁵² In addition, readmission agreements are usually accompanied by protocols dealing with the technical

⁴⁸ Article 23.1 of the Convention implementing the Schengen Agreement provides that “Aliens who do not fulfil or who no longer fulfil the short-stay conditions applicable to the territory of a Contracting Party shall normally be required to leave the territories of the Contracting Parties immediately’. In paragraph 4 the same Article continues saying that ‘Such aliens may be expelled from the territory of that Party to their country of origin or any other state to which they may be admitted, in particular under the relevant provisions of the readmission agreements concluded by the Contracting Parties’.

⁴⁹ See D. Bouteillet-Paquet (2003), “Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and Its Member States”, *European Journal of Migration and Law* 5: 359-377. Bouteillet-Paquet differentiates between four different generations of readmission agreements. The agreements signed in the 1950s and 1960s between the EC states are the first generation; the second is made up of the agreements with Central and Eastern European countries; the third generation is composed by those agreements concluded after the entry into force of the Amsterdam Treaty; and finally the fourth generation of readmission agreements are based on the emerging external dimension of EU migration law and the so-called ‘integrated method’.

⁵⁰ Council Recommendation concerning a specimen bilateral readmission agreement between a member state and a third country, 30 November 1994, OJ C 274/20, 19.09.1996.

⁵¹ See Articles 1-4 of the Council Recommendation C 274/20.

⁵² See R. Cholewinski (2001), “The EU *acquis* on Irregular Migration: Reinforcing Security at the Expense of Rights”, *European Journal of Migration and Law*, 2:361-405, Kluwer Law International.

aspects related to their implementation. Therefore, the Council also adopted a series of guiding principles to be used in that concern as a basis for negotiation.⁵³

Article 63.3.b of the Amsterdam Treaty conferred upon the EU for the first time the competence over policies on irregular immigration and the repatriation of irregular migrants.⁵⁴ The Community's power is not exclusive in this field but is shared with the member states.⁵⁵ The Tampere European Council called for the development of a common EU policy on immigration while "taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes".⁵⁶ In 1999 the Council adopted a decision on the inclusion of an updated model of 'readmission clauses' in Community agreements as well as in agreements between the European Community, its Member States and third countries.⁵⁷ From that time onwards the Council decided on the mandatory introduction of these clauses in every future agreement concluded by the Community with third countries.⁵⁸ These standard clauses cannot be considered as readmission agreements themselves. They only impose an obligation to the contracting parties to readmit their own nationals, third country nationals and stateless persons who may be unlawfully present on their territories. Since 1996, readmission clauses have been included in the agreements with Algeria, Armenia, Azerbaijan, Croatia, Egypt, Georgia, Jordan, Lebanon, Macedonia, Uzbekistan, and the Cotonou Agreement between the EU and the ACP countries, etc.⁵⁹

As highlighted above, after the events of September, 11th, the fight against terrorism, organised crime and illegal immigration also became a first priority inside the EU. Security-oriented policies on immigration and asylum moved to the very top of the agenda. The previously-mentioned Comprehensive plan to combat illegal immigration represented a core step towards the development of a common EU policy on irregular immigration. It identified the readmission and return policy as an integral and pivotal component in the fight against illegal immigration. The plan also stated that "these agreements should also include an obligation to readmit third-country nationals and stateless persons coming from or having resided in the country concerned". In the same vein, the Green Paper on a

⁵³ Council Recommendation on the guiding principles to be followed in drawing up Protocols on the implementation of readmission agreements, 24.7.1995, OJ C 274/25, 19.06.1996.

⁵⁴ Article 63.3.b of the EC Treaty provides that "The Council, acting in accordance with the procedure referred to in Article 67, shall adopt: measures on immigration policy within the following areas: b. illegal immigration and illegal residence, including repatriation of illegal residents".

⁵⁵ The Council alone or the Member States acting collectively will no longer be able to enter into such agreements. Also, Member States may continue to conclude bilateral readmission agreements as far as the Community has not already done so with a particular third country. Article 63.4 says that "Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements".

⁵⁶ Tampere European Council Conclusions, 15th and 16th October 1999, point 3. Even before the Amsterdam era, the Council had agreed in 1998 on the creation of the so-called 'High-Level Working Group on Asylum and Immigration' to develop an integrated external migration policy, and whose mandate was further expanded in 2002 (Council document, 9433/02, 30.5.2002).

⁵⁷ See Adoption of a Council Decision on the Consequences of the Treaty of Amsterdam on readmission clauses in Community agreements and in agreements between the European Community, its Member States and third countries, Council of the European Union, General Secretariat, 13409/99, Brussels, 25.11.1999.

⁵⁸ The former standard clauses provided by the Council Conclusions on readmission clauses, Council of the European Union, 11955/1/95, 23 November 1995, used to be inserted in association and cooperation agreements on a case-by-case basis only.

⁵⁹ See for instance, the Council and Commission Decision on the conclusion of the Partnership and Cooperation Agreement between the European Community and their Member States, of the one part, and the Republic of Armenia, of the other part, 1999/602/EC, 31.5.1999, OJ L 239/1. See also Article 13 of the Cotonou Agreement whereby the Members of the African, Caribbean and Pacific group of states (ACP) are obliged to "accept the return and readmission of any of its nationals who are illegally present in the territory of a Member State of the European Union, at that Member State's request and without further formalities".

Community Return Policy on illegal residents presented by the European Commission addressed the need to create common standards and measures on return issues for people residing illegally in the EU and to put forward suggestions for a coordinated and efficient policy based on common principles and standards.⁶⁰

At its meeting in Seville on 21-22 June 2002, the European Council called for speeding up the conclusion of readmission agreements with a number of targeted countries.⁶¹ Also, under the Spanish Presidency, the idea of placing sanctions, such as cutting development aid to those countries failing to cooperate on the control of illegal immigration, was presented by Spain and the UK as a policy option. The direct penalisation and punishment of developing countries was not considered to be ‘practical’, and the idea was not adopted. It was agreed that migration diplomacy and co-development programmes should be actively pursued in order to address migration issues in a more coherent and efficient way.⁶² Having that as a basis, the Commission presented a Communication on the integration of migration in relations with third countries in which it further stressed the considerable synergy between migration and development policies.⁶³ It also addressed how migration issues are being integrated in the Community’s external cooperation programmes and policies (‘integrated approach’), and how to use these policies to efficiently tackle irregular immigration.

The Council has so far given the green light to the European Commission to enter into negotiations on multilateral readmission agreements with Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China and Turkey.⁶⁴ The five official criteria that justify the inclusion of these countries on the list are:⁶⁵

- The migration pressure exerted by flows of persons from or via third countries, together with the number of persons awaiting return;
- The pressure which illegal immigration flows exert on the European Union’s frontiers;
- The added value for the member states in bilateral negotiations;
- A geographical balance between the various regions of origin and transit of migration flows; *and*
- Countries with which the EU is negotiating accession agreements should not be included. Yet, third countries with which the EU has concluded Association or Cooperation Agreements containing a readmission clause should be included.

There have been serious difficulties in the negotiations process with most of these states. Of the three agreements concluded so far (Hong Kong, Macao,⁶⁶ and Albania), only the one with Hong Kong has

⁶⁰ Green Paper on a Community Return Policy on Illegal Residents, COM(2002) 175 final, Brussels, 10.04.2002.

⁶¹ See Presidency Conclusions Seville European Council, 21-22 June 2002, point 30 that deals with measures to combat illegal immigration.

⁶² At the recent General Affairs Council Meeting 2552nd, Brussels, 8 December 2003 a systematic evaluation mechanism was set, whereby the European Commission will present annually a report on cooperation with third countries. The report will give an overview of the efforts third countries are making in the fight against illegal immigration as well as the technical and financial support provided by the EU side.

⁶³ Commission Communication on integrating migration issues in the European Union’s relations with third countries, COM(2002) 703 final, Brussels, 3.12.2002.

⁶⁴ Article 300 EC Treaty establishes the procedure to be followed where the EC Treaty provides for the conclusion of agreements between the Community and one or more States or international organizations.

⁶⁵ See the Criteria for the identification of third countries with which new readmission agreements need to be negotiated – Draft Council Conclusions, Council of the European Union, 7990/02, Brussels, 16.4.2002.

⁶⁶ See Report on the Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Macao Special Administrative Region of the People’s Republic of China on the readmission persons residing without authorization, European Parliament, 24.2.2004.

entered into force.⁶⁷ Negotiations with Morocco are starting to move.⁶⁸ Moreover, a Memorandum of Understanding between the EU and the National Tourism Administration of China regarding visa and other related issues on tourist groups has been recently concluded.⁶⁹

What are the main features characterising the readmission agreements? They impose the obligation to the contracting parties to readmit, upon application and without any further formality, their nationals if they do not, or no longer, fulfil the conditions for entry to, presence in or residence on the territory of the requesting state. This principle is generally recognised as an obligation in treaties under international law.⁷⁰ In addition this covers all third country nationals or stateless persons (or persons of another jurisdiction) if it is proved that they hold (or at the time of the entry held) a valid visa or residence permit issued by the requested state, or that they entered the EU after having stayed on or transited through that state.

The agreements also provide the readmission procedure to be followed (the readmission application, the means of evidence regarding nationality, the time-limits as well as the transfer modalities and modes of transportation). The use and protection of personal data are an important part of the agreements.

Finally, they also include the so-called ‘non-affected clause’, which guarantees that the readmission agreement shall be without prejudice to rights and obligations arising from international law.⁷¹ Much criticism has been expressed about the fact that this provision does not make specific reference to international human rights or refugee standards.⁷² Yet, contrary to the readmission agreement concluded with Hong Kong, this human rights reference has been expressly included in the latest version proposed by the European Commission of the agreement negotiated with Albania.⁷³

⁶⁷ See Information on the entry into force of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorization, OJ L64/38, 2.3.2004. Also, Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorization, OJ L17/25, 24.1.2004.

⁶⁸ On February 2003, Morocco agreed to open discussions. Since that date some rounds of negotiations have occurred.

⁶⁹ See Council Decision concerning the Conclusion of a Memorandum of Understanding between the European Community and the National Tourism Administration of the People’s Republic of China on visa and related issues concerning tourists groups from the People’s Republic of China, 2004/265/EC, of 8.3.2004, OJ L83/12. The Commission now hopes to begin negotiations on a wider scale that would cover all Chinese nationals or/and persons coming from China.

⁷⁰ See K. Hailbronner (2000), *Immigration and Asylum Law and Policy of the European Union*, Kluwer Law International, pp. 483-5. Article 13.2 of the Universal Declaration of Human Rights.

⁷¹ Article 16.1 of the Readmission Agreement with Hong Kong says that “This Agreement shall be without prejudice to rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Hong Kong SAR. 2. Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements”.

⁷² See S. Peers (2003), *Readmission agreements and EC external migration law*, EU: Statewatch analysis No. 17 (retrievable from www.statewatch.org).

⁷³ Article 17 of the Agreement between Albania and the European Community on the readmission of persons residing without authorisation, as included in the Commission proposal for a Council Decision concerning the signing and conclusion of the agreement, COM(2004)92 final of 12.2.2004, provides that “This agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and International instruments on extradition”.

While the readmission agreements are widely considered to be a paramount instrument in migration management and in the fight against illegal immigration,⁷⁴ they have been also highly criticized for several reasons. As Peers highlights, while the targeted countries will face more and more pressure under the new EU ‘integrated approach’, little is done in order to better tackle and prevent the underlying causes of irregular migration as well as the potential human rights violations that these instruments may lead to (such as sending rejected asylum-seekers to ‘safe’ countries of origin which prove as a matter of fact not to be so safe).⁷⁵

The EU is also facing serious difficulties in being able to offer anything ‘sufficiently attractive’ in exchange to those third countries. Since readmission agreements are in the interest of the Community, it has been commonly agreed that a successful conclusion depends on the ‘leverage’ at the Commission’s disposal. One of the main strains within these agreements is the obligation to readmit persons who are not nationals of the requested state but who have transited through its territory on their way to the Union. These transit states will be confronted with very high technical and financial charges. In addition to the technical and financial assistance/incentives that may accompany these agreements,⁷⁶ the EU and the member states need first to consider the so-called ‘root causes approach to migration’. The multiple negative effects that these European ‘return policies’ may cause in developing countries should also be taken into account. A right balance needs to be struck while integrating the policies on external relations and migration control.

As stressed by the European Commission in its recent Study on the links between legal and illegal immigration, a different and more flexible approach may be required.⁷⁷ Along with a coherent and balanced return policy that fully guarantees a high human rights protection, the use of legal migration measures may be the best solution in order to reduce significantly the much-feared threat of illegal immigration. These measures may include, for example, opening up channels of legal labour migration, developing measures for a better holistic integration of their nationals in the EU member states,⁷⁸ facilitating the issue of visas, etc.

3. Turkey’s Progress towards the Alignment of the Schengen *Acquis*

3.1 The policy and procedural context

It is only in the last two years that Turkey has started to focus its attention and energy on JHA issues. Previously, attention was centred on meeting the Copenhagen political criteria. The adoption of the second Action Plan in March 2003 followed by the revised NPAA efforts towards harmonisation in the JHA area started to gather pace. Already in June 2002, the Turkish government formed the Task Force on Asylum, Migration and Border Protection composed of representatives from the Coast Guard, Gendarmerie, Military, Ministry of Interior, Ministry of Foreign Affairs, Undersecretary of Customs and the Secretariat General for European Union Affairs. Working groups within this Task Force were set up to start legislative scrutiny and arrange for studies as well as study visits with

⁷⁴ See J. Niessen (2004), *International migration and relations with third countries, The European Union*, Migration Policy Group, May (retrievable from <http://www.migpolgroup.com>).

⁷⁵ See S. Peers (2003), *Readmission agreements and EC external migration law*, EU: Statewatch analysis No. 17 (retrievable from www.statewatch.org).

⁷⁶ See for instance the Regulation (EC) No. 491/2004 of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), of 10.3.2004, OJ L80/1, 18.3.2004.

⁷⁷ Commission Communication on a Study on the links between legal and illegal migration, COM(2004) 412 final, Brussels, 4.6.2004, Part II on the relationship between legal and illegal migration flows and relations with third countries.

⁷⁸ Commission Communication on immigration, integration and employment, COM(2003) 336 final, Brussels 3.6.2003. See also J. Apap and S. Carrera (2003), *Towards a proactive immigration policy for the EU?*, CEPS Working Document No. 198, December.

respect to border protection, irregular migration, the Schengen visa regime and asylum.⁷⁹ Since then, the Task Force has produced Strategy Reports in these areas that were in turn negotiated and discussed with the European Commission in Ankara. Subsequently, the government has had a series of proposals for twinning projects prepared dealing with the above wide areas. These projects by and large deal with the preparation of Action Plans for the implementation of the Strategy Reports as well as offer training programmes and resources for administrative capacity building. They are financed from the assistance allocated by the Accession Partnership for Turkey.

A joint EU-Turkey consultative mechanism has also been put into place to oversee the harmonisation process. Subsequent to the Helsinki European Council in December 1999, the EC-Turkey Association Council of 11 April 2000 set up eight subcommittees under the Association Committee.⁸⁰ The last of the subcommittees deals with JHA policies. This subcommittee has met five times.⁸¹ The meetings have been forums during which views are exchanged and Commission officials raise questions concerning legislative screening and progress in respect to work on harmonisation.

In general, government and public attention has been mainly focused on the Copenhagen political criteria reform packages and their implementation. Yet, within various bureaucracies an ever-growing number of middle and senior rank officials have become drawn into the tasks associated with the nitty-gritty details of preparing Turkey for the harmonisation of its legislation and practice with that of the EU. Since the formation of the new government in November 2002, officials are also encouraged by a government exhibiting a strong will for getting whatever needs to be done to open the way for Turkey's EU membership prospects. This is putting these officials in contact with their EU counterparts in an unprecedented manner. In this process the Secretariat General for European Union Affairs plays the role of the coordinating body between the different bureaucracies involved in respect to implementing the terms of the NPAA. By and large it can be said that over the last year or so these officials have become increasingly committed to their tasks even if there are occasional moments when doubts about the EU's credibility surfaces in their minds. This becomes particularly evident in respect to controversial and sensitive aspects of the harmonisation process and does indeed influence their performance.

3.2 Enhancing Protection of External Border

Turkey has 2,949 km of land borders and 8,330 km of sea borders. Much of the land borders is characterised by mountainous terrain. Traditionally, the Iranian, Iraqi and Syrian borders were porous and particularly vulnerable to smuggling and banditry well into the 1970s. Subsequently, in the 1980s and 1990s these borders became conduits for PKK terrorists operating out of neighbouring countries. As a result they have been heavily militarised, and a good part of the Syrian border is mined. However, a significant improvement in relations between Syria and Turkey over the last year has culminated in a decision early in 2004 to start removing the mine fields. It is now in particular the Iranian border that is vulnerable to irregular migration. A large proportion of illegal transit migrants usually are smuggled into Turkey across this border. It is also via this border that most of the asylum seekers arrive in Turkey. A large number of asylum applications in Turkey are lodged in the city of Van near the Iranian border. The Iraqi border on the other hand has seen two major mass influxes of refugees. In 1988 subsequent to the Halapja incidents, close to 60,000 Kurdish Iraqis sought refuge in Turkey followed by another almost 450,000 after the end of the first Gulf War. An overwhelming proportion of these refugees eventually returned to Iraq.

⁷⁹ The European Commission provided considerable expert assistance to the working groups, through an existing 'unallocated institution building' project: Administrative Cooperation and study visits were organised for Turkish officials to Germany, Poland and Finland as best practice Member States with the assistance of the European Commission.

⁸⁰ Decision No 3/2000 of the EC-Turkey Association Council of 11 April 2000 on the establishment of Association Committee subcommittees (2000/378/EC).

⁸¹ These meetings were held on 6-7 March 2001, 2-3 July 2001, 20-21 March 2002, 19 June 2002 and 15 December 2003.

On the other hand, the Soviet border was tightly sealed until the end of the Cold War, with minimal movement of people. Currently, the border with Georgia and Azerbaijan's Nahcivan province is open and lively while the one with Armenia that is separated by a river remains closed. During the Cold War, the Bulgarian border too was tightly controlled and heavily fortified on both sides. However, with the collapse of the communist regime in Bulgaria, relations between the two countries improved very quickly. By the mid-1990s, both countries had reached agreements for the demilitarisation of the border regions accompanied by efforts to de-mine the border. Currently, the Bulgarian border is extremely busy as Bulgaria constitutes the main transit path for a good proportion of Turkey's commercial relations as well as the seasonal movements of Turkish immigrants in Europe. Since the end of the Cold War there has also been a significant increase in regional commercial as well as private traffic. The border with Greece from the early 1960s too had become a tightly controlled and militarised border with no-go zones on both sides as the relations between the two countries deteriorated. The two countries are separated by a river. However, since relations between the two countries entered a period of *rapprochement* in 1999, the border has started to be demilitarised and traffic, both commercial and private, has increased significantly.

Turkey also has an exceptionally long sea border. The Aegean Sea is particularly difficult to control because of the nature of the coast and the large numbers of islands that dot the sea. This provides an ideal environment for illegal migrants trying to make it to Europe. They attempt to use the multitude of little ports and isolated coves along the coast to catch a passage with the help of human smugglers to the Greek islands at short distances from Turkey. The Aegean is also a rough sea which explains why occasionally boats overloaded with illegal migrants sink and tragedies occur.⁸² The Mediterranean Sea itself is a major conduit between the Afro-Asian world and the European Union for the movement of illegal migrants. However, compared to the Aegean Sea, the Turkish coast along the Mediterranean Sea is relatively easier to control and incidents of human smuggling and accidents involving boats carrying illegal migrants are much less frequent. The Black Sea coast of Turkey does not appear to be used for human smuggling and illegal migration purposes.

The east and south-eastern land borders of Turkey to a depth of 50 kilometres is controlled by the land forces of the Turkish military except for a short stretch near the city of Van, which is controlled by the Gendarmerie.⁸³ They are responsible for the actual patrolling and the physical protection of the borders against infringements. The coastal guard on the other hand is responsible for patrolling the sea coast. It is the coastal guard that is responsible for detecting, tracking and interdicting boats carrying illegal migrants.⁸⁴ The Interior Ministry's General Directorate of Security is responsible for managing 107 border-crossings while the Undersecretary of Customs processes formalities with customs and goods.

The EU is expecting Turkey to adopt a string of measures to enhance the protection of its borders. Most importantly the EU wants to see the replacement of the current border control and management system with an integrated civilian-professional unit with a capability to detect forged and false documents. The strategy foreseen in the NPAA on external borders needs to be highlighted. The Task Force on Asylum, Immigration and External Borders for the preparation of the overall strategy for alignment with the EU *acquis* on border management finished its work in the year 2003. The outcome hence foresees the creation of a new body wanted by the EU within the Ministry of Interior for all border protection issues, including coast guards, composed of non-military, professional law

⁸² For a detailed study of transit migration and smuggling of migrants with specific coverage of the personal experiences of irregular migrants and the special place of the Aegean Sea see A. İçduygu (2003), *Irregular Migration in Turkey*, IOM International Organization for Migration, Geneva.

⁸³ The Turkish Ministry of Interior, the General Directorate of Security (police forces) carry out the passport controls as well as the entry-exit checks in the country. According to estimations provided by the Turkish Ministry of Interior, national police at the border gates (land border, sea and airport border gates) number some 10,000 officers.

⁸⁴ The Coastal Guard is equipped with 80 coastal guard boats and 341 Contour boats. Turkish authorities with the assistance of the Coastal Guard intercepted between 2000-2003 118 boats carrying illegal migrants. Statistics obtained from the Foreigners Department of the MOI.

enforcement officials. The strategy equally identifies the key legislative and institutional amendments, as well as the infrastructure and training programmes, considered to be the only conditions under which a proper alignment with the Schengen *acquis* would take place.⁸⁵

The European Council at its meetings in Feira⁸⁶ and Göteborg⁸⁷ stressed the importance of any applicant countries' capacity to implement and enforce the *acquis communautaire*. The Council further emphasized that this goal involves fundamental efforts by every applicant in strengthening and reforming their administrative and judicial systems. In Turkey, as for all the past and present candidate countries, the so-called twinning projects play a fundamental role in that respect towards pre-accession negotiations.⁸⁸ The projects commonly named as 'twinning' are highly valuable instruments for targeted administrative cooperation to assist candidate countries to strengthen their administrative and judicial capacity and to implement the EU framework in their national systems. They have been qualified as the cornerstone of the joint effort by the European Union (European Commission and member states) and the candidate countries to foster institution-building, yet in some particular cases may be beset by a number of practical difficulties.⁸⁹

Since May 1998, the date in which the first twinning took place in Turkey, we may see how most of the projects envisaged for this country deal with Justice and Home Affairs policies. This fact reflects Turkey's determination to reinforce its law enforcement capacity in these particular areas as well as the importance given to the issues at stake in the pre-accession period by the European Commission and the member states. By way of example, in the year 2003 alone, five out of a total of 18 twinning projects were prepared dealing with the following JHA issues: strengthening the police forensic capacity, strengthening institutions in the fight against trafficking in human beings, strengthening the struggle against money laundering, financial sources of crime and the financing of terrorism, visa policy and practice, etc. The programme presented for the 2004 period includes three additional projects dealing with asylum, border protection, law enforcement and migration issues.⁹⁰

Regarding border controls, the main purpose of the 'twinning' is to prepare an action plan to implement Turkey's integrated border management strategy with a view to aligning its border management policy with the Schengen *acquis*, and to improve the operational capacity of the agencies in charge of that management inside the country. Among the list of projects for 2004,⁹¹ we stress the

⁸⁵ Looking at the schedule presented in the National Programme for the adoption of the *acquis*, for instance, new amendments in the Law of Foreign Nationals are expected to be adopted by next year (1 March 2005).

⁸⁶ See Santa Maria de Feira European Council 19 and 20 June 2000, Presidency Conclusions, point 16: "The European Council recalls that, in addition to finding solutions to the negotiating issues, progress in the negotiations depends on the incorporation by the candidate States of the *acquis* in their national legislation and especially on their capacity to effectively implement and enforce it. While progress has already been made, this calls for important efforts by the candidates to continue their domestic reforms, in particular strengthening their administrative and judicial structures. The Union will closely monitor the performance of the candidates. To this end, the Commission is invited to report to the Council on its findings. The European Council at Nice will review progress on enlargement and consider how to take forward the accession processes".

⁸⁷ Göteborg European Council 15 and 16 June 2001, Presidency Conclusions, point 7: "This new momentum must be matched by continued progress in the candidate countries in transposing, implementing and enforcing the *acquis*. They will have to pay particular attention to putting in place adequate administrative structures, to reforming judicial systems and the civil service, as well as to the situation of minorities. Special efforts will be devoted to assisting Bulgaria and Romania".

⁸⁸ See European Commission, Enlargement DG, *Twinning in Action*, October 2001, available at http://europa.eu.int/comm/enlargement/pas/twinning/pdf/twinning_en.pdf.

⁸⁹ Report on the Assessment of the Twinning Instrument under Phare, by civil servants from the member states, July 2000.

⁹⁰ The total budget of JHA projects amounts to €13 million, which represents 5.5% of the total financial aid allocated to Turkey for the year 2004.

⁹¹ Other projects envisaged for 2004 deal with the enhancement of the professionalism of the Turkish Gendarmerie in its law enforcement activities, the development of Probation Services in Turkey, etc.

importance of the one dealing with the development of a training system for border police.⁹² This project aims to develop a training strategy in order to progressively achieve the objective envisaged in the border management strategy and the NPAA for the establishment of a specialised border police in Turkey.⁹³ An additional important measure that the Turkish Ministry of the Interior took in the run up to the NATO summit in Istanbul in June 2004 involved providing photo-cameras to passport police at major airports and land crossings. This project is still in its initial stages, but once fully implemented it will allow photographs taken at border crossings and airports to be matched with photographs of persons thought to pose security risks. Furthermore, a number of land crossings have been equipped, with the help of funding from the World Bank and the British government, with systems to detect the presence of persons being smuggled in land vehicles. These two projects when fully operational should contribute to a major improvement in border protection.

The call by the EU for the establishment of a new integrated civilian organisation had caused considerable consternation in the Turkish bureaucracy and the military. This was caused by an initial misunderstanding of the nature of this new civilian organisation. At the preparation stage of the first NPAA there was the mistaken notion that the EU was requiring that this organisation be outside the state apparatus. Once this misunderstanding was overcome, the Turkish military as well as the government became attuned to the idea. The problem here appears to be more a material one as the reorganisation is expected to be financially and organisationally demanding.

In official circles harmonising Turkey's border management and protection policies with the EU is seen as a development that will benefit most importantly Turkey and its national security. There is a general recognition of the weaknesses and problems associated with the current system as well as a generally shared will to improve it. However, this is also accompanied by a realistic awareness of the immense nature of the task. This explains Turkey's preference to spread the harmonisation task over the pre-accession process. This is also accompanied by an expectation that Turkey will indeed be able to receive substantial material support. The exercise of strengthening Turkey's eastern borders, as much as it may seem to be a gigantic task, could become an exercise in 'mutual confidence-building' for the broader pre-accession process that would serve and benefit the two sides.

3.3 Irregular migration

A critical aspect of border protection and control for the EU is the so-called 'fight against illegal migration'. The arrival of large numbers of irregular migrants on the shores of Italy and France especially in the late 1990s along with highly publicised incidents involving irregular migrants in Britain have increased the urgency to act against irregular migration at the EU level. The events of September 11th and March 11th have also played a fundamental role in that concern. Turkey has attracted considerable attention as a transit country for illegal migrants as a point of departure for boats carrying these smugglers. As mentioned in Section 2.1 of this report, it is striking to see how during the run-up to the Seville European Council summit Tony Blair and José María Aznar went even as far as to threaten countries such as Turkey with sanctions if they did not cooperate with the EU.

Turkey's geographical location between immigrant-producing areas and Europe, accompanied by a relative large informal economy, makes it an attractive country for illegal migrants. Turkey has long been known as a country of emigration. Yet, Turkey has, like the Ottoman Empire, a long history of immigration. Government statistics indicate that from 1923 to 1997, more than 1.6 million persons

⁹² According to information provided by the Turkish Ministry of Interior, this project has been organised in three different modules: 1) support for the preparation of a border police training strategy, 2) development of border police training programmes in line with current EU practices, and 3) development of operational standards and best practices for border police.

⁹³ To achieve this goal, some accompanying measures will be taken during the transitional period, such as the issuing of a practical handbook for border management.

immigrated to Turkey.⁹⁴ The founders of the modern Turkish state were concerned to create a homogenous sense of national identity in an otherwise ethnically and culturally diverse country.⁹⁵ Exclusive priority was given to encouraging and accepting immigrants who were either Turkish-speaking Muslims to start with, or who were officially considered to belong to ethnic groups that would easily melt into a Turkish identity such as Albanians, Bosnians, Circassians, Pomaks and Tatars from the Balkans. Only a small number of immigrants came from outside the Balkans and the above ethnic and religious groups. The Gagauz Turks, for example, were not encouraged to immigrate to Turkey, largely due to their being Christian. The period of government-supported major immigration into Turkey lasted until about the early 1970s, after which immigration began to be discouraged on the grounds that Turkey's population had grown enough and that land to distribute to immigrants had become scarce. In fact, the last major wave of immigration occurred, unexpectedly, when close to 310,000 Turks and Pomaks were expelled from Bulgaria in 1989 after refusing to assimilate into a Bulgarian Slav identity as part of a campaign launched by the Communist regime. A third of these refugees returned soon after the regime change in Bulgaria in 1990. The rest acquired Turkish citizenship. With Bulgarian membership in the EU expected by 2007, ever-growing numbers of these refugees are returning to reclaim their Bulgarian citizenship. Since the early 1990s, Turkey has been witnessing new forms of immigration. These include students from a variety of countries as well as nationals of EU countries who have an officially sanctioned presence in Turkey with proper residence and work permits. EU nationals include individuals engaged in professional activities and their families, particularly in Istanbul, as well as European retirees in some of the Mediterranean resorts. They, too, constitute a relatively new phenomenon in terms of immigration into Turkey, and their numbers are estimated at 100,000-120,000.⁹⁶

Table 1. Breakdown by nationality of illegal immigrants arrested by Turkish security forces, 1995-June 2004

Country of origin	Number of people
Afghanistan	28,911
Bangladesh	13,418
Pakistan	28,442
Iran	22,199
Iraq	99,402
Syria	5,018
Sub-total	197,390
North Africa	9,397
Former Soviet Republics*	100,018
Central Asian Countries**	6,473
Albania	3,988
Bulgaria	9,111
Romania	19,067
Turkey	24,419
Others	107,986
Total	477,849

* Russia, Ukraine, Moldova, Georgia, Azerbaijan, Armenia, Belarus, Lithuania, Latvia and Estonia.

** Kyrgyzstan, Kazakhstan, Turkmenistan, Uzbekistan and Tajikistan.

Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI).

⁹⁴ K. Kirişci (1996), "Coerced Immigrants: Refugees of Turkish Origins since 1945", *International Migration* Vol. 34, No. 3.

⁹⁵ K. Kirişci (2000), "Disaggregating Turkish citizenship and immigration practices", *Middle Eastern Studies*, Vol. 36, No. 3, July.

⁹⁶ B. Kaiser (2003), "Life Worlds of EU Immigrants in Turkey", in Emrehan Zeybekoğlu and Bo Johansson (eds), *Migration and Labour in Europe: Views from Turkey and Sweden*, İstanbul: Şefik Matbaası.

There is also a form of irregular immigration involving nationals of neighbouring countries, and transit migrants. Turkey allows nationals of Armenia, Azerbaijan, Georgia, Iran, Moldova, Ukraine, Russia, and the Central Asian republics to enter the country quite freely either without visas or with visas that can easily be obtained at airports and other entry points (see Appendix 2). A large number of these people are involved in small-scale trade.⁹⁷ However, some overstay their visas and illegally work as household help, sex workers and labourers, especially on construction sites and in the tourism sector. It is very difficult to estimate the number of such irregular immigrants in Turkey. According to government statistics, there were 477,849 such persons apprehended between 1995 and June 2004, as presented in Table 1. More than 120,000 were nationals of the former Soviet republics and Balkan countries who were apprehended for violating the terms of their visa. Few of these individuals actually attempt to go to Europe via Turkey. If anything, Turkish officials have argued that a liberal Turkish visa policy and the possibility that many nationals of these countries were able in the 1990s to engage in suitcase-trading relieved the pressure on EU countries that once had feared an influx of migrants from these countries. For such persons Turkey itself is the target country. To these groups must be added a small number of trafficked persons, particularly women. These are people who have either been coerced or deceived into travelling to Turkey for commercial sex work, and are forced to remain in Turkey against their will.

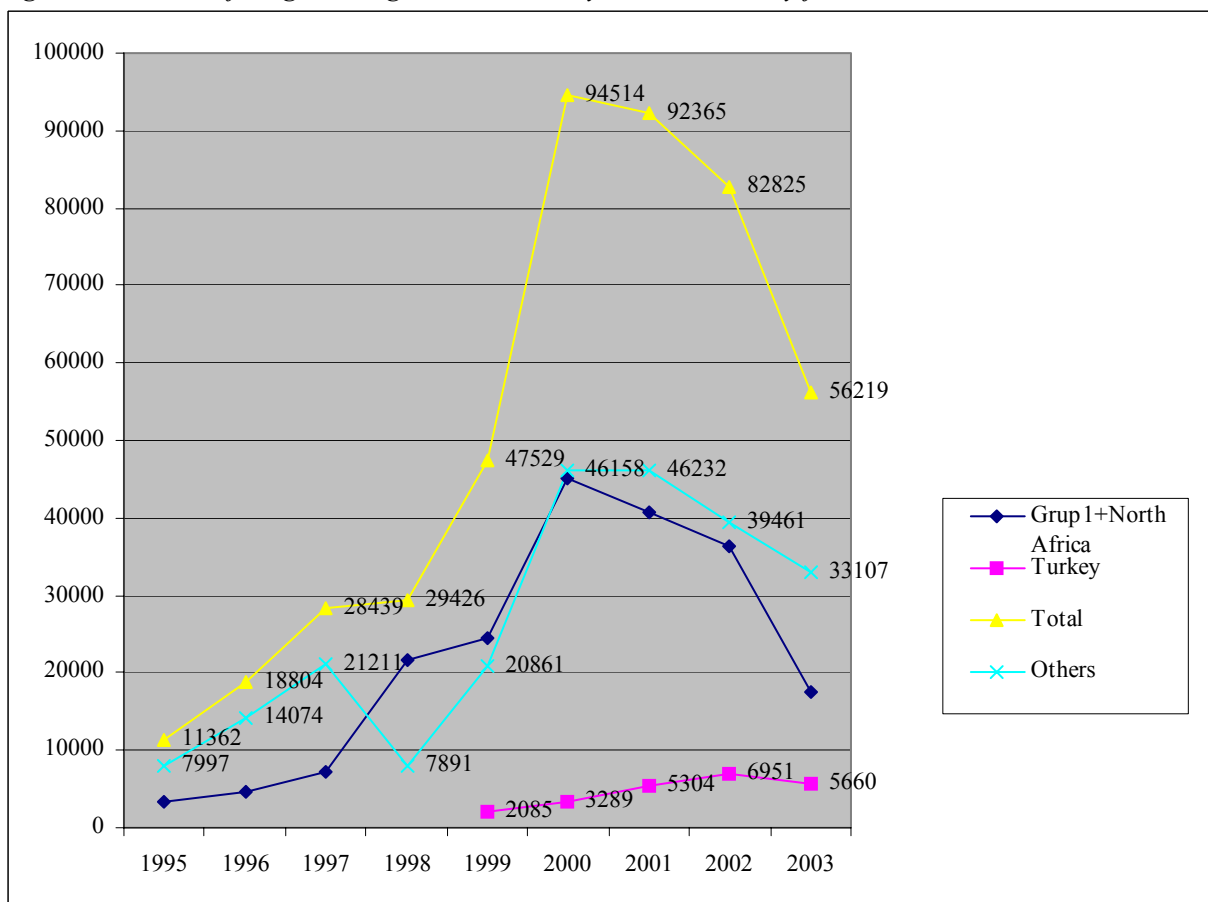
Lastly, starting from the mid-1990s, there was a growth in the number of irregular migrants using Turkey as a transit route. These people were mostly nationals of neighbouring countries in the Middle East such as Iraq, Iran and Syria, as well as Afghanistan and Pakistan. The Turkish government came under massive pressure from a number of EU member countries to curb this transit migration. In accordance with the AP, Turkey is expected to introduce a series of measures to combat irregular migration including the construction of reception centres, signing of readmission treaties with countries of origin as well as to start negotiations on a readmission treaty between Turkey and the EU.⁹⁸ Furthermore, Turkey in 2001 joined the Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI). Since then it has been sharing data with this Centre and participates in bi-annual meetings of the Centre. It also cooperates with the Early Warning System with respect to sudden surges in illegal migration movements and forged or stolen documents. The High Level Working Group (HLWG) on Turkey completed its Strategy Report to Support the Migration Management Action Plan in December 2003. The Strategy Report lays out in detail the tasks and objectives to be achieved in respect to combating irregular migration including legislative alignment. In this respect two twinning projects, one on asylum and immigration and another on combating trafficking in human beings have been signed involving Austria, Denmark, Germany and the United Kingdom to help to build up institutional capacity and develop training programmes. Furthermore, with the financial support of Germany and Sweden and in coordination with the High Level Working Group of the EU, 10 seminars were organised for Turkish officials on EU practice in these areas. The issue of combating irregular migration is raised through formal channels such as the 8th Subcommittee of the Associational Committee as well as during bilateral meetings between European Commission and Turkish government officials at the highest level. The Turkish Foreign Minister and the Commissioner Gunter Verheugen exchanged letters to start to negotiate a readmission agreement during the spring of 2004 (see also Section 2.1).

⁹⁷ See İçduygu (2003) as well as S. Erder. (2003), “Global Flows of Huddles: The Case of Turkey”, in Zeybekoğlu and Johansson (eds).

⁹⁸ The Accession Strategy for Turkey under Co-operation in the field of Justice and home affairs notes “Continue to strengthen the fight against illegal immigration and negotiate a readmission agreement with the European Community”, p. 17. On the other hand the JHA Council meeting of 21-22 April 2002 that approved the criteria for readmission and new readmission treaties “asked the European Commission to submit separate draft negotiation mandates for readmission agreements with China, Turkey, Algeria and Albania”, see the Criteria for the identification of third countries with which new readmission agreements need to be negotiated – Draft Council Conclusions, Council of the European Union, 7990/02, Brussels, 16 April 2002, approved by the JHA Council on 25-26 April 2002.

There are no reliable figures available to bear out Turkey's success or failure in this regard. Figure 1 shows the trend of the number of nationals from these countries apprehended by the authorities for being illegally present in the country. The bulk of them are constituted by the nationals of the former Soviet republics as well as Balkan countries. It is the illegal migrants from Asian and North African countries that have been a primary concern for the EU. Figure 1 shows how the numbers of such irregular migrants apprehended by the authorities have steadily increased until their numbers peaked in 2000 with almost 95,000 arrests, roughly half of them coming from countries whose nationals traditionally have sought to transit to Europe. Since then the trend has turned steadily downwards. Turkish authorities have argued that this is product of an intensive effort on their part to stem the flow of illegal transit migration. This effort also appears to be borne out by the steady increase in the number of human smugglers apprehended as indicated in Table 2. Furthermore, according to Turkish government sources, the number of irregular migrants apprehended by the Italian authorities and alleged to have reached the Italian coast via Turkey has fallen from 6,093 in 2001 to 2,117 in 2002 and 177 in 2003. These statistics also indicate that between 2000 and 2003, 157 ships were intercepted carrying irregular migrants, 118 of which were stopped by the Turkish authorities. The 2003 Progress Report does indeed acknowledge that the trend in illegal migration via Turkey has shown a decrease and international migration flows have been diverted away from Turkey to other routes.⁹⁹

Figure 1. Number of illegal immigrants arrested by Turkish security forces, 1995-2003



Group 1: Afghanistan, Bangladesh, Pakistan, Iran, Iraq and Syria.

North Africa: Egypt, Libya, Tunisia, Morocco and Algeria.

Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI).

⁹⁹ See http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf.

Part of the wider problem of irregular migration in Turkey has also been that of trafficked persons – especially women. Turkey has become both a transit and destination country for prostitution by foreign nationals. Some of the women involved in this trade are actually trafficked.¹⁰⁰ In December 2000, Turkey was among the first group of countries to sign the UN Convention against Transnational Organised Crime and of its two additional Protocols including the Protocol to Prevent, Suppress and Punish Trafficking. The Turkish Parliament ratified these instruments in March 2003.¹⁰¹ More importantly as part of the August 2002 reform package, the government introduced new articles to the Penal Code criminalising human smuggling and trafficking.¹⁰² The government also instituted stricter controls at borders and ports accompanied by training programmes for the Gendarmerie, Police and Judiciary.¹⁰³ The new law has enabled prosecutors to pursue human smugglers more effectively and also seek harsher penalties than had been the case. As of March 2004, there were 42 cases opened for violations under the terms of Article 201, and 21 of these cases were concluded with convictions while the others are pending.¹⁰⁴ Most strikingly the Interior Ministry officials subsequently joined by the Gendarmerie were able to make arrangements in September 2003 with a non-governmental organisation, Human Resources Development Foundation (Insan Kaynaklarını Geliştirme Vakfı-HRDF) and the Directorate General of the Status of Woman to provide social assistance to victims of trafficking until their return to their countries of origin could be arranged. This development in itself is significant of the transformation that Turkey is going through and constitutes an example of the close cooperation that is developing between the bureaucracy and civil society in Turkey.

Table 2. Arrests of human smugglers by Turkish authorities by nationality, 1998-June 2004

Nationality	1998	1999	2000	2001	2002	2003	2004	Total
Turkey	75	139	701	1021	1019	825	236	4,016
South Asia ^a	3	17	35	11	20	30	7	123
Neighbouring Middle East ^b	15	31	72	92	93	50	19	372
Other Middle East ^c	2	0	0	4	0	0	4	10
European Union/Candidate Countries ^d	2	0	15	6	14	8	3	48
Former Soviet Union ^e	1	0	14	8	10	7	6	46
Others (incl. China)	0	0	13	13	1	16	13	57
Total	98	187	850	1,155	1,157	936	288	4,672

^a Afghanistan, Bangladesh, Pakistan and India.

^b Iran, Iraq and Syria.

^c Egypt, Lebanon and Mauritania.

^d Greece, Romania, Poland and Bulgaria.

^e Russia, Ukraine, Moldavia, Georgia, Azerbaijan and Armenia.

Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)

The latter development played a critical role in the US administration's decision in September 2003 to upgrade Turkey from a category of countries threatened with sanctions for inadequate attention paid to

¹⁰⁰ For an extensive and thorough study of this problem, see S. Erder and S. Kaska (2003), *Irregular Migration and Trafficking in Women: The Case of Turkey*, IOM International Organisation for Migration, Geneva.

¹⁰¹ *Official Gazette*, 29 March 2003, No. 25052.

¹⁰² *Official Gazette*, 9 August 2002, No. 24841

¹⁰³ Detailed information available from *Turkey on Trafficking in Human Beings* (last updated 25 June 2004) available at www.mfa.gov.tr.

¹⁰⁴ Data obtained from www.cte.adalet.gov.tr/istatistik/suc_turu.htm (on 2 July 2004).

combating against trafficking in human beings and women in particular. Previously, Turkey had been put in this category based on the US State Department's *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Reports*.¹⁰⁵ During the NATO summit in June 2004, a major additional breakthrough was achieved when in the presence of the US Secretary of State Colin Powell, a protocol was signed between the municipality of Istanbul and HRDF. This protocol improves the protection to be offered to women victims of trafficking. The HRDF also instituted a mechanism which enables it to receive instant information about trafficked women apprehended by the police. The police, together with HRDF, cooperate closely with the authorities and non-governmental organisations of the country of origin of trafficked women to ensure a safe repatriation. The HRDF will hold a conference in September 2004 on combating trafficking in women with the participation of officials and representatives of non-governmental organizations from a number of Balkan countries. Furthermore, the Interior Ministry has also instituted the practice of granting humanitarian residence permits up to six months for victims of trafficking. Lastly, in an effort to prevent the abuse of the acquisition of Turkish nationality by marriage, the government amended Article 5 of the Citizenship Law in June 2003 and introduced the requirement of a minimum of three years of probation before Turkish nationality can be obtained. Previously, the law permitted women to acquire Turkish nationality automatically. This had led to considerable abuse.

3.4 Irregular Migration and Readmission Agreements¹⁰⁶

As highlighted in Section 2.1, in the context of fighting against illegal migration, Turkey has also been expected to sign readmission agreements with third countries of origin as well as with neighbouring countries. So far Turkey has been able to sign such agreements only with Syria in September 2001, Kyrgyzstan in May 2003 and Romania in January 2004.¹⁰⁷ In the context of the agreement with Syria, Turkey has returned 854 illegal migrants to Syria and readmitted 18 migrants to Turkey. Turkey has proposed to negotiate readmission agreements with 15 countries, but it has failed to get any response.¹⁰⁸ It is, on the other hand, in the process of negotiating agreements with Byelorussia, Bulgaria, Egypt, Kazakhstan, Libya, Lebanon, Macedonia, Sri Lanka, Russia, Ukraine and Uzbekistan. The negotiation of so many agreements simultaneously is a taxing exercise, particularly considering that progress is often extremely slow and governments often have little incentive to cooperate. The latter explains very much why Turkey has failed to start negotiations with 15 countries. On the other hand, it should be noted that Turkey's performance in terms of number of readmission agreements concluded and being negotiated is much better than the performance of the European Commission (see section 2.1).

Turkey itself has been required to start negotiating a readmission agreement with the EU. Turkey had long resisted the signing of such an agreement and instead expressed a readiness to receive back any third country irregular migrants as long as they were returned to Turkey promptly and without delay. Turkey also argued that constitutionally it was required to accept back its own nationals in any event. In March 2004 Turkey, reluctantly, agreed to start negotiations with the EU on such an agreement. However, officials have expressed resentment with respect to the level of pressure they have come under to start these negotiations. They fear that Turkey will become a dumping ground for unwanted immigrants by the EU. Turkish officials are especially concerned because Turkey is encountering great difficulties in initiating negotiations let alone actually concluding agreements with many of the sending countries of illegal migrants. They fear that this may lead to a situation where the EU would

¹⁰⁵ These reports are available at www.state.gov/g/tip/rls/tiprpt/.

¹⁰⁶ Analysis in this section is based on interviews with officials from the Ministry of Interior and Ministry of Foreign Affairs and internal documents.

¹⁰⁷ These agreements were published in the *Official Gazette*: Syria, Law 4901, *Official Gazette*, 17 June 2001, No. 25148; Greece, Law 3914, *Official Gazette*, 24 April 2002, No. 25148; and Kyrgyzstan, Law 5097, *Official Gazette*, 17 February 2004, No. 25376. The one with Romania has not yet been ratified and put into force.

¹⁰⁸ For the full list of countries as of August 2004 see Appendix 2a.

be able to send back illegal migrants to Turkey while Turkey will not have the means of ensuring their return to their respective countries of origin.

In the meantime Turkey did sign in November 2001 a bilateral readmission protocol with Greece. This is the longest-standing readmission agreement that Turkey has had with a current EU country. In spite of a dramatic improvement in Greek-Turkish relations in recent years and the presence of a very positive cooperative climate, the implementation of the agreement has encountered difficulties. Since the agreement came into force, Greece has provided Turkey with a list of more than 14,101 illegal migrants that they would have liked to send back to Turkey. Turkey has agreed to admit 2,416 from this list, but Greece was only able to hand over to the Turkish authorities 1,006 persons from this list. These illegal migrants, 270 Iranians and 736 Iraqis, were handed over to the Turkish authorities between October 2002 and January 2004. They were subsequently repatriated to Iran and Iraq.¹⁰⁹ According to the Turkish authorities, an additional 2,816 illegal migrants were forced back to Turkey in violation of the provisions of the agreement. On the other hand, the Turkish side asked 753 illegal migrants of 28 nationalities to be readmitted by Greece. Greece was able to accept back 19 Somalis. The problems encountered are indicative of the practical difficulties associated with readmission agreements even when it involves two neighbouring countries with reasonably good relations.

As we have seen in the beginning of this report, policies on illegal migration continue to be a major source of concern for EU governments. An impressive body of *acquis* has been developed in this area. The new accession countries have had to adjust their policies accordingly.¹¹⁰ Turkey is under pressure to follow precisely the same route. However, many Turkish officials feel that they are not receiving the recognition they deserve for the energy and resources that are being channelled into combating irregular migration. Furthermore, they also feel that Turkey is being treated differently than the previous candidate states who signed readmission agreements only after accession talks started and then only on a bilateral basis. This difference constitutes a major source of distrust. This distrust is further aggravated by what Turkish officials consider an absence of burden-sharing. They complain that Turkey is basically left to its own devices with respect to combating irregular migration in general and to arranging for the return of the illegal migrants to their countries of origin. The granting to Turkey of EU financial and technical assistance that is typically offered to ‘third countries’ in the areas of migration and asylum (the so-called AENEAS programme),¹¹¹ also represents a fundamental factor for the lack of confidence by the Turkish side on its potential candidacy status. In addition, Turkish authorities often pay out of their own personal resources the upkeep of the migrants and encounter great financial and administrative difficulties in ensuring the deportation of such persons. They frequently cite, e.g., a project that Turkey has carried out with Holland, Sweden and Switzerland together with the International Organisation for Migration (IOM) involving the return of rejected asylum seekers to Iraq via Turkey. The project protocol was signed in October 2001 and until its completion in July 2003, ensured the return of 91 migrants. The project was strictly based on voluntarism and was actually carried out by the Anatolian Development Foundation, a Turkish non-governmental organisation with extensive experience dealing with refugees, with the cooperation of Turkish authorities.

3.5 Irregular Migration and Asylum

The question of asylum may not immediately be seen as relevant to border control. However, some attention and sensitivity need to be paid to asylum – particularly in the case of Turkey. Contrary to general belief, Turkey, like its predecessor the Ottoman Empire, has long been a country of asylum. It

¹⁰⁹ The readmission and repatriation of Iraqis were suspended between when the war in Iraq started, March 2003 and June 2003.

¹¹⁰ For a general analysis of this situation see S. Lavenex and E. Uçarer (eds) (2002), *Migration and the Externalities of European Integration*, Lanham, Maryland: Lexington Books.

¹¹¹ Regulation (EC) No. 491/2004 of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), of 10.3.2004, OJ L80/1, 18.3.2004

