

# BULLETIN

No. 116 (449) • December 6, 2012 • © PISM

Editors: Marcin Zaborowski (Editor-in-Chief), Katarzyna Staniewska (Executive Editor),  
Jarosław Ćwiek-Karpowicz, Beata Górka-Winter, Artur Gradziuk, Roderick Parkes, Beata Wojna

---

## Lifting Visas for Turkey: A Safer EU and Stronger EU Foreign Policy

Pinar Elman

*Citizens of Turkey are still subject to EU visa requirements while all other candidate and potential candidate countries and even some non-candidate countries enjoy visa-free travel to the EU. As the main transit country for illegal migrants to the Union, Turkey's cooperation is vital for securing the EU's external borders. In addition, given the number of court decisions that have declared the visa requirements for Turkish citizens illegal, visa liberalisation will contribute to the EU's image as a rule-of-law promoter.*

**Securing the EU's External Borders.** In June 2012 EU Member States finally authorised the European Commission to begin visa-liberalisation talks with Turkey. A Visa Roadmap is expected to be unveiled by the end of this autumn, in exchange for a readmission agreement under which Turkey would undertake to accept back even non-nationals who enter the EU from its territory. Cooperation with Turkey on these matters will have significant benefits for the EU as the Greek-Turkish border remains one of the main transit gates for illegal crossings by third-country nationals. This cooperation will not only secure the EU's external borders but also help decrease the tensions between the Member States over the future of the Schengen zone.

This *quid pro quo* of visa liberalisation in return for support with illegal immigration is already an established practice for the EU, which introduced it in cooperation with Western Balkan countries. Yet, until recently, some Member States, notably France, were unwilling to open up such a deal to Turkey, despite the manifest practical benefits, fearing that Turks would abuse this right and overstay. Singling Turkey out for special, negative measures not only broke the principle of equal treatment, it was flawed—there is already a readmission agreement for Turkish citizens who overstay on their visas in the EU. This suggests that the road ahead will be long and difficult.

**The Legality of the EU Visa Policy.** Turkey's interest in visa liberalisation derives not just from a desire to normalise its relations with the EU. The maintenance of visa requirements has severe consequences for the Turkish business community: while goods can move freely, Turkish businessmen cannot because of the long visa processes. The restrictions thus run counter to the guarantees of the gradual establishment of the "freedom of movement of goods, services, capital and people" between the EU and Turkey. The 1963 Association Agreement and its 1970 Additional Protocol signed between the European Economic Communities (EEC) aim to create a Customs Union (CU) with Turkey based on the freedom of establishment and the freedom to provide services.

The EU visa policy not only creates unfair competition within the customs union and violates Article 41(1) of the Additional Protocol; more fundamentally, it runs counter to the 1970 Protocol, which bans the introduction of new restrictions on these two freedoms. According to a number of domestic European courts as well as the European Court of Justice (ECJ), the EU visa requirements, introduced as exceptional interim measures upon Turkish service providers and businessmen in 1980, are therefore illegal. Recently, Turkish officials have started to mention that they would consider re-negotiating the CU in order to overcome the disadvantages of unfair competition.

**The Unclear Case of Turkish Service Receivers.** The European Court of Justice is now considering a related issue, which is whether Turkish citizens travelling to the EU to receive services (i.e., tourists or even those on personal visits) rather than provide services should not also benefit from the freedoms set out in the Association Agreement. Member States contest Turkey's claim that

the “service providers” covered in the Agreement also include “service receivers”. The Member States themselves keep these two categories separate for Turkish citizens. But the freedom to receive services in the EU nevertheless falls within the scope of the freedom to provide services.

A German Higher Administrative Court has recently brought the “Demirkan” case before the European Court of Justice, about a teenage girl being denied a visa to visit her mother in Germany. The ECJ is expected to give its decision in June 2013 at the latest. If the ECJ decides positively, not only the service providers, but also those who receive services will have the right to visa-free travel. In this case, the Member States will have to abolish their visa requirements for all Turkish citizens and may possibly not even benefit from a readmission agreement with Turkey.

**The EU’s Image as a Rule-of-Law Promoter.** Service providers and receivers are not the only ones to be affected by the costly and time-consuming visa procedures: beneficiaries of EU Programmes, if not refused in their visa application, often have to start their programmes after long delays. Some even have to cancel and give back their grants. As such, the visa requirements affect the success of other EU policies. Taken together, the core political aims of these programmes—promotion of dialogue and understanding between people and cultures—are thus negatively affected by the restrictions.

This points to another serious consequence: the damage to the EU’s image as a rule-of-law promoter. According to Turkish Foreign Minister Ahmet Davutoglu, the visa exemption for Turkish citizens is already Turkey’s right and so visa liberalisation will not be a “favour” on the part of the EU, but rather an obligation. This view is widely accepted among Turkish nationals. Their suspicions about the EU’s commitment to its own legal obligations are naturally clouding their perception of the EU as a reliable partner as regards the reforms it is promoting abroad, reducing the EU’s transformative power both in Turkey and further afield.

**Conclusion.** The ongoing conflict in Syria and the instability in its neighbourhood will make Turkey an even more important transit country for illegal migration, rendering its co-operation vital for the EU. This situation considerably strengthens Turkey’s position in the visa dialogue with the EU and makes the reluctance of member governments to lift restrictions increasingly untenable. By lifting visa restrictions with this country, and securing Turkey’s support, the EU will do much to secure its borders and contribute to its fight against illegal migration emanating from beyond Turkey. The question is, however, what form that cooperation can best take.

The EU has until now followed a *quid pro quo* policy which consists of lifting visa requirements in exchange for a readmission agreement. However, as a 2011 Commission Report demonstrates, readmission agreements are often an ineffective tool: they focus on immigrants who have already entered the territory illegally, rather than on preventing them from doing so. They are also hugely politicised in signatory states, denting the domestic will for implementation and cooperation. For more effective border security, the EU needs rather to “police at a distance”—within a framework for Turkish cooperation on a more practical manner and daily basis at the Turkish–Greek border.

The EU already has to start persuading Turkey in to cooperate before the ECJ’s ruling on Demirkan, which may ask the EU to abolish its visa requirements without any precondition and which may deprive the EU of the ability to offer the incentive of visa liberalisation. Turkey has already shown its good will in cooperating with the EU by getting involved in the readmission agreement despite its perception that it is an “illegal” visa policy. For these reasons, the Member States would do well to start abolishing their visas for Turkish citizens to ensure Turkish cooperation. There is still an opportunity for cooperation until the ECJ ruling is issued, thanks in part to the recent change of government in France.

At this point, it is important to emphasise Poland’s successful longer-term visa policy towards Turkey. According to Commission statistics, the country today ranks as the second most popular destination for Turkish exchange students, bolstering the image of both Poland and the EU as a whole. The fact that the Turkey question is not politicised domestically allows Poland to adopt a different national visa policy and to further contribute to the EU’s normative power in this country. A Polish-led change in the EU visa system would be a win-win arrangement for Turkey and the Member States.