**Briefing Note by IKV on the Signature of the Readmission Agreement and the Protocol on Visa Liberalisation Dialogue between Turkey and the EU**

**18 December 2013**

IKV welcomes the signature of the Readmission Agreement and the Protocol on the initiation of the Visa Liberalisation Dialogue, which constitutes a critical step towards ensuring visa-free travel for Turkish citizens in the EU member states that are part of the Schengen Area, on 16 December 2013 between Turkey and the EU.

***The Readmission Agreement***

Readmission (of third country nationals) is undoubtedly an important mechanism in dealing with irregular and illegal migration and is essential for ensuring security both inside and outside a country’s borders. It should be noted that Turkey, is the fifth country in Europe in terms of the length of both land and maritime borders, the former 2648 km. long, and the latter 7200 km. long. Thus, for Turkey, establishing the readmission mechanism with the EU, with which it is negotiating accession, is not only an obligation as part of the EU membership criteria, but it is also a prerequisite for ensuring its own security. In addition, Turkey should conclude readmission agreements with regional countries which constitute a source of refugees and asylum-seekers and establishes a comprehensive readmission mechanism.

In this vein, it is important to underscore that the signature of the Readmission Agreement, whose negotiations have lasted more than 8 years, is a positive development. This Agreement, which will enable Turkey to secure its borders more effectively and step up its efforts in dealing with irregular migration as part of a modern border management understanding, will bring benefits to both Turkey and its neighbouring countries.

***Visa Liberalisation Dialogue***

With the signature of the Readmission Agreement, the roadmap towards visa liberalisation, which was handed over to the Turkish authorities in December 2012, has become official after being altered in line with Turkey’s demands. The fact that the visa requirements for Turkish nationals, which have become a nightmare for those intending to travel to the Schengen Area for tourism, business, education or family-related reasons since the 1980’s, are being dealt with in the same framework, is a positive yet thought-provoking development. However, the (positive) atmosphere manifested by the proliferation of news articles in certain media outlets regarding the signature of the Readmission Agreement should not overshadow certain fundamentals. In this context, IKV, as an organisation, which has long been a pioneer of the efforts in keeping the visa issue on the agenda and discussing it with all its aspects, is of the opinion that some fundamental issues which have been largely ignored over the last couple of days should be recalled.

* First, since the 1980’s when the visa requirements for Turkish nationals started being introduced in many EU countries, there has been a gradual shift in the issue of visa-free travel for Turkish nationals towards liberalisation thanks to Turkey-EU Association Law, Turkey-EU Customs Union and judgements of the Court of Justice of the EU (CJEU).
* The fact that the visa requirements for Turkish nationals have been in force for more than thirty years and have become stricter is a reality difficult to comprehend for Turkey-EU relations whose fundamentals date back more than fifty years.
* Visa requirements for Turkish nationals are in violation of various provisions of the Turkey-EU Association Agreement (i.e.: Ankara Agreement) and the Additional Protocol as well as the decisions of the Turkey-EU Association Council and the related provisions of the Turkey-EU Customs Union. The visa requirement, initially introduced by some countries as a temporary measure in the light of the extraordinary situation in Turkey, with the rest of member states following suit, has shortly become a “permanent” and “acute” reality that made its way to the agenda of Turkey-EU relations.
* CJEU, the highest court in the EU legal system, has on numerous occasions confirmed that the visa requirement is in violation of Turkey-EU Association Law. Bearing in mind that the CJEU delivered its judgement on the first case regarding the visa issue (*Demirel Case*) in 1987 and the final case (*Demirkan Case*) in 2013, it is a reality that during this almost thirty year period CJEU delivered countless judgements concerning Turkish citizens’ rights of movement and settlement in the EU members states and this led to a constant development in the case law in this area.
* During the 26 year period from the September 1987 *Demirel Decision* to the October 2013 *Demirkan Decision,* the CJEU has delivered judgements on more than fifty cases concerning rights of movement and settlement Turkish citizens in EU member states. Majority of these judgements have confirmed the related rights of Turkish citizens. Let us recall the *Soysal Case*: The Court in its decision voiced at the highest level that the visa requirements imposed on Turkish nationals by EU member states are in violation of Article 41 (1) of the Additional Protocol, also known as the “standstill clause”. The Court referred to 1 January 1973 as the date in which the Additional Protocol entered into force and stated that member states cannot introduce any new restrictions on Turkish citizens’ rights in the area of the freedom of establishment and the freedom to provide services. This decision is still valid. The highest court in the EU also invited the Commission, as the guardian of EU law, to inspect the situation in member states and make sure that the member states abide by its decisions.
* However, the member states have literally disregarded the decision of the CJEU, the highest court in the EU legal system, and have carried on applying visa requirements for Turkish nationals. Meanwhile, some member states have tried to save the day by making certain symbolic and procedural improvements. The European Commission, aware of the problems experienced by Turkish nationals, has made some improvements to the process of applying for and obtaining a visa. Nonetheless, none of these measures have been effective in finding a solution to the visa ordeal that Turkish citizens have been experiencing for thirty years and still are subject to.
* In stark contrast with the lack of political will in implementation, head-turning developments have been taking place in the legal sphere. The CJEU decisions including the *Soysal Decision* have made such a significant impact that in March 2012, the highest court in a founding member state of the EU, *Raad van State* (i.e.: State Council) in the Netherlands, stated thatthe Netherlands can not impose visa restrictions on Turkish service-providers and self-employed persons.
* After the 2009 *Soysal Decision* the question as to “whether visa requirements for Turkish nationals are being lifted” started to be voiced more frequently by both sides, however the October 2013 *Demirkan Decision* which constituted the last string in the developments in this area has been met with frustration on part of Turkey. The CJEU in its decision regarding the *Demirkan Case*, has in a way ignored the judgement it made regarding the *Soysal Case* four years ago by stating that Turkish nationals intending to visit a member state as service recipients do not have the right to enter the territory of a member state without obtaining a visa. Claims that political pressure from some member states has played a role in this rather daunting decision of the Court is something that we do not want to believe in, but should in any case be taken into consideration.

In light of the abovementioned legal background, with the signature of the Turkey-EU Readmission Agreement on 16 December 2013, the visa dialogue that will eventually lead to visa-free travel for Turkish citizens in their visits to the EU member states based on a document that was redesigned in accordance with Turkey’s reservations has been officially launched with the signature of the Protocol on the Visa Liberalisation Dialogue. With the launch of the visa liberalisation dialogue, Turkey and the EU have taken the first step towards an advanced process with regards to the visa issue which has been at the heart of a lengthy and heated debate between the parties.

In the context of the visa problem, which has been and is still being experienced by Turkish citizens, we need to perceive this development as an initiative based on good intentions and support it. This step aimed at breaking the deadlock in ending the visa requirements for Turkish nationals, which have defied all political, economic, legal and most importantly humanitarian norms, will enable both parties to proceed in a more positive direction. Undoubtedly, this is due to the fact that it clearly lays down the rules that need to be fulfilled for visa-free travel. Similar processes concluded between the EU and the countries of the Western Balkans and negotiations towards similar processes carried out with countries in the neighbouring geographies presentnumerous models that are available to Turkey. This will not only enable Turkey to take bigger steps on its path towards visa-free travel, but also to examine the available models and come up with quick solutions, if need be.

***Lessons from the Past***

At this point, it is constructive to recall a few important facts in relation to the visa dialogue process of the EU within the Western Balkan region:

* Following the Thessaloniki Summit in June 2003 in which the first concrete step towards visa liberalisation process for the citizens of five Western Balkan states was taken, Montenegro, Macedonia and Serbia completed the visa liberalisation process within six years; whereas Albania and Bosnia and Herzegovina completed the same process in seven years;
* Paving the way to visa liberalisation, the EU has signed the visa facilitation and readmission agreements with these five states; and the visa dialogue with Montenegro, Macedonia and Serbia was launched 26 months after the aforementioned agreements entered into force; and was launched 35 months after for Albania and Bosnia and Herzegovina. In other words, within 2 to 3 years, the EU has confirmed that five Western Balkan states have successfully fulfilled the criteria predetermined in the readmission agreements.
* The visa dialogue negotiations designed for Serbia, Montenegro and Albania after readmission were completed within three months; the negotiations with Macedonia within two and a half months; with Bosnia and Herzegovina within only 10 days; and after that, these states promptly received the roadmaps on visa liberalisation.
* In the visa roadmaps, Albania, Macedonia, Serbia and Montenegro were required to meet 41 criteria, whereas Bosnia and Herzegovina was required to meet 42 criteria.
* When the visa facilitation and readmission agreement negotiations are considered as the starting point, citizens of Serbia, Montenegro and Macedonia have gained visa-free travel rights within the EU Member States in the Schengen area within approximately two years, whereas citizens of Albania and Bosnia and Herzegovina gained the same rights within three years. This process promptly made progress due to sincere intentions and strong will of respective parties; and within political literature, this was acknowledged as a “successful example” internalised within the EU’s foreign policy.
* The decision on the abolishment of visa requirements technically substantiates from the repositioning of the five Western Balkan states from the additional list (*Black List*) to Council Regulation No. 539/2001, to another list (*White List*). When one investigates the background of this process, it is possible to observe that this decision has instigated continuous and lengthy technical preparations, negotiations and political discussions and made all relevant institutions produce documents totalling thousands of pages in length.
* The progresses of the individual Western Balkan states have been promptly evaluated by the European Commission with a country-specific and *tailor-made* approach; the Council and the European Parliament have been informed; new requirements and additional evaluations on the processes of Western Balkan states helped them to maintain this momentum; and therefore all the respective parties have been successfully and solidly included in the process in a timely manner.
* The upholding of the process in an integrative and eager manner has without a doubt contributed to the rapid visa-free travel of citizens of five Western Balkan states within the EU Member States in the Schengen area.
* During the initial stages of the process, these states were given *strict but fair* warning; and whilst Western Balkan states were fulfilling the strict conditions, the European Commission along with relevant European counterparts made necessary efforts in order to provide a fair and proper functioning of the system.

In the current state of affairs, Turkey’s expectation could only be the following: for the process to be pursued in a strict but fair manner and for the EU to demonstrate the same integrative approach and willingness, as it previously portrayed.

***Turkey’s Homework***

Turkey, since 2010, has invested great effort in fulfilling the conditions foreseen by the visa liberalisation roadmap. This is a reality that needs to be acknowledged by both parties.

Following the transition to biometric passports in June 2010, more than 10 million biometric passports were issued and put in service of Turkish citizens according to December 2013 figures. As of April 2013, the new Law on Foreigners and International Protection which is beyond EU standards entered into force. The Integrated Border Management Action Plans and Turkey’s readmission and refugee absorption capacity have been significantly enhanced by the Ministry of Interior and the relevant European counterparts. Although discussions and deadlock on visa subject are still ongoing, Turkey, on its own initiative, has taken considerable steps in various areas specified in the roadmap. Nonetheless, there are still a few deficiencies to be remedied. Correction of these deficiencies, by way of Turkey’s modern border management strategy, will provide the opportunity to protect its own borders and fight against illegal and irregular migration. At this point, it is vital that the EU provides technical assistance to Turkey.

***Our expectations***

The process followed by the EU and countries of the Western Balkans will be shared by Turkey. This process will be tough and challenging for Turkey and can only be achieved through pursuing its previous efforts and especially by overcoming the deficiencies in implementation. We cannot emphasize enough that Turkey’s expectation from the EU is to carry out this process in a facilitating, supportive and equitable manner and to treat Turkey fairly. The signature of the readmission agreement which presents an important liability for Turkey has confirmed Turkey’s readiness for burden sharing with the EU in preventing illegal migration. However, it is vital that the EU provides financial and technical assistance to Turkey. The negotiations towards visa liberalisation should not be perceived as an open-ended process; once the necessary conditions are fulfilled, Turkish nationals should start to enjoy visa-free travel in their visits to EU member states that are part of the Schengen Area. Setting up artificial barriers in front of Turkey at that stage would have destructive consequences; therefore it is extremely important that the rightful expectations of Turkish citizens are not let down.

In this context, it should not be overlooked that Turkey’s relations with the EU date back more than fifty years and Turkey is a candidate country which is conducting accession negotiations with the EU. In contrast to the five Western Balkan states and the six Eastern Partnership countries that the EU is currently conducting visa liberalisation dialogue, Turkey is a country that has been negotiating accession with the EU since 2005.

It is unacceptable that citizens of Turkey, which is one of the EU’s main trading partners, have been subjected to this “visa torture”. On the other hand, it must not be forgotten that Turkey is a candidate country that is currently negotiating accession with the EU.  Advancing in the accession negotiations which have gained a momentum with the opening of a new chapter in November 2013 and moving towards the ultimate goal of full membership should be the top priority for both Turkey and the EU.

The reforms and alignment efforts carried out by Turkey in a wide range of areas from Customs Union to the prevention of illegal migration are all steps aimed at fulfilling the ultimate objective of EU membership. The objective of full membership constitutes the framework of cooperation between both parties in all areas. In this context, it is vital that all issues are resolved promptly and the process gains momentum.

As one of the most reputable institutions which have been working in this field for long years, it is without doubt IKV’s greatest wish that the recently initiated process towards ensuring visa-free travel for Turkish citizens will be completed as soon as possible, and in line with the sensitivities of both parties.

Prepared by: Melih ÖZSÖZ, İKV Research Director

mozsoz@ikv.org.tr