

The State of Turkey-EU Negotiations

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On 3 October 2005, the EU Council of Ministers unanimously decided to open accession negotiations with Turkey. The negotiation framework for Turkey,¹ adopted on the same date, states that “the shared objective of the negotiations is accession,” but also points out the inherent “open nature” of the process. The document was certainly both vigorous and strict, enabling the EU to determine opening benchmarks for every negotiation chapter, in addition to closing benchmarks. It heralded a tough time ahead, challenges and difficulties such as long transition periods, derogations and even permanent safeguard measures, and it contained grey areas like the EU’s “absorption capacity,” the rediscovered fourth membership criteria. The fact that it could not be deconstructed into objective, measurable criteria applicable to all candidate states made the document, and consequently the negotiation process, ambiguous. The “toughness” of the negotiation framework was probably the result of the following factors: Turkey’s so-called differences in terms of size, population, geographical location, etc; the negative experiences of the previous enlargement; enlargement

fatigue or temporary indigestion caused by the 5th enlargement; and a certain level of mistrust towards Turkey.²

However, regardless of the final outcome, the negotiations definitely constituted a new reality. This has been voiced by several Europeans from different segments of society, including Wilfried Martens, the chairman and co-founder of the European People’s Party who, back in 1997, was particularly dubious of Turkish accession. Almost a week after the negotiations began he wrote: “I support the negotiations because I believe we are confronted by a unique opportunity, as great as making peace between France and Germany after the War, or as reunifying Europe after the fall of the Berlin Wall in November 1989. These talks begin a dialogue between Christians and Muslims which could signal an extraordinary new beginning for the world as a whole.”³

In principle, the initiation of accession negotiations constitutes the beginning of an irreversible process in which the candidate country’s membership perspective becomes gradually clearer. This has not been the case with Turkey. No negotiation process has been purely technical for any candidate country, but none has been influenced by political factors to the same extent as Turkey’s.

The main political factor affecting Turkey’s accession negotiation process is the “Cyprus problem.” In the negotiations launched in 2005, this was reflected under a “technical guise” as “the implementation of the additional protocol”, which requires Turkey to extend the customs union it has had with the EU since 1996 to all countries that have joined the EU after that year. In practice what the EU means by

¹ Council of the European Union, 12823/1/05, REV 1, LIMITE, ELARG 64.

² Since many believe Turkey’s political system falls far short of meeting European standards, that its economy is relatively backward and that the country is not wholly European.

³ *European Voice*, 13-19 October 2005, p. 9.

the “implementation of the additional protocol” is that Turkey should open its ports and airports to the Republic of Cyprus. Turkey made its position clear in an action plan announced in January 2006, in which it demanded “mutual abolition of all limitations on the free movement of commodities, persons and services, including those related to transportation, in the framework of a schedule to be agreed on.” In short, Turkey wanted the EU to implement the decision of the Council of Ministers, taken on 26 April 2004, to end the isolation of Turkish Cypriots. However, the necessary regulation has since been blocked by the Republic of Cyprus. Turkish politicians state that until and unless the EU implements its commitment, the country will not feel bound by its signature to the additional protocol.

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At the end of 2006, the EU, referring to its Declaration of 21 September 2005 when it stated that “Turkey’s reluctance in implementing the relevant additional protocol would have an impact on the negotiation process as a whole,” suspended negotiations in eight chapters considered to be related with customs union.⁴ The EU decided that none of the chapters could be closed, even provisionally, before the implementation of the additional protocol, which would appear as an additional benchmark in the aforementioned eight chapters. In this declaration the EU also added that they would review the situation in 2007, 2008 and finally in 2009.

In the period following this decision, the negotiation process has continued to suffer adverse develop-

ments, besides those caused by the Cyprus problem. After Nicolas Sarkozy’s election as French President in spring 2007, France started to block the opening of five negotiation chapters⁵ that would have “a direct bearing on membership.” This stance was in clear contradiction with the negotiation framework unanimously adopted on 3 October 2005 by the EU Council of Ministers. France’s violation of the *pacta sunt servanda* principle has seriously harmed the EU’s credibility in Turkey, and the damage has been further exacerbated by the silent acceptance of this situation by all other Member States. In addition to this, several other countries have prevented the opening of other chapters, in which Turkey was technically well advanced, for political reasons. Some of these national vetoes overlap, but in total 18 chapters are currently off limits, according to Turkey’s chief negotiator, Egemen Bagis.⁶ Largely due to these developments,⁷ Turkey’s policy of compliance came to almost a complete standstill and negotiations reached a deadlock.

In more than four years since the start of negotiations, Turkey was able to open only twelve chapters and provisionally close just one.⁸ The Science and Research chapter was opened and provisionally closed on 12 June 2006; Enterprise and Industrial Policy was opened on 29 March 2007;⁹ Financial Control and Statistics chapters were opened on 26 June 2007; Trans-European Network and Consumer and Health Protection chapters were opened on 19 December 2007; Company Law and Intellectual Property Law chapters were opened on 12 June 2008; Free Movement of Capital and Information Society and Media were opened on 18 December 2008; the Taxation chapter was opened on 30 June 2009; and the Environment chapter was opened on 21 December 2009. The EU Council of Ministers could not agree on a common position for Education and Culture (for more than three and a half years) and Economic and Monetary Policy (for about three years). These chapters were blocked by the Republic of Cyprus and France respectively for political reasons,

⁴ Free Movement of Goods; Right of Establishment and Freedom to Provide Services; Financial Services; Agriculture and Rural Development; Fisheries; Transport Policy; Customs Union and External Relations.

⁵ Agriculture and Rural Development, Economic and Monetary Policy, Regional Policy and Coordination of Structural Instruments, Financial and Budgetary Provisions and Institutions.

⁶ BARYSCH, Katinka. “Can Turkey combine EU accession and regional leadership?” Centre for European Reform *Policy Brief* (25 January 2010), p. 3.

⁷ KRAMER, Heinz. “Turkey’s Accession Process to the EU: the Agenda behind the Agenda”, German Institute for International and Security Affairs (October 2009).

⁸ Please see the enclosed Table 15: Current Overview of Turkey’s Accession Negotiations (21 December 2009).

⁹ None of the chapters will be closed – even provisionally – if Turkey does not implement the additional protocol that extends the customs union to all new Member States in line with the decision made by the Council on 11 December 2006.

despite Turkey's performance in these areas being considered adequate for opening negotiations.

Until now, Turkey has received screening reports for 23 chapters. There are 28 technical opening benchmarks¹⁰ in nine chapters and 41 technical closing benchmarks in twelve chapters. The screening reports for nine chapters are yet to be released by the Council and one by the Commission. For three of the chapters that have been on the Council's agenda for more than three years, the Commission has not envisaged any opening benchmarks (Free Movement of Workers, Energy and Financial and Budgetary Provisions). These are being blocked by certain Member States. Although others have some technical opening benchmarks envisaged by the Commission, they are not immune to political blocks. In December 2009, the Republic of Cyprus declared that it would formally block six more chapters,¹¹ which it has already been obstructing.

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Consequently, there seem to be four chapters that can be opened in the coming period: Public Procurement, Competition Policy, Food Safety, Veterinary and Phytosanitary Policy¹² and Social Policy and Employment. Mainly due to the effects of the global financial crisis on the economy, it seems likely that efforts will only be made to open one of these chapters, Food Safety, Veterinary and Phytosanitary Policy, reducing the number of chapters that can be opened during the Spanish Presidency to just one.

Under these conditions, the EU General Affairs Council meeting, held quietly on 7-8 December 2009 and expected to be an unpleasant turning point in Turkey's relations with the EU and particularly in the negotia-

tion process since 2006, had no reverberations in the EU or Turkey. The understanding that a negative outcome from the meeting could not worsen the negotiation process substantially reduced interest for Turkey and the EU. EU Foreign Ministers, despite making a reference to the adverse situation created by Turkey's failure to implement the additional protocol and hence to open ports and airports to the Republic of Cyprus, postponed the decision in this regard to 2010 and underlined the importance of Turkey's contribution to the ongoing peace talks in Cyprus. The EU leaders in turn deemed it adequate to endorse this decision at the Summit held on 10-11 December.

The main reason for this attitude, adopted by the EU Foreign Ministers and leaders, was in fact that they were well aware that the “additional protocol/ports” problem is a reflection of the Cyprus problem in the negotiation process and that no steps can be taken in this respect unless the reconciliation efforts carried out in Cyprus bear fruit. Furthermore, they know that a decision to officially suspend the negotiations between Turkey and the EU, which are already at a point of impasse, would have a detrimental impact on the solution to the Cyprus problem. In this negative context, the Turkey-EU relationship has entered another important year. The postponed review of the relationship based on the implementation of the Additional Protocol and the normalisation of relations with the Republic of Cyprus will take place at the end of 2010 at the EU summit.

Factors Affecting the Negotiation

As indicated by the analyses of the preceding pages Turkey-EU negotiations have been both slow and contested. More than four years have passed since Turkey started negotiations and only twelve chapters have been opened, and only one provisionally closed. In the same period Croatia, which started negotiations at the same time, opened 28 chapters and provisionally closed 17.

In addition to the continuing Cyprus dispute, the specific nature of the negotiating framework also affected Turkey-EU relations and led to a decline in

¹⁰ Other than the non-discriminatory implementation of the additional protocol which was made an opening benchmark for all chapters by Council Decision dated 11 December 2006.

¹¹ Free Movement of Workers; Energy; Judiciary and Fundamental Rights; Justice, Freedom and Security; Education and Culture and Foreign, Security and Defense Policy.

¹² Editorial note: the Food Safety, Veterinary and Phytosanitary Policy Chapter was opened on June 30.

enthusiasm in Turkey. The emphasis on “open-endedness” and potentially permanent derogation of the mobility of people, agricultural subsidies and structural funds fuelled significant resentment and led to an extensive debate over whether the EU had discriminated against Turkey. Many suggested that Turkey had not been treated on terms equal to other accession countries with respect to the Copenhagen criteria. Turkey-EU negotiations were also adversely affected by the unique “sufficient” qualification regarding the Copenhagen political criteria, meaning that Turkey met the political criteria sufficiently, but not entirely. As a result, Turkey-EU negotiations began in a manner quite different from those of other acceding countries. At the time, this was probably the only politically feasible solution, a compromise to start negotiations with Turkey. Furthermore, it was considered a short-term qualification, although one that persists, as the most recent progress report on Turkey underlines.¹³ This has had a considerable impact on the politicisation of even the most technical chapters and further slowed the process. Failure to fully meet the political criteria has affected all aspects of the negotiation. This politicisation has made it difficult to sustain the process as “technical”, based on objective criteria.

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Furthermore, as Turkey started negotiations, after a long waiting period, there was an unfortunate downturn in the process of European integration. The EU was immersed in prolonged institutional problems, augmented by the non-ratification of the Constitutional Treaty in the referendum in France and the Netherlands. The continuing stalemate regarding these problems deeply affected the process of en-

largement and led to the questioning of one of the EU's most successful policies. In this climate, the enlargement policy became the scapegoat and victim of the EU's institutional problems. As attention turned to the enlargement issue, Turkey became an easy target, being one of the remaining two countries and, furthermore, the more problematic one at the negotiation table. These developments awakened previously dormant sceptical attitudes towards Turkey's accession in Europe, resulting in a negative interaction between the EU and Turkey. Immersed in its own problems caused by the downturn phase, the EU found it difficult to focus on Turkey's accession process, slowing negotiations.

The worsening of Turkey-EU relations after 2005 affected Turkey's internal political forces, leading to the disintegration of the pro-reform coalition

The worsening of Turkey-EU relations after 2005 affected Turkey's internal political forces, leading to the disintegration of the pro-reform coalition and the rise of more sceptical coalitions. Unfortunately, as Turkey started negotiations, the EU came to be seen as less of a transformative power and the enthusiasm for the reform process sharply declined. The political costs of supporting the process increased, leading to a dramatic decline in the domestic ownership of the project. The governing party began to understand these costs, as sceptical attitudes became prevalent among the public. The opposition parties adopted a more nationalistic outlook on critical political issues, such as Cyprus, and became less sensitive to the democratic aspect of the accession process. This set the stage for Turkey's more traditional form of politics to re-emerge, with the opposition parties adopting more sceptical positions and European integration becoming a half-hearted government issue, and not one of bipartisan relevance. The situation caused all political actors, particularly the government, to lose crucial time and the reform process became even more sluggish. The government announced 2008 as a “reform year”, but records show a poor rate of achievement. The same was true for 2006 and 2007

¹³ EU Commission Regular Report from the Commission on Turkey's Progress Towards Accession. (Brussels, 2009)

Chapters Opened and Provisionally Closed	Chapters Where Turkey Was Invited to Submit Its "Negotiation Position Paper"	Chapters Whose Screening Reports Were Approved by the Council of the European Union (with Opening Benchmarks)	Draft Screening Reports to be Approved by the Council of the European Union	
			On the Agenda of the Council	On the Agenda of the Commission
25. Science and Research (12 June 2006) Opened	17. Economic and Monetary Policy (Negotiation Position Document submitted on: 9 March 2007) / blocked by France	1. Free Movement of Goods / (OB: 4) / suspended at the end of 2006	2. Free Movement of Workers / blocked by Germany / Austria / Greek Cyprus	31. Foreign, Security and Defence Policy / blocked by Greek Cyprus
4. Free Movement of Capital / CB:4 (18 December 2008)	26. Education and Culture (Negotiation Position Document submitted on: 25 May 2006) / blocked by Greek Cyprus	3. Right of Establishment and Freedom to Provide Services / (OB:1) / suspended at the end of 2006	13. Fisheries / suspended at the end of 2006	
6. Company Law / CB:5 (12 June 2008)		5. Public Procurement / (OB:3)	14. Transport Policy / suspended at the end of 2006	
7. Intellectual Property Law / CB : 4 (12 June 2008)		8. Competition Policy / (OB:6)	15. Energy / blocked by Greek Cyprus	
10. Information Society and Media / CB:5 (18 December 2008)		9. Financial Services / suspended at the end of 2006	22. Regional Policy and Co-ordination of Structural Instruments / blocked by France	
16. Taxation / CB:3 (30 June 2009)		11. Agriculture and Rural Development / (OB:5) / suspended at the end of 2006 / blocked by France	23. Judiciary and Fundamental Rights / blocked by Greek Cyprus	
18. Statistics CB: 2 (26 June 2007)		12. Food Safety, Veterinary and Phytosanitary Policy / (OB: 6)	24. Justice, Freedom and Security / blocked by Greek Cyprus	
20. Enterprise and Industrial Policy / CB:1 (28 February 2007)		19. Social Policy and Employment / (OB:2)	30. External Relations / suspended at the end of 2006	
21. Trans-European Network / CB:1 (19 December 2007)		29. Customs Union / (OB:1) / suspended at the end of 2006	33. Financial and Budgetary Provisions / blocked by France	
28. Consumer and Health Protection / CB:5 (19 December 2007)				
32. Financial Control / CB:6 (26 June 2007)				
27. Environment / CB:5 (21 December 2009)				
12 Chapters 41 Closing Benchmarks				

CB: Closing Benchmark. OB: Opening Benchmark.

and also for last year, 2009. As has happened before, the increase in domestic polarisation has given Turkey's domestic agenda the upper hand over its reform drive. Turkey is losing valuable time, which should be spent on the reform process.

Prospects in the Relationship

Fortunately, the institutional stalemate and the downturn phase in European integration are coming to an end with the ratification of the Lisbon Reform Treaty, which could revitalise the crucial linkage between deepening and widening policies of the EU, and open new horizons for enlargement. The positive climate in the transatlantic relationship also creates a more conducive environment for the USA and Europe to work together on the problems of the volatile international system. Both are hopeful

that the new American administration will focus more on multilateral policies and foster better relations with Europe. The change in transatlantic relations may make US support for Turkey's EU accession more productive. The Obama administration is also formulating different policies to those of the previous Bush administration with regard to sensitive international issues such as Afghanistan, Iraq and the Middle East in general. These policies will require increased collaboration with Turkey and foster its geopolitical significance. Turkey is increasingly becoming a "regional actor" in its turbulent neighbourhood, with a more active foreign policy, and more reliant on soft policy measures. On the unstable international scene, the EU and Turkey need to bring their energies together on critical neighbourhood issues. Problems in the joint turbulent neighbourhood put pressure on both the EU and Turkey to focus more on concrete mechanisms of cooperation.

Turkey-EU relations may improve if Turkey is gradually brought into the Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP) and if both sides establish effective channels of dialogue on neighbourhood issues. Such a development would improve confidence in Turkey-EU relations and help to revitalise the accession process. The development of such a partnership would not only ease frictions in relations, but also serve to create more converging orientations and policies of effective multilateralism for the volatile region.

The Lisbon Reform Treaty could revitalise the crucial linkage between deepening and widening policies of the EU, and open new horizons for enlargement

In addition to the changing European and international contexts, the continuing negotiations in Cyprus provide another opportunity for improving Turkey-EU relations, as well as solving the long-standing Cyprus issue. As previously indicated, the referenda in Cyprus in 2004 and subsequent entry

of the Republic of Cyprus into the EU without a solution to the problem, were major developments that contributed to the downturn in Turkey-EU relations after that year. All actors involved lost valuable time that could have been used for solving the Cyprus dispute. The present negotiations on the island offer another opportunity – and probably the last – to solve the problem.¹⁴ If the two leaders on the island, who have learned important lessons from past failures during their long personal relationship, are unable to solve the problem, further attempts will be difficult. If negotiations move forwards and a solution to the Cyprus problem becomes viable, this will certainly have positive repercussions for Turkey-EU relations, and may generate an environment conducive to a new drive for reform in Turkey. The history of Turkey-EU relations shows that a focus on reform has occurred mainly in periods when there was a relative convergence in the time-frames of the EU and Turkey or when the international context was more favourable.¹⁵ Hopefully, we are entering a more positive period after the downturn in the process of European integration. The past can serve as an important lesson for political actors in Turkey, who should learn how to capture the dynamics of European integration and use time more efficiently to advance the process of Europeanisation in Turkey.

¹⁴ International Crisis Group. "Reunifying Cyprus: The Best Chance Yet" *Europe Report* 194 (2008).

¹⁵ For a more comprehensive analysis of the role of "time factor" in the Turkey-EU Relationship, see ERALP, Atila. "The Role of Temporality and Interaction in the Turkey-EU Relationship". *New Perspectives on Turkey* 40: 149-170 (2009).