

EU-Turkey Relations: Turning vicious circles into virtuous ones

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Key points

With local elections due to take place in Turkey on March 30th, presidential elections on August 2nd and general elections in June 2015, the coming weeks and months will be decisive for the general tenor of the country's politics for the foreseeable future. Sadly, the state of democracy and rule of law in Turkey has deteriorated due to the government's mishandling of a series of toxic political scandals in recent months. At the same time, the stagnation in Turkey's accession process continues to sour relations with the EU. The European Commission's so-called "Positive Agenda" is virtually on life-support and needs a fresh injection if the vicious circles now affecting bilateral relations are to be turned into virtuous ones.

Main recommendations

- The European Council and the European Commission should go beyond token expressions of concern about the decline in democratic standards and rule of law in Turkey. They should endeavour to tackle head on the challenges to the Copenhagen political criteria in Turkey.
- In line with the EU's "New Approach" to accession negotiations, which centres on the early opening of chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security) to secure not just reform on paper, but to establish a track record in implementation throughout the accession process, the European Commission should be given the signal to start such talks with Turkey. To that end, member states, Cyprus in particular, need to be persuaded to end their opposition to formulating benchmarks for the opening of accession negotiating chapters 23 and 24.
- Screening reports and Action Plans should be adopted to guide the negotiations in chapters 23 and 24. At the opening of these chapters, interim benchmarks could be set by the member states. Only when these interim benchmarks have been met sufficiently would closing benchmarks be adopted.
- In order to help Turkey fulfil the commitments made in its Action Plans, financial and technical assistance would have to be mobilised under the Technical Assistance and Information Exchange instrument (TAIEX) of the Commission and the Instrument for Pre-accession Assistance (2014-2020). These supporting measures would have to be targeted at the early stages of the process and take a sectoral approach, including budget support based on concrete and comprehensive plans.

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Something rotten in the state of Turkey

Concerns about the deterioration of democracy in Turkey are not new: the trials over the 2003 'Sledgehammer' alleged coup plan (2010-12) and over the 'Ergenekon' secret organisation (2008-13) broke the military's influence over politics, but were widely criticised because of their reliance on secret witnesses and disputes over evidence. Ironically, their outcome has recently been challenged by Prime Minister Erdoğan himself, who has disowned the trials now that the judiciary has the AK Party in its sights.¹ International concern was also stirred by the violent crackdown on the countrywide protests of May/June 2013. Unrest then was triggered by the planned redevelopment of Istanbul's Gezi Park in May 2013, but developed into a wider movement critical of government corruption, increasing restrictions on freedom of speech and concerns about the erosion of secularism. Protests simmered on through September, winding down in autumn and winter only to reignite in March of this year.

The latest wave of developments was triggered by the launch of a judicial probe into a series of real-estate deals in mid-December, culminating in the arrests of over 50 officials and businessmen close to the ruling AKP. Three ministers, whose sons had been implicated, resigned: one of them, Environment Minister Bayraktar, publicly called on Erdoğan to step down as well. In an effort to smother the rebellion against his (party's) rule, Prime Minister Erdoğan reacted on the 25th of December by announcing the reshuffle of seven other members of his cabinet, including the Minister for European Affairs, who was implicated in the ongoing investigation. But this did not stem the tide: in January and February the government was rocked by the release of recordings and videos contributing to continuing allegations of high-level corruption, leading to ever louder calls for the Prime Minister himself to be investigated for

corruption. Indeed, the circle seemed to be closing in on Erdoğan himself, with the release of a recording in which he purportedly tells his son to hide millions of dollars. The whole episode has been depicted as part of a broader power struggle between Erdoğan and his former ally Fetullah Gülen, Turkey's most influential cleric and leader of a worldwide religious civil society movement named after him.² Erdoğan has accused Gülen and his followers of concocting the graft investigation to undermine the AKP before the elections. According to Erdoğan, who also alleged the involvement of the US Ambassador, Gülen wields great influence over what he terms Turkey's "parallel state" - the upper echelons of the bureaucracy, police and judiciary. However, the preacher denies any link to the probe.

The government's reaction to the ongoing investigation has resulted in a blurring of the separation of powers and the curtailing of civil liberties. In particular, in the aftermath of the arrests in December the government relocated nearly 100 judges and prosecutors, and dismissed or reassigned nearly 500 police officers, including Istanbul's chief of police. Also in January, a package of measures modifying the status of the Supreme Board of Judges and Prosecutors and granting the Minister of Justice increased authority over appointments of judges and prosecutors was approved, with limited amendments. A contentious medical bill, potentially criminalising the treatment of wounded protesters, was also signed into law. In February, parliament passed a law expanding the powers of the National Intelligence Organisation (MİT). Upon the authorisation of a single judge at an Ankara criminal court, the spy agency will be able to access the databases of banks and other commercial corporations, and conduct wire tapings to collect data related to foreign intelligence, national defence, terrorism and cyber security. Censorship was stepped up with the passing of highly controversial amendments to Law 5651 on the "Regulation of

¹ T. Arango, "Turkish leader disowns trials that helped him tame military", *New York Times*, 26 February 2014.

² D. Dombey, F. Guler and D. Gardner, "Showdown", *Financial Times*, 19 March 2014.

Publications on the Internet and Suppression of Crimes Committed by means of such Publication”, allowing authorities to block websites and collect extensive browsing data from users. From 2008 to 2010 the country had already experienced a ban on YouTube when the government blocked access to the website because of videos deemed insulting to the country’s founder, Mustafa Kemal Atatürk. Most recently, after Erdoğan voiced his anger that people used Twitter to spread allegations of corruption about members of his inner circle, the government blocked the website. President Gül, who, like many others, evaded the ban tweeted that the shutdown on social media was unacceptable. The overall level of press freedom remains a matter of grave concern: in the 2014 World Press Freedom Index published in February, Turkey dropped six places and was ranked 154th. The report also marks an increasing tendency for self-censorship, remarking Turkey “remains the world’s biggest prison for journalists”.³

The government’s restriction of civil liberties is not the only worrying development for the country. Turkey’s situation is also becoming increasingly problematic in economic and diplomatic terms.

The crackdown on civil liberties, combined with the global effect of rising interest rates in the US, has led to pressure on the Turkish lira. To prevent outflows, the central bank was forced to hike interest rates, raising the overnight rate from 7.75% to 12%. The government did not rule out further measures to stabilise the situation, although the imposition of capital controls was excluded. Global economic volatility in emerging markets, combined with lower than expected economic growth and continuing political uncertainty, may well affect Turkey’s attractiveness to foreign investors, adding to the government’s difficulties.

Moreover, Turkey’s ambitions of a ‘zero problems with the neighbours’ policy

³ See “Reporters without Borders” (<https://rsf.org/index2014/en-index2014.php#>).

announced at the outset of the current legislature seem to be slipping further away. While the resumption of talks with Cyprus in February should be welcomed, the dispute is far from being solved, although Erdoğan’s need for foreign policy successes could aid the negotiations. Relations with Israel are still marred by the Gaza flotilla incident of May 2010. Relations with the US are suffering not only as a result of Erdoğan’s talk of an international conspiracy against his government, but also because of Turkey’s lax policy towards the Syrian border and by its decision in September to purchase a Chinese missile defence system, which will probably pose compatibility issues with NATO’s own systems. The biggest reverses in diplomatic terms stem from regional developments: Turkey’s support of the Muslim Brotherhood in Egypt, even after the ousting of President Morsi, has soured its relations with its Sunni partners, especially Egypt and Saudi Arabia.

Turkey’s domestic politics, economic fortunes, and international relations now seem to be tightly interwoven with the Prime Minister and his own fate. As Erdoğan desperately tries to hold on to power by deflecting the legal inquiry closing in on him, there is an increasingly palpable risk that he might fatally undermine the very foundations of Turkey’s democracy and rule of law, dragging them down with him.

Token expressions of concern will no longer do

Events in Turkey since the spring 2013 protests in Gezi Park and Taksim Square have soured relations with the EU, at a time when the accession process seemed to be gradually regaining momentum.⁴ On the surface, the EU’s

⁴ Statement by EU High Representative Catherine Ashton on the latest developments in Turkey, 12 June 2013 (http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137451.pdf); Speech by Štefan Füle at the Plenary Session of the European Parliament, Strasbourg, 12 June 2013. (http://europa.eu/rapid/press-release_SPEECH-13-526_en.htm).

reaction to developments in Turkey has been rather subdued, but there are grave underlying concerns about the deterioration of democracy and the rule of law in the country. The European Parliament's April 2013 resolution on Turkey expressed concerns about the human rights situation and stressed the need for judicial reform, reiterating calls to revise the legal framework on freedom of expression.⁵ In its annual report of October 2013, the European Commission welcomed progress in certain areas, but criticised a political climate marked by polarisation, which translated into "an understanding of democracy as relying exclusively on parliamentary majority, rather than a participative process in which all voices are heard".⁶ The Commission also pointed out that "key provisions of the Turkish legal framework and their interpretation by the judiciary continue to hamper respect for fundamental freedoms, including freedom of expression."

In contrast to the sharp decline in standards since the publication of the Commission's Annual Report, EU leaders at the beginning of this year stressed productive discussions with Prime Minister Erdoğan (on his first visit to Brussels in five years) and welcomed Turkish commitments to continue on the path of reform. They did not go beyond voicing "concern" or, at most "serious concerns" over the continuing restriction of democratic freedoms.⁷ After the

⁵European Parliament resolution of 18 April 2013 on the 2012 Progress Report on Turkey, (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0184+0+DOC+XML+V0//EN>).

⁶"Key Findings of the 2013 Progress Report on Turkey", 16 October 2013 (http://europa.eu/rapid/press-release MEMO-13-895_en.htm).

⁷Remarks by President of the European Council Herman Van Rompuy after his meeting with Prime Minister of Turkey Recep Tayyip Erdoğan, 21 January 2014 (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140694.pdf);

Statement by President Barroso following the meeting with Prime Minister Erdoğan of Turkey, 21 January 2014 (http://europa.eu/rapid/press-release SPEECH-14-43_en.htm).

passing of the controversial internet censorship law, the Commission agreed to "share in writing a number of the concerns identified, regarding both compatibility with the *acquis* and EU best practices".⁸ In reaction to the move to block Twitter, EU Commissioner for Enlargement Štefan Füle upped the ante and said that it "raises grave concerns and casts doubt on Turkey's stated commitment to European values and standards."⁹

On the whole, member states have been more dismissive in their criticism, with German Foreign Minister Steinmeier stating that Erdoğan's recent actions had put the accession process at risk,¹⁰ while French President François Hollande made clear his opposition to opening new negotiating chapters during his visit to Turkey in January.¹¹ German Chancellor Angela Merkel too has remained sceptical about full Turkish membership of the Union.¹² Together with the recently passed motion by the European Parliament on Turkey, expressing "deep concern" over recent developments, key member states' positions are forcing the EU executive to take a tougher line.¹³

⁸"EU-Turkey: Ministerial dialogue in Brussels", 10 February 2014 (http://europa.eu/rapid/press-release STATEMENT-14-1_en.htm).

⁹"Statement of Commissioner Štefan Füle on the blocking of Twitter in Turkey", 21 March 2014 (http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2014/03/20140321_en.htm). Commission VP Kroes was even more outspoken when she tweeted: 'The Twitter ban in #Turkey is groundless, pointless, cowardly. Turkish people and the intl. community will see this as censorship. It is.' (<https://twitter.com/NeelieKroesEU/status/446784267541291008>).

¹⁰"Germany criticizes Turkey PM ahead of EU visit", 21 January 2014 (<http://euobserver.com/foreign/122806>).

¹¹"Hollande declines to open new EU chapter in Turkey", *EU Observer*, 28 January 2014 (<http://euobserver.com/foreign/122889>).

¹²"Erdogan struggles with Merkel's scepticism on Turkey's EU bid", 4 February 2014 (<http://uk.reuters.com/article/2014/02/04/uk-turkey-germany-eu-idUKBREA130YZ20140204>).

¹³European Parliament resolution on the 2013 progress report on Turkey, 12 March 2014

The slight differences in the tone of reactions of member states and EU institutions should not conceal the fact that both sets of actors face the same underlying dilemma: by more firmly condemning developments in Turkey, or by threatening to suspend accession negotiations, there is the risk of undermining cooperation on issues of mutual concern and losing all remaining leverage over the political process within the country. Arguably, the degree of leverage possessed by the EU has already diminished since the start of negotiations in 2005, as the prospect of Turkish membership was pushed further and further into the future. In particular, France and Cyprus have stalled the talks, with each vetoing the opening of several negotiating chapters, including chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security). Cyprus argued that Ankara first needed to normalise relations with Nicosia.¹⁴ After two years of not opening negotiating chapters, in May 2012 the European Commission tried to reinvigorate the process with a so-called "Positive Agenda". In the last two months of 2013 this resulted in the opening of negotiations on chapter 22 on regional policy, the signing of a readmission agreement and the adoption of a visa liberalisation roadmap. This did little to address the root causes of the lethargy in relations, however.

Like the EU, Turkey itself is increasingly struggling to view the negotiations as genuine, with public support for membership having declined in recent years.¹⁵ When speaking at a

(<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bMOTION%2bB7-2014-0241%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>).

¹⁴ France is blocking the opening of 4 chapters, Cyprus of 6 others. See "Turkey-EU Relations" (<http://www.mfa.gov.tr/relations-between-turkey-and-the-european-union.en.mfa>).

¹⁵ Turkey, European Union relations experiencing 'chilly' period: Poll, *Hurriyet Daily News*, 19 September 2013 (<http://www.hurriyetdailynews.com/turkey-european-union-relations-experiencing-chilly-period-poll.aspx?PageID=238&NID=54709&NewsCatID=351>).

CEPS event to commemorate the 50th anniversary of the Association Agreement in September 2013, Turkish Ambassador to the EU Selim Yenel argued that unless substantial progress in the pre-accession process was made by mid-2014, Turkey would have to pull the plug on accession negotiations and propose a new agenda for advanced relations with the EU.¹⁶ In sum, these developments and perceptions mean that the accession process might well be less important than it has ever been in the general framework of EU-Turkey relations.

Several important events loom on the horizon. The results of the local elections across Turkey at the end of March will be key in showing the extent to which the developments over the past year have dented the AKP's popularity. While the party undoubtedly enjoys wide support, Erdoğan's reaction to a potentially negative outcome of the local elections will be crucial: it is expected that he will announce whether or not he intends to stand for the first direct presidential elections, scheduled for August 2014. Alternatively, he could also attempt to change the AKP's internal regulations to stand for a fourth term as Prime Minister. In this context, it is important to recall the OSCE/ODHIR report about the 2011 parliamentary elections, stating there was a need "to ensure the equality of vote weight among constituencies, lifting certain existing restrictions on suffrage rights, and enhancing transparency in the complaints and appeals process".¹⁷ Any hints about moves to manipulate the outcome of the upcoming elections would of course heighten the EU's concerns about further rollbacks in the country's democratic institutions and practices and lead to a further souring of relations.

¹⁶ CEPS News, October 2013 (<http://www.ceps.eu/system/files/simplenews/2013/09/CNOctweb.pdf>).

¹⁷ OSCE/ODIHR Election Assessment Mission Report, 12 June 2011 (<http://www.osce.org/odihr/84588>).

Back to basics: respect for the principle of democracy and the rule of law

As the accession process stalls and democratic advances within Turkey are reversed, it is time for the EU to reassess its relationship with Turkey and turn the vicious circles now affecting bilateral relations into virtuous ones.

The 2009 Enlargement Strategy highlighted the rule of law as one of the key challenges within the enlargement process: “In line with the renewed consensus on enlargement [agreed to by the December 2006 European Council] and taking into account experience from the fifth enlargement, the rule of law is a key priority which needs to be addressed by the countries concerned at an early stage of the accession process. With EU assistance, some progress has been made in putting into place effective legislation and structures to fight corruption and organised crime, but rigorous implementation and enforcement of laws are necessary to achieve tangible results”.¹⁸

In the framework of the Positive Agenda, working groups were established on the following chapters: 3 (right of establishment and freedom to provide services); 6 (company law); 10 (information society and media); 18 (statistics); 28 (consumer and health protection); and 32 (financial control). Crucially, separate working groups were set up to deal with fundamental rights and justice matters covered by chapters 23¹⁹ and 24.²⁰ Whereas the work

carried out by these groups has led to a number of closing benchmarks being confirmed in the areas of company law, consumer and health protection, and financial control, progress has been forestalled in the area of rule of law, with no opening benchmarks being communicated to Turkey.²¹ The EU ought to overcome its internal impasse and unleash the potential of chapters 23 and 24 to address the troubling state of democratic principles and rule of law in Turkey.

In tune with the EU’s “new approach” to accession negotiations, which centres on the early opening of chapters 23 and 24 in order to monitor not just reform on paper but also in practice throughout the entire negotiating period,²² the European Commission should be given the signal to start such talks with Turkey. To that end, member states – Cyprus in particular – need to be persuaded to give up their opposition in order to let the Council decide on benchmarks for the opening of accession negotiating chapters 23 and 24. One argument that may serve that purpose is that, apart from adopting opening benchmarks to prioritise key issues in the realm of these two chapters, member states are in the position to introduce interim and closing benchmarks along the way. As such, they can determine the course of reforms at all stages of the accession negotiations so that a solid track record of implementation of reforms is achieved. Moreover, the introduction of benchmarks could serve to overcome the limited amount of ‘hard *acquis*’ (i.e. clear and unambiguous EU rules) in some of the areas covered by chapters 23 and 24, which would otherwise make it difficult to

¹⁸ Communication from the Commission to the European Parliament and the Council, “Enlargement Strategy and Main Challenges 2009-2010”, COM(2009) 533, Brussels, 14 October 2009 (http://ec.europa.eu/enlargement/pdf/key_documents/2009/strategy_paper_2009_en.pdf).

¹⁹ Chapter 23 covers the independence, impartiality, integrity and efficiency of the judiciary, the fight against corruption, and respect for fundamental rights and EU citizens’ rights, as guaranteed by the *acquis* and by the EU Charter of Fundamental Rights.

²⁰ Chapter 24 covers the fight against all types of organised crime (including drug and arms trafficking, trafficking in human beings etc.) and terrorism, the Schengen rules, border control and visas, as well as

migration, asylum, judicial cooperation in criminal and civil matters and police and customs cooperation.

²¹ Turkey: EU political benchmarks “were never given to us”, EurActiv, 7 February 2013 (<http://www.euractiv.com/enlargement/got-necessary-eu-benchmarks-turk-news-517614>).

²² Communication from the Commission to the European Parliament and the Council, “Enlargement Strategy and Main Challenges 2011-2012”, COM(2011) 666, 12 October 2011, at 5. See also the General Affairs Council Conclusions of 5 December 2011, point 4, and the European Council Conclusions of 9 December 2011.

determine exactly which targets need to be met in order to comply with general principles and European standards.²³

To achieve this, screening meetings for chapters 23 and 24 would have to be convened as soon as possible. Screening reports should be adopted, setting out the framework for negotiations. In response, Action Plans would have to be drawn up by Ankara, detailing the tasks to be addressed by Turkey, as well as laying down clear roadmaps for the negotiations. Thus, the Action Plans would effectively constitute the opening benchmarks for chapters 23 and 24. Interim benchmarks could be set by the member states when negotiations are opened. Closing benchmarks would only be adopted once the interim benchmarks have been met. The closing benchmarks would require Turkey to demonstrate a solid track record of reform implementation. Only when the closing requirements in chapters 23 and 24 are met could all other chapters be permanently closed.

In order to help Turkey fulfil the commitments made in its Action Plans, financial and technical assistance would have to be mobilised under the Technical Assistance and Information Exchange instrument (TAIEX) and the second edition of the Instrument for Pre-accession Assistance (2014-2020). These supporting measures would have to be targeted at the early stages of the process and take a sectoral approach, including budget support based on concrete and comprehensive plans.²⁴ If necessary, the

accountability of Turkey could be increased by, for example, requesting a new or amended Action Plan from Ankara or by adopting additions to interim benchmarks. If progress on chapters 23 and 24 were to significantly lag behind overall progress, then the “new approach” would allow for the adoption of so-called “corrective measures” to stop or slow down negotiations on other chapters until the thorny issues are resolved.²⁵ It is for the Council to decide by qualified majority on a proposal from the Commission and on the conditions for lifting the measures taken. Based on the “importance of [chapters 23 and 24] for the implementation of the *acquis* across the board”,²⁶ the Council could thus decide to suspend accession negotiations completely in case of serious and persistent breaches of the principles of democracy, respect for fundamental rights and the rule of law.

In sum, the application of the “new approach” to accession negotiations with Turkey would lead to a stronger focus on democracy and the rule of law. It would introduce extra time and a more structured approach to monitoring and assistance to tackle the prickly issues at hand. Moreover, it would link progress in accession talks overall more directly to progress in these crucial domains. This would ensure that reforms produce a solid track record of implementation before actual accession.

²³ It has been argued that the material substance of chapter 23 should in fact be categorised under the third Copenhagen criterion (i.e. the candidate’s ability to take on the obligations of membership) rather than the first (i.e. political) criterion, since it is “no longer regarded solely as an *eligibility condition* (i.e. prerequisite for starting accession negotiations) as suggested by Article 49(1) TEU. Fundamental rights are also conceived as an *integral part* of the EU *acquis* which the candidate has to assimilate (...)”. See C. Hillion, “Enlarging the European Union and deepening its fundamental rights protection”, SIEPS European Policy Analysis 2013:11. See also W. Nozar, “The 100% Union: The Rise of Chapters 23 and 24”, Clingendael Paper, August 2012.

²⁴ Nozar, *ibid.*, at 3.

²⁵ *Ibid.* See also General EU Position, Ministerial meeting opening the Intergovernmental conference on the accession of Montenegro to the European Union, AD 23/12, 27 June 2012, para. 25: “should progress under [chapters 23 and 24] significantly lag behind progress in the negotiations overall, and after having exhausted all other available measures, the Commission will on its own initiative or on the request of one third of the Member States propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate until this imbalance is addressed.”

²⁶ *Ibid.*

Concluding remarks

Opening negotiations on chapters 23 and 24 could lead to a greater engagement with Turkey in two delicate fields, giving new impetus to reform within the country: indeed, past reforms have been carried out when there was momentum behind the negotiating process. With renewed momentum, it may even be possible to realise membership of Turkey in the Union by 2023, the 100th anniversary of the Turkish Republic.²⁷

Should the opening of chapters 23 and 24 not prove enough to engage Turkey and to restart the accession process in earnest, it will become increasingly likely that the plug will indeed have to be pulled on the negotiations and that other frameworks in which to pursue further cooperation and integration will have to be considered. Several such modalities have been suggested: ranging from a partnership focused on security and energy co-operation to selectively deep integration within an increasingly differentiated EU,²⁸ and even an associate membership of the EU.²⁹ Whatever merit there may be in each of the proposals, the EU should not be seen to renege on its own commitments. A serious attempt should therefore be made to push the accession process forward, based on sustained compliance with the norms set out in chapters 23 and 24.

²⁷ In 2006, European Commission President Barroso said that the accession process will take at least until 2021. In a visit to Germany on 31 October 2012, Turkish Prime Minister Erdoğan made clear that Turkey was expecting membership in the Union to be realised by 2023, implying that Ankara could end membership negotiations if the talks had not yielded a positive result by then.

²⁸ N. Tocci and D. Bechev, "Will Turkey Find its Place in Post-Crisis Europe?", in *Global Turkey in Europe: Political, Economic, and Foreign Policy Dimensions of Turkey's Evolving Relationship with the EU*, IAI Research Paper, 2013 (http://www.iai.it/pdf/Quaderni/iairp_09.pdf).

²⁹ See A. Duff, "The case for an Associate Membership of the European Union" (<http://www.spinelligroup.eu/article/case-associate-membership-european-union>).