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Turkey's 10 years of EU accession negotiations: no end in sight

William Chislett



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William Chislett | Associate Analyst, Elcano Royal Institute | @ WilliamChislet3 

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(1) Summary¹

Turkey's accession process to the EU is in limbo: only 14 of the 33 chapters of the acquis that require negotiations have been opened in 10 years (the last one in November 2013) and just one provisionally closed. The main stumbling block is Turkey's failure to implement the 2005 Additional Protocol to the Ankara Agreement and extend its customs union with the EU by opening its ports and airports to Greek-Cypriot traffic. As a result, the EU suspended at the end of 2006 the opening of eight chapters related to the Customs Union and announced that no more chapters would be provisionally closed until Turkey had fulfilled its commitment. France and Cyprus have unilaterally blocked other chapters. Turkey is still far from being a fully-fledged democracy, hampered by the actions of Recep Tayyip Erdoğan, the autocratic President. The landslide victory last April of the pragmatic Mustafa Akıncı in the presidential election in the Turkish Republic of Northern Cyprus raised hopes for reunification of Cyprus, divided since Turkey's 1974 invasion of the island, although this is not part of the EU accession. While a window of opportunity has opened in Cyprus, the one provided in 2013 by a fragile ceasefire between the Turkish state and the insurgent Kurdistan Workers Party (PKK), following a brutal dirty war of 28 years that killed at least 40,000 people, was closed in July with a renewal of violence on both sides. The best way to keep Turkey on board, improve its

¹ William Chislett is the author of two books on Turkey (Euromoney), six working papers for the Elcano Royal Institute and a study for the Open Society Foundation (Istanbul) comparing Spain's and Turkey's EU trajectories. He has twice been a Visiting Scholar at Bilkent University, Ankara.

flawed democracy and reinvigorate its EU negotiations would be to open the two chapters on judicial and fundamental rights and on justice, security and freedoms –core areas blocked by Cyprus since 2009–.

(2) Background²

The European Council of Ministers took a momentous decision and opened accession negotiations with Turkey 10 years ago this month, but progress since then has been painfully slow. Only 14 of the 33 chapters of the *acquis* that require negotiations have been opened (two of them do not) and just one (science and research) provisionally closed.

The country has been knocking at the EU's door since 1963 when it became an associate member of the then European Economic Community (EEC), having applied in 1959 (see the timeline in Appendix 1). In 1987, one year after Spain joined the EEC, Ankara applied for full membership and in 1996 Turkey became the first and so far the only non-EU member to form a Customs Union with the EU for industrial goods and processed agricultural products. The decision of the December 1997 Luxembourg summit not to include Turkey among the 10 candidate countries who joined the EU in May 2004 and two more in 2007, caused a major rift with Ankara which virtually cut off relations with Brussels. The thaw lifted two years later at the Helsinki summit when Turkey's status was upgraded from an applicant to a candidate country.

Turkey's accession process is in a category of its own –very different to that of other applicants– because it is said to be 'too big, too poor and too Muslim', although there is no reason why the country's size (its population of 76 million is slightly more than the combined populations of the 10 countries that joined the EU in 2004), its predominantly Muslim religion and economic underdevelopment in certain areas, most notably in the impoverished south-east, should be stumbling blocks on the road to accession. These factors fuel opposition to if not reticence about Turkey's possible full membership among some populations and governments, particularly in Germany and France. This is bound to intensify with the recent avalanche of migrants into the EU although significantly Turks are not among those seeking to enter the Union. Indeed, Turks in the EU have been returning to their country for several years, something not widely known, as Turkey has become richer. The commonly held belief that Turks will flood the EU when and if it becomes a full EU member is a misconception that Ankara should be more proactive in trying to correct among the wider public.

The country's special case was implicitly made clear in the negotiating framework produced by the Council of the EU when the green light was given to open the accession process (see Appendix 2). This enables the EU to determine opening and closing benchmarks for every chapter, in addition to long transition periods, derogations, permanent safeguard measures and grey areas like the EU's 'absorption capacity'. And there is no guarantee, unlike that which existed for all the other candidate countries, that completion of the accession process automatically brings with it full membership. It is not an irreversible process in which Turkey's membership perspective becomes gradually clearer.

² I would like to thank Bülent Algan of the University of Ankara, Dimitrios Dagdeverenis, Fiona Mullen, Ömer Önhon, Turkey's ambassador in Madrid, and Fatma Yilmaz-Elmas of the International Strategic Research Organization in Ankara for their help in writing this Paper.

Indeed, the framework and subsequent declarations by some EU leaders have strengthened the feeling that the EU wants a 'special partnership' for Turkey and not full membership.

Nevertheless, a new if ambiguous reality was established for Turkey which was accepted by sceptics such as Wilfried Martens, the chairman and co-founder of the European People's Party, who in 1997 cast doubts on Turkey's accession. After negotiations began in 2005 Martens saw in it '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

The accession negotiations, however, have not laid to rest the issue of whether Turkey is really part of Europe, despite joining the Council of Europe in 1949, being a founding member of the Organisation for Economic Co-operation and Development (OECD) in 1961 and becoming a NATO ally in 1952 (with the second-largest standing military force after the US).

When Turkey became an associate member, there was no doubt in the mind of Professor Walter Hallstein, the President of the European Commission, on this issue. 'Turkey is part of Europe', he declared. 'This is the ultimate meaning of what we are doing today. It confirms in incomparably topical form a truth which is more than the summary expression of a geographical concept or of a historical fact that has held good for several centuries'. The EU itself seemed to rebuff the geographical argument with the accession of Cyprus in 2004 (most of which is east of Ankara).⁴ Throughout the 19th century the Ottoman Empire was known as the 'Sick Man of Europe'.

Three-quarters of foreign direct investment in Turkey comes from the EU, and the country is the Union's sixth-largest trading partner. Some 55% of European economic legislation is reflected in corresponding Turkish law, and an estimated 150,000 Turkish entrepreneurs employ 600,000 workers inside the EU. It rightly rankles with the Turkish business community that despite their extensive activities with European companies the tough visa requirements have still not been eased.

It is one of the paradoxes of Turkey that it was not the political heirs of Mustafa Kemal Atatürk, the enlightened founder of the country's republic in 1923, on the ruins of the Ottoman Empire, who started EU accession negotiations but the Justice and Development Party (AKP) of Recep Tayyip Erdoğan, which has its roots in political Islam and has been in power since 2002. Erdoğan became the first directly elected President in 2014 after serving as Prime Minister for 11 years.

Turkey was due to go to the polls on 1 November for the second time this year. The AKP won yet again the most seats in the parliamentary elections on 7 June with 41% of the vote, but not enough to retain the majority it had held for 12 years, largely because of the success of the pro-Kurdish People's Democratic Party (HDP). The AKP also failed to form a coalition or minority government with parliamentary backing.

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

⁴ See the section on the history of Turkey and Europe in my 2004 Paper on the country for a fuller explanation. Available at http://www.realinstitutoelcano.org/wps/portal/web/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/dt17-2004#.VeLcfryqqko.

The AKP was initially reformist, particularly defanging the powerful military, the arbiter of political life, which intervened directly in politics three times between 1960 and 1980 and in 1997 shut down the ruling Islamist Welfare party (a precursor of the AKP) of Necmettin Erbakan without seizing power. The military has long seen itself as the 'guardian of Turkish democracy' and the defender of the secular state created by Atatürk.

Curbing the power and influence of the military was a key element in becoming an EU candidate country, and very much in the interests of the AKP's Islamist agenda given the military's anathema of anything that smacked of political Islam.

Twelve *acquis* chapters were opened between 2006 and 2009 and only two since then, underscoring the extent to which the pace of reform has decelerated (see Figure 1). The blame for this lies on both sides.

Figure 1. State of play in the *acquis* chapters at September 2015

| Chapter | State of play |
|---|--|
| 1) Free movement of goods | Blocked (EU Council decision, December 2006) |
| 2) Freedom of movement for workers | Blocked (Cyprus veto, December 2009) |
| 3) Right of establishment for companies and freedom to provide services | Blocked (EU Council decision, December 2006) |
| 4) Free movement of capital | Opening of negotiations, December 2008 |
| 5) Public procurement | Screening completion, November 2005 |
| 6) Company law | Opening of negotiations, June 2008 |
| 7) Intellectual property law | Opening of negotiations, June 2008 |
| 8) Competition policy | Screening completion, December 2005 |
| 9) Financial services | Blocked (EU Council decision, December 2006) |
| 10) Information society and media | Opening of negotiations, June 2010 |
| 11) Agriculture and rural development | Blocked (EU Council decision, December 2006) |
| 12) Food safety, veterinary and phytosanitary policy | Opening of negotiations, June 2010 |
| 13) Fisheries | Blocked (EU Council decision, December 2006) |
| 14) Transport policy | Blocked (EU Council decision, December 2006) |
| 15) Energy | Blocked (Cyprus veto, December 2009) |
| 16) Taxation | Opening of negotiations, June 2009 |

| | |
|--|--|
| 17) Economic and monetary policy | Blocked (France veto, June 2007) |
| 18) Statistics | Opening of negotiations, June 2007 |
| 19) Social policy and employment | Screening completion, March 2006 |
| 20) Enterprise and industrial policy | Opening of negotiations, March 2007 |
| 21) Trans-European networks | Opening of negotiations, December 2007 |
| 22) Regional policy and coordination of structural instruments | Opening of negotiations, November 2013 |
| 23) Judiciary and fundamental rights | Blocked (Cyprus veto, December 2009) |
| 24) Justice, freedom and security | Blocked (Cyprus veto, December 2009) |
| 25) Science and research | Provisional closure of negotiations, June 2006 |
| 26) Education and culture | Blocked (Cyprus veto, December 2009) |
| 27) Environment and climate change | Opening of negotiations, December 2009 |
| 28) Consumer and health protection | Opening of negotiations, December 2007 |
| 29) Customs Union | Blocked (EU Council decision, December 2006) |
| 30) External relations | Blocked (EU Council decision, December 2006) |
| 31) Foreign, security and defence policy | Blocked (Cyprus veto, December 2009) |
| 32) Financial control | Opening of negotiations, July 2007 |
| 33) Financial and budgetary provisions | Blocked (France veto, June 2007) |
| 34) Institutions | Blocked (France veto, June 2007) |
| 35) Other issues | No negotiations required |

Key:

| | | |
|--|--|--|
|  Chapter Open |  Vetoed |  Blocked |
|--|--|--|

Source: European Commission and Dimitrios Dagdeverenis.

By making Turkey a special case, albeit for understandable reasons, given the complexity of the issue and the lack of a unanimous stance among EU countries, reinforced by the absence of an unequivocal commitment that Turkey will be accepted as a member, the incentive for reform has been weakened and with it the EU's transformative power.

EU conditionality (the use of 'carrots' and 'sticks') was effective in 1999-2005 as Turkey got itself into shape to become a candidate country and saw the incentive to do so, but the EU no longer has any leverage. As there is no certainty of a reward at the end of the accession process (ie, full EU membership), the AKP, under the increasingly autocratic Erdoğan, feels under no pressure to move decisively and so proceeds at its own pace,

dictated, at times, by the domestic political climate (for example, over the issue of the Kurds) and its own electoral interests. Sadly, Turkey does not have the same overwhelming political consensus that Spain had when it negotiated its EU accession.

The social-democratic Republican People's Party (CHP), the main opposition and the oldest party in modern Turkey, is stuck in its Kemalist past, while the right-wing Nationalist Movement Party (MHP) rabidly waves the national flag. The AKP began as a broad mosque party that galvanised the disparate opposition to the status quo (known as the deep state) and endless bickering coalition governments, particularly in the more pious Anatolian heartlands. The AKP's more liberal supporters have since drifted away, because of the country's authoritarian drift, most notably and recently to the HDP in last June's parliamentary election.

The protracted accession process, however, has not dented support among Turks for EU membership, which has been on the rise since 2013 after falling. Fifty-three per cent of respondents in 2014 said membership would be good, according to the German Marshall Fund of the United States, up from 45% in 2013, while 61.8% supported membership in a poll conducted by Turkey's Economic Development Foundation (IKV) in April of this year. Expectations, however, that Turkey will become a full member –as opposed to support for the EU– have decreased.

The increased support for EU membership comes at a time when the economy is flagging after a period of stellar growth and the quality of Turkey's democracy leaves a lot to be desired. This suggests that Turks, like Spaniards in the past, see Europe as the solution for their problems.

On the international front, the main stumbling block to progress in EU accession is Cyprus, as Turkey has still failed to implement the 2005 Additional Protocol to the Ankara Agreement and extend its Customs Union with the EU by opening its ports and airports to Greek-Cypriot traffic. As a result, the EU at the end of 2006 suspended the opening of eight chapters related to the Customs Union and announced that no more chapters would be provisionally closed until Turkey had fulfilled its commitment. The eight chapters are: 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.

Ankara wants the EU to implement the decision of the Council of Ministers, taken on 26 April 2004, to end the isolation of the internationally unrecognised Turkish Republic of Northern Cyprus (TRNC), created after Turkey's invasion of the country in 1974.⁵ The promise was made two days after Turkish Cypriots voted in favour of the Annan Plan to reunify the island (rejected by Greek Cypriots). Cyprus joined the EU on 1 May 2004 (the writ of EU law does not run in the TRNC) and since then has blocked the direct trade regulation needed to lift tariffs on TRNC goods.

Cyprus and France have also unilaterally blocked the opening of certain chapters. In 2007, France declared it would not allow the opening of five chapters: (1) agriculture and rural development (also blocked due to the Additional Protocol); (2) economic and

⁵ 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'.

monetary policy; (3) regional policy and coordination of structural instruments; (4) financial and budgetary provisions; and (5) institutions. The reason is that they are considered to be directly related with EU membership. France lifted its blockage of the chapter on regional policy and coordination of structural instruments in February 2013, enabling it to be opened in November that year (nothing has been opened since then).

In 2009 the Greek Cypriot government unilaterally stated it would block the opening of six chapters: (1) freedom of movement for workers; (2) energy; (3) judiciary and fundamental rights; (4) justice, freedom and security; (5) education and culture; and (6) foreign, security and defence policy.

The landslide victory of the pragmatic Mustafa Akıncı in the TRNC's presidential election last April over the more inflexible Derviş Eroğlu raised hopes of progress finally being achieved in reunifying the island. Both Akıncı and Nikos Anastasiades voted in favour of reuniting Cyprus in the 2004 referendum. Reunification is not a prerequisite for EU membership, but would undoubtedly improve the atmosphere.

(3) A flawed democracy

In 2004, the European Commission stated that Turkey *sufficiently* (my italics) fulfilled the Copenhagen criteria and so signalled that accession negotiations could begin, which they did in October 2005. These criteria, as laid down by the European Council in June 1993, require a candidate country to have achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, as well as the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union. Membership also presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

The European Commission reports every year on the progress which Turkey has made and the areas where it needs to do better. The reports make it clear how far Turkey still has to go. The AKP government made great strides in its first years in office, but the pace has slowed down. The polarising President Erdoğan with his majoritarian concept of democracy and increasingly top-down rule has earned few friends abroad for the way his opponents are treated. After taking office in August 2014 he installed himself in a new US\$615 million presidential palace (with more than 1,000 rooms) that has been ridiculed by the opposition as the needless extravagance of an increasingly authoritarian leader.

Brussels and some EU leaders such as Angela Merkel have repeatedly warned Ankara about its slippage in the accession process. Merkel was particularly appalled by the brutal handling of the Gezi Park protests in 2013 and fired a shot across Ankara's bows by delaying the opening of the first *acquis* chapter (on regional policy) in three years until after the presentation of the European Commission's progress report for that year.

One of the most important reforms has been in the area of the military. The National Security Council, which represented an institutionalisation of the military's influence over politics and acted as a kind of shadow government, has been under civilian control since 2004 and the military is no longer represented on the Higher Education Board, which oversees the administration of universities, or the Radio and Television Council. Officers have also been brought to trial in civilian courts for allegedly plotting to overthrow the AKP government (the 'Sledgehammer' and 'Ergenekon' conspiracies). A court earlier this year, however, cleared 236 of the more than 300 officers convicted in 2012 in the

Sledgehammer trial including General Çetin Doğan, a former First Army commander. Some of the evidence had been fabricated, according to expert reports.⁶

Erdoğan has also done more for the Kurds, who constitute 15% to 20% of the 76 million population, than his predecessors. They have been gradually granted greater cultural rights. Kurdish-language private schools, television and radio broadcasts were legalised, and limited time on state TV. Not so long ago the mere act of speaking Kurdish could expose one to criminal charges of being a 'separatist': the National Security Court, for example, handed four musicians three-to nine-year prison sentences for singing in Kurdish at a wedding reception.

The Turkish state and the insurgent Kurdistan Workers Party (PKK) fought a brutal dirty war for 28 years that killed at least 40,000 people and displaced more than 1 million. The PKK's two and a half year ceasefire broke down in July, with a renewal of violence on both sides (see the section below). Turkey launched air strikes on PKK camps in northern Iraq following a series of attacks on its police officers and soldiers blamed on the militant group (classified as a terrorist organisation by the EU and the US). The strikes were launched virtually in parallel with ones against the self-styled Islamic State of Iraq and the Levant (Isis), as Ankara reversed its policy and joined the US-led coalition in its fight against Isis after the group carried out a suicide bombing near the Syrian border, killing 32 people.

Erdoğan accuses the Kurdish People's Democratic Party (HDP), which won 13% of the vote in the June election (see Figures 2 and 3) and deprived the AKP of its majority in parliament for the first time since 2002, of links with the PKK. Erdogan's opponents say he is demonizing Kurdish nationalists for his own political advantage ahead of the fresh parliamentary election on 1 November.

Figure 2. Turkish parliament seats and percentage of votes, 2002-15 parliamentary elections

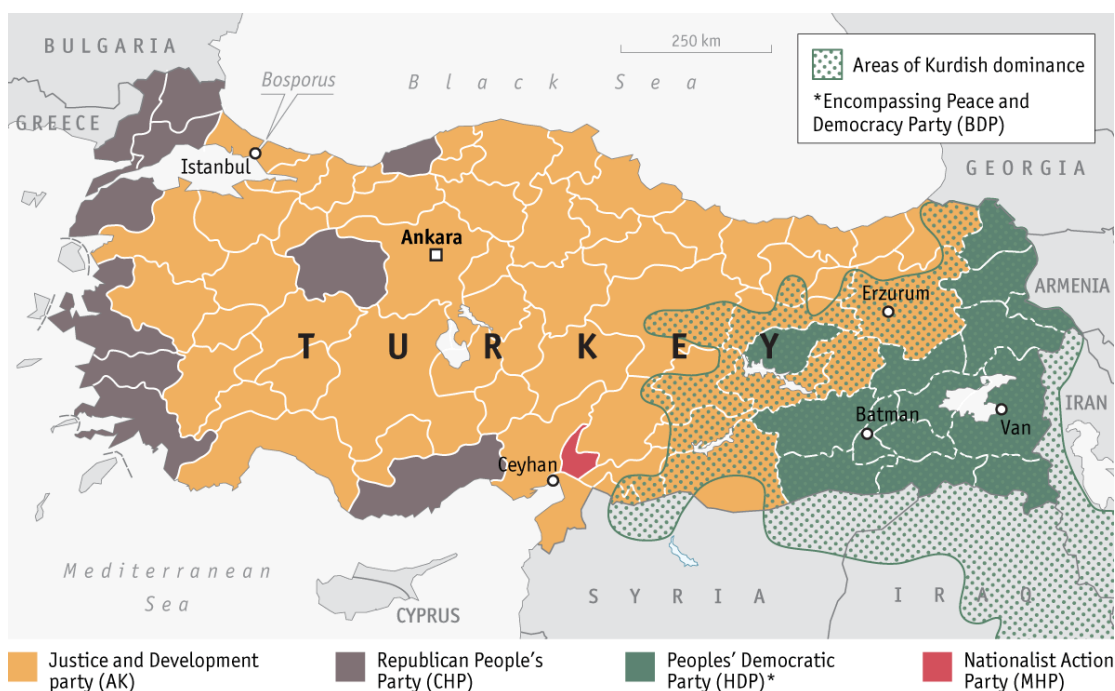
| Parties | 2002 | 2007 | 2011 | June 2015 |
|-------------------------------|-----------|-------------|-------------|-------------|
| Justice and Development Party | 363 (34%) | 340 (46.6%) | 327 (49.9%) | 258 (41.0%) |
| Republican People's Party | 178 (19%) | 112 (20.8%) | 135 (25.9%) | 132 (25.0%) |
| Nationalist Movement Party | – | 71 (14.3%) | 53 (12.9%) | 80 (16.5%) |
| People's Democratic Party | – | – | – | 70 (13%) |
| Independents (1) | – | 27 (5.2%) | 36 (6.6%) | – |
| Voter turnout (%) | 79.0 | 84.4 | 86.7 | 86.0 |

(1) From various political affiliations but mainly the pro-Kurdish Peace and Democracy Party.

Source: Supreme Electoral Board.

⁶ See the account by Harvard professor Dani Rodrik, the son-in-law of General Çetin Doğan, and his wife of how the *coup* plot was manufactured at <http://foreignpolicy.com/2010/04/06/how-turkey-manufactured-a-coup-plot-2/>.

Figure 3. How Turkey voted in June 2015



Source: The Economist.

Other reforms include abolition of the death penalty, a retrial of cases decided in state security courts and a new penal code which among other things amended the infamous Article 301 under which Orhan Pamuk, the Nobel Prize-winning novelist, was prosecuted for 'denigrating Turkishness' in an interview with a Swiss newspaper, but did not go to jail. This widely used law was as damaging to Turkey's reputation abroad as *Midnight Express*, a 1978 film about an American drug smuggler brutalised in a Turkish prison. The record on torture is better, though it does not yet live up to the government's 'zero tolerance' slogan.

The new Article 301 as of 2008 replaced 'denigrating Turkishness' with 'denigration of the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament, the government of the Republic of Turkey and the legal institutions of the state', and added the additional requirement of the authorisation of the Minister of Justice before prosecutors could initiate proceedings. By adding the requirement of the authorisation of the Minister of Justice, prosecutors are hindered from filing suits arbitrarily. Yet the change was not sufficiently substantive and did not solve the controversial elements of the article. How 'denigration' is interpreted by Turkish Courts is of vital importance for the enjoyment of freedom of expression, as the condition of approval of the Minister of Justice is not always a reliable guarantee because of the political character of the article.⁷ The article needs to be scrapped.

⁷ See the article in the *German Law Journal* in 2008 by Bülent Algan at https://www.germanlawjournal.com/pdfs/Vol09No12/PDF_Vol_09_No_12_2237-2252_Developments_Algan.pdf.

Press freedom has deteriorated.⁸ Freedom House, the US-based democracy group, has rated the Turkish press as 'not free' since 2013, when the government suppressed mass protests. Turkey's press freedom score dropped from 54 in 2010 to 65 in 2014 (0 = best; 100 = worst). Turkish Journalists marked World Press Freedom Day in Istanbul this year by gathering to lament the sorry state of the country's media. 'Journalists are in a very difficult position right now with bans via court decisions, accreditation [issues] and both censorship and automatic self-censorship', said Turgay Olcayto, president of the Turkish Journalists Association. Maureen Freely, president of English PEN, said Erdoğan had 'gone to extraordinary lengths in recent years to suppress the media... particularly coverage of the escalating conflicts in the predominantly Kurdish southeast'.

More than 300 journalists have lost their jobs. The state media is tightly controlled and pressure applied on private media owners with other business interests who are fearful that if they do not toe the line they will lose lucrative business deals and government advertising, or be subject to visits by tax inspectors. Fines are also a weapon that is wielded. A US\$2.5 billion fine for alleged tax infractions on the Doğan group in 2009 led it to sell the newspaper *Milliyet* to the Demirören conglomerate, allies of Erdoğan. The broadcasting regulator issued 254 fines to TV channels last year.

Erdoğan reportedly sued more people in his first year in office over charges of insulting the President than the number of those who were tried over the past 64 years under a notorious law for criticising Mustafa Kemal Atatürk, the nation's founder. More than 700 people appeared before a court for insulting Erdoğan (for example on Twitter and Facebook) in the year to August 2015, according to a report in the *Today's Zaman* newspaper.⁹ The figure is believed to be more than 1,000 if cases that were not covered by the press are included.

The Law on the Protection of Atatürk came into force in 1951 and is still on the statute books. The article in the constitution that criminalises insulting the President was hardly applied until Erdoğan took office.¹⁰ While Süleyman Demirel, President between 1993 and 2000, ignored virulent cartoons against him (he proudly collected them), Erdoğan's lawyers have instructions to go after anyone who criticises him.

The lack of press freedom and Erdoğan's pursuit of critics particularly plays into the hands of those European governments most opposed to Turkey's full EU membership.

Corruption is also a big problem. Turkey's perceived level of corruption worsened the most out of the 175 countries in the latest index (2014) of the Berlin-based Transparency International. Turkey's score dropped by five points to 45 (the nearer to 100 the cleaner the country). Along with China and Angola, whose scores fell by four points, Turkey is perceived as increasingly corrupt; its score, however, is still better than Italy's and that of the EU countries Bulgaria and Rumania (see Figure 4). Sixty seven per cent of respondents in a survey conducted earlier this year by the branch in Turkey of

⁸ See the July 2015 OSCE report on press freedom at <http://www.osce.org/fom/173036?download=true>.

⁹ Available at http://www.todayszaman.com/anasayfa_turkey-biggest-loser-in-global-corruption-ranking-survey-shows_366038.html.

¹⁰ Many countries have *lèse-majesté* laws protecting monarchs and heads of state. For example, two Spanish cartoonists were found guilty in 2007 of offending the Spanish royal family and fined €3,000 for their cartoon on the front page of the weekly satirical magazine *El Jueves*, which depicted the then Crown Prince Felipe and his wife Letizia making love.

Transparency International said corruption was on the rise.

Figure 4. Corruption Perceptions Index ranking and score, 2005-14 (1)

| 2014 ranking | 2014 score | 2013 score | 2012 score | 2005 score |
|-------------------|------------|------------|------------|------------|
| 1. Denmark | 92 | 91 | 90 | 95 |
| 12. Germany | 79 | 78 | 79 | 82 |
| 14. UK | 78 | 76 | 74 | 86 |
| 17. US | 74 | 73 | 73 | 76 |
| 26. France | 69 | 71 | 71 | 75 |
| 37. Spain | 60 | 59 | 65 | 70 |
| 64. Turkey | 45 | 50 | 49 | 35 |
| 69. Italy | 43 | 43 | 42 | 50 |
| 69. Bulgaria | 43 | 41 | 41 | 40 |
| 69. Rumania | 43 | 43 | 44 | 30 |

(1) The nearer to 100 the cleaner the country.

Source: Transparency International.

The AKP was rocked by two graft investigations that went public in December 2013. Police raided homes and confiscated some US\$17.5 million in cash. Four ministers lost their posts following the probes. The sons of three of the four ministers, including then-Prime Minister Erdoğan's son Bilal, were also allegedly implicated in the corruption investigations. Shortly after the two probes went public, however, prosecutors and police officers involved in the investigations were removed from their posts, and Twitter and YouTube were temporarily banned. Both corruption investigations against some 60 suspects were then dropped by the new prosecutors. The parliamentary Corruption Investigation Commission quashed the case into the ministers, as the AKP had an absolute majority in parliament. The Istanbul Chief Prosecutor's Office returned the money seized from the homes of Süleyman Aslan, the CEO of the state-owned Halkbank, and Barı ş Güler, son of the former Interior Minister –with interest–.

Erdoğan dismissed the graft investigation as a 'judicial *coup*' by the followers of the US-based cleric Fethullah Gülen, a former ally turned arch enemy for creating a 'parallel state', to undermine his government. The Gülen network, with adherents in the police, the judiciary and the security services, worked hand in glove with the AKP when it came to power, particularly in curtailing the military. Turkey issued a warrant for the arrest of Gülen last December and proscribed his movement as a terrorist organisation.

According to a report published last month, commissioned by Gülen and written by senior British lawyers, Turkey's government is inflicting 'systematic human rights violations' on

its judiciary, police and media.¹¹ The report, written among others by Lord Woolf, the former Lord Chief Justice, says the government has interfered to produce 'supine' courts, censored websites, restricted freedom of expression, stifled corruption investigations and subjected detainees to degrading treatment.

Turkey's elections are regarded as free and fair, although not without defects. The parliament, however, has an abnormally high threshold of 10% of the national vote (3% in Spain) in order to enter the legislative body, the highest in Europe. This threshold, which hinders a more representative parliament, is a legacy of the 1980 military *coup* and aimed at only allowing 'moderate' parties into parliament, locking out the Kurds and achieving stable governments. In the 2002 elections, the centre-right True Path party won 40 seats but received only 9.55% of the vote. As a result, it forfeited those seats, which were reallocated to the larger parties including the AKP, which received a total bonus of 102 seats, enabling it to win a landslide victory. The threshold has not prevented fragmentation: there were weak coalition governments during the 1990s. In the June 2015 election the pro-Kurdish People's Democratic Party won 13% of the vote and 80 seats. A much lower threshold would help to make Turkey more democratic.

Erdoğan broke the spirit if not the letter of the constitution, which obliges the President to be non-partisan and perform his duties without bias, by barnstorming the country during the June election campaign in favour of the ruling AKP. He will doubtless do the same during the campaign for the November snap election. Numerous complaints calling for a halt to the President's campaign activities and citing misuse of administrative resources, including extensive coverage on state television, were filed.¹²

The judiciary and the law enforcement agencies have become more politicised in recent years, a central criticism in the US State Department's latest (2014) annual report on human rights in Turkey.¹³ The former Constitutional Court chairman Haşim Kılıç, who retired earlier this year after being at loggerheads with the government, accused politicians of turning the judiciary into an 'instrument of revenge'. 'Everybody knows the political views of judges and prosecutors, even in the remotest villages of the country, he said. 'We cannot move forward with such a judiciary.' Government-backed candidates won the majority of seats in elections for the country's top judicial body, further tightening government control over the judiciary. Kılıç complained about the elections, saying members were elected based on their political views.

Turkey was ranked 80th out of 102 countries in the 2015 WJP Rule of Law Index (see Figure 5).

¹¹ See the report at http://www.onebrickcourt.com/files/REPORT_ON_THE_RULE_OF_LAW_FINAL_FINAL_240815_27622.

¹² See the OSCE's report on the elections at <http://www.osce.org/odihr/elections/turkey/162671?download=true>.

¹³ See <http://www.state.gov/documents/organization/236798.pdf>.

Figure 5. Turkey vs Spain in WJP Rule of Law Index, global rankings (1)

| | Overall | CoGP | AoC | OG | FR | OS | RE | CJ | Cr.J |
|--------|---------|------|-----|----|----|----|----|----|------|
| Turkey | 80 | 95 | 49 | 82 | 96 | 68 | 46 | 63 | 76 |
| Spain | 24 | 26 | 25 | 26 | 19 | 33 | 26 | 24 | 26 |

(1) Out of 102 countries. CoGP, Constraints on government powers; Aoc, absence of corruption; OG, open government; FR, fundamental rights; OS, order and security; RE, regulatory enforcement; CJ, çivil justice; Cr.J, criminal justice.

Lastly, the 1982 Constitution, which came into force as a direct result of the 1980 military *coup*, needs to be changed. The approach so far has been piecemeal, with more than 100 amendments, but it is still too authoritarian with its emphasis on the state's as opposed to the individual's rights. Erdoğan is particularly interested in replacing the current parliamentary democracy with a presidential regime which would give him more powers. But to this the AKP needs to win two-thirds (330) of the 500 seats in parliament in order for Erdoğan to have his way and call a referendum on changing the constitution. In June, the AKP won 258 of the 550 seats (327 in 2011), 18 short of a simple majority.

Undeterred by the election results, the hubristic Erdoğan announced in August that Turkey's form of government had already been changed into a *de facto* presidential system, and he called for a constitutional framework to 'finalise' this transition. 'You can either accept it or not. Turkey's governmental system has been *de facto* changed in this regard. What should be done now is to finalise the legal framework of this *de facto* situation with a new constitution', he said.

(4) The Cyprus problem: a glimmer of light

There are two issues involving Cyprus that affect Turkey's EU accession process. One of them –Turkey's failure to implement the 2005 Additional Protocol to the Ankara Agreement and extend its Customs Union with the EU by opening its ports and airports to Greek-Cypriot traffic– has a direct bearing on EU membership, while the other – reunification of Cyprus, divided since Turkey's invasion in 1974 (see Figure 6)– is not a condition for EU membership, but would have a positive impact and could help to resolve the other issue by creating a more favourable climate.

Figure 6. Partitioned Cyprus

Source: BBC.

Cyprus joined the EU in 2004, but the writ of EU law does not run in the internationally unrecognised Turkish Republic of Northern Cyprus (TRNC). Ankara's non-recognition of the Greek Cypriot administration led the EU at the end of 2006 to suspend the opening of eight chapters related to the Customs Union and announce that no chapter would be provisionally closed until Turkey had fulfilled its commitment. Ankara is not budging because it feels it has been betrayed. It wants the EU to implement the decision of the Council of Ministers, taken on 26 April 2004, to end the isolation of the TRNC. This promise was made shortly after Turkish Cypriots voted in favour of the Annan plan to reunite the island (rejected by Greek Cypriots) and just before Cyprus joined the EU. Cyprus continues to block the direct trade regulation needed to lift tariffs on TRNC goods.

While the protocol issue remains unresolved, the prospects for reunification look better than they have for a good number of years, following the overwhelming victory last April of the more consensual Mustafa Akıncı as President of the TRNC. Both Akıncı, a former Mayor of the Turkish-Cypriot part of the capital Nicosia from 1976 to 1990, and Nicos Anastasiades, the (Greek-Cypriot) President of the Republic of Cyprus, voted in favour of reunification in the 2004 referendum.

For some 40 years, under seven Greek Cypriot presidents and four Turkish Cypriot leaders, off-and-on talks have dragged on. Anastasiades and Derviş Eroğlu, the previous and more hard line TRNC leader who voted 'no' in the referendum, resumed talks in February 2014 after a break of 18 months before they broke down again in the October over Ankara's gunboat diplomacy to begin seismic research in the southern part of the Cyprus exclusive economic zone where large deposits of natural gas were discovered. Turkey is not party to the UN Convention on the Law of the Sea and disputes the Greek Cypriot claims to the offshore energy wealth.

Not only is the atmosphere more positive for longer than experts can remember, but there has also been a pause in exploratory drilling off Cyprus and Turkey halted its search. Greek Cypriot popular sentiment appears to be moving more towards a settlement of the dispute, and international pressure for a solution has increased.

Megaphone diplomacy is less loud; both sides are refraining from negative rhetoric about each other and from using the media to negotiate positions on issues. Meetings between Andreas Mavroyiannis and Özdil Nami, respectively the chief Greek Cypriot and Turkish

Cypriot negotiators, are more frequent, taking place almost every day; progress has been made on some sensitive issues such as property and citizenship, and Anastasiades is taking on some of the hardliners in his own camp. He told the Conference of Overseas Cypriots in August that populism and sentimentality had no place in the talks and that people had to get away from the idea of Cyprus being a Greek Cypriot republic.

Unlike his predecessors, Akıncı comes across as someone who feels Cypriot (and European) more than specifically Turkish Cypriot. He is also prepared to stand up more to Turkey, the TRNC's paymaster which has some 30,000 troops stationed in the territory and recently completed an 80-kilometre-long underwater pipeline between the mainland and the island to address the chronic water shortage Turkish Cypriots have suffered since the 1950s. Greek Cypriots would benefit from the pipeline if reunification were to happen. President Recep Tayyip Erdoğan rebuked Akıncı soon after he took office and summoned him to Ankara after he said the TRNC needed a 'proper relationship that would enable the Turkish Cypriots to stand on their own feet, to be masters of their own institutions'.

The greater openness in the TRNC paved the way for bringing in technical assistance under UN auspices from institutions such as the IMF and the European Commission. This will be important in ensuring that Turkish Cypriots are ready economically and institutionally for participation in the EU and power-sharing on an equal basis.

Big challenges, however, remain, particularly the issue of property and territory in a united, federal Cyprus. The statement in July by both leaders that the individual's right to property would be respected was seized upon by naysayers in the TRNC who went around saying this meant Turkish Cypriots would be kicked out of homes claimed by Greek Cypriots. Various alternatives are envisaged for dispossessed owners and current users for the regulation of the exercise of this right, including compensation, exchange and reinstatement. The exercise of these choices will be subject to agreed criteria and a list of categories of affected properties drawn up. An independent Property Commission, comprising an equal number of Turkish and Greek Cypriots, would be mandated to resolve property claims based on mutually agreed criteria.

There has been repeated reunification false dawns before; this time, however, it really does feel as if there is a window of opportunity that can be successfully exploited.

(5) The Kurdish issue: ceasefire ends

While a window of opportunity has opened in Cyprus, the one opened in 2013 by a fragile ceasefire between the Turkish state and the insurgent Kurdistan Workers Party (PKK), following a brutal dirty war of 28 years that killed at least 30,000 people, was closed in July with a renewal of violence on both sides.

On the same day in July that Erdoğan engineered a U-turn and said Turkey would join the US in the fight against the self-styled Islamic State (IS), airstrikes were launched against the PKK in northern Iraq and within Turkey, although the outlawed separatist group and its allies in Syria, the Kurdish People's Protection Units (YPG), have played a crucial role in halting the advance of the IS. Kurdish fighters seized a swathe of territory along the border between Turkey and Syria from the IS.

Erdoğan was long reluctant to join the US in the fight against the IS, particularly allowing the use of the İncirlik Air Base for anti-IS strikes. Various factors were behind his change of mind. The ceasefire ended after peace talks stalled; 18 Turkish police and soldiers

were killed in July in PKK-linked attacks. The PKK accused Ankara of covertly helping the IS to the detriment of its Syrian allies, and Erdoğan had repudiated a 10-point peace plan known as the Dolmabahçe agreement (named after the Prime Minister's office in Istanbul), announced by the government and the pro-Kurdish People's Democratic Party (HDP). The government also dragged its feet on passing legislation enabling safe withdrawal for armed PKK militants from Turkey. Despite the hurdle of the absurdly high threshold of 10% of the national vote required to obtain seats in parliament, the HDP polled 13.1% of the vote and with it deprived the AKP of its absolute majority and Erdoğan of his burning ambition to change the constitution and create an executive-style presidency. HDP joint leader Selahattin Demirtaş focused his campaign on curtailing Erdoğan's ambition and won tactical votes from liberals (who had previously voted for the AKP in its reformist days) and disillusioned conservative Kurds.

Having to some extent courted Kurds with reforms and sweet talk, in the hope of winning their votes, Erdoğan, according to Demirtaş, stopped having any interest in the peace process once he 'saw from the public opinion polls that the process was not going to bring him the votes he needed to establish a presidential system'.

The climate now recalls that of the military-dominated 1990s at the height of the war with the PKK when Kurdish nationalists were routinely jailed. Having won 70 of the 550 seats in the Turkish parliament (the third-biggest party), which gave it legitimacy to be an interlocutor for the Kurdish peace process, the HDP is now being demonised. The HDP has seen its offices vandalised, ransacked or torched. According to figures provided by the HDP media department, 128 party offices were attacked in the period from 6 to 11 September alone.

The state prosecutor in Diyarbakır, the regional capital of the mainly Kurdish populated south-east, opened a probe into Demirtaş last month on charges ranging from humiliating the Turkish people to insulting Erdoğan and producing propaganda for a terrorist group. He asked for Demirtaş's parliamentary immunity to be lifted.

(6) The Economy: transformed but now flagging

Under the AKP, Turkey, the world's 16th and Europe's 6th largest economy, has been one of the most striking successes among emerging markets. The average real growth rate in the decade to 2014 was 4.2%, the fastest among OECD countries, which grew at an average of 1.7%. GDP per capita nearly trebled between 2002 and 2013 to US\$10,815 (greater than that of two EU countries, Rumania and Bulgaria). The country has attracted more than US\$100 billion of foreign direct investment, and exports have more than quadrupled since 2002 (to US\$157 billion in 2014). Fitch Ratings accorded Turkey an investment-grade credit rating in 2012, followed by Moody's in 2013.

But after a period of stellar growth, largely fuelled by domestic demand and a thriving construction sector (like Spain before its crisis), the economy is now flagging. Growth fell sharply from around 9% in 2010 and 2011 to under 3% in 2014, chaos in Turkey's neighbourhood is hitting exports, unemployment has risen to 11%, around a five-year high and inflation was running at 7% in August, high by EU standards but historically low for the country (it averaged 36.6% between 1965 and 2015).

Turkey's gross public debt (33% of GDP in 2014) is well below the Maastricht criterion of 60% (it has been meeting this criterion since 2004), and also its budget deficit/GDP

ratio (1.4% in 2014).¹⁴ In strictly macroeconomic terms, Turkey is in better shape than many EU countries, although the country has become increasingly more dependent on relatively short-term capital flows to underwrite its traditionally large current account deficit –which makes it vulnerable to shocks– and the lira has fallen heavily against the US dollar since May 2013. As a result of structural reforms, the banking system is also in good health; it survived the global financial crisis largely unscathed. BBVA, Spain's second-largest bank, owns almost 40% of Garanti, Turkey's largest bank by market capitalisation.

The European Commission's 2004 progress report granted Turkey 'market economy status'. While its value is mainly symbolic, such a status is a prerequisite for joining the EU.

The Customs Union since 1995, the only one of its kind for a non-EU country, which eliminated tariffs on trade in industrial goods and processed agricultural products, has played an important role in integrating Turkey into the EU's internal market and globally making Turkish goods more competitive. But it has not been changed since 1995 (no one envisaged then that the country's eventual EU accession process would move so slowly). Bilateral trade between Turkey and the EU increased almost six-fold from US\$28 billion in 1995 to US\$158 billion in 2014.

Turkey, moreover, is not part of the Transatlantic Trade and Investment Partnership (TTIP) that is being negotiated by the US and the EU. Turkish exporters fears being left out in the cold.

As a result, the EU and Turkey agreed in May to upgrade their Customs Union and work as of 2016 towards including services, government contracting and most agricultural goods. One of Turkey's biggest complaints about the Customs Union is that the trade deals the EU signs with other countries do not take Turkey into account. The European Council of Ministers took a momentous decision and opened accession negotiations with Turkey 10 years ago this month, but progress since then has been painfully slow. Only 14 of the 33 chapters of the *acquis* that require negotiations have been opened (two of them do not) and just one (science and research) provisionally closed.

(7) Conclusion: keeping Turkey on board

During the 10 years that Turkey has been negotiating its EU accession, Croatia leapfrogged over Ankara and joined the EU in 2013 after completing all the reforms needed to bring it into line with EU laws and standards. Tiny Croatia (population 4.2 million), however, cannot be put in the same category as the giant Turkey whose full membership would be a much more seismic event. More importantly, Turkey is still far

¹⁴ There are five criteria set out in the Treaty of Maastricht that must be met by European countries if they wish to adopt the EU's single currency, the euro. They are: (1) inflation of no more than 1.5 percentage points above the average rate of the three EU member states with the lowest inflation over the previous year; (2) a national budget deficit at or below 3% of GDP; (3) national public debt not exceeding 60% of GDP; (4) long-term interest rates should be no more than two percentage points above the rate in the three EU countries with the lowest inflation over the previous year; and (5) the national currency is required to enter the ERM 2 exchange rate mechanism two years prior to entry.

from meeting the conditions for membership, and some would argue that it has broken the spirit if not the letter of the Copenhagen political criteria.

Turkey's long-standing bid to become an EU member is in limbo. The decision to upgrade the outdated Customs Unions is not part and parcel of joining the EU and will not in itself enhance Turkey's prospects. Nonetheless, it is a positive move. Turkey should also be allowed to monitor the TTIP negotiations and, after an agreement is reached, be given the opportunity to accede.

The EU also needs to involve Turkey in resolving the migration crisis (there are more than 1.8 million Syrian refugees in the country) and terrorism issues –it has a lot of experience of both– at the institutional and not just the bilateral level. The number of Syrian refugees in 10 cities across Turkey now rivals the population of local residents and even outnumbers it in one city.

Also positive was the publication in 2014 of Turkey's new EU strategy, though it is more of a communication exercise than a substantive document with 'new' measures. Indeed, some of it is surreal, such as the assertion that 'civil society is free to express its opinion' which is a half-truth as the crackdowns on basic freedoms have shown.

Given Turkey's flawed democracy, the best way for the EU to engage with the country, move the EU accession along and in the process put the autocratic Erdoğan's flagging democratic credentials to the test would be to open chapter 23 of the *acquis* on judicial and fundamental rights and chapter 24 on justice, security and freedoms. These two chapters have been blocked by Cyprus since 2009.

Applying the famous saying in 1910 of the Spanish philosopher José Ortega y Gasset – 'If Spain is the problem, Europe is the solution'– which was the mantra for Spaniards yearning for the democracy that EU membership would bring, 'If Erdogan is the problem, Europe is the solution'.

It is somewhat hypocritical of the EU to criticise and rightly so Turkey's major deficiencies in the areas of the rule of law and respect for fundamental freedoms –the core of the negotiation process– and not give it the chance to make improvements by opening these chapters.

It is also ridiculous that the EU is beholden on this matter to one country, but that is how the process works, as unanimous decisions are required. This is a good case for using qualified majority voting, which avoids the need to find a unanimous consensus on every issue and means that a decision can instead be taken if two conditions are met: when 55% of EU member states vote in favour of a measure, and when it is supported by member states representing at least 65% of the total EU population.

Appendix (a). Timeline: the long and winding road to the opening of EU accession negotiations

February 18 1952

Turkey becomes a full member of Nato.

September 20 1959

Turkey applies to the European Economic Community (EEC) to become an associate member.

May 27 1960

The army stages a *coup* and remains in power until October 1961. It draws up a new constitution and establishes a mechanism to intervene in politics, the National Security Council.

September 12 1963

Turkey is made an associate member of the EEC.

July 22 1970

Turkey signs an agreement foreseeing its eventual full membership of the bloc.

March 12 1971

The army hands an ultimatum to Prime Minister Demirel's government. On April 27 1971 martial law is declared in 11 provinces; some leftist and religious political parties are closed down. The state security courts, heavily influenced by the military, are created. The direct influence of the military lasted until the October 1973 elections.

July 20 1974

Turkey invades Cyprus by sea and air following the failure of diplomatic efforts to resolve conflicts between Turkish and Greek Cypriots. After gaining control over 40% of the island, Turkey unilaterally declares a ceasefire.

February 13 1975

Turkish Cypriots establish their own state in the north of the island. Later that year Turkey takes control of most of the US installations within that territory, except the joint defence base at Incirlik, which it reserves for 'Nato tasks alone'.

1978-79

The EC suggests that Turkey applies for membership along with Greece. Ankara declines the suggestion.

September 12 1980

After months of street fighting between rival left-wing and right-wing factions, a third army *coup* topples the Turkish government. Military rule lasts until November 1983. Relations with the EC are virtually frozen.

1983

Northern Cyprus declares its territory as the Turkish Republic of Northern Cyprus. The state is recognised by no one else but mainland Turkey. Parliamentary elections are held in Turkey and military rule is ended. Relations with the EC begin to normalise.

May 1984

The Council of Europe accepts the participation of Turkish parliamentarians.

January 26 1987

Turkey recognises the right of its citizens to file complaints with the European Human Rights Commission.

April 14 1987

Turkey applies to the EC for full membership.

December 18 1989

The European Commission endorses Turkey's eligibility for membership, but defers the assessment of its application.

January 1 1996

A Customs Union between the now-named European Union (EU) and Turkey enters into force for industrial goods and processed agricultural products.

December 13 1997

At the Luxembourg summit, EU leaders decline to grant candidate status to Turkey. Ankara reacts angrily, freezing relations and contacts.

June 2 1999

Abdullah Öcalan, the founder of the Kurdistan Workers' Party (PKK), who led a violent 15-year campaign for independence for Turkey's 14 million or so Kurds, is convicted by Turkey of treason and separatism and sentenced to death (not carried out).

December 10 1999

The EU summit in Helsinki recognises Turkey as a 'candidate state destined to join the Union on the basis of the same criteria as applied to the other candidate States'.

April 2000

The composition of the State Security Courts is changed, to exclude members of the military.

March 2001

The EU approves the Accession Partnership document, which sets out the political, economic and legislative reforms that Turkey has to carry out to fulfil the accession criteria. Cyprus is included as part of the 'Political Dialogue and Political Criteria'.

March 19 2001

The Turkish Government publishes the National Programme for the Adoption of the *acquis*, with a detailed explanation of the reforms to fulfil the accession criteria.

October 3 2001

The Turkish Grand National Assembly approved 34 amendments to the Constitution, the most ambitious overhaul since its entry into force in 1982, in order to meet the Copenhagen political criteria.

August 3 2002

The Turkish Parliament passes sweeping reforms, including the abolition of the death penalty and the easing of bans on the use of the Kurdish language, to meet some of the EU's human rights criteria.

November 3 2002

The conservative Justice and Development Party (AKP), which has Islamic roots, wins a general election partially on a pledge to drive forward Turkey's sagging EU bid.

November 30 2002

The state of emergency in all remaining provinces of the south-east was lifted.

December 11 2002

The Turkish Parliament approves a clutch of constitutional reforms that make it harder to shut down parties and easier to prosecute torturers.

December 12 2002

The EU summit at Copenhagen decides to accept Cyprus in May 2004, despite faltering talks to reunify the island. It proposes a December 2004 review of Turkey's progress in fulfilling the Copenhagen political criteria for EU membership, and if the outcome is positive accession negotiations will be opened 'without delay'.

April 2003

The EU Council approves a revised Accession Partnership, specifying the remaining priority areas for reform. In July the Turkish government publishes a revised National Programme for the Adoption of the *acquis*.

July 2003

The seventh reform package reduces the influence of the armed forces via the powerful National Security Council. The Council becomes more of an advisory body.

November 5 2003

The European Commission released its sixth regular report on Turkey's progress towards accession. It said the government had 'shown great determination in accelerating the pace of reforms' but 'on the ground, implementation of the reforms is uneven'. The report warned that Turkey's hopes of starting formal accession talks with the EU could face a 'serious obstacle' if no settlement is reached over the divided island of Cyprus by May 2004 (when Cyprus joins the EU).

January 15 2004

Romano Prodi is the first President of the European Commission to visit Turkey since 1963.

March 31 2004

Talks on a revised UN plan for the unification of Cyprus failed to win endorsement from the leaders of the island's Greeks. But the United Nations decided to go ahead anyway and put its plans to a vote in both parts of Cyprus on April 24, ahead of the island's entry into the EU on May 1.

April 24 2004

The Greek-Cypriot part of Cyprus entered the EU, but not the Turkish-Cypriot part, after more than three-quarters of Greek-Cypriots voted against the UN plan to reunite the island. Turkish-Cypriots, in contrast, endorsed the plan. Both sides had to accept the reunification plan in order for the whole island to join the EU.

September 6 2004

An Independent Commission of Europeans who previously held high positions in public office, including Marcelino Oreja, a former Spanish Foreign Minister and EU Commissioner, called for the EU to treat Turkey's case with 'respect, fairness and consideration'.

September 13 2004

Less than a month before the landmark report by the European Commission on Turkey's progress towards meeting the criteria for starting accession talks, Brussels warned Ankara that unless it removed proposals before parliament to criminalise adultery it would not meet the minimum criteria required of aspiring members. Recep Tayyip Erdoğan, the Turkish Prime Minister, accused the EU of interfering in the country's internal affairs, but withdrew the proposals.

September 26, 2004

The Turkish parliament held an emergency session and approved reforms of the penal code including tougher sentences for torture and 'honour killings'.

October 6, 2004

The European Commission issues a report recommending that the European Council at its meeting in December opens accession negotiations, but with certain conditions.

December 17, 2004

EU leaders agree at the Brussels summit to open talks on Turkey's EU accession. The decision, made at a summit in Brussels, follows a deal over an EU demand that Turkey recognise Cyprus as an EU member.

October 3, 2005

EU membership negotiations officially launched.

Appendix (b). Negotiating Framework, Council of the European Union, Luxembourg, 3 October 2005

Principles governing the negotiations

1. The negotiations will be based on Turkey's own merits and the pace will depend on Turkey's progress in meeting the requirements for membership. The Presidency or the Commission as appropriate will keep the Council fully informed so that the Council can keep the situation under regular review. The Union side, for its part, will decide in due course whether the conditions for the conclusion of negotiations have been met; this will be done on the basis of a report from the Commission confirming the fulfilment by Turkey of the requirements listed in point 6.

2. As agreed at the European Council in December 2004, these negotiations are based on Article 49 of the Treaty on European Union. The shared objective of the negotiations is accession. These negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.

3. Enlargement should strengthen the process of continuous creation and integration in which the Union and its Member States are engaged. Every effort should be made to protect the cohesion and effectiveness of the Union. In accordance with the conclusions of the Copenhagen European Council in 1993, the Union's capacity to absorb Turkey, while maintaining the momentum of European integration is an important consideration in the general interest of both the Union and Turkey. The Commission shall monitor this capacity during the negotiations, encompassing the whole range of issues set out in its October 2004 paper on issues arising from Turkey's membership perspective, in order to inform an assessment by the Council as to whether this condition of membership has been met.

4. Negotiations are opened on the basis that Turkey sufficiently meets the political criteria set by the Copenhagen European Council in 1993, for the most part later enshrined in Article 6(1) of the Treaty on European Union and proclaimed in the Charter of Fundamental Rights. The Union expects Turkey to sustain the process of reform and to work towards further improvement in the respect of the principles of liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, including relevant European case law; to consolidate and broaden legislation and implementation measures specifically in relation to the zero tolerance policy in the fight against torture and ill-treatment and the implementation of provisions relating to freedom of expression, freedom of religion, women's rights, ILO standards including trade union rights, and minority rights. The Union and Turkey will continue their intensive political dialogue. To ensure the irreversibility of progress in these areas and its full and effective implementation, notably with regard to fundamental freedoms and to full respect of human rights, progress will continue to be closely monitored by the Commission, which is invited to continue to report regularly on it to the Council, addressing all points of concern identified in the Commission's 2004 report and recommendation as well as its annual regular report.

5. In the case of a serious and persistent breach in Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption. The Council will decide by qualified majority on such a recommendation, after having heard Turkey, whether to suspend the negotiations and on the conditions for their resumption. The Member States will act in the Intergovernmental Conference in accordance with the Council decision, without prejudice to the general requirement for unanimity in the Intergovernmental Conference. The European Parliament will be informed.

6. The advancement of the negotiations will be guided by Turkey's progress in preparing for accession, within a framework of economic and social convergence and with reference to the Commission's reports in paragraph 4. This progress will be measured in particular against the following requirements:

- the Copenhagen criteria, which set down the following requirements for membership:
 - the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
 - the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
 - the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and the administrative capacity to effectively apply and implement the *acquis*;
- Turkey's unequivocal commitment to good neighbourly relations and its undertaking to resolve any outstanding border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter, including if necessary jurisdiction of the International Court of Justice;
- Turkey's continued support for efforts to achieve a comprehensive settlement of the Cyprus problem within the UN framework and in line with the principles on which the Union is founded, including steps to contribute to a favourable climate for a comprehensive settlement, and progress in the normalisation of bilateral relations between Turkey and all EU Member States, including the Republic of Cyprus.
- the fulfilment of Turkey's obligations under the Association Agreement and its Additional Protocol extending the Association Agreement to all new EU Member States, in particular those pertaining to the EU-Turkey customs union, as well as the implementation of the Accession Partnership, as regularly revised.

7. In the period up to accession, Turkey will be required to progressively align its policies towards third countries and its positions within international organisations (including in relation to the membership by all EU Member States of those organisations and arrangements) with the policies and positions adopted by the Union and its Member States.

8. Parallel to accession negotiations, the Union will engage with Turkey in an intensive political and civil society dialogue. The aim of the inclusive civil society dialogue will be to enhance mutual understanding by bringing people together in particular with a view to ensuring the support of European citizens for the accession process.

9. Turkey must accept the results of any other accession negotiations as they stand at the moment of its accession.

Substance of the negotiations

10. Accession implies the acceptance of the rights and obligations attached to the Union system and its institutional framework, known as the *acquis* of the Union. Turkey will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies timely and effective implementation of the *acquis*. The *acquis* is constantly evolving and includes:

- the content, principles and political objectives of the Treaties on which the Union is founded;
 - legislation and decisions adopted pursuant to the Treaties, and the case law of the Court of Justice;

- other acts, legally binding or not, adopted within the Union framework, such as interinstitutional agreements, resolutions, statements, recommendations, guidelines;
- joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy;
- joint actions, joint positions, conventions signed, resolutions, statements and other acts agreed within the framework of justice and home affairs;
- international agreements concluded by the Communities, the Communities jointly with their Member States, the Union, and those concluded by the Member States among themselves with regard to Union activities.

Turkey will need to produce translations of the *acquis* into Turkish in good time before accession, and will need to train a sufficient number of translators and interpreters required for the proper functioning of the EU institutions upon its accession.

11. The resulting rights and obligations, all of which Turkey will have to honour as a Member State, imply the termination of all existing bilateral agreements between Turkey and the Communities, and of all other international agreements concluded by Turkey which are incompatible with the obligations of membership. Any provisions of the Association Agreement which depart from the *acquis* cannot be considered as precedents in the accession negotiations.

12. Turkey's acceptance of the rights and obligations arising from the *acquis* may necessitate specific adaptations to the *acquis* and may, exceptionally, give rise to transitional measures which must be defined during the accession negotiations.

Where necessary, specific adaptations to the *acquis* will be agreed on the basis of the principles, criteria and parameters inherent in that *acquis* as applied by the Member States when adopting that *acquis*, and taking into consideration the specificities of Turkey.

The Union may agree to requests from Turkey for transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*. For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing, detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition. In this connection, account must be taken of the interests of the Union and of Turkey.

Long transitional periods, derogations, specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures, may be considered. The Commission will include these, as appropriate, in its proposals in areas such as freedom of movement of persons, structural policies or agriculture. Furthermore, the decision-taking process regarding the eventual establishment of freedom of movement of persons should allow for a maximum role of individual Member

States. Transitional arrangements or safeguards should be reviewed regarding their impact on competition or the functioning of the internal market.

Detailed technical adaptations to the *acquis* will not need to be fixed during the accession negotiations. They will be prepared in cooperation with Turkey and adopted by the Union institutions in good time with a view to their entry into force on the date of accession.

13. The financial aspects of the accession of Turkey must be allowed for in the applicable Financial Framework. Hence, as Turkey's accession could have substantial financial consequences, the negotiations can only be concluded after the establishment of the Financial Framework for the period from 2014 together with possible consequential financial reforms. Any arrangements should ensure that the financial burdens are fairly shared between all Member States.

14. Turkey will participate in economic and monetary union from accession as a Member State with a derogation and shall adopt the euro as its national currency following a Council decision to this effect on the basis of an evaluation of its fulfilment of the necessary conditions. The remaining *acquis* in this area fully applies from accession.

15. With regard to the area of freedom, justice and security, membership of the European Union implies that Turkey accepts in full on accession the entire *acquis* in this area, including the Schengen *acquis*. However, part of this *acquis* will only apply in Turkey following a Council decision to lift controls on persons at internal borders taken on the basis of the applicable Schengen evaluation of Turkey's readiness.

16. The EU points out the importance of a high level of environmental protection, including all aspects of nuclear safety.

17. In all areas of the *acquis*, Turkey must bring its institutions, management capacity and administrative and judicial systems up to Union standards, both at national and regional level, with a view to implementing the *acquis* effectively or, as the case may be, being able to implement it effectively in good time before accession. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system.

Negotiating procedures

18. The substance of negotiations will be conducted in an Intergovernmental Conference with the participation of all Member States on the one hand and the candidate State on the other.

19. The Commission will undertake a formal process of examination of the *acquis*, called screening, in order to explain it to the Turkish authorities, to assess the state of preparation of Turkey for opening negotiations in specific areas and to obtain preliminary indications of the issues that will most likely come up in the negotiations.

20. For the purposes of screening and the subsequent negotiations, the *acquis* will be broken down into a number of chapters, each covering a specific policy area. A list of these chapters is provided in the Annex. Any view expressed by either Turkey or the EU

on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters. Also, agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters.

21. Building on the Commission's Regular Reports on Turkey's progress towards accession and in particular on information obtained by the Commission during screening, the Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter. The Union will communicate such benchmarks to Turkey. Depending on the chapter, precise benchmarks will refer in particular to the existence of a functioning market economy, to legislative alignment with the *acquis* and to a satisfactory track record in implementation of key elements of the *acquis* demonstrating the existence of an adequate administrative and judicial capacity. Where relevant, benchmarks will also include the fulfilment of commitments under the Association Agreement, in particular those pertaining to the EU-Turkey customs union and those that mirror requirements under the *acquis*. Where negotiations cover a considerable period of time, or where a chapter is revisited at a later date to incorporate new elements such as new *acquis*, the existing benchmarks may be updated.

22. Turkey will be requested to indicate its position in relation to the *acquis* and to report on its progress in meeting the benchmarks. Turkey's correct transposition and implementation of the *acquis*, including effective and efficient application through appropriate administrative and judicial structures, will determine the pace of negotiations.

23. To this end, the Commission will closely monitor Turkey's progress in all areas, making use of all available instruments, including on-site expert reviews by or on behalf of the Commission. The Commission will inform the Council of Turkey's progress in any given area when presenting draft EU Common Positions. The Council will take this assessment into account when deciding on further steps relating to the negotiations on that chapter. In addition to the information the EU may require for the negotiations on each chapter and which is to be provided by Turkey to the Conference, Turkey will be required to continue to provide regularly detailed, written information on progress in the alignment with and implementation of the *acquis*, even after provisional closure of a chapter. In the case of provisionally closed chapters, the Commission may recommend the re-opening of negotiations, in particular where Turkey has failed to meet important benchmarks or to implement its commitments.

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