

HAS TURKEY FULFILLED THE COPENHAGEN POLITICAL CRITERIA?

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ABSTRACT

The next few months are the last opportunity for Turkey to take steps that could influence the European Commission's recommendation in October on whether the Copenhagen political criteria have been met, and therefore whether to open accession negotiations, with the European Council due to take the decision in December. Following a brief summary of the Copenhagen political criteria and illustrations of how they were applied in the current enlargement, this short paper draws on a detailed review of Turkey's progress in relation to the most sensitive areas covered under the Copenhagen criteria (the role of the military, human rights, minority rights and the judiciary). It identifies 20 steps that could conceivably be taken in the next few months by the Turkish government with a view to securing a positive decision. Several but not all of these points have already been raised in the Commission's '2003 Regular Report on Turkey's Progress towards Accession'.

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1. The Copenhagen Criteria

The European Council at Copenhagen on 21-22 June 1993 concluded that:

“Membership requires that the candidate country has achieved

- 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 as well as the capacity to cope with competitive pressures and market forces within the Union.
- Membership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union”.

“The Union’s capacity to absorb new members, while maintaining the momentum in European integration, is also an important consideration in the general interest of both the Union and the candidate states.”

Comment on case examples

The Commission’s opinions on the Central and Eastern European candidates were adopted in July 1997, using systematic language to assess fulfilment of the Copenhagen criteria. These opinions fed into the Luxembourg European Council meeting of December 1997, which took the decisions to go ahead and open negotiations with five countries (the ‘Luxembourg five’), but to defer this step for five others, the latter having to wait until the Helsinki European Council meeting of December 1999 (the ‘Helsinki five’). The summary assessments were:

- *Hungary, Poland, Estonia, Czech Republic and Slovenia*: “Hungary (etc.) presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities.” These are the ‘Luxembourg five’, with whom negotiations began in March 1998.
- *Latvia and Lithuania*: “Latvia (etc.) presents the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities. *But measures need to be taken* to accelerate the rate of naturalisation of Russian-speaking non-citizens to enable them to become better integrated into Latvian (etc.) society”. The EU agreed to open negotiations only in February 2000 when it judged that these states had gone sufficiently far in meeting the recommendations of the OSCE High Commissioner for National Minorities on measures for the Russian minorities. However the issue remained ongoing through the negotiation period.

- *Romania and Bulgaria*: “The current improvements in Romania (etc.), following the arrival in power of a new government, indicates that Romania (etc.) is *on its way to satisfy the political criteria*.” There was here also a delay of two years before negotiations were opened in February 2000. It is generally considered that the EU opened negotiations before the Copenhagen political criteria were at all adequately met, with widespread corruption and malfunctioning public administrations. The decisions were taken in the aftermath of the Kosovo war, when these countries suffered serious collateral damage, and the decision may be interpreted as having had an element of political compensation.
- *Slovakia* “... *does not fulfil in a satisfying manner* the political conditions set out by ... Copenhagen, because of instability of Slovakia’s institutions, their lack of rootedness in political life and shortcomings in the functioning of democracy”: the EU waited for the replacement of the Meciar government before agreeing to open negotiations, which also however was possible in February 2000.

The Commission thus established four categories:

- Model 1: YES
- Model 2: YES, BUT
- Model 3: ON THE WAY
- Model 4: NO

For Turkey the present assessment of the EU seems to be neither Model 1 ‘YES’, nor Model 4 ‘NO’. It is somewhere in the region of Models 3 and 4.

If the EU strictly followed its prior doctrine, the conclusion would have to be that Turkey does not yet fulfil the Copenhagen criteria, in spite of the huge progress with constitutional amendments and seven harmonisation packages, since there are too many implementation shortcomings (e.g. penal system, judiciary). Moreover, adequate implementation will take years and cannot possibly be fulfilled by October 2004 when the Commission delivers its recommendation.

However it might that the EU Commission, and then the European Council, adopt not an absolutist position, but one in which it might decide that ‘sufficient progress’ towards meeting the Copenhagen criteria had been made to warrant the opening of negotiations. This would draw on the Bulgarian and Romanian precedents, since negotiations with these countries began with only incomplete fulfilment of the Copenhagen political criteria. These conditions have to be met fully before accession, and indeed the actual accession of Bulgaria and Romania has been delayed to 1997.

In favour of a ‘sufficient progress’ scenario for Turkey is the fact that the AKP government led by Mr Erdogan has achieved an exceptionally favourable credibility rating in the eyes of the European Union. Since 2000, Turkey has seen seven so-called harmonisation packages of reform measures, and 35 amendments made to its Constitution.

2. Twenty steps to get a ‘sufficient progress’ decision in December 2004

The possibility of a positive decision could perhaps be secured by a further set of steps or package, and indeed the Turkish authorities have been signalling that a further set of reform measures is being prepared. What might they consist of? Or, what might be both conceivable and sufficient to clinch a positive decision by the EU?

Twenty measures are outlined below by way of illustration. They are extracted from a thorough review of outstanding problems in well-known fields. This author’s speculative

assessment (made in a purely personal capacity, without any inside knowledge) is that, if these measures were taken, no member state would say that this was not enough for a positive decision at the December 2004 European Council. Implementation programmes are not discussed here, even though they are of fundamental importance, simply because they have a longer time horizon.

Military

1. The representative of the National Security Council on the **High Audio-Visual Board (RTÜK)**, responsible for preparing the regulations for the implementation of laws such as broadcasting in languages other than Kurdish, would be withdrawn.
2. The representative of the National Security Council on the **High-Education Board (YÖK)** who oversees the administration of universities would be withdrawn.
3. The decisions of the **Supreme Military Council** would be no longer immune from judicial oversight or review, assuming that the judiciary would also become independent.
4. **Extra-budgetary funds** available to the military, for example the defence industry support fund, would be brought under full budgetary control of the Parliament.

Human rights

Torture and ill-treatment

5. There are many mechanisms that create effective **impunity** for torture and ill-treatment, such as the statute of limitations, the permission required to open investigations and sentences for the guilty. This regime would be reformed.
6. The **'village guards'**, a civil defence force of about 60,000 located mostly in the South East and reputed to be the least disciplined of the security forces, would be abolished.

Freedom of expression

7. Despite recent amendments, various provisions in **Articles 159, 169, and 312** of the **Penal Code** and **Article 7** of the **Anti-Terror Law** are widely used for restricting the freedom of expression, notably regarding restrictions for 'protecting the basic characteristics of the Republic' and 'safeguarding the indivisible integrity of the State with its territory and nation'. These provisions would be repealed.
8. As a more profound change, **Article 28 of the Constitution** would be amended to guarantee constitutionally the right to express opinions without censorship, the freedom of the press and the right of individuals to obtain information.
9. Further amendments would be made to the **Press Law**, revising the level of fines, which tend to be so high that many journalists face imprisonment due to inability to pay them.

Freedom of association

10. The **Law on Associations**, regulating the activities and organisation of associations in minute detail, would be amended and simplified to ease effective restrictions.
11. The cumbersome procedures and laws regarding the **establishment of foreign foundations**, or cooperation with foreign associations, including over the receipt of funds, would be simplified and eased.

Kurds

The Kurds would be especially important beneficiaries of measures under point 7 above regarding the freedom of expression.

12. The new **legislative framework regarding broadcasting in Kurdish** would be reformulated, in the light of public prosecutors' and the Constitutional Court's expansive reading of the principle of 'indivisible integrity of the state'.
13. The High Audio-Visual Board (RTÜK) in January 2004 granting the **right to broadcast in Kurdish excludes regional broadcasting**; this restriction would be lifted.
14. The **strict limits on the timing and contents** of programmes in Kurdish would be eased.
15. **Minority language education** would not just be permitted but become a right.
16. **The electoral threshold of 10%** is so high that it limits Kurdish representation unduly, and would be lowered.

Non-Muslim minorities

17. Their **property rights** are significantly limited by law, and property of many Armenians, Greeks and Catholics has been confiscated or faces the risk of confiscation. The reform packages have amended the Law on Foundations, but the regulations require incredibly cumbersome bureaucratic procedures. These laws would be revisited and drastically eased.
18. The **ban on the training of Christian clergy** would be lifted.

Judiciary

19. While the principle of the **independence of the judiciary** is enshrined in the constitution, it is undermined by several provisions linking it to the executive, for example, the chairmanship by the Minister of Justice of the High Council of Judges and Prosecutors. This would be reformed parallel to a more general modernisation of the judiciary.
20. **State Security Courts (SSCs)**, dealing with 'crimes against the state', saw their extensive powers reduced in the recent democratisation packages. Following calls from high-ranking judiciary and some members of the government, these courts would be abolished.

3. Other political criteria

Absorptive capacity of the EU for further enlargement. This is certainly a very serious criterion for next decisions on accession. Whether EU-25 can function satisfactorily will remain unproven for some years. If the Constitution is not passed in June and remains blocked for what are perceived as 'Polish reasons', this could adversely affect the decision on Turkey in December. However the Madrid tragedy may now have unblocked the Constitution, in which case the absorptive capacity argument would not block the December decision, but it should be revisited later before next accession decisions.

Cyprus. The EU Commission has strengthened the element of conditionality in recent months, with a failure to get a solution viewed as serious obstacle for a favourable decision over Turkey. However the outlook is now complicated by the fact that the outcome is not necessarily going to be a simple YES or NO outcome. Following submission of the final

amendments of the Annan plan to the parties on March 31st, a mixed YES (in the North) and NO (in the South) outcome to the planned referenda is a distinct possibility.

One might expect that in the event of this particular YES-NO hypothesis that the EU (at least EU 23 or 24) would be inclined towards the following position:

- It would not want to penalise Turkey, and
- It would try to be helpful to the North, which in practise mean finding some way of lifting the trade embargo.

As of today, the policy planners do not want to think about this scenario. As of tomorrow, however, they may well have to do so.

The EU as a Christian club? This huge issue has now come alive because of a sequence of events: the debate over whether God should have a place in the preamble of the EU Constitution (outcome almost certainly negative), the declaration by former President Giscard d'Estaing that Turkey's accession would mean the 'end of the EU', and the turmoil in public opinion over the place of Islam in Europe after September 11th, and now March 11th.

Giscard has a following in, or is in line with some Christian Democratic parties, notably in Germany and the Netherlands, and French UMP parliamentarians. This author's impression however, is that more people in Europe were shocked by Giscard's declaration than are rallying to it.

This leads into the question whether Turkey's possible accession is assessed as a threat or an asset in the fundamental challenge to avoid an escalating clash of civilisations, and instead to foster the harmony of cultures first of all within Europe, and also in the wider Arab-Muslim neighbourhood surrounding the Europe to its east and south. The balance of opinion over the threat-or-asset question seems to be moving in Turkey's favour, as long of course as the Turkish leadership sustains its present strategic course. A conclusion on this question would in any case remain to be worked out in the pre-accession period.

Table 1. Chronology of the enlargement process

	Application	Opinion of the Commission	Start of negotiations	End of negotiations	Accession
Turkey	14.4.87	14.12.89			
Cyprus	4.7.90	30.6.93	31.3.98	5.2.03	1.5.04
Malta	16.7.90	30.6.93	15.2.00	5.2.03	1.5.04
Hungary	31.3.94	16.7.97	31.3.98	5.2.03	1.5.04
Poland	5.4.94	16.7.97	31.3.98	5.2.03	1.5.04
Romania	22.6.95	16.7.97	15.2.00		
Slovakia	27.6.95	16.7.97	15.2.00	5.2.03	1.5.04
Latvia	13.10.95	16.7.97	15.2.00	5.2.03	1.5.04
Estonia	24.11.95	16.7.97	31.3.98	5.2.03	1.5.04
Lithuania	8.12.95	16.7.97	15.2.00	5.2.03	1.5.04
Bulgaria	14.12.95	16.7.97	15.2.00		
Czech Republic	17.1.96	16.7.97	31.3.98	5.2.03	1.5.04
Slovenia	10.6.96	16.7.97	31.3.98	5.2.03	1.5.04
Croatia	21.2.03				

Source: G. Avery, 'The Enlargement negotiations', in F. Cameron (ed.), *The Future of Europe: Enlargement and Integration*, Routledge, London, 2004.

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