

The European Commission's Report on Turkey

An Intelligent Guide

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On 17 December, the European Council will decide whether or not to open accession negotiations with Turkey. Its decision will be based on the comprehensive Turkey report presented by the Commission on 6 October which serves as an intelligent guide for drawing up the negotiating mandate as well as preparing for the actual negotiations themselves. It explains why the negotiations with Turkey will be conducted in a different way, indeed why owing to both parties' interest in a successful outcome they *have to* be organised differently than the talks concluded with countries in past waves of enlargement. The European Council should take full account of the Turkey report and the recommendations contained therein when making its decision.

On 6 October 2004 the European Commission unveiled its long-awaited report on the progress made by Turkey towards EU accession. On 17 December, the European Council will base its decision on whether or not to open accession negotiations with Turkey on the contents of that report. The extensive report is divided into three parts: an examination of Turkey's progress on the way to achieving the Copenhagen political criteria (2004 Progress Report), an assessment of the main consequences of Turkey's accession, and a recommendation on the opening of negotiations.

The subsequent public debate in Turkey focussed primarily on the recommendations, which were taken as a 'conditional yes.' Many people there regard the 'con-

ditions' as discriminating against Turkey, as opposed to the eight Central and Eastern European countries and Cyprus and Malta which acceded to the Union in the previous wave of enlargement.

A recommendation with snags?

On closer inspection, Turkey's reservations about the 'new conditions' mentioned in the European Commission's report and the claim of discrimination through unequal treatment prove exaggerated and inappropriate. The Commission does not adopt any new position on key issues that deviates from any standpoint it took up during the previous accession processes. However, it does for the first time explicitly spell out

The report can be consulted on the Internet at the following address:
<http://europa.eu.int/comm/enlargement/report_2004/pdf/tr_recommendation_en.pdf>

certain obvious facts. The Commission appears to assume that these facts have not yet been sufficiently taken on board by the political elite in Turkey or by the country's general public, and evidently deems such a specific form of clarification necessary. Yet at the same time, by so doing it is unmistakably signalling to citizens in the EU Member States who are highly skeptical about Turkey's accession that the general principles of the accession negotiations also apply unconditionally to Turkey.

Based on the assessment of political reforms undertaken by Turkey in recent years, the European Commission concludes "that Turkey sufficiently fulfils the political criteria." Consequently, it recommends the opening of accession negotiations.

Unlike Turkish politicians, who usually say that their country has completely fulfilled all the conditions for accession, all the Commission says is that Turkey has so far made sufficient progress in this respect. From the Commission's viewpoint, further improvements and headway are both possible and desired.

Should the adopted reforms and their implementation prove unstable, the Commission "will recommend the suspension of the negotiations in the case of a serious and persistent breach 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 Council would decide on such a recommendation with a qualified majority."

The fact that serious and persistent breaches of principles on which the European Union is based will not be tolerated is nothing more than the analogous application of the possibility provided for in the Constitutional Treaty of suspending the membership of any EU Member State that is guilty of similar violations. Under such circumstances, no candidate for accession can seriously expect the Union not to react to such breaches and continue with negotiations as if nothing is wrong. The issue here is not any individual set of measures taken by Turkey (a fact that appears to be

being overlooked in the heated debate there about discrimination), but a fundamental deviation from fundamental EU principles. Examples of this would be the reintroduction of the death penalty, a shift to base the legal system on Islamic principles or renewed interference in politics by the military.

Main features of the concept for the negotiations

For the negotiation process itself, the Commission proposes a strategy based on three pillars combining political reforms, the adoption of the Union's *acquis* and the promotion of Turkey's social development.

Closer monitoring of the progress of political reforms

On the basis of a revised Accession Partnership the primary aim here is to ensure that the relevant political criteria are systematically fulfilled. As from the end of 2005, the Commission will draw up annual reports to monitor efforts at political reform. The rate of progress made in such reforms will then determine the pace of negotiations.

This approach mirrors two established features in the previous wave of enlargement, namely the practice of publishing yearly reports on the progress made and the special emphasis placed on the fulfillment of political requirements for accession. This approach is intended to guarantee that the process of Turkey's 'Europeanisation' doesn't falter.

To make sure that this is the case, right from the start of the negotiations the EU should plan far more comprehensive monitoring of the adoption and implementation of the *acquis* in Turkey than it did during the previous wave of enlargement. In this connection it might consider setting up 'branch offices' of the EU delegation based in Ankara in other parts of the country in an effort to enhance the scope of the Union's 'coverage' of Turkey.

Negotiations on the adoption of the “acquis”

The accession negotiations will take place in the framework of an Intergovernmental Conference between the EU Member States and Turkey which will take decisions un-animously, whereby unanimity is also required of the Member States with respect to the Commission’s negotiating mandate. With regard to the individual chapters of the negotiations, the Commission recommends laying down benchmarks that would not merely indicate Turkey’s legislative alignment with the Union, but also its implementation of the *acquis* to a certain extent, before a chapter was ‘closed’ and Turkey was declared ready for accession in that connection.

By taking this approach, the Commission shows that it has learnt from the previous wave of accession, for in many cases and in virtually every candidate country implementation has been very slow to follow on from legislative alignment. However, the Commission’s proposal also takes account of the EU’s past experience with Turkey, where legislative acts have by no means invariably changed anything in practice, since the government has frequently failed to display the will required to enforce their systematic implementation.

Bearing in mind its assessment of the possible consequences of Turkey’s accession, the Commission reaches the same conclusion that is already widespread in the EU, i.e. that in various policy areas long transition periods may be required before the *acquis* are being applied in their entirety. In addition, the Commission openly considers the prospect of having specific arrangements apply (for a limited period?) to structural policies and agriculture, indeed even going so far as to entertain the possibility of permanent safeguards in connection with the free movement of workers.

While transition periods and specific arrangements also featured in the previous wave of enlargement, the establishment of permanent safeguards would be something entirely new. The question arising here is

whether they would match up to the guarantees of freedom of movement enshrined in the Constitutional Treaty shortly due for ratification.

A great deal depends on the actual form these safeguards would take: Should individual Member States have the possibility in the long run of erecting temporary barriers to access after the expiry of a transitional period if their domestic labour market finds itself in jeopardy once again? Or should certain sectors of the EU’s economy remain closed off to Turkish workers on a permanent basis? One thing is clear: such clauses may well give rise to legal disputes between the Turkish workers affected and the European Union in the wake of Turkey’s accession.

However, bearing in mind the lengthy period that can be expected to elapse before the EU’s rules governing freedom of movement take effect in the event of Turkey’s accession, it is extremely difficult to state with any degree of certainty today what kind of conditions should be attached to its EU membership in this respect. Consequently, the Commission’s consideration is also probably geared more towards placating corresponding fears in many EU Member States than meant as a binding stipulation for the negotiating mandate on the relevant chapter.

The Commission proposes that in light of the financial and institutional consequences associated with the scenario of Turkey’s accession, the EU should define its medium-term financial perspective for the period after 2014 before the negotiations can be concluded. The implication here is that negotiations will last roughly 10 years, since no such definition is likely before 2013. So the Commission’s proposal takes account of the view currently adopted by all leading political groups in the EU that the negotiations will take a long time. Furthermore, it sends a signal to citizens in both the EU Member States and Turkey that they should not expect accession to be a swift process.

The Commission's view that the negotiation process "by its very nature ... is an open-ended process whose outcome cannot be guaranteed beforehand" made serious waves in Turkey. Again, this wording states an obvious fact, yet against the backdrop of the debate on Turkey's accession in Germany and France the statement fuelled suspicions in the minds of numerous Turkish commentators that the negotiations should, from the outset, be geared towards an outcome other than accession. On several occasions Prime Minister Erdoğan has spoken out against the inclusion of such "discriminatory wording" in the European Council's decision on 17 December.

Accordingly, the European Council should make it clear that in line with Article 49 of the Treaty on European Union accession negotiations are conducted exclusively on "conditions of admission," without any guarantee in advance that the outcome will be positive. Alternatives to accession can only be discussed by the EU and Turkey if the negotiations should fail in spite of the efforts made by both sides.

In the face of fears in many EU circles that Turkey's accession would 'destroy' the Union, the Commission rightly underlines the need for corresponding preparations to be made by the EU as well. The "criterion for integration" laid down in Copenhagen in 1993 should be taken seriously, whereby the Union must be capable of taking in new members "while maintaining the momentum of European integration."

Political and cultural dialogue

The 'third pillar' identified by the Commission, entailing substantially strengthened political and cultural dialogue is so far nothing more than political pie in the sky. Yet herein lies the key to boosting Turkey's acceptance amongst EU citizens. Consequently, just as much attention should be paid to this element as to the negotiations themselves. This will require a particular effort on the part of the Member States, for

any reservations will need to be dealt with at their source, rather than primarily in EU-wide forums. Furthermore, Turkey must utterly abandon its still predominant tendency to subject its civil society's foreign contacts to the government's scrutiny.

Conclusion

The European Commission's report and recommendation constitute a wise basis for the accession negotiations with Turkey, assuming that the European Council will adopt them on 17 December. The report already indicates that these negotiations will—and indeed must—differ from those of previous waves of enlargement. In view of the widespread rejection of Turkey's accession in most EU Member States, the top priority must be to demand unquestionable evidence from Turkey of its ongoing "Europeanisation." Meanwhile, the Union must show that it can accept Turkey's accession without incurring any damage as a result. The various elements of the negotiating concept sketched out by the Commission can make a key contribution in this respect. Accordingly, the EU needs to make clear to Turkey that they will not be relinquished or diluted, but will rather serve as a basis for guiding the negotiations with the necessary degree of openness regarding future developments.

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