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**Turkey's Shift to Executive Presidentialism:
How to Save EU-Turkish Relations**

Summary

The most recent report of the European Commission on Turkey from 17 April 2018 points out that, for the time given, there is no room for the opening of new EU negotiation chapters.

After 13 years of protracted bargaining, mutual crimation, backtracking of democracy and the rule of law in Turkey as well as a serious loss of prestige and leverage on the side of the EU, relations between Ankara and Brussels are at an all-time low.

Undermining the separation of powers and the independency of the judiciary, Turkey's shift to executive presidentialism may well push both sides further apart. However, the EU still matters for Turkey economically and the EU depends on Turkey in the realm of security policy where highly sensitive issues are at stake such as migration, the fight against terrorism and Turkey's membership in NATO. To secure a working relationship, both Turkey and the EU have to shoulder responsibility for the failing accession process. Turkey needs to fix a number of arrangements of its presidential system most detrimental to democracy. For its part, the EU has to create a new framework for relations of its members with Ankara. A framework is needed that is both attractive for Turkey in terms of economy and challenging regarding the rule of law.

Turkey's Shift to Executive Presidentialism: How to Save EU-Turkish Relations

■ The most recent report of the European Commission on Turkey of 17 April 2018 ¹ points out that, for the time given, there is no room for the opening of new negotiation chapters. Turkey's backsliding in all areas pertaining to the Political Criteria of Copenhagen has undermined the political and legal basis of membership negotiations.

In Germany, but also in other EU member states with large-scale migration from Turkey, influential political circles had silently hoped for an end of Turkey's EU membership process mostly due to concerns regarding new migratory flows. Today, however, there is no mood of relief, quite the reverse. In recent years, the earlier relationship between Turkey and Europe in which the EU had intended to use its leverage on Turkey to modernise the country economically and to transform it politically has given way to a state of interdependency in which Turkey sometimes was able to put more pressure on Europe than vice versa.

One example highlighting this is the refugee crisis that Europe was able to manage at least temporarily only with the help of Turkey, and Brussels' ensuing hopes for Turkey's future cooperation. ² Another matter of concern in the EU are the so-called European foreign fighters that are about to retreat from Syria into Turkey, probably on their way to Europe. To stave off terrorist threat to their own populations, Berlin, Paris, and Brussels rely on information from Turkish intelligence. ³ Ankara's rapprochement to Moscow forms a third issue that disquiets not only the US but also NATO-members all over Europe. Doubts whether Turkey remains a reliable military partner haunt the sleep of many in Europe. ⁴ What went wrong? What can both sides do to avoid further escalation or a complete breakdown of mutual relations?

1 C.f. http://europa.eu/rapid/press-release_MEMO-18-3407_en.htm.

2 http://europa.eu/rapid/press-release_IP-18-1763_de.htm.

3 *Marc Pierini*, "EU-Turkey relations, confined to core priorities", Carnegie 21.11.2017, <http://carnegieeurope.eu/strategieurope/74791>.

4 *Rayk Hähnlein* et al., „Die Türkei verlässt die NATO“ (German), in: *Lars Borzus* (Ed.), *Während wir planen*, Berlin 2018, p. 10-15.

First, Turkey and its European partners should stop putting the blame for the derailed membership process completely on the other side. Both sides should reconsider the extraordinary difficulties of Turkey's EU accession process and take responsibility for their own fatal failures. *Second*, Turkey should be aware of the risk it shoulders in terms of its relations with the European Union in case of a one-to-one implementation of its amended new constitution into law and political practice. *Third*, the European Union should work for an additional framework concerning the Union's relations with Turkey to ensure cooperation with Turkey beyond the stalled membership process and to avoid that every single member state deals with Turkey on a bilateral level.

Reading Turkey's membership process beyond the established blame game

Three groups of reasons contributed to the failure of EU-enlargement concerning Turkey, a country of vital interest to Europe's well-being and security: First, the changing geopolitical context after the End of the Cold War; second, developments in Turkey's domestic arena; and third, the EU's incapacity to align EU-member states to a joint and coherent policy towards the country.

The change of geopolitical context due to the end of the Cold War

During the Cold War, Turkey's role in the security considerations of the West had shaped Turkey's relationship with Europe. The pivotal state at NATO's south-eastern flank was to be economically developed and politically stabilized. Additionally, NATO wanted to minimize frictional losses caused by Turkey's rivalry with Greece. Turkey itself perceived Moscow its primary security concern since the Soviet Union demanded a say in the ruling of the Turkish straits and glanced at regions in the north east of Anatolia. In these days, Ankara's alignment with the West in strategic terms made up for Turkey's 'European character' that – unlike today – nobody questioned with reference to historical, religious or geographical considerations. Alongside Greece and Germany, Turkey had been one of the beneficiaries of the Marshall Plan. It was a founding member of the OECD's forerunner OEEC as well as the Council of Europe. Already in 1956 – prior to Germany – Turkey entered NATO. Turkey's at the time unequivocal political, economic and cultural orientation towards the West undoubtedly added to the country's image as part of the West. Thus, Walter Hallstein, the first President of the EEC-Commission, stated his desire to have Turkey one day as a member of the Union on equal footing.⁵

Things drastically changed with the demise of the USSR. The dissolution of the Warsaw Pact seemingly reduced Turkey's significance for Europe in terms of security and, at the same time, allowed the EU to develop its vision of eastern enlargement with the concomitant change of priorities. Feeling no longer challenged by the USSR,

5 *Frank R. Pfetsch*, "Gehört die Türkei zu Europa?", www.ipw.uniheidelberg.de/.../Gehoert%20die%20Tuerkei%20zu%20Europa.doc.

European societies experienced the so-called 'democratisation of foreign policy' that – as far as Turkey was concerned – resulted in a stronger impact of culturalist prejudices and ensuing discourses on foreign policy making. Turkey, too, saw an expansion of political freedoms that led to the strengthening of religious-conservative forces. Additionally, Turkey's foreign policy leeway widened drastically, allowing for engagement in hitherto inaccessible regions.

Thus – in the 1990s and 2000s when Turkey for the first time came close to EU candidacy and membership negotiations – Europe's primary motif for enlargement towards Turkey was weakened and, simultaneously, Turkey, for the first time, became able to ponder alternative directions for economical cultural and political development.

Domestic developments in Turkey: political transformation stalled

When the Turkish Prime Minister Turgut Özal in 1987 for the first time applied for full membership in the EU, Turkey still struggled with the political and economic devastations caused by the coup d'état of 1980 and the ensuing military rule that lasted until 1983. Economic policies remained stuck between the protection of loss-making state enterprises and efforts of privatization. Large parts of the Turkish population doubted both the generals' and the civilians' capabilities to develop the country. Thus, Özal's application appeared to have been driven by economic considerations and with a view to the EU's financial contribution to neighbouring Greece.

The 1990s witnessed a further erosion of the political centre in Turkey, the taking office of the first Islamist Prime Minister (Necmettin Erbakan), an escalation in the fight with the Workers Party of Kurdistan (PKK), and repeated interventions of the military into politics. It is against this background, that the AKP in 2002 came out as the sole winner of legislative elections and singlehandedly formed the new government. A fragile balance of power emerged that triggered unforeseen political dynamics. The governing party that rested on a solid religious-conservative electorate, for the first time, was able to challenge the vested power of the secular elite, that was as authoritarian as westernizing, including the high judiciary, large parts of the press and – as the decisive force – the military. This state-elite tirelessly questioned the political legitimacy of the ruling party whose leadership has its roots in Islamist circles.

Nothing depicts the situation better than the fact that the AKP in 2007 only at a hair's breadth escaped its being outlawed by the constitutional court, although the AKP enjoyed absolute majority in the parliament those days. In such a political setting, the EU's demands toward democratic reform could only work to the advantage of the conservative forces and to the disadvantage of the state elite, particularly the military that lacked democratic legitimacy. This was the main reason why the AKP oriented itself towards Europe disregarding the fact that its electorate represented those clusters of Turkey's society with the greatest distance to the overall secular European life style and political culture. The pious opted for democracy because they needed it and a window of opportunity opened for deep-grounded political

transformation of Turkey's state and society. When the AKP, in 2004, defined itself as a movement for Conservative Democracy,⁶ the door was open for a silent revolution in Turkey.

In the meantime, the AKP has won four legislative and three local elections, three constitutional referenda and one race for president of state. In the eyes of its electorate, the underlying conflict between the pious people and the secular and alienated elite is still valid. However, gone has the time of democratic reform and orientation towards Europe. In the domestic arena the AKP lost interest in further democratisation exactly at that moment it had brought down the bastions of elite rule, and the military, the high judiciary and the secular press ceased to be political actors to reckon with. In terms of foreign policy, the so-called Arab Spring played in the hands of those who projected Turkey as the new pivotal state in the Middle East. Ankara expected the overturn of authoritarian secular and militarist rule in Tunisia, Egypt and Syria and the coming to power of moderate Muslim movements that would accept Turkey as a natural leader of the Middle East. Thus, both domestic and international dynamics weakened the interest of the Turkish government in Europe and in the EU.

EU-member states render Turkey's membership process a plaything of their 'national interests' and domestic policies

In Europe, several issues exerted a negative impact on Turkey's EU accession process and pushed the question of Ankara's fulfilment of accession criteria on the backstage: The sheer size of Turkey in demographic terms, the unresolved Cyprus Question and the ascribed cultural remoteness of Turkey's overall Muslim population. The presence of large Turkish migrant communities all over Europe made Turkish accession the subject of heated domestic debates in some member-states and other member-states used Turkey's quest for membership to selfishly pursue their own 'national agendas'.

For the latter, the policy of Greece may serve as an example. Athens became an EU member in 1981, and, in the 1990s, it used its status to spoil the development of a common European strategy to bring Turkey closer to the Union with the aim to put pressure on Turkey due to conflicts in the Aegean.⁷ At the EU Summit of 2013 in Thessaloniki, Greece threatened to block the eastern enlargement in case Cyprus would not enter the list of candidates for future membership.

Brussels gave in, thus opening the way for Nicosia to block single-handedly a number of negotiation chapters for Turkey in 2009 as a response to Turkey's policy in the Cyprus question. However, already two years earlier, in 2007, the newly elected French President Nicolas Sarkozy in open violation of the European Council's decision had unilaterally blocked five negotiation chapters to prevent Turkey's membership. Probably France would not have been able to get away with this would the German government not

6 *Yalçın Akdoğan*, Muhafazakar Demokrasi, AKP, Ankara 2003, <https://acikerisim.tbmm.gov.tr/xmlui/handle/11543/2633>.

7 *Heinz Kramer*, A Changing Turkey: The Challenge to Europe and the United States, Washington D.C. 2000, p. 195 ff.

have tacitly given its blessing to the move. Turkey, thus, was the first candidate that faced the so-called 'nationalisation of the EU's enlargement policy', an euphemistic term for the Union's growing inability to enforce commonly taken decisions on its member states.

Due to these reasons European policy deplorably failed to impart new impetus to Turkey's EU accession process particularly at the moment, when dynamics towards Europe in Turkey itself slowed down. Probably, the EU wasted the final opportunity to breathe new life into Turkey accession process in 2016 when – in the course of the refugee crisis – Turkey's then Prime Minister Ahmet Davutoğlu demanded the opening of new chapters in return for Turkey's cooperation. Again, it was Cyprus that blocked the move and probably again other member-states behind the scene supported Nicosia. Meanwhile, public opinion in Europe had turned even more negative towards Turkey due to the country's authoritarian trajectory.

Thus, many political actors have to share responsibility for the derailment of Turkey's EU membership adventure. Additionally, geopolitical conditions changed and moods among the populations here and there were not supportive – to say the least. Therefore, it does not make sense to heap the blame exclusively on one or the other side.

If you are serious about the significance of the relationship – adopt a new language!

In case leaders in Europe and in Turkey should decide for renewed cooperation, they first have to acknowledge a shared responsibility for the state of affairs in the relationship. They, second, will have to desist from entering again in vicious circles of mutual accusations and in ascribing bad intentions towards the other side. They, third, should seriously consider a change of language in the same direction also when speaking to domestic audiences. They, fourth, should publicly acknowledge that with derailing the membership process, both, Turkey and the EU have missed a great opportunity and that it is time for damage limitation. Without such a change in language currently applied and approaches currently pursued even strong awareness of shared interests and well-designed new frameworks of cooperation will not ensure productive cooperation.

The risk of further escalation in EU-Turkey relationship due to Turkey's shift to executive presidentialism

In 1993, the European Council on its Summit in Copenhagen defined the political criteria a candidate country must meet for accession to the Union as follows: "Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." ⁸ Even prior to the already mentioned most recent 2018

⁸ https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en.

report of the European Commission on Turkey, central stakeholders in Europe arrived at the conclusion that the domestic situation in Turkey is no longer matching its criteria.

- Already in November 2016, the European Parliament called on the Commission and the member states of the European Union "... to initiate a temporary freeze of the ongoing accession negotiations with Turkey", because "... repressive measures under the state of emergency are disproportionate and in breach of basic rights and freedoms ... of democratic values upon which the European Union is founded ...".⁹
- In April 2017, the Parliamentary Assembly of the Council of Europe (PACE) decided to reopen the monitoring procedure of Turkey until "serious concerns" about the respect for human rights, democracy and the rule of law "are addressed in a satisfactory manner".¹⁰
- In January 2018, the French President Emmanuel Macron said in a joint press conference with Turkey's President Recep Tayyip Erdoğan: "As far as the relationship [of Turkey] with the European Union is concerned, it is clear that recent developments and choices do not allow any progression of the process we [Turkey and the EU] are engaged."¹¹
- In March 2018, the three parties that form the new German government agreed on the following formula to define their common approach to Turkey: "Turkey is an important partner for Germany whom we have manifold relations with and a neighbour of the EU. Therefore, we have strong interest in good relations. There is backsliding for quite some time in regard to democracy, rule of law and human rights. This is the reason why we are not intending to close chapters of the accession negotiations or to open new ones."¹²
- In April 2018, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) expressed "its deepest concerns about the announcement on 18 April 2018, of the holding of early presidential and parliamentary elections in Turkey on 24 June 2018, because "... an adverse context will impede the conduct of genuinely democratic elections."¹³

Currently, the government and the ruling party in Turkey push for amendment acts to harmonize the law with the newly amended constitution. Adopting the law in that direction may well drive the final nail in the coffin of Turkey's EU membership perspectives. On request of PACE's Monitoring Committee, the Council of Europe's constitutional law experts from the so-called Venice Commission scrutinized the

9 C.f. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0450+0+DOC+XML+VO//EN&language=DE>.

10 <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6603&lang=2>.

11 BBC, 5.1.2018, <http://www.bbc.com/news/world-europe-42586108>. The press conference took place immediately after the meeting of the two leaders and shortly after Turkey had ordered 25 passenger airplanes from the French-German Airbus Company.

12 Koalitionsvertrag für die 19. Legislaturperiode, https://www.edu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1.

13 <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7036&lang=2&cat=3>.

constitutional amendment already in March 2017. They warned "... that by removing necessary checks and balances, the amendment would not follow the model of a democratic presidential system based on the separation of powers, and instead would risk degeneration into an authoritarian presidential system".¹⁴ – How justified are these concerns?

The political context of Turkey's constitutional amendment and the rhetoric that accompanied its implementation

Despite quite a variety of democratising amendments – some of them made in the 2000s in response to expectations of the European Union – the Turkish constitution until today bears many authoritarian traces. These traces originate from the constitution of 1982 that the forces of the 1980 military coup imposed on the country. This original version of the present constitution defined the whole populace as ethnically Turkish, privileged the Sunni version of Islam against other confessions and beliefs and – at the same time – obliged the whole citizenry to a strictly secular lifestyle. In doing so, the 1980 constitution seriously limited the political leeway, particularly for Muslim conservatives but also for lingual and religious minorities. At the same time, the constitution yielded legitimacy to extra-parliamentary veto players, in the first line the military and the high judiciary. Thus, in the 1990s and more so in the 2000s, a wide range of political actors valued the Turkish constitution of 1980 as one of the major obstacles for further democratisation and demanded a fundamental change. In preparing the populace for the most recent amendment, the AKP government heavily capitalised on that sentiment. However, with the most recent amendment, the government did not change the authoritarian character of the constitution.¹⁵ The AKP, instead, only replaced the alleged secular character of the Turkish nation – used for decades to limit and to sanction conservative political activity – with an equally fantasized pious character of the whole nation and in doing so, again paved the way for an authoritarian policy.

The key arguments the government put forward in defending the necessity for the shift to a presidential system exemplify this very strategy, starting with the designation of the envisaged system. The Turkish president is not striving for a presidential system as such, but for a "Turkish type"-presidential system.¹⁶ He substantiates the need for change by saying that "up until today" the Turks had to live under "exported constitutions, designed accordingly to equally exported logics". Now it is time "to turn to the native and home-grown values of the nation". In need is "a constitution that puts the nation in the centre and rests on our ancient and autochthonous governance tradition". Thus, the government again constructs a

14 <https://rm.coe.int/168071ebc9>.

15 *Osman Can*, "The basic priorities of the constitutional order remain untouched" (Turkish), *Karar*, 16.1.2017, <http://www.karar.com/gorusler/prof-dr-osman-can-yazdi-anayasal-duzenin-temel-tercihlerine-dokunulmuyor-372515>.

16 For this and the following see the speech of *R. T. Erdoğan* published in the newspaper *Hürriyet*, 29.1.2016, under the title "Turkish type constitutional order: the nation is ready" (Turkish), <http://www.hurriyet.com.tr/gundem/turk-tipi-anayasa-modeli-millet-hazir-40046600>.

culturally homogeneous nation. This nation resists exported, i.e. secular, values. It longs for rule according to Turkey's ancient governance tradition and, thus, traces its roots back to the ancestors from imperial Ottoman times. United in autochthonous values, this nation knows no inner conflicts, and there is no need for the separation of powers. According to the Turkish President, the constitutions so far in place rested on the idea of conflict between the powers. "The spirit of the new constitution", he said, "will not be conflict, but harmony and balance, and the powers will not strive to harm but to complement each other, and all current problems will be solved."¹⁷ The provisions of the amendment very much mirror these intentions.

The abolition of the cabinet and the concentration of the executive power in one person

The president of state is taking over the competences and responsibilities of the prime minister and the cabinet. Both latter institutions cease to exist. The president appoints his own deputy, the ministers, the undersecretaries and leading bureaucrats.¹⁸ Far reaching decisions such as the declaration of the state of emergency, the exceptional convocation of the parliament as well as the issuing of decree-laws and administrative decrees, decisions that prior to the amendments rested with the collective deliberation of the cabinet, are now in the exclusive competence of the president of state.¹⁹

Reduced rights and competences of the parliament

The amendment drastically reduces the power of the parliament to control the executive. The government does not rely on a parliamentary vote of confidence, ministers are not obliged to answer personally parliamentarians' investigative quests, and there are no sanctions for ministers who refuse to deliver parliament even written reply. Parliament's budget rights also turn into blunt weapons. When the parliament refuses to approve the new budget, the government continues its work, using the adopted budget of the previous year.²⁰

Impeachment of the president in case of criminal offence requires extraordinary large majorities in parliament. It needs three fifths of the deputies to trigger criminal investigation, and two thirds of the deputies have to back the instigation of the court procedure.²¹ In order to dismiss the president, the parliament has to dissolve itself which it can do only with a majority of two thirds of its members. On the other hand, the president may dissolve the parliament whenever he sees fit. The parliament faces serious challenges also regarding its core capacity, legislation. Prior to the amendment, the parliament overturned presidential vetoes of laws adopted by the parliament with

17 Ibid.

18 *Christian Rumpf*, Die geplante Verfassungsänderung, Stuttgart, 4.4.2017, p. 4.

19 Union of Turkish Bar Associations, Comparison of the changing articles of the old and the new constitution (Turkish), http://anayasadegisikligi.barobirlik.org.tr/Anayasa_Degisikligi.aspx.

20 Constitution of the Republic of Turkey, amended 17.4.2016 (Turkish), https://www.tbmm.gov.tr/anayasa/anayasa_2017.pdf, Article 161.

21 Ibid, Article 105.I.

the bare majority of the quorum. The new provisions ask for the absolute majority of seats.²²

However, for the parliament's legislative monopoly, the newly introduced power of the president to issue decree-laws appears to be even more fateful. Although the amendment explicitly limits the scope of decree-laws to areas not already designed by ordinary laws, this limitation does not apply in the state of emergency.²³ Most recent moves on the side of the Turkish government unequivocally displayed a tendency of the executive to use this provision to make large inroads into the legislative monopoly of the parliament. The constitution limits the scope of decree-laws issued under the state of emergency to matters related to *the* threats that caused the declaration of the state of emergency. However, the government, in August 2017, did not respect this limitation. It circumvented parliament by changing a number of ordinary laws with no relation to the causes that triggered the declaration of the state of emergency by ways of decree-law, thus clearly violating constitutional rules.²⁴

Blurring the division between the executive and the legislative

If one looks for the particular 'Turkish type'²⁵ of Turkey's new presidential system, two issues meet the eye: *First*, the president of state is not obliged to leave his party and to resign from party posts.²⁶ As a result, the president who has collected all powers of the executive in his person acts also as the head of the party that enjoys absolute majority in parliament. This leads to a serious blurring of the divide between the executive and the legislative powers as the person that single-handedly runs the executive due to his authority over the hegemonic party also determines the conduct of the parliament.

The *second* crucial regulation in this context stipulates that the elections for parliament and presidency will take place at the same date.²⁷ Thus, the campaigns for both elections happen in the same political setting and atmosphere and under the very same political front lines and slogans. This design, in all probability, will further reproduce the already alarming polarisation of Turkey's polity. The executive will uphold its decisive influence on parliament and the blurring of the divide between the powers will continue.

Enhanced impact of the executive on the judiciary

The combination of, first, the concentration of all executive powers in one person, and second, the merger of interest between the hegemonic party and the president (due to the latter's continuing party membership and even leadership) is also likely to severely undermine the independency of the judiciary. This is the case because the president of

22 Ibid, Article 89, including footnote 22.

23 Ibid, Article 104 and 119.

24 Decree-Law 694 of 24.8.2017.

25 *Etyen Mahcupyan*, A presidential parliamentary system (Turkish), Karar, 13.12.2016, <http://www.karar.com/yazarlar/etyen-mahcupyan/baskanli-parlamentar-sistem-2823>.

26 *Union of Turkish Bar Associations*, Comparison of the changing articles of the old and the new constitution (Turkish), http://anayasadegisikligi.barobirlik.org.tr/Anayasa_Degisikligi.aspx, Article 101.

27 Constitution of the Republic of Turkey, amended 17.4.2016 (Turkish), https://www.tbmm.gov.tr/anayasa/anayasa_2017.pdf, Article 116.

state and the party that holds the simple majority of parliament are in the position to staff the most central juridical institutions. The president of state appoints twelve out of 15 members of the Constitutional Court and the parliament elects the remaining judges and may do this with simple majority!²⁸ Thus, the president and the ruling party may appoint all members of the court.²⁹ The very same picture occurs when it comes to the staffing of the Council of Judges and Prosecutors that is responsible for the appointment of juridical personal at the courts. Including the Minister of Justice and its undersecretary, the president appoints five of its 13 members. The parliament elects the remaining seven members, and again is able to do this with simple majority.³⁰ Thus, president and hegemonic party exclusively decide the staffing of main juridical institutions.

If you are serious about the significance of the relationship – consider steps to re-introduce checks and balances

The rhetoric adopted by Turkey's ruling party of today to justify the need for a presidential system draws the picture of an absolute contradiction between the values of *the* Muslim conservative nation on the one hand and all those who do not fit into this culturalist designation of the sovereign. This does not bode well for political opponents and for the rights of religious, ethnical and sexual minorities. The capacities of parliament to control the executive and to protect its monopoly of legislation are severely limited and the separation of powers is put into question. Government and hegemonic party are able to staff main juridical institutions. The constitutional amendment thus undermines the very foundations of democracy and the stability of institutions in Turkey.

In order to avoid further escalation in its relationship with the European Union, the Turkish government and the ruling party should consider the re-establishment of checks and balances. In this vein, the government should end the state of emergency. It should not issue new decree-laws and respect the legislative monopoly of the parliament. It should secure the independency of the judiciary by stipulating the need for a two third majority in parliament for the appointment of judges to the Constitutional Court as well as to the Council of Judges and Prosecutors. The government should hand back to parliament its budgetary rights, and the discretion of the president to dissolve the parliament should be limited and bound to legal conditions, unequivocally formulated.

A new framework for Turkey's relations with the European Union

Today, practically, Turkey and the EU are on equal footing. They maintain manifold relations that create strong interdependency and function to mutual benefit. The flip side of the coin is that both sides can also harm each other seriously. In fact, if tensions escalate, both sides have much to lose. The EU member states may experience unbridgeable gaps in their capability to prevent terrorist activities. The European Union

28 Ibid, Article 146.

29 Ibid, Article 146.

30 Ibid, Article 158.

may fail to prevent uncontrolled and therefore unmanageable immigration with severe consequences for the EU members Greece, Bulgaria and Romania. Given its today similar fragile relations with the United States, Turkey – in case of simultaneously escalating tensions with Europe – may even turn its back to NATO and thus rock transatlantic power-balances.

Such scenarios, naturally, would come with a cost for Turkey. Ankara risks the drain of its main source of direct foreign investment. At stake is also its privileged access to its primary export market. Turkey's industry will miss incentives for technical improvement, and Turkey's holiday destinations will lose again tourists from Europe.

Neither Ankara nor Brussels are likely to risk a total break. At the same time, however, the current framework of relations – Turkey's EU membership process – today appears to be more of a spoiler than a facilitator for cooperation. For both parties tend to use the membership process as a bargaining chip, forgetting that – due to the factual stalling of the process – this currency is out of value. So neither will Turkey manage to force its way into the Union only because Brussels depends on Turkey's cooperation in the above-mentioned fields. The very character of the accession process does not allow for this as accession remains to be dependent on the fulfilment of criteria. At the same time, recent experience shows that the EU has lost the leverage on Turkey that it enjoyed in times when the accession process worked. Whenever one of the both sides, today, refers to the accession process, it only causes anger as well as raising tensions.

Existing frameworks for cooperation

Beyond accession negotiations, Turkey-EU relations rest on the following pillars: In 1964, Ankara entered into an Association Agreement with the EU that already foresaw future full membership.³¹ In 1970, both sides signed an additional protocol that pointed to the gradual establishment of a customs union. The actual Customs Union between Turkey and the EU entered into force in 1995, designed as a temporary agreement that will become superfluous with later membership.

With the stalemate of the EU accession process looming, since 2013 and more so since 2015, both sides have concentrated on high level dialogues to enable necessary cooperation. A *High Level Political Dialogue* deals with foreign policy and cooperation in the field of mutual security. Both sides discuss Turkey's demand for visa-free travel to the Schengen countries in the format of a *Visa Liberalisation Dialogue*. Regular meetings additionally take place in the *High Level Economic Dialogue* as well as in the *High Level Energy Dialogue*. In 2015, the parties made mutual political statements to frame their cooperation for handling the refugee crisis.

Turkey's need for a new framework for the relationship with the EU

However, the above-mentioned agreements and dialogue formats have not been able to prevent the deterioration of Turkey's relation with the European Union. None of the

31 This and the following according to the website of the Turkish EU Ministry, https://www.ab.gov.tr/111_en.html.

dialogue formats has yielded substantial results. Even the Association Agreement and the Customs Union have contributed their share to political strife. Turkey and the EU need a new format for cooperation.

- Turkey, first, needs a new base for its economic relations with the EU to guarantee its long-term access to the common market independent of the fate of the accession process. Only a framework that works beyond everyday political strife and that does not relate directly to Turkey's political transformation will help to attract future long-term investment.
- Turkey, second, needs a new base for its economic relations with the EU to overcome the flaws of the existing Customs Union. Thought as a temporary arrangement it does not grant Turkey any say in European trade policy but forces Turkey to bear the costs of new Free Trade Agreements the EU is conducting with third countries. Moreover, the existing Customs Union applies only to industrial products excluding services and agriculture. It lacks effective arbitration mechanisms, a flaw that becomes more relevant by the day.
- Turkey, third, needs a new base for its economic relations with the EU as an incentive to re-establish the rule of law – a step that is in Turkey's own economic interest. Disregarding wide-spread criticism towards Europe in Turkey, there is no other point of reference for legal standards, for economic norms and universal values than the EU.

The EU's need for a new framework concerning the relationship with Turkey

A new institutional framework for its relationship with Turkey is also central to the interests of the European Union. Given the huge divergence of single EU member states towards Turkey, only the institutionalisation of relations with Turkey may serve as platform for a joint European policy. For there is no single all-over European interest towards Turkey that would invite the EU member states to arrive at a common European policy towards the country that alone may exert impact on Ankara. Given their interests in Turkey, one may discern three different groups of EU member states:

A first group is made up of countries with huge labour migration (not only but also) from Turkey, namely Germany, the Netherlands, Belgium, Sweden, Austria and France. The governments of these states often face an interested public, active and sometimes even agitated when it comes to Turkey and its EU membership bid. Fears of further migration but also wide spread concerns of well-informed circles regarding democracy and the respect for human rights trigger the debates. These countries, at the same time, appear to be the most prominent destinations for refugee influx. Additionally, these countries are the most concerned about returning foreign fighters. Their governments depend the most on Turkey and at the same time face a very Turkey-critical public opinion.

The southern EU member states form a second group of countries, made up by Italy, Portugal and Spain. They look at Turkey primarily as economic partner. They do not share – at least not to a similar degree – neither the concerns of the first group of countries nor their political restraints. A third group consists of Central and East

European states. In some of them³² the state of democracy and rule of law are matters of concern and there is no particular criticism towards Turkey. They see Turkey only as crucial NATO partner one must avoid driving into the arms of Russia. In most recent years, Berlin, Den Haag and Vienna have come to realise how difficult it is to organize support inside the European Union when quarrelling with Turkey. A common EU-framework, thus, is the most effective way to avoid ineffective bilateral strife with Ankara.

If you are serious about the significance of the relationship – remain silent on the EU accession process, modernise and deepen the Customs Union, ease visa requirements

Given the divergence of the EU member states' interests in Turkey, to remain silent on the accession process, comes as the only way for the EU to maintain the semblance of common EU policy and to save the face. Agreement on alternative options like the formal suspension or the restart of the accession process is not really a possibility. Thus, there is no need to burn the bridges and to further complicate the climate for cooperation.

To modernise the Customs Union serves Turkey's most pressing interest in upholding friendly relations with the EU. The Turkish government hopes the deepening of the Customs Union will double the current trade volume from 146 to 300 Billion USD per annum.³³ This is a strong incentive for Turkey in order to cooperate in the above-mentioned areas where Ankara exerts leverage on the EU and/or on single EU member states. At the same time, the present Customs Union has not worked to the detriment of the EU as far as trade balances are concerned. Additionally, the start of negotiation on the Customs Union will put considerable pressure on the Turkish side in terms of rule of law, transparency, fair competition rules and worker's rights. More than anything else, the positive economic effects of the existing Customs Union turned Turkey's industrial entrepreneurs into supporters of Ankara's EU membership. They know that only enhanced trade with Europe helps Turkey to escape the middle-income trap by grading up its technological capacities and strengthening its competitiveness. Additionally, to agree on re-negotiations of the Customs Union today seems to be the only option the EU member states could jointly arrive.

A move to ease visa requirements between Turkey and the EU will face strong opposition from various governments in Europe, most likely particularly from those, who point the most to human rights, the rule of law and ethical standards. However, no other step is of more relevance to Turkey's pro-European audience. And no other step contributes stronger to a more positive image of the EU in Turkey and thus secures that Turkey's European option will continue to exist.

32 But also in some countries of the other two groups.

33 (Prime Minister Binali Yıldırım), "We can manage to modernise the Customs Union" (Turkish), news-website Diken, 21.8.2017, <http://www.diken.com.tr/yildirim-can-atiyor-gumruk-birligini-guncellemeyi-basarabiliriz/>.