

REVISTA CIDOB D'AFERS
INTERNACIONALS 75.

**Turquía y la UE: Trazando el camino
a seguir**

Anexo
Negotiating Framework

Negotiating Framework

European Commission/Enlargement process/ Relations with Turkey

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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.

ANNEX

Preliminary Indicative List of Chapter Headings

(Note: This list in no way prejudices the decisions to be taken at an appropriate stage in the negotiations on the order in which the subjects will be dealt with.)

1. Free movement of goods
2. Freedom of movement for workers
3. Right of establishment and freedom to provide services

4. Free movement of capital
5. Public procurement
6. Company law
7. Intellectual property law
8. Competition policy
9. Financial services
10. Information society and media
11. Agriculture and rural development
12. Food safety, veterinary and phytosanitary policy
13. Fisheries
14. Transport policy
15. Energy
16. Taxation
17. Economic and monetary policy
18. Statistics
19. Social policy and employment¹
20. Enterprise and industrial policy
21. Trans-European networks
22. Regional policy and coordination of structural instruments
23. Judiciary and fundamental rights
24. Justice, freedom and security
25. Science and research
26. Education and culture
27. Environment
28. Consumer and health protection
29. Customs union
30. External relations
31. Foreign, security and defence policy
32. Financial control
33. Financial and budgetary provisions
34. Institutions
35. Other issues

Note

1. This chapter includes also anti-discrimination and equal opportunities for women and men.