
The EU's Progress Report on Turkey's Accession: A Glimmer of Light in the Tunnel, but Cyprus Remains the Main Obstacle (ARI)

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Theme: The European Commission's annual report on Turkey's progress toward full EU membership showed the country's arduous accession process in a more positive light, but there will be no breakthrough until the Cyprus problem is resolved.

Summary: The report, released on 9 November, recognised advances, particularly as a result of the approval of constitutional reforms in September's referendum, but pointed out deficiencies in various areas of fundamental rights, including press freedom.

Analysis:

Background

The latest annual report on Turkey's very sluggish progress towards full membership of the EU came at a time when negotiations, started five years ago, looked as if they would grind to a complete halt in the near future. The country has only opened 13 of the 35 'chapters' (areas of EU law and policy) needed to complete its accession process and closed just one of them (science and research). As many as 18 are still blocked, for various reasons, by the EU as a whole, by France or by Cyprus, leaving very few for further progress.

Meanwhile, support inside and outside Turkey for joining the EU continues to decline while Ankara's new focus on the Middle East (under its policy of 'zero problems with neighbours') is enjoying increasing support among Turks (see Figures 1 and 2). The 2010 Transatlantic Trends survey by the German Marshall Fund of the United States showed that the percentage of Turks who said Turkey should act in closest cooperation with the countries of the Middle East on international matters doubled to 20%. This was accompanied by a nine-point decline in those who said Turkey should cooperate with EU countries.

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Figure 1. Turkey Joining the EU Would be a Good Thing (%)

	2004	2005	2006	2007	2008	2009	2010
Turkey	73	63	54	40	42	48	41
US	43	37	35	40	32	41	38
EU (1)	29	22	21	22	21	20	23

(1) EU7 for 2002-06 and EU11 for 2007-10.

Source: Transatlantic Trends 2010, German Marshall Fund of the United States.

Figure 2. With Whom Should Turkey Act in Closest Cooperation?

	2009	2010
Turkey should act alone	43	34
Countries of the EU	22	13
Countries of the Middle East	10	20
US	4	6
Russia	3	5

Source: Transatlantic Trends 2010, German Marshall Fund of the United States.

The main stumbling block to speeding up the negotiations and opening more chapters is still the Turkish government's refusal to implement the 2005 Ankara Protocol and open its ports and airports to Greek Cypriot traffic and hence extend its customs union with the EU (since 1996) and recognise the Republic of Cyprus. As a result, the European Council suspended eight chapters in December 2006. The whole of Cyprus joined the EU in 2004, but the *acquis* only apply to the Greek Cypriot southern part as the northern part (36% of the territory) has been occupied by Turkey since its military intervention in 1974 under the 1960 treaty of guarantee which gave it the right to take action, following inter-communal strife between Greek and Turkish Cypriots and an attempt to incorporate the island into Greece through a coup. The Turkish Republic of Northern Cyprus (TRNC) is only recognised by Ankara (see Figure 3). Ankara will not budge until something is done to fulfil the promise of the European Council to ease the economic isolation of the TRNC. The pledge was made shortly after Turkish Cypriots voted overwhelmingly 'yes' for the Annan plan to reunify Cyprus, which they did overwhelmingly in the 2004 referendum, unlike Greek Cypriot voters who massively rejected it. The first action of a divided Cyprus as an EU member was to block this gesture, and since then Cyprus has become a single-issue member state.

Figure 3. Cyprus



Source: BBC.

A further five chapters related to economic and monetary union are blocked by France on the grounds that they open the door to full EU membership. President Nicolas Sarkozy and Germany's Chancellor Angela Merkel have offered Turkey a 'privileged partnership', which Ankara adamantly rejects.

The Lisbon Treaty appeared to offer a way out of the Cyprus deadlock as it grants the European Parliament a voice in the direct trade matter, but hopes were dashed on 18 October when the parliament's legal affairs committee approved with 18 votes in favour, five against and one abstention the opinion of the parliament's legal service that the legal basis of the direct trade regulation is wrong and that the proper legal basis is Article 1(2) of Protocol 10 on Cyprus to the Treaty of Accession of April 2003. The opinion of the legal service is based on the following three points: (1) the Turkish occupied part of Cyprus is part of the Republic of Cyprus and the European Commission wrongly insists on using Article 207 (2) which regulates trade with third countries; (2) according to Article 3 of the European Community's Customs Code, the whole territory of the Republic of Cyprus is part of the customs territory; and (3) the European Commission's intention to use ports and airports in the Turkish-occupied part without the consent of the government of Cyprus undermines the sovereignty of the Republic of Cyprus. The legal service also stipulated that the European Commission wrongly used Ceuta and Melilla –the Spanish enclaves on the coast of North Africa–, Gibraltar and Helgoland as precedents in order to justify the use of Article 207 (2). The legal service of the Council of the EU had earlier taken a similar position to that of the European Parliament's legal service.

Soon after the vote of the parliament's legal committee, President Demetris Christofias of Cyprus wrote to José Manuel Durão Barroso, the President of the European Commission, calling for the regulation on direct trade between the EU and the TRNC to be withdrawn.

Ban-Ki Moon, the UN Secretary-General, is becoming increasingly frustrated at the lack of progress in three years of talks (under the UN's good offices) between the Greek and Turkish Cypriot leaders to reach a comprehensive settlement on a bizonal, bicommunal federal constitution. He has summoned Christofias and Dervis Eroglu, who was elected President of the TRNC last April, replacing Mehmet Ali Talat, to meet in New York on 18 November in an attempt to end the deadlock. European diplomats say the time is fast approaching to face up to the consequences of failure, which could mean a formal partition of Cyprus.¹ Reuniting Cyprus is not a *sine qua non* for Turkey's entry into the EU, although it is difficult to believe it would ever happen without a settlement.

Greek prejudice and Turkish pride, in the words of Andrew Duff, a Liberal Democrat member of the European Parliament, are to blame for the deadlock.²

*The Report*³

The report, released on 7 November, was much more positive than the one a year ago. This was quickly seized on by Egemen Bağış, Turkey's chief EU negotiator, who called it the 'most positive and encouraging one among the 13 reports released by the Union so far. Now we have begun to get the smell of EU membership'. Bağış's upbeat mood, however, was dampened by Stefan Fuele, the EU Enlargement Commissioner, who said 'no one can be satisfied with the current pace of negotiations. Despite overall progress, we are concerned that Turkey's accession process is losing momentum. The key to

¹ For a fuller explanation of the Cyprus problem see the author's working paper *Cyprus: Time for a Negotiated Partition?*, Working Paper nr 21/2010, Elcano Royal Institute, http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/europe/dt21-2010. See also James Blitz, (UN Talks are) 'Last Chance For Solution' (on Cyprus), *Financial Times*, 7/XI/2010.

² See his letter to the *Financial Times*, 10/XI/2010.

³ The full report is at http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm.

changing this is primarily with Turkey, which is expected to fully implement its current contractual relations with the EU –the Customs Union– before it can gear up to full membership of the Union’.

The main advance since the last progress report is in the **political criteria**. The constitutional reforms, approved in the referendum held on 12 September, create the conditions for progress in a number of areas, such as the judiciary and fundamental rights.⁴ Turkey still has the illiberal constitution drawn up by the military junta that ruled the country for three years after the 1980 coup, although some parts of it have been reformed. The changes were approved by 58% of voters, much wider than most polls had suggested, and rejected by 42%. The report noted, however, that significant efforts ‘are still needed on fundamental rights’, pointing out, for example, that ‘the quantity of legal actions against journalists and undue pressure on the media undermine freedom of the press in practice’.

Earlier this month, a Turkish court reinstated a 30-month ban on the popular video-sharing YouTube website just days after it was removed, deepening a dispute over online free expression. Access to YouTube was blocked by the Turkish government in May 2008 after users posted videos deemed insulting to the Republic’s founder, Mustafa Kemal Atatürk.

The implementation of the amended constitutional provisions through legislation, in line with European standards, will be a key point. The government has not always kept its promises. The report criticised the government for only partly following through on the democratic opening, announced in August 2009, to address the Kurdish issue and also the Constitutional Court for closing down the Democratic Society Party (DTP) and banning 37 members from party politics for five years, including two members of parliament who thereby lost their parliamentary seats.

As regards **democracy and the rule of the law**, the report said the ongoing trial against the Ergenekon network (an ultra-nationalist organisation with links to the military and security forces) was an ‘opportunity to strengthen confidence in the proper functioning of the democratic institutions and the rule of law’. A total of 270 people, including 116 military officers and six journalists, were charged with trying to overthrow the government of the religiously-conservative Justice and Development Party and instigate armed riots. But there are ‘concerns as regards judicial guarantees for all suspects’ and Turkey still needs to align its legislation as regards the procedure and grounds for closing political parties with European standards.

Progress has been made on the **civilian oversight of the security forces**. The constitutional package limits the competence of military courts and opens the decisions of the Supreme Military Council to judicial review. Senior members of the armed forces, however, continued to make statements beyond their remit, in particular on judicial issues, and no progress was made in terms of parliamentary oversight over the defence budget. No change has been made to the Turkish Armed Forces Internal Service Law, which defines the duties of the military and contains an article leaving the military wide room for manoeuvre to intervene in politics, and the Law on the National Security Council provides

⁴ See the author’s analysis of the referendum at http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari136-2010.

a broad definition of 'security', which, depending on interpretation, could cover almost any policy field.

In the area of the **judiciary** there was progress on implementing reforms. The adoption of the constitutional amendments on the composition of the High Council of Judges and Prosecutors was a 'positive step'. However, the Justice Minister still chairs the High Council and has the last word on investigations, which means the judiciary is still not sufficiently independent of the executive.

Likewise, there were positive developments in the government's anti-corruption strategy, but corruption was still prevalent in many areas. Turkey was ranked 56th out of 178 countries in the latest annual Corruption Perceptions Index, published last month by the Berlin-based Transparency International, compared with 61st in 2009. Its score was 4.4 out of 10, the same as in 2009 (see Figure 4). The closer to 10, the cleaner the country.

Figure 4. Corruption Perceptions Index, Selected Countries (1)

Country ranking	Score
1= Denmark, New Zealand and Singapore	9.3
6. Canada	8.9
15. Germany	7.9
20. UK	7.6
25. France	6.8
30. Spain	6.1
67. Italy	3.9
56. Turkey	4.4

(1) The closer to 10, the cleaner the country and ranking out of 178 nations.
Source: Transparency International.

In **human rights and protection of minorities**, the number of rulings of the European Court of Human Rights (ECtHR) finding that Turkey has violated the ECHR continued to increase. During the reporting period the court delivered a total of 553 judgements ruling that Turkey had violated the ECHR. The number of new applications to the ECtHR went up for the fourth consecutive year. Since October 2009, a total of 5,728 new applications were made to the ECtHR. The majority of them concern the right to a fair trial and protection of property rights. As of September 2010, 16,093 cases were pending before the ECtHR regarding Turkey. The report said the amendment to the constitution introducing the right to submit individual applications to the Constitutional Court is an important step to reduce the number of applications to the ECtHR. Turkey has abided by the majority of ECtHR rulings.

As regards **freedom of religion**, freedom of worship continued to be generally respected. Ecumenical Patriarch Bartholomew celebrated on 15 August, after almost nine decades, the Divine Liturgy of the Dormition of Theotokos at the Soumela monastery in the Black Sea province of Trabzon. On 19 September the first religious service since 1915 was held at the Armenian Holy Cross church on the Akhdamar island in lake Van. Members of minority religions, however, continued to be subject to threats by extremists. A legal Framework in line with the ECHR has yet to be established, so that all non-Muslim religious communities and the Alevi community can function without undue constraints, including the training of clergy.

In the country's **east and south-east**, with a large Kurdish population and where there has been a surge of PKK terrorist attacks, the anti-terror legislation needs to be amended to avoid undue restrictions on the exercise of fundamental rights. The report also said the village guard system needs to be phased out.

Turning to the **economy**, which is the fastest growing in Europe and the second among the Group of 20 nations after China, the report noted that external imbalances and financing needs have been growing significantly, but Turkey continued to improve its ability to take on the obligations of EU membership. Alignment is advanced in certain areas, such as the free movement of goods, intellectual property rights, anti-trust policy, energy, enterprise and industrial policy, consumer protection, statistics and Trans-European networks.

Conclusion: A modicum of progress continues to be made and is keeping Turkey on board, but there is little leeway for real progress until the Cyprus problem is resolved to the satisfaction of all sides. Meanwhile, Turkey should continue with its reforms at a faster pace so that the blocked chapters can be quickly completed when they are finally opened.

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