

Turkey's Progress towards the Adoption of Acquis Communautaire

■ by *Firat Oktay**

There are three aspects that make the most recent succession of new members to the European Union (EU) different from the previous membership expansion periods. These differences include more candidates than ever before, where most of the applicant countries had a level of economic development well below that of the present members. In addition to this, many of these candidates possess weak administrative capacities.¹

Despite these differences, in 1997, the EU decided to begin negotiations with ten countries from Central and Eastern Europe, as well as Cyprus and Malta; these countries have already joined the EU. The EU also started considering Turkey's application to join the Union.²

However, Turkey compares differently to the other candidates in four key ways. Firstly, Turkey is very large both in terms of geography and population. In the former case, a significant section of Turkey falls in Asia and the Middle East. Secondly, unlike a predominantly Christian Europe, Turkey is predominantly Muslim. In the past, Turkey has suffered from several setbacks, ranging from political and economic insecurity, to the interfering role of its army, to a record of human-rights abuses.

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1 AVERY, G., 2001, "Reunifying Europe.", *The World Today*, August-September, p. 41-43.

2 PUSCA, A., 2003, *European Union: Challenges and Promises of a New Enlargement*, New York, International Debate Education Association, p. 13.

Those more skeptical Europeans could therefore easily argue against previous Turkish proposals to join the European Union. However, since they became the ruling party, the government of Recep Tayyip Erdogan's Justice and Development Party (*Adalet ve Kalkınma Partisi*) has enacted a swathe of reforms, in the hope of meeting the 'Copenhagen criteria' that governs eligibility to join the EU.³

Definition of the Copenhagen Criteria

According to the Dictionary of the European Union, accession criteria, often referred to as the Copenhagen criteria, were adopted by the Copenhagen Summit of the European Council in June 1993, when the European Community committed itself to admitting the countries of Central and Eastern Europe (CEE). Accession was, however, to depend on the candidate countries meeting the following criteria: having stable institutions, guaranteeing democracy, the rule of law, human rights and protection of minorities; possessing a functioning market economy and the capacity to cope with the competitive pressures of the internal market; having the ability to take on the obligations of membership including adherence to the aims of the European Union, notably the political, economic and monetary union. In 1995, the Madrid Summit of the European Council added a further criterion: that the countries seeking membership should possess the administrative capacity to implement the *acquis communautaire*.⁴

Aim of the Article

The aim of this article is to analyze the process of Turkey joining the European Union with regard to the *acquis communautaire* section of the accession criteria – or as it is often referred to – the 'Copenhagen Criteria.' The article will establish, especially by focusing on the *acquis communautaire* section whether Turkey has achieved fulfillment of the Copenhagen Criteria by evaluating the efficiency of Turkey's efforts to fulfill these criteria.

Criteria just for Turkey

Concerning Turkey's accession, the Council stated that:

*"While having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume all the obligations of membership it must be ensured that Turkey is fully anchored in the European Structures through the strongest possible bonds."*⁵

In the article *Turkey's quest for membership of the European Union*, the editors disagreed with this statement, particularly with regards to the manner in which reference was made to the Union's absorption capacity as surprising and slightly puzzling. It is hard to see how the

3 ANON., 2004, *A date with Turkey*, Global Agenda, p. 1.

4 PHINNEMORE, D., 2002, *Dictionary of the European Union*, KY, USA: Taylor & Francis, Incorporated, p. 1-2.

5 *Negotiation Framework*, Luxembourg: 3 October 2005, point 2.

Union's absorption capacity could be part of the Copenhagen Criteria. Yet, this is what the text suggests. These criteria set out the requirements to be satisfied by applicant countries, but it is not the responsibility of a candidate for membership to undertake action to safeguard or improve the Union's absorption capacity. Therefore this is not an additional condition to be satisfied by Turkey but rather than an obligation to be assumed by the Union or perhaps an escape clause allowing the EU to back out of the accession process.⁶

Laçiner assumes that neither the politics nor even the economics of the changing relationship can be understood apart from the historical background and cultural dimensions. Therefore the main hypothesis of his study was that the present problems are mainly structural and rooted in the history of Turkey and Europe. In order to prove this, the study first attempted to address the motives behind Europe's unwillingness to admit Turkey, and Turkey's European obsession.⁷

Has Turkey Adopted the Acquis Communautaire Efficiently?

According to the dictionary of the European Union, *acquis communautaire* is a phrase which collectively describes all the secondary legislation of the European Community (EC) passed under the provisions of the founding treaties and their subsequent amendments. It covers all the directives, decisions and regulations adopted by the EC. States that apply for EU membership have to accept the *acquis communautaire*.⁸

Denis Chaibi addresses the most pressing challenges facing Turkey in the EU accession process, stating that "*accession will require drastic reform in Turkey*"; a long and difficult journey started on October 3, 2005. Turkey's accession talks will put Ankara's EU bid, (as well as the EU's role and identity), into a new perspective. To become a member, Turkey must meet three basic conditions, known as the Copenhagen Criteria. On the political level, Turkey must create stable institutions that guarantee democracy, the rule of law, human rights, and respect for minorities. Economically, the EU expects Turkey to have a functioning market economy. Turkey must also adopt the entire body of EU laws, known as the *acquis communautaire*, and adhere to the various political, economic, and monetary aims of the European Union. This third criterion will require Turkey to reform itself to adopt, implement, and enforce the EU's values and legislation. Although it is often said that Turkey is "too big, too poor, and too Muslim" to join the EU – its size, its GDP per capital, and its religion should not be the main stumbling blocks on the road to accession. It is more the way Turkey will deal with these political, economic, and legal issues that will be decisive.⁹

6 ANON, 2005, *Turkey's quest for membership of the European Union*, Common Market Law Review 42, no. 6 1 December, p.1561-1566.

7 LAÇINER, S., 2005, *Civilisational Differences as a Condition for Turkish Full-Membership to EU*, The Journal of Turkish Weekly, 9 February.

8 PHINNEMORE, D., 2002, *Dictionary of the European Union*, KY, USA: Taylor & Francis, Incorporated, p. 1-2.

9 ANON, *Turkey's EU Accession: The Long Road from Ankara to Brussels*, ROUNDTABLE WITH BURAK AKÇAPAR DENIS CHAIBI, Yale Journal of International Affairs, Winter | Spring 2006, p. 51.

According to Palabiyik, joining the EU has become one of Turkey's highest political priorities, and it is a major force in shaping regulatory reforms in the political, economic, social, and administrative sectors. These political, legal, economic, social and environmental aspects of the membership process to join the EU extend individual and national daily life standards to, and perhaps beyond, modern international standards. Accession Partnerships, National Programme for the Adoption of the Acquis, Regular Reports and the results of accession negotiations altogether identify priority areas for support in Turkey's candidacy process. The key objective is to attain sustainable development, in addition to establishing economic and social policies in a suitable political climate; In addition, the development of an effective and efficient environmental strategy, planning and its implementation through collaboration of the public and private sectors, academic institutions, non-governmental organizations (NGOs), and citizens is highly needed.¹⁰

After the approval of the Accession Partnership, the Turkish government announced its own National Programme for the Adoption of the Acquis (NPAA) on 19 March 2001. With this document, Turkey heralded a new beginning in its efforts in various fields such as democratisation, human rights and liberal economic policies, as well as common market policies. The National Programme has been created with a careful appreciation of the requirements of Turkey as spelled out in the Accession Partnership. This comprehensive document demonstrates the will of Turkey to adopt the EU *acquis* in all areas that are required for the accession to the EU. More specifically, it lays down the tasks to be accomplished within the short and medium terms and thus, clarifies the responsibilities of the institutions within the harmonisation process.¹¹

The Accession Partnership for Turkey was first adopted by the Council in 2001. A revised Accession Partnership was adopted in May 2003. The purpose of the Accession Partnership is to assist the Turkish authorities in their efforts to meet the accession criteria. It covers in detail the priorities for accession preparations, in particular implementation of the *acquis*, and forms the basis for programming pre-accession assistance with EU funds.¹²

The priorities of the Accession Partnership have been selected on the basis that it is realistic to expect that the country can complete them or take them substantially forward over the next few years. A distinction is made between short-term priorities, which are expected to be accomplished within one to two years, and medium-term priorities, which are expected to be accomplished within three to four years.¹³

10 PALABIYIK, H., 2006, *Turkey and European Union Accession: Review of the National Program for the Adoption of the Environmental Acquis*, The Journal of Turkish Weekly, 10 May.

11 ANON, 2006, TURKEY - ADOPTION OF THE COMMUNITY ACQUIS, [online], Available from: <http://europa.eu/scadplus/leg/en/s40013.htm> [Accessed November 23th 2006].

12 EU OPENING STATEMENT FOR THE ACCESSION CONFERENCE WITH TURKEY, COUNCIL OF THE EUROPEAN UNION, Brussels: 12 October 2005.

13 Commission Report COM(2004)656 final - SEC(2004) 1201. Not published in the Official Journal.

Turkey has continued to address the priorities defined in the revised Accession Partnership. Overall, some further progress has been made, but substantial efforts will be necessary to complete the foreseen tasks. The revised priorities will reflect the progress achieved to date and address areas where further progress is required. For a considerable number of these priorities, the government will benefit from EU assistance, as projects directly related to these priorities have been included in the 2005 national programme.¹⁴

According to the overall assessment of the Commission on the 2005 Progress Report for Turkey, the country has made further progress in acceding to the relevant international and European conventions and has increased its efforts to execute decisions of the European Court of Human Rights (ECHR). Several protocols were signed, including Protocol No 14 to the ECHR and the Protocol amending the European Social Charter. The European Agreement relating to Persons participating in Proceedings of the European Court of Human Rights was ratified on 6 October 2004 and entered into force on 1 February 2005. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force on 1 January 2005.

Interview with Mr. Yaşar Yakış (the Chair of Turkey's European Union Affairs Committee and AK Parti's MP)

During the interview that I made with Mr. Yaşar Yakış, who is arguably one of the most important authorities in Turkey concerning the EU and Turkey Relationships, I asked the following questions regarding the content:

Question 1 - Does EU need Turkey?

According to Yakış, the EU has sufficient capability to achieve its goals. However, with the accession of Turkey, EU would be able to achieve these aims more efficiently, cheaper, and easily with less human resources. Yakış further claimed that the influence of Turkey on the strategic regions of the world, such as the Balkans, Middle East, Caucasias and Central Asia would be useful for the EU as well. To support this idea, Yakış pointed out the request of the USA, while at the war against Iraq, to use Turkey's airbases.

Question 2 - Although Turkey is not member of the EU, do they exploit Turkey by making promises to grant it membership?

Yakış stated that Turkey does not aim to complete the necessary requirements merely to join the EU. The main reason for the efforts of Turkey is to improve the welfare of the country by striving to attain EU standards.

¹⁴ TURKEY - Presidency Conclusions - Brussels, 16/17 December 2004 - [online]. Available from: http://ec.europa.eu/enlargement/pdf/turkey/presidency_conclusions16_17_12_04_en.pdf [Accessed 7th November 2006].

Question 3 - Has Turkey sufficiently met the European Union's expectations?

According to Yakiş this issue is relative. To demonstrate his idea, he compared Turkey's and the Czech Republic's accession processes. For Turkey, the EU set the fulfillment of Copenhagen Criteria as a precondition of the negotiation. However, in the progress report of the Czech Republic, EU stated that "*although negotiations with Czech Republic continues for two years the government has not fulfilled the Copenhagen criteria*" and currently the Czech Republic is a member of the EU without having fulfilled the Copenhagen Criteria. The approach of the interviewee from this example is that although Turkey currently fulfils the Copenhagen Criteria sufficiently, complete fulfillment will occur after accession.

Furthermore, Yakiş gave another example for that question. The EU demanded Turkey amend its constitution to stipulate that "If a judgment of the constitution concerning human rights is contrary to international agreement in that case international law is valid." However, the constitution of South Cyprus, as a member state, still includes provisions against EU accession. The answer and the examples provided by Yakiş indicate that the EU applies a double standard for Turkey concerning the fulfillment of the Copenhagen Criteria.

Question 4 - Why have other candidate countries' participation period been short and Turkey's accession period is long and on-going. ?

Yakiş claimed that there are two explanations for this question. The first reason refers to the unfavourable historical image that Europeans hold of Turkey. The other reason is the size and therefore the possible affect on the population of Europe. Yakiş stated that when the EU is negotiating with large states, it does so in a hesitant manner. To demonstrate this idea, he gave the accession process of the UK as an example. The UK accession process was harder than the other candidates, with its application being vetoed several times by President De Gaulle of France.

He further added that this approach of the EU can be seen in the most recent enlargement in May 2005. As a relatively large country, Poland's negotiations were longer than that of Malta's, whose population is only 350,000.

The analysis of this answer would be that the EU examination of Turkey is more intense than other candidates owing to the possible affect of Turkey's sizable population by comparison to other European countries.

Question 5 - Since Turkey is predominantly Muslim, how does this affect the accession process?

According to Yakiş, religious affiliation is not the part of the Copenhagen

Criteria. In official negotiations, therefore, there is no mention of religion. However, after the negotiations there is a requirement to confirm the accession by referendum, which will be voted by the European Community. Yakiş supposes that the different religious character of Turkey will create a negative effect.

Question 6 - Is the EU accession the last chance for Turkey? If the EU does not accept Turkey, can Turkey join another Union?

Yakiş argued that this recommendation has very strong support in the Turkish community, by highlighting the strength Turkey's relationship with the other countries in the region, such as Russia and Iraq. However he believes that this approach is not logical, since both these countries are seen as less favorable union partners. Turkey, with the EU, would be stronger for the regional countries; likewise the support of the regional countries to Turkey would be cooperative in the process of accession.

Question 7 - Is Turkey behind the other EU countries in human rights?

According to Yakiş, the concept of the human rights is not suitable to compare its content item by item. The interviewee demonstrated his ideas by citing examples from Bulgarian and British legislation.

Yakiş stated that in Bulgaria, when a person visits the country as a tourist s/he is required to give his passport to the host, the host brings it to the police, who keep it until the visitor leaves the country. According to the interviewee, this rule is rooted in communist Bulgaria, however in practice the application of the rule still continues. Yakiş claimed that this practice could be considered to be a human rights violation, however Bulgaria has joined the EU already.

In the case of England, Yakiş compared the length of arrest under English Law and under Turkish Law. According to Yakiş, even though England has a traditional belief concerning human rights, the length of time that can be spent under arrest under English law is relatively longer than for other EU countries. Yakiş emphasised that the duration of under arrest had increased up to 96 days, but after long discussions it has been decreased to 28 days in England. However, the under arrest time was 9 days in Turkey; albeit it is shorter than many current members of the union, EU demanded Turkey amend the law, and currently the maximum time that can be spent under arrest in Turkey is now 4 days.

The explanation of the answer would be that under the concept of human rights there are different values. Therefore, it is impossible to evaluate respect for human rights by comparing particular rules such as the length of arrest period.

The conclusion of the interviewee regarding human rights considerations is that the “utilisation of human rights in Turkey lags behind many of the EU countries, but it is forward of some of them.”

Conclusion

Turkey's Progress Reports reveals that Turkey's alignment with the *acquis* has progressed in most areas, however areas that still need to be addressed remain. It is most advanced in chapters related to the EC-Turkey Customs Union but in this respect Turkey is not fully meeting its obligations. Alignment is also more advanced in areas where other international obligations exist which are similar to the *acquis*.

Recommendation

It can be said that Turkey has made sufficient progress in implementing the *acquis* effectively. However, supplementary legislative work is necessary. Turkey should concentrate on implementing its National Programme for the Adoption of the Acquis, corresponding to the Accession partnership priorities, more constantly across all chapters. In addition, new legislation should not diverge from the *acquis*.

However, findings reveal that, owing to the dissimilar character of Turkey from other candidate countries, although there is no mention in official negotiations, the political dimensions, such as the debated Armenian Genocide issue and the future of Cyprus, as well as the Islamic character of Turkey, has had a substantial impact on the accession process. Therefore it is recommended that the country should continue to complete the adaptation of Acquis at sufficient level; however at the same it also needs to solve other external issues to achieve full EU membership.