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**Rough Waters, Dark Shadows and Cross-Cutting Winds: the impact of European Union enlargement on Turkey's EU accession negotiations**

DRAFT

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For a multiplicity of socio-economic, geo-political, strategic and identity-based reasons, Turkey's progress towards EU membership is often treated as a *sui generis* case. Yet although Turkey's accession negotiations with the European Union (EU) are essentially a bilateral – and often stormy – affair, they take place within a wider and dynamic process of enlargement in which not only can the gloomy – sometimes dark – shadows of past and prospective enlargements be clearly detected, but so too can the often chill winds from ongoing, parallel negotiations with other candidates. How the EU negotiates accession and what it expects from candidates has continued to evolve since the EU began drawing up its framework for negotiations with Turkey ten years ago. This paper charts this evolution by first identifying changes in the light of Croatia's negotiating experience, the 'lessons learnt' by the EU in meeting the challenges of Bulgarian and Romanian accession, the EU's handling of Iceland's membership bid and accession negotiations, and the revised approach to negotiating accession evident in the more recent frameworks for accession negotiations with Montenegro and Serbia. The paper then explores the extent to which these changes have impacted on the approach the EU has adopted in framing and progressing accession negotiations with Turkey. In doing so, it questions both the consistency with which the EU's negotiates accession and the extent to which Turkey's progress towards EU membership is conditioned by the broader dynamics of EU enlargement as opposed to simply the dynamics within EU-Turkey relations and domestic Turkish reform efforts.

## Introduction

For a multiplicity of socio-economic, geo-political, strategic and identity-based reasons, Turkey's progress towards European Union (EU) membership is generally regarded as a *sui generis* case of integration. Since – and indeed prior to – its membership application in 1987, the EU has tended to treat Turkey's accession bid separately. Enlargement strategy pronouncements and documents always include references to Turkey and in most instances dedicate as much attention to its progress as to that of others. However, as evident in the European Commission's compendious *Agenda 2000* document in 1997 and the Luxembourg European Council's subsequent decision to launch an accession process only with Cyprus and the countries of central and eastern Europe, Turkey is generally treated as a case apart. Accession negotiations were indeed launched in October 2005 on the same day as negotiations with Croatia, but this was more by coincidence than design. Croatia had been scheduled to commence accession negotiations earlier in the year and there was no intention to proceed formally or informally with the two candidates in tandem. Turkey's progress was always intended to be determined by the specifics of the Turkish case, and not by some broader enlargement dynamics.

The sense that Turkey's progress towards accession is and will be determined by its own dynamics has long been reflected in the way in which EU and Turkish officials view and present relations. Indeed reflections on relations can often be quite blinkered, albeit unintentionally. Currently, not least because of its size and the longevity of its relationship with the EU, Turkey can only be considered on its own. Undeniably, Turkey does stand out among the current applicants and candidates and its accession has its own particular dynamics. However, no country's relationship with the EU develops in total isolation from either the EU's internal politics or its relations with other states. Given that Turkey has been negotiating accession with the EU for almost a decade during which the EU has open and closed negotiations with one candidate, enlarged twice, opened negotiations with three more candidates, and revised to its 'revised approach' to negotiating accession, it cannot be assumed that Turkey has continued – and will continue – to negotiate accession on the same basis as it started. Rather, the negotiations are likely to be impacted by not only the shadows – potentially gloomy, sometimes dark – of past and prospective enlargements, but also the winds – potentially chill – from ongoing and parallel negotiations with other candidates. Exploring the substance and effects of these shadows and cross winds allows a more nuanced appreciation of the actual and potential dynamics of Turkey's accession negotiations as well as its progress towards membership. The exploration also provides an opportunity to appreciate the

evolving nature of the EU's approach to negotiating the admission of candidates and the extent to which this is affected by lessons learnt and strategic action.

This paper charts this evolution by first identifying the impact that 'eastern' enlargement – in terms of both the negotiating experience and the impact of admitting ten new member states in 2004 – had on the framework for negotiations adopted in 2005 for negotiations with Turkey and Croatia. The paper then considers the 'revised approach' to accession negotiations that the EU subsequently adopted and first implemented for the negotiations it launched with Montenegro in 2012. It also considers the frameworks for negotiations adopted for Iceland in 2009 and Serbia in 2014. A further section explores the actual and potential impact of the adjustments and innovations on the approach the EU has adopted in framing and progressing accession negotiations with Turkey. The analysis questions both the consistency with which the EU's negotiates accession and the extent to which Turkey's progress towards EU membership is conditioned by the broader dynamics of EU enlargement as opposed to simply the dynamics within EU-Turkey relations and domestic Turkish reform efforts.

## **1. Towards Accession Negotiations**

When the EU launched accession negotiations with Croatia and Turkey in October 2005 it was not simply opening another two sets of negotiations but was doing so in the aftermath of its most intense period of negotiating its own enlargement. Having commenced six sets of accession negotiations with applicants in March 1998, it had doubled the number to twelve in February 2000 subsequently closing negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia in December 2003. Negotiations with Bulgaria and Romania continued on until June and December 2004 respectively. Although the EU had prior to this completed eleven sets of accession negotiations,<sup>1</sup> not only had the *acquis* expanded considerably since the previous set of negotiations with Austria, Finland, Norway and Sweden in 1993-1994, but the EU had since 1998 been negotiating primarily with applicants that were still completing their post-communist transformation processes. The challenges they faced in adopting and implementing the *acquis* were unprecedented. Established principles and procedures for negotiations had been both confirmed and refined. Their appropriateness had also been – and was continuing to be – tested: the 'big bang' enlargement of the EU from 15 to 25 member states had taken place seventeen months earlier on 1 May 2004. The past was casting its shadow. And this was made clear

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<sup>1</sup> Nine sets of negotiations with applicants that subsequently acceded to the EU and two with Norway whose voters rejected membership in referenda in 1972 and 1994.

by the European Council in December 2004 when agreed that future accession negotiations would be based on a 'framework for negotiations' and that each framework 'will be established by the Council on a proposal by the Commission, *taking account of the experience of the fifth enlargement process* and of the evolving *acquis*' (Council of the European Union, 2005b: point 23 – emphasis added).

The launch of accession negotiations with Croatia and Turkey also took place under the shadow of the future. Although the EU's commitment to the accession of 'potential candidates' from the Western Balkans lacked the boldness and apparent certainty of the European Council's statements at Copenhagen (1993), Luxembourg (1997) and Helsinki (1999), it was clear that the negotiations with Croatia and Turkey would set new precedents for the further enlargement of the EU into south-eastern Europe. The EU was not only agreeing the terms of accession for Croatia and Turkey but also implicitly for Macedonia, which had applied in March 2004, as well as the other countries of the Western Balkans, all of which had signalled their desire to secure membership. According to one leading participant in the Croatia's negotiations, Croatia was the 'guinea pig' for a new era of enlargement to include other countries from the Western Balkans (Interview, Brussels, 6 July 2012).

For Croatia, however, there was also the shadow of the present: the prospect of the EU adopting a framework for and indeed opening negotiations with Turkey. Work on the framework for negotiations with Turkey formally commenced in early 2005 at the same time that the framework for negotiations with Croatia was being drawn up. Initially it was envisaged that negotiations would be opened with Croatia on 17 March 2005 and those with Turkey on 3 October 2005 (Council of the European Union, 2005b: points 16 and 22). However, on 16 March 2005, EU member states were unable to reach agreement in the Council on whether Croatia was cooperating fully with the ICTY, the condition that had to be met in order for accession negotiations to be opened. Although the framework for accession negotiations was adopted, the opening of negotiations was duly postponed until such time that the Council had established that Croatia was 'cooperating fully' with the ICTY (Council of the European Union, 2005a). This and the fact that the European Council had established a timeframe for negotiations with Turkey to be launched created an opportunity for the opening of the two sets of negotiations to become linked. Austria, vociferously opposed to Turkish accession, only agreed to support the opening of negotiations with Turkey in exchange for agreement from the other member states to open negotiations with Croatia.<sup>2</sup> And even then, Austrian support – as well

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<sup>2</sup> The deal required a timely statement and some deft language from Carla del Ponte, the Chief Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY). The opening of accession negotiations was conditional on Croatia cooperating fully with the ICTY. On 1 September 2005, del Ponte (2005a) had reported

as the support of a number of other member states – required adjustments to the language of the framework for negotiations with Turkey. Consequently, there are a number of notable differences in the texts of the two frameworks.

## 2. Negotiating Croatian and Turkish Accession:

The adoption – and publication – in 2005 of a formal ‘framework for negotiations’ for the sets of negotiations with Croatia and Turkey with represented a new departure for the EU. Previously, accession negotiations had been based on a looser arrangement. For the negotiations launched in March 1998, a ‘general negotiating framework’ had been produced by the Council Presidency, based on texts drawn up in December 1992 for the negotiations that led to the 1995 enlargement. The framework was adopted in early 1998 based on a draft attached to the Council Presidency report on Enlargement and Agenda 2000 to the Luxembourg European Council in December 1997 that was to be finalized in the light of the discussions held by the European Council.<sup>3</sup>

The framework (see Appendix 1) contained a range of established principles, namely ‘full acceptance by the applicant country of the actual and potential rights and obligations [i.e. the *acquis*] attaching to the Union system and its institutional framework’. Moreover, the *acquis*, identified as including the content, principles and objectives of the EU’s treaties as well as secondary legislation, the jurisprudence of the Court and measures relating to the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA), had to be applied ‘at the time of accession’ with accession also implying ‘effective implementation’ so requiring ‘the establishment of an efficient, reliable public

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that ‘Croatia and Serbia and Montenegro, in particular, have been co-operating with the Tribunal only thanks to the international pressure. Their co-operation is not perfect, nor full, but the serious improvements we could notice in the past year and a half or so are definitely the result of the well-articulated and consistent EU policy... Croatia must finally step up its efforts to locate and arrest Ante Gotovina. It is obvious that Croatia will do even less to locate him the moment accession talks start with the EU’ (emphasis added). Four weeks later as the UK Council Presidency was desperately trying to secure the lifting of the Austrian veto over the opening of negotiations with Turkey, del Ponte conveniently issued an updated assessment of the co-operation provided by Croatia to the ICT. She commented: ‘I can say that, for a few weeks now, Croatia has been cooperating fully with us and is doing everything it can to locate and arrest Ante Gotovina. If Croatia continues to work with the same resolve and intensity, I am confident that he can be transferred to The Hague soon’ (del Ponte, 2005b).

<sup>3</sup> It is unclear whether and how much the draft was actually revised after the Luxembourg European Council. The draft envisaged the negotiating framework being ‘fleshed out in detail early in 1998 in the form of a general statement to be submitted by the Union at the ministerial meeting at which the negotiations are opened’. However, no formal record of a revised framework being adopted has been located in Council minutes. Tatham (2009: 250-51) cites only the draft document when referring to the framework for negotiations. The same is true with the semi-official account of the negotiations provided by Christoffersen (2007). The latter also notes (ibid, 47) that the same text, only adjusted to take account of the new *acquis*, was used for the additional set of negotiations launched in 2000 following the Helsinki European Council.

administration' (European Union – the Council, 1997: 49).<sup>4</sup> Although the *acquis* was to be adopted in full, it was accepted that 'technical adjustments and exceptionally ... non-permanent transitional measures' (*ibid*: 50) might be adopted. It was also stressed that the negotiations with the different applicant countries would be conducted 'on the basis of the same principles and criteria, but separately and according to the individual merits of each applicant country' (*ibid*). Consequently their 'progress and conclusion are not required to take place in parallel' (*ibid*).

Regarding progress in negotiations, this was to be determined by taking into account the extent to which the Copenhagen criteria were being met. The Madrid criteria relating to administrative capacity were also to be taken into account as were 'the objective of a high level of nuclear safety and environmental protection', 'undertakings to resolve any border disputes' and existing contractual relations, e.g. association agreements. Explicit thresholds for progress were not, however, specified. Two final principles covered 'acceptance' that each membership application 'forms part of the inclusive enlargement process' and an 'undertaking' from each applicant to align their policies and positions towards third countries and within international organizations with those of the EU.

The language deployed in the framework was equally general when it came to procedure. The Council would 'determine' the EU's common position on 'problems posed by the accession negotiations', doing so on the basis of Commission proposals for Community matters and Council Presidency proposals for CFSP and JHA matters. To provide some structure to the negotiations a 'provisional indicative list of [31] chapter headings' was provided.<sup>5</sup> In contrast to more recent frameworks for negotiations there was no reference to how, when and in fulfilment of what criteria negotiating chapters would be opened or closed. The same was true regarding if, how and for what reasons negotiations might be suspended.

Seven years later, once negotiations with all Cyprus, Malta and all the ten CEE applicants had been concluded and the first of the two 'eastern' enlargements had taken place on 1 May 2004, the European Council was becoming far more prescriptive regarding both the requirements to be made of candidates in negotiating accession and how negotiations would be structured and progressed. A

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<sup>4</sup> The principles contained in the draft *General Negotiating Framework* are reproduced in Appendix 1. These referred not only to the obligations of the acceding countries, but also to the need not only to safeguard but also strengthen the functioning and future of the EU. For an earlier draft, see Union Européenne – le Conseil (1997).

<sup>5</sup> Officials involved in the subsequent negotiations have noted that the list, based on the one used during negotiations on the 1995 enlargement 'was neither discussed later in any Council organ nor at any moment officially adopted, but it was also never drawn into question by anybody' (Sajdik and Schwarzingger, 2008: 33).

range of changes were agreed and implicit features the negotiation process made explicit (Council of the European Union, 2005b: point 23). First, the need to unanimity among member states at all stages of the negotiations was made clear. Second 'benchmarks for the provisional closure and, where appropriate, for the opening of each chapter' would be used; the benchmarks, 'depending on the chapter concerned', would refer to 'legislative alignment and a satisfactory track record of implementation of the *acquis* as well as obligations deriving from contractual relations with the European Union'. Third, 'specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures' could be considered, with suggestions that they might be used in areas such as 'freedom of movement of persons, structural policies or agriculture'.<sup>6</sup> Fourth, the European Council, while acknowledging that the 'shared objective of the negotiations is accession', made it clear that 'negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand'. Consequently, '[w]hile taking account of all Copenhagen criteria, if the candidate State is not in a position to assume in full all the obligations of membership it must be ensured that the candidate State concerned is fully anchored in the European structures through the strongest possible bond'. Finally, on the process of negotiations, a suspension clause was announced allowing the Commission, on its own initiative or at the request of one third of the Member States, to 'recommend the suspension of negotiations and propose the conditions for eventual resumption' in the case of 'a serious and persistent breach in a candidate State of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded'. Unlike other decisions, a decision to suspend would be require only a qualified majority of the member states. The European Parliament would be informed.<sup>7</sup> Finally, due attention had to paid to the EU's ability to admit new members. Here the European Council made reference both generally to 'the Union's capacity to absorb new members, while maintaining the momentum of European integration' (*ibid*: point 5) and specifically to the financing of further enlargements, adding in a thinly veiled reference to Turkey that 'accession negotiations yet to be opened with candidates whose accession could have substantial financial consequences can only be concluded after the establishment of the Financial Framework for the period from 2014 together with possible consequential financial reforms' (*ibid*: point 23).

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<sup>6</sup> The European Council also agreed that '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.

<sup>7</sup> In addition, parallel to the negotiations, an intensive political and cultural dialogue involving civil society would be pursued with each candidate aimed at 'enhancing mutual understanding by bringing people together'

Each of these changes, whether substantive or rhetorical, made their way into the frameworks for negotiation with Turkey and Croatia. However, there were in some instances, in line with the European Council's agreement that each framework for negotiations would address 'the specific situations and characteristics of each candidate State (Council of the European Union, 2005b: point 23), subtle and not-so-subtle differences in the language used. First, while references to the 'open-ended' nature of negotiations and the objective of accession were included in both the negotiation frameworks, the possibility of a candidate not being able to assume the obligations of membership and what to do then is only referred to in the framework for negotiations with Turkey. In doing so, the EU commits to ensuring that Turkey is 'fully anchored in the European structures through the strongest possible bond' (Conference on Accession to the European Union – Turkey, 2005: points 2). None of the subsequent negotiation frameworks for Iceland, Montenegro and Serbia includes a reference to either the possibility of the candidate not being able to assume obligations of membership or to an alternative relationship.

Second, there are differences in the assessment bases for the opening negotiations with specific conditions included for each candidate. Croatia, as is the case with all Western Balkan candidates, was required to meet, in addition to the political criteria set out by the Copenhagen European Council in 1993, the conditionalities of the Stabilization and Association Process (SAP). While Croatia was deemed in its framework for the negotiations to have met the political criteria, Turkey was only deemed to have 'sufficiently' met the political criteria. Consequently the Union expected Turkey 'to sustain the process of reform' with particular note being made of the need 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' (ibid: point 4).<sup>8</sup> These differences are carried forward into the assessment bases for making progress in the negotiations and are expanded. For both Croatia and Turkey assessments will be based on fulfilment of the Copenhagen criteria, promoting good neighbourly relations, the fulfilment of obligations arising out of existing agreements with the EU; and undertaking to resolve any border disputes in accordance with the UN Charter, relevant UN Conventions and if necessary compulsory jurisdiction of the ICJ. Specifics were also included.

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<sup>8</sup> Croatia meanwhile was expected 'to continue to fulfil the political criteria and to work towards further improvement in the respect of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law; to cooperate fully with the International Criminal Tribunal for the former Yugoslavia; and to make further progress in relation to minority rights, the return of refugees, judiciary reform, regional cooperation and the fight against corruption (Conference on Accession to the European Union – Croatia, 2005: point 12).

Whereas Croatia was expected to demonstrate a ‘strong contribution ... to the development of closer regional cooperation in accordance with the [2003] Thessaloniki Agenda for the Western Balkans and ‘[sustain] full co-operation with the ICTY’ (Conference on Accession to the European Union – Croatia, 2005: point 13),<sup>9</sup> the emphasis in Turkey’s case was on its Cyprus and 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’ (Conference on Accession to the European Union – Turkey, 2005: point 6).

A third difference relates to the provision for ‘intensive political and civil society dialogue’ with a view to ‘enhance mutual understanding by bringing people together’. In the Croatian case, there is also reference to ‘cultural cooperation’ (Conference on Accession to the European Union – Croatia, 2005: point 14). No such reference appears in the framework for negotiations with Turkey although it does include an additional aim to the dialogue of ‘ensuring the support of *European* citizens for the accession process’ (Conference on Accession to the European Union – Turkey, 2005: point 6, emphasis added). This reflects the fact that public support for Turkey’s accession within the EU has never been particularly strong, in fact it has tended to be sceptical and significantly so in several member states.<sup>10</sup>

A fourth and rather pointed difference between the two frameworks for negotiation is that the text in Turkey’s case there is explicit provision for consideration to be given to ‘[l]ong transitional periods, derogations and permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures’ (ibid: point p.12). At the time of the wording’s adoption, it was suggested that such clauses might facilitate reaching agreement among member states on admitting

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<sup>9</sup> With regard to the ICTY conditionality, the Commission was invited ‘to continue to monitor this closely, on the basis of regular reports from the ICTY, and report to the Council if full co-operation is not maintained’. Commission assessments of co-operation with the ICTY would form part of its reports to the Council on Croatia’s fulfilment of the political criteria. It was stressed that ‘less than full co-operation with the ICTY at any stage would affect the overall progress of the negotiations and could be grounds for triggering the [suspension] mechanism in paragraph 12 of the negotiating framework’ (Conference on Accession to the European Union – Croatia, 2005: point 13)

<sup>10</sup> In the later frameworks for negotiation with Iceland, Montenegro and Serbia the stated aim of civil society dialogue is ‘bringing people together and ensuring the support of citizens for the accession process’; the reference to ‘European’ citizens is dropped. This would appear to reflect the need to bolster support from both EU citizens and those of the candidate country citizens for accession. A more cynical interpretation is that in referring to ‘European citizens’ in the framework for negotiations with Turkey, the EU was consciously differentiating between ‘European’ and ‘Turkish’ citizens and suggesting the latter need not necessarily be considered as ‘European’.

Turkey as a formal member of the EU but without it being accorded all the rights of membership. The free movement of workers might be restricted or Turkey might only have partial access to the Common Agricultural Policy. Technically, the same 'long' transitional measures, 'derogations' and 'permanent safeguard clauses' could be included as part of the accession of other states negotiating accession. This follows the indirect reference to them in the reference to 'the second bullet point of paragraph 23 of the European Council conclusions of 16/17 December 2004' that appears not only in the framework for negotiations with Croatia, but in the frameworks for negotiations with Iceland, Montenegro and Serbia (Conference on Accession to the European Union – Croatia, 2005: point 19).<sup>11</sup>

Finally, the two frameworks for negotiation adopted in 2005 differ in their consideration of the significance of the EU's 'absorption capacity' for the progress and outcome of negotiations. Both make reference to the issue, stating that the EU's capacity to absorb each new member 'is an important consideration in the general interest of both the Union and [Croatia/Turkey]'. Only in Turkey's case, however, does the framework for negotiation, initially through reference to the Commission's 2004 paper assessing the effects on the EU and its policies of Turkey's 'possible accession', enter into specifics. The paper considers seven issues relating to Turkey's membership 'perspective': the geopolitical dimension; the economic dimension; the internal market and related policies; agriculture, veterinary and phytosanitary issues, fisheries; regional and structural policy; justice and home affairs; institutional and budgetary aspects (European Commission, 2004). The framework for negotiation charges the Commission with monitoring, in line with 'the whole range of issues' contained in the report, the EU's capacity to admit Turkey. The purpose of the monitoring is 'to inform an assessment by the Council as to whether this condition of membership [i.e. the EU's absorption capacity] has been met' (Conference on Accession to the European Union – Turkey, 2005: point 3). Later on, the framework for negotiations stresses the importance of the financial consequences of Turkish accession. These, it notes, 'must be allowed for in the applicable Financial Framework'. And, given 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'. Moreover, '[a]ny arrangements should ensure that the financial burdens are fairly shared between all Member States' (ibid: point 13). The reference specially to the 2014 financial framework reflected the optimism in some EU quarters that negotiations could be concluded within a reasonable timeframe which clearly

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<sup>11</sup> See Conference on Accession to the European Union – Iceland (2010: point 25); Conference on Accession to the European Union – Montenegro (2012: point 33); Conference on Accession to the European Union – Serbia (2014: point 33).

has not been the case. This does not nullify the provision since it can be reasonably argued, given the financial and political challenges associated with reaching agreement – if at all – among the member states, that Turkey’s accession will be conditional on a multi-annual financial framework providing for the necessary finances being agreed.

### **3. Negotiating Accession: a revised approach (2012-)**

The experiences of ‘eastern’ enlargement and of negotiating with Croatia, coupled with a general desire, in part fuelled by popular scepticism about enlargement, to ensure the credibility of the process, and mindful that there is a commitment to the countries of the Western Balkans, how the EU negotiates accession has been further refined. A number of refinements appeared in the framework for negotiations with Iceland, but a more complete set of refinements was first included in the framework for negotiations with Montenegro which was adopted on 27 June 2012. The framework for negotiations with Serbia, adopted on 9 January 2014, contains the same set, albeit with some further adjustments and innovations. Five refinements stand out.<sup>12</sup>

#### **3.1. Opening Negotiations**

The first concerns the threshold for opening accession negotiations. Whereas negotiations in 2005 had been opened on the basis that Turkey had ‘sufficiently’ met the political criteria set out at Copenhagen in 1993 and Croatia had met these criteria as well as the SAP conditionalities, negotiations with Montenegro and Serbia were only opened once they had achieved ‘a high degree of compliance with the membership criteria’ (Conference on Accession to the European Union – Montenegro, 2012: point 21; Conference on Accession to the European Union – Serbia, 2014: point

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<sup>12</sup> There are other refinements of note. Transparency of the negotiations – the frameworks for negotiations with Montenegro and Serbia state: ‘In order to strengthen public confidence in the enlargement process, decisions will be taken as openly as possible so as to ensure greater transparency. Internal consultations and deliberations will be protected to the extent necessary in order to safeguard the decision[-]making process, in accordance with EU legislation on public access to documents in all areas of Union activities’ (Conference on Accession to the European Union – Montenegro, 2012: point 30; Conference on Accession to the European Union – Serbia, 2014: 30). The issue is not only about public confidence but also about challenging the ideas of EU enlargement and integration sceptics. Arrangements for accession to the Schengen area – here there is a partial communitarization of the process by which the Council decides on admitting Montenegro to the area. Its decision will be taken ‘taking into account a Commission report confirming that Montenegro continues to fulfil the commitments undertaken in the accession negotiations that are relevant for the Schengen *acquis*’ (Conference on Accession to the European Union – Montenegro, 2012: point 36; Conference on Accession to the European Union – Serbia, 2014: 36). Statistical data – Montenegro and Serbia are required to provide a ‘reliable and comparable statistical data on reform implementation’ (Conference on Accession to the European Union – Montenegro, 2012: point 45; Conference on Accession to the European Union – Serbia, 2014: 48).

21).<sup>13</sup> Simply ‘meeting’ the criteria was no longer sufficient. Given the emphasis on ‘strict conditionality’ in the European Council’s 2006 ‘renewed consensus on enlargement’ such a move was to be expected. And reference to the ‘renewed consensus’ in each framework for negotiations testifies to this.

### 3.2. Prioritizing the Problematic

The second refinement represents a reversal of established practice in accession negotiations in that rather than leave those chapters where the candidate is facing most difficulties and challenges in adopting the *acquis* to later in negotiations, they are to be opened sooner. As the frameworks for negotiating with Montenegro and Serbia state: ‘Policy areas in which particularly serious efforts are required by [Montenegro/Serbia] to align legislation with the *acquis* and to ensure its implementation and enforcement will be addressed at an early stage in the accession negotiations’ (Conference on Accession to the European Union – Montenegro, 2012: point 40; Conference on Accession to the European Union – Serbia, 2014: point 41).<sup>14</sup>

Beyond the general, these latest frameworks for negotiations require specifically that Chapters 23 and 24 are opened early: ‘Given the challenges faced and the longer-term nature of the reforms, the chapters "Judiciary and fundamental rights" and "Justice, freedom and security" should be tackled early in the negotiations to allow maximum time to establish the necessary legislation, institutions, and solid track records of implementation before the negotiations are closed (Conference on Accession to the European Union – Montenegro, 2012: point 42; Conference on Accession to the European Union – Serbia, 2014: point 43). That issues covered by these chapters need attention is highlighted earlier in the frameworks for negotiations. In Montenegro’s case, the framework for negotiations goes further than those with Croatia and Turkey in stressing the need to ‘ensure full implementation of key reforms, in particular in relation to judiciary reform, the fight against corruption and organised crime, media freedom, anti-discrimination and public administration reform’ (Conference on Accession to the European Union – Montenegro, 2012: point 22). In Serbia’s case, reference is also made to ‘independence of key institutions’ and ‘the protection of minorities’ (Conference on Accession to the European Union – Serbia, 2014: point 21)

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<sup>13</sup> They were also obliged to demonstrate respect for and a commitment to promote the EU’s founding values as set out in Article 2 TEU before accession negotiations could be opened (Conference on Accession to the European Union – Montenegro, 2012: point 22; Conference on Accession to the European Union – Serbia, 2014: 21).

<sup>14</sup> The same wording appears in the framework for negotiations with Iceland. See Conference on Accession to the European Union – Iceland (2010: Point 31)

This intended prioritization of the Chapters 23 and 24 was in evidence even before the framework for negotiations with Montenegro had been adopted. As envisaged by the European Council in December 2011, screening for these chapters had already commenced (*ibid*: point 39). However, any apparent sense of urgency to open the chapters soon was dispelled. The chapters were not opened until December 2013, so eighteen months after accession negotiations were launched.

### 3.3. Stressing Capacity

Also emphasised in the frameworks for negotiations with Montenegro and Serbia is the administrative capacity of the candidate to meet its obligations as a member state. In the frameworks for negotiations with Turkey and Croatia the focus is on each of the candidates 'bring[ing] its institutions, management capacity and administrative and judicial systems up to Union standards 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'. Similar language regarding timely and effective implementation is used in the Montenegrin and Serbian cases.<sup>15</sup> However, reflecting the higher threshold for opening negotiations, the emphasis is on ensuring that their 'institutions, management capacity and administrative and judicial systems are sufficiently *strengthened*' (Conference on Accession to the European Union – Montenegro, 2012: point 37; Conference on Accession to the European Union – Serbia, 2014: point 37 – emphasis added). To this end, with particular reference to the fight against corruption and organised crime and efforts to align to the EU *acquis*, the EU commits to provide technical assistance, 'making full use of the available pre-accession funds' (*ibid*). The frameworks for negotiations with Montenegro and Serbia also stress the need to for 'the necessary capacity and structures for the sound management and efficient control of EU funds'. A particular reference is also made to 'sound management and efficient control of EU funds' (*ibid*).

### 3.4. Chapters 23 and 24: Action Plans and Interim Benchmarks

A further refinement concerns the manner in which the prioritized *Chapter 23 – Judiciary and fundamental rights* and *Chapter 23 – Justice, freedom and security* will be 'tackled'. In a departure from previous accession negotiations, the frameworks for negotiations make explicit use of 'actions

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<sup>15</sup> In the Serbian case, the requirement in all the frameworks for negotiations for 'timely and effective implementation' of the *acquis* at the time of accession is expanded with the implementation of the *acquis* explicitly including its 'enforcement' Conference on Accession to the European Union – Serbia, 2014: point 31.

plans' as the basis for opening these chapters. The action plans are to be adopted by the Montenegrin and Serbian authorities in the light of the 'substantial guidance' provided by the Commission in its screening reports and will contain specific tasks, with 'where justified by exceptional circumstances' timetables laid down by the Council or Commission for specific measures to be adopted. These tasks constitute the benchmarks for the opening of Chapters 23 and 24 and it is for the Council to decide, on the basis of a Commission assessment, whether the benchmarks for opening the respective chapters have been met. When taking its decision the Council will – in a further refinement to existing practice – 'lay down interim benchmarks'. These will 'specifically target, as appropriate, the adoption of legislation and the establishment and strengthening of administrative structures and of an intermediate track record and will be closely linked to actions and milestones in the implementation of the action plans' (Conference on Accession to the European Union – Montenegro, 2012: point 42; Conference on Accession to the European Union – Serbia, 2014: point 43).

The focus on Chapters 23 and 24 is a clear response to the experience of eastern enlargement and the sense that the subsequent frameworks for negotiations with Croatia and Turkey did not adequately address the need to prioritize promotion of the rule of law and provide effective mechanisms to do so. The importance of Chapters 23 and 24 is also reflected in the monitoring regime. Whereas standard practice during eastern enlargement and since has been for the Council to receive 'Progress Reports' from the Commission on an annual basis, with Chapters 23 and 24 the Commission now provides twice yearly reports. Furthermore, where problems arise during the negotiations it may propose 'updated' benchmarks "including new and amended action plans, or other corrective measures, as appropriate' (Conference on Accession to the European Union – Montenegro, 2012: point 43; Conference on Accession to the European Union – Serbia, 2014: point 44). In addition to the interim benchmarks, provision is also made for the Council to adopt closing benchmarks. Reflecting further the increased thresholds that Montenegro and Serbia must meet, closing benchmarks, at least where Chapters 23 and 24 are concerned, require 'solid track records of reform implementation' (Conference on Accession to the European Union – Montenegro, 2012: point 42).

### 3.5. Chapters 23 and 24: Equilibrium clause

The fifth refinement of note is the so-called 'equilibrium clause'. This is the most innovative feature of the EU's revised approach to accession negotiations and once again highlights the increased focus of the EU on Chapters 23 and 24. Devised by the Commission, it links progress in negotiations in the

chapters 23 and 24 to progress overall. So, if progress in the chapters on judiciary and fundamental rights and on justice, freedom and security should lag ‘significantly’ behind progress in the negotiations overall, the Commission, ‘having exhausted all other available measures’, the Commission ‘will’ – not ‘may’ – ‘on its own initiative or on the request of one third of the Member States propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed’ (Conference on Accession to the European Union – Montenegro, 2012: point 25)(Conference on Accession to the European Union – Serbia, 2014: point 24). It is then for the Council to decide by a qualified majority whether to accept the Commission’s recommendation and so effectively put significant progress in other chapters on hold.

This linking of progress in all other unclosed chapters to progress in chapters 23 and 24 is a notable departure from existing practice. It places capacity to uphold rule of law issues at the core of negotiations. Negotiations remain focused on the formal adoption of the hard *acquis* of EU law, but progress and closure requires that the candidate state convince the Commission and the member states that it has the institutional – and especially the judicial – capacity to ensure the continued implementation of the *acquis*.

### 3.6. Serbia: normalization of relations with Kosovo

The emphasis on and special arrangements governing Chapter 23 and 24 clearly set the framework for negotiations with Montenegro apart from those with Croatia and Turkey. As expected they also appear prominently in the framework for negotiations with Serbia. What sets the latter apart, however, is the Kosovo-specific conditionalities that the framework for negotiations includes and the extent to which it draws on the special arrangements introduced for Chapter 23 and 24 to promote the pursuit of these by Serbia. The first reference to Kosovo is in the conditions governing the advancement of negotiations. In addition to the standard requirements relating to Copenhagen and SAP conditionalities – which includes improved relations with Kosovo [CHECK/COMPARE LANGUAGE], the framework for negotiations with Serbia also states that progress in negotiations will be conditional on ‘Serbia’s ‘s continued engagement, in line with the Stabilisation and Association process conditionality, towards a visible and sustainable improvement in relations with Kosovo. This process shall ensure that both can continue on their respective European paths, while avoiding that either can block the other in these efforts’ (Conference on Accession to the European Union – Serbia, 2014: point 23). More importantly, the engagement should ‘gradually lead to the

comprehensive normalisation of relations between Serbia and Kosovo'. This normalization is to take 'the form of a legally binding agreement by the end of Serbia's accession negotiations, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities' (*ibid*). Although the framework for negotiations spells out specific requirements for Serbia in terms of what is expected in terms of 'engagement',<sup>16</sup> the expectations of 'normalisation' are left to *Chapter 35: Other issues* and as 'a specific item, which should be tackled early in and throughout the accession negotiations process' (*ibid*).

Reference is also made to the fact that normalization should also be tackled 'in duly justified cases in other relevant chapters' (*ibid*) and to this end dedicated provisions are included requiring that:

'Serbia 'ensure[s] that its position on the status of Kosovo does not create any obstacle nor interfere with Serbia's implementation of the acquis. Any such obstacles will be addressed in the course of the negotiations in the context of the chapter of the acquis concerned. As part of its efforts to align with the EU acquis, Serbia shall in particular ensure that adopted legislation, including its geographical scope, does not run counter to the comprehensive normalisation of relations with Kosovo (*ibid*: point 38).

As with Chapters 23 and 24, special monitoring arrangements are set out with the Commission and the High Representative assigned to 'monitor closely' and report to the Council 'as appropriate, and at least twice yearly', on Serbia's efforts towards the normalisation of relations (*ibid*, point 46). Moreover, the framework for negotiations with Serbia draws specifically on the system of action plans and benchmarking provided for in relation to 23 and 24 and applies them – 'with a particular focus on the setting and updating of interim benchmarks' – to Serbia's normalization of its relations with Kosovo (*ibid*, point 45). It also imports the equilibrium clause. Consequently, if progress in the normalization of relations with Kosovo should lag 'significantly' behind progress in the negotiations overall, the Commission, 'having exhausted all other available measures', 'will on its own initiative or on the request of one third of the Member States propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed' (*ibid*: point 24). It is then for the Council to decide by a qualified

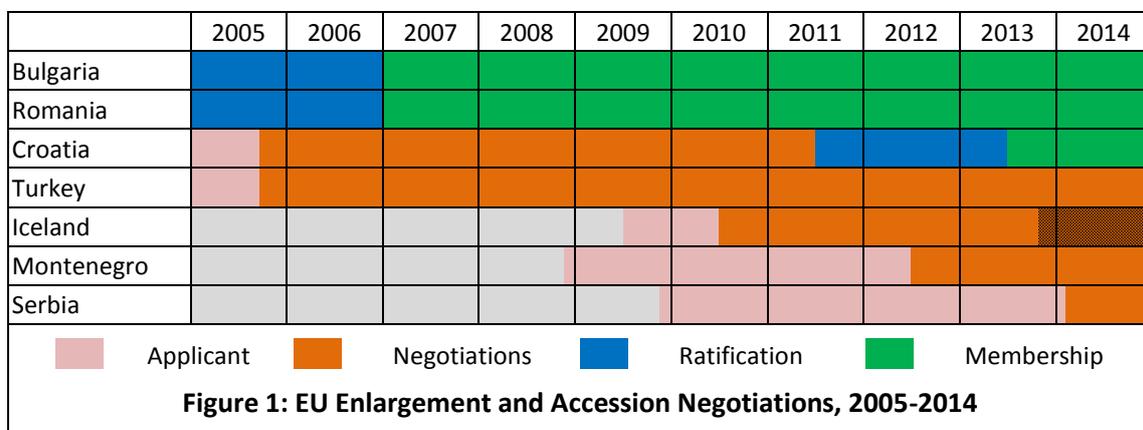
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<sup>16</sup> 'Specifically, Serbia is expected to continuously: a) Implement in good faith all agreements reached in the dialogue with Kosovo; b) Fully respect the principles of inclusive regional cooperation; c) Resolve through dialogue and spirit of compromise other outstanding issues, on the basis of practical and sustainable solutions and cooperate on the necessary technical and legal matters with Kosovo; d) Cooperate effectively with EULEX and contribute actively to a full and unhindered execution by EULEX of its mandate throughout Kosovo' (Conference on Accession to the European Union – Serbia, 2014: point 23).

majority whether to accept the Commission’s recommendation and so effectively put significant progress in other chapters on hold.

#### 4. Turkey: a sui generis case?

During the nine years since it launched accession negotiations with Turkey the EU’s approach to negotiating accession has continued to evolve. The framework for negotiations with Turkey agreed in October 2005 heralded an era of more explicit and demanding requirements compared to previous enlargements. In terms of current norms, expectations and procedure, as exemplified by the more recent frameworks for negotiations with Montenegro and Serbia, the framework for negotiations with Turkey appears rather dated. How the EU approaches negotiations and what it expects and requires of candidates has been revised in the light of a series of important enlargement-related developments since 2005 (see Figure 1). Bulgaria and Romania have joined the EU, Croatia has completed negotiations and become the EU’s 28<sup>th</sup> member states, negotiations with Iceland have been launched (only later to be effectively suspended), and frameworks for negotiations with Montenegro and Serbia adopted and negotiations opened. This begs the question: to what extent have such developments impacted on Turkey’s accession negotiations?



##### 4.1. Stalled Negotiations

In practice the impact might be expected to be limited given that Turkey’s negotiations have effectively stalled. One might indeed argue that they are only formally still ongoing because neither side wishes to take responsibility for calling them off. In June 2006, a first chapter – *Chapter 25 – Science and research* – was opened and immediately ‘provisionally closed’ (see Figure 2). Six months later, however, the Council agreed that six chapters could not be opened until Turkey had fulfilled its

obligation of ‘full non-discriminatory implementation of the Additional Protocol to the Association Agreement’ – i.e. opened its ports and airports to traffic and trade from Cyprus (see Figure 3). This did not prevent five chapters being opened in 2007 and a further four in 2008. In the meantime, however, in 2007 France declared that it was unprepared to see five chapters most directly related to membership, only one of which was covered by the Council’s 2006 decision, being opened. Two years later, in June 2009, the Council did reach agreement on opening *Chapter 16 – Taxation*. Six months later it also opened *Chapter 27 – Environment*. However, Cyprus immediately announced that it was unilaterally blocking negotiations on a further six chapter being opened. Since 2009 only two more chapters have been opened (See Figure 4). In June 2010 the Council agreed to open *Chapter 12 – Food safety, veterinary and phytosanitary policy*. In November 2013, and with France lifting its 2007 veto, agreement was reached on opening *Chapter 22 – Regional policy and coordination of structural instruments*. Still, only one of 34 negotiating chapters has been provisionally closed. In the light of such paltry progress, the assumption contained in the framework for negotiations that the EU’s multi-annual financial framework for 2014-2020 would provide for Turkish accession – and it understandably clearly does not – appears in retrospect to be one of the more extreme examples of naïve optimism in the history of EU enlargement.

Neither Turkey nor the EU has, however, abandoned the negotiations. Indeed the Commission continues to push for chapters to be opened and for progress in negotiations. In its 2013 enlargement strategy report it once again stressed that the full potential of the EU-Turkey relationship could only be realised within the framework of ‘an active and credible accession process’ arguing that it was in the interest of both Turkey and the EU that opening benchmarks for Chapter 23 and 24 be agreed ‘as soon as possible’ and negotiations opened (European Commission, 2013: point 17). It has also signalled informally to Turkish officials its view that a range of opening and closing benchmarks for some chapters have been met and if the political will can be found relevant chapters could be opened or closed (Interview, Brussels, 3 July 2014). In addition, the Commission has launched – in May 2012 – a ‘Positive Agenda’ aimed at reviving the accession process. This involves eight working groups assisting Turkey in aligning its domestic policies and legislation with key areas of the *acquis communautaire*. The areas covered include: visas, mobility and migration, energy, trade and the customs union, political reforms, fight against terrorism, foreign policy dialogue and participation in EU programmes. Reaction to the Positive Agenda has been mixed with critics regarding it as a thinly disguised alternative to negotiations and a precursor to the latter’s abandonment. This is not a view shared by the Commission which denies this latest form of ‘enhanced cooperation’ is a substitute for negotiations, instead maintaining that it

‘support[s] and complement[s]’ them (European Commission, 2013: 40). Viewed as a de facto ‘proxy’ for negotiations (Interview, 22 July 2014), the Positive Agenda at least allows formal discussions to be held on as yet unopened chapters. Significantly the first meeting was dedicated to issues covered in Chapter 23, currently blocked formally by Cyprus, the EU’s then Commissioner for enlargement, Stefan Füle, declaring: ‘I agree with those that believe it is important to have chapter 23 opened as early as possible, so that Turkey and the European Union have a process within which progress can be made. I regret to say that to date this has not been possible. However, the positive agenda offers an avenue that will indeed allow us to go ahead’ (Füle, 2012).

This prioritization of Chapter 23 issues in the Positive Agenda provides an initial example of how Turkey’s accession negotiations, irrespective of how *sui generis* Turkey’s candidacy may be and how stalled the negotiations are, are far from immune from the impact of the adjustments and innovations the EU has introduced as it has revised its approach to negotiating the accession of candidates. Indeed it is one of several examples that can be noted.<sup>17</sup>

#### 4.2. Revising the Framework for Negotiations

If and when the EU opens more chapters in its negotiations on Turkish accession and some life is breathed into the negotiations one question that arises is whether the framework for negotiations with Turkey should be revised. The framework is, after all, almost ten years; the EU has moved on and the manner in which it negotiates accession has clearly evolved. And given the principle that applicants should be negotiating according to the same principles and criteria, a credible case can be made that the framework for negotiations with Turkey should be updated to bring it in line with revised requirements and procedures set out in the frameworks for negotiations with Montenegro and Serbia.

To date, and despite the assorted refinements noted above, the text of the framework for negotiations with Turkey remains unchanged. No revision has been made or even proposed, although the case for doing so is acknowledged (Interview, Brussels, 22 July 2014) and there is no procedural, legal or technical obstacle to revising a framework for negotiations, even if there is no precedent. Preventing any move to introduce refinements is the broad consensus that to re-open the content of the framework for negotiations would be to re-open Pandora’s Box only to be unable to close it. It needs to be remembered that the content and language of the framework for

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<sup>17</sup> The following sections draw significantly on interviews conducted with Turkish and Commission officials during June and July 2014.

negotiations with Turkey contains a number of hard-fought compromises that one or more member states would at best most likely want to re-visit and at worst be unwilling to support were it required to vote in favour of the framework a second time. Neither France nor Germany nor Cyprus would be likely to endorse the goal of Turkish accession (Interview, Brussels, 2 July 2014); and there are likely to be other member states similarly minded. It is also clear that there would be opposition to certain refinements being imported. Considerable scepticism exists, for example, towards emulating the framework for negotiations with Serbia and incorporating an equilibrium clause that makes progress in negotiations conditional on the normalization of relations with Cyprus. It is also clear that Turkey has no desire at all to see the framework for negotiations revised (Interview, Brussels, 5 June 2014), even if a shift towards a more technocratic approach could help depoliticize elements of the negotiations. The formal requirement for opening and interim benchmarks and the imposition of equilibrium clauses hold no attraction.

However, while there is no formal intention to revise formally the framework for negotiations with Turkey and so update it to bring it in line with the more recently adopted frameworks for negotiations with Montenegro and Serbia, it is clear that the refinements included in the latter either informally exist, are being in effect implemented or are likely to feature either explicitly or implicitly in Turkey's EU accession negotiation once – and assuming – they are revived. This is in part because of their intrinsic value in assisting the preparations for accession; political realities intervene too. And there are also voices conscious that presentationally the EU will find it hard to justify one dated approach for Turkey and a more intensive and demanding approach for others.

#### 4.3. Prioritizing the Problematic

Although the stalled nature of Turkey's accession negotiations has provided no real opportunity for the EU to prioritize the opening of more problematic negotiating chapters, it is clear that the principle is informing the Commission's strategy regarding relations and negotiations with Turkey and influencing the priorities of the Positive Agenda launched in 2012. Successive Commission progress reports on Turkey and strategy papers on enlargement have urged progress towards the opening of Chapters 23 and 24. In 2013 the Commission was forthright on the matter and explicitly linked progress in the accession negotiations and progress in the political reforms in Turkey as 'two sides of the same coin' (European Commission, 2013: point 17). Moreover, the early focus of the Positive Agenda has been very much these chapters. The first of the eight working groups to commence work in 2012 was on Chapter 23. In addition, the Commission has urged the Turkish

government to focus on rule of law issues in its peer assessments of preparations for accession. The EU has also been focusing on rule of law issues in meetings of the EU-Turkey Association Committee and Association Council. As far as Turkish officials are concerned, the elevated status of Chapters of 23 and 24 'is not valid for Turkey' (interview, Brussels, 5 June 2014), but there is little that can be done to resist the EU's prioritization of these chapters.

#### 4.4. Action Plans and Benchmarks

While the framework for negotiations with Turkey makes no mention of Actions Plans, de facto Action Plans have long been an informal feature of the process for opening chapters and Turkey has accepted this. Turkish officials also anticipate extensive use of opening benchmarks although there is some uncertainty as to whether the EU will in fact proceed with too many technical benchmarks since this would help depoliticise the opening of chapters. Interim benchmarks have yet to feature, not least because neither Chapter 23 nor Chapter 24, where they are envisaged, has been opened. The clear Turkish preference is to avoid such benchmarks, the obvious concern being that they would make accession more difficult. However, for the Commission, interim benchmarks are almost certainly to be used, the question already having been raised. Precedents exist as well. De facto interim benchmarks were, where the EU adopted interim common positions, part of the eastern enlargement negotiations. And, once again, presentationally, it will be difficult for the EU to justify their non-use when they are an essential element of the process for progressing negotiations on Chapters 23 and 24.

As to the thresholds to be met within the benchmarks, here too, even if it wished to, the EU would find it extremely difficult, if not impossible, to set and justify lower standards from Turkey than from other candidates negotiating accession. Assuming negotiations are revived the benchmarks that are adopted will be as demanding for Turkey as they are for others, irrespective of what the 2005 framework for negotiations requires. The dynamic within the enlargement process, especially the emphasis on implementation of the *acquis* and solid track records of compliance 'will for sure be felt' by Turkey (Interview, Brussels, 2 July 2014).

#### 4.5. Equilibrium Clause – Chapters 23 and 24

Given the lack of interest and political will to revise the framework for negotiations, it follows that Turkey will be spared an equilibrium clause linking progress in the negotiations overall to progress in Chapters 23 and 24. This does not mean that there is no interest in such a clause within the EU. The

Council has in fact already discussed the matter and there is support within the Commission for such a clause. It has not yet though been raised by the EU with Turkey; it is regarded by one Turkish official, however, as very much ‘an elephant’ in the room (Interview, Brussels, 5 June 2014)

And had the framework for negotiations been concluded later than 2005 such a clause could well have been included. It was a matter of timing. The clause’s inclusion in the framework for negotiations with Serbia and Montenegro was inspired by the fact that the delay clause contained in the Treaty of Accession governing the 2007 enlargement proved to be unusable; a more flexible and usable mechanism focused on rule-of-law reforms was therefore sought for future accession negotiations. By this time, however, the framework for negotiations with Croatia and Turkey had already been concluded. So, all that the EU has to hand if Turkey’s fails to progress in meeting or continuing to meet the criteria for accession is the general suspension clause. Using it would – just like the delay clause governing the accession of Bulgaria and Romania – be a ‘nuclear option’ (Interview, 22 July). Adopting, whether within the framework for negotiations or more likely through an alternative means, an equilibrium clause has its attractions for the EU.

#### 4.6. Equilibrium Clause – normalization

The idea of an equilibrium clause linking progress in Turkey’s accession negotiations overall to progress in and/or the normalization of relations with Cyprus has also received interest. At present, the Council’s 2006 decision declaring that Chapters 1, 3, 9, 11, 13, 14, 29 and 30 will not be opened until Turkey has fulfilled its obligation of ‘full non-discriminatory implementation of the Additional Protocol to the Association Agreement’ acts as a form of equilibrium clause but its scope is limited. Moreover, ‘full non-discriminatory implementation of the Additional Protocol’ would not in itself amount to *the* normalization of relations even if would entail progress in this direction. Its weakness as a form of equilibrium clause is also reflected in the fact that once ‘full non-discriminatory implementation of the Additional Protocol’ has been achieved and the chapters are opened, the Council’s decision falls (although the Council could make progress in the negotiation of these chapters conditional on the sustained implementation of the Additional Protocol). If a link between progress in negotiations more generally and the normalization of relations with Turkey were needed – and it cannot be ruled out that Cyprus and most likely the other members states too would want a mechanism to safeguard against backsliding – then a case could be made for an equilibrium clause. Needless to say, such a clause would be opposed by Turkey, even though there is an acceptance

among Turkish officials that an implicit requirement of the accession process is that relations with Cyprus are normalised.

Agreeing and inserting a clause in the framework for negotiations would be a major challenge for the EU. Indeed, as noted (see 4.2) considerable scepticism exists towards adopting a clause. There are member states wholly opposed to granting Cyprus in effect its own a special veto over the negotiations. Were a clause adopted, however, rather than formally inserting it in the framework for negotiations, it could be introduced simply through agreement among the member states.

### Conclusion

Despite the protestations that EU-Turkey relations and Turkey's accession process are *sui generis* – and it is striking how much Turkish officials maintain this line – it is clear that the accession negotiations and the EU's approach to them have not been unaffected by developments in EU enlargement more broadly. Just as the prospect of opening accession negotiations with Turkey cast its shadow over how the EU actually worded its framework for negotiations with Croatia, so too do completed and ongoing negotiations as well as enlargement experiences cast their shadow over Turkey's negotiations. The framework for negotiations remains unchanged and negotiations may in practice be stalled, but there are clear indications that the EU's 'revised approach' to negotiating accession is casting its shadow over how the EU is 'negotiating' – and intends to negotiate – with Turkey. Thresholds for accession have been raised since Turkey's negotiations were launched in 2005; new elements to the process and new mechanisms have been introduced. Assuming they are revived, Turkey's accession negotiations promise to be far more demanding than originally envisaged.

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**Figures 2-4**

4	Free movement of capital	19.12.2008
6	Company law	17.06.2008
7	Intellectual property law	17.06.2008
10	Information society and media	19.12.2008
12	Food safety, veterinary and phytosanitary policy	30.06.2010
16	Taxation	30.06.2009
18	Statistics	25.06.2007
20	Enterprise and industrial policy	29.03.2007
21	Trans-European networks	19.12.2007
22	Regional policy and coordination of structural instruments	05.11.2013
25	Science and research	12.06.2006
27	Environment	21.12.2009
28	Consumer and health protection	19.12.2007
32	Financial control	26.07.2007

**Figure 2: EU-Turkey Accession Negotiations: Opened Chapters**

1	Free movement of goods
3	Right of establishment and freedom to provide service
9	Financial services
11	Agriculture and rural development
13	Fisheries
14	Transport policy
29	Customs union
30	External relations

**Figure 3: Negotiating Chapters whose Opening is conditional on Turkey implementing Additional Protocol**

2	Freedom of movement of workers	Cyprus
11	Agriculture and rural development	France
15	Energy	Cyprus
17	Economic and monetary policy	France
22	Regional policy and coordination of structural instruments*	France
23	Judiciary and fundamental rights	Cyprus
24	Justice, freedom and security	Cyprus
25	Education and culture	Cyprus
31	Foreign, security and defence policy	Cyprus
33	Financial and budgetary provisions	France
34	Institutions	France

\* block since lifted

**Figure 4: Negotiating Chapters whose opening France (2007) and Cyprus (2009) announced they were blocking**

## Appendix 1 The General Negotiating Framework

### Annex I

#### I Key Components for the Opening Statement

##### B. NEGOTIATING BASES: PRINCIPLES

- Statement that accession implies full acceptance by the applicant country of the actual and potential rights and obligations attaching to the Union system and its institutional framework, known as the "acquis" of the Union. The new Member States will have to apply this as it stands at the time of accession. Statement that accession also implies effective implementation of the "acquis" by the applicant country, which requires the establishment of an efficient, reliable public administration. The "acquis" is constantly evolving and includes:
  - = the content, principles and political objectives of the Treaties (including those of the Amsterdam Treaty);
  - = legislation adopted pursuant to the Treaties, and the case law of the Court of Justice;
  - = statements and resolutions adopted within the Union framework;
  - = joint actions, common positions, declarations, conclusions and other acts within the framework of the common foreign and security policy (CFSP);
  - = joint actions, joint positions, conventions signed, resolutions, statements and other acts agreed upon within the framework of justice and home affairs (JHA);
  - = international Agreements concluded by the Community and those concluded among themselves by the Member States with regard to Union activities.
- Statement that any specific arrangements under the Association Agreement which depart from the "acquis" of the Union cannot be considered as precedents in the accession negotiations.
- Section setting out the approach of the Union in relation to the common foreign and security policy and justice and home affairs (including the integration of the Schengen "acquis") with the entry into force of the Amsterdam Treaty in prospect.
- Statement that, in accordance with the conclusions of the Copenhagen European Council, the Union should be capable of absorbing new members, while maintaining the momentum of European integration.
- Statement that 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 ensure that the institutional structures of the Union are not weakened or diluted, or its powers of action reduced.
- Section explaining that the acceptance of these rights and obligations by a new Member State may give rise to technical adjustments and exceptionally to non-permanent transitional measures as defined during the accession negotiations (limited in time and scope, and accompanied by a plan with clearly defined stages for application of the "acquis"), but can in no way 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 the applicant countries.
- Negotiations with the different applicant countries will be conducted on the basis of the same principles and criteria, but separately and according to the individual merits of each applicant country. Their progress and conclusion are not required to take place in parallel.

- The individual progress of each applicant country in preparing for accession will contribute, within a framework of economic and social convergence, to the advancement of the negotiations, taking into account:
  - = the Copenhagen and Madrid criteria, i.e. membership requires of the applicant country:
    - 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 as well as 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;
    - administrative capacity;
  - = the objective of a high level of nuclear safety and environmental protection;
  - = undertakings to resolve any border disputes within the framework of the Stability Pact procedures or by means of other dispute settlement methods laid down in the United Nations Charter, including the prior, compulsory jurisdiction of the International Court of Justice;
  - = the Association Agreements; partnerships for accession, including compliance with intermediate priorities laid down in those partnerships (CCEE).
- Acceptance by each applicant country of the principle that its application forms part of the inclusive enlargement process established by the European Council.
- Undertaking by the applicant countries, within the framework of their policies towards third countries and within international organizations, particularly the WTO, to align progressively – with a view to their accession – on the policies and positions adopted by the Community and its Member States.

Source: European Union – the Council (1997: 49-51)