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New Perspectives on Turkey-EU Relations

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1- Overview

Turkey is the only pluralist secular democracy in the Islamic world and has always attached great importance to developing its relations with other European countries ever since the establishment of Turkish Republic in 1923. In 1959, shortly after the creation of the European Economic Community (EEC) in 1958, Turkey made its first application to join. The ensuing negotiations resulted in the signature of the Agreement Creating an Association between the Republic of Turkey and the European Economic Community (the "Ankara Agreement") on 12 September 1963. This agreement aimed at securing Turkey's full membership in the EEC through the establishment in three phases of a customs union which would serve as an instrument to bring about integration between the EEC and Turkey.

While, the Ankara Agreement was a framework agreement which only determined the main goals of the parties, the Additional Protocol of 13 November 1970 set out in a detailed fashion how the Customs Union would be established. It provided that the EEC would abolish tariff and quantitative barriers to its imports from Turkey (with some exceptions including textile) upon the entry into force of the Protocol, whereas Turkey would do the same in accordance with a timetable containing two time-tables set for 12 and 22 years, and called for the harmonisation of Turkish legislation with that of the EU in economic matters.

Additional Protocol brought significant advantages for Turkey's agricultural exports to the EEC. 92% of Turkish agricultural exports in 1971 benefited from this regime. Despite other agricultural producers such as Greece, Portugal and Spain later becoming member states and the EEC's conclusion of preferential trade agreements with certain Mediterranean countries, Turkey preserves even today its position as one of the EU's most privileged trading partners. On the other hand, the Additional Protocol, like Ankara Agreement, was not implemented in full. Otherwise, the free movement of goods and services and the harmonisation of Turkish legislation with that of the EU would have been achieved at the end of the 22 year-timetable.

The "final phase" envisaged in the Ankara Agreement was to complete the establishment of a customs union between the EC and Turkey. On 6 March 1995, Association Council adopted a "Customs Union Decision (Decision No 1/95)" on implementing the final phase of customs

union between Turkey and the EC. In this way, 22 years of “transition phase” envisaged in the Additional Protocol was finished as of 1 January 1996 and the final phase was initiated on the way to accession of Turkey to EU.

The European Council granted the status of candidate country to Turkey in December 1999 and accession negotiations were opened in October 2005. Within the framework of accession negotiations, 16 chapters have been opened so far and one of these was (science and research) provisionally closed. The preparatory documents were submitted to the Council for chapters 15 on energy, 26 on education and culture and 31 on foreign, security and defence policies, without prejudice to Member States’ positions in accordance with the existing rules. Preparatory documents for chapters 23 on judiciary and fundamental rights and 24 on justice, freedom and security are in the process of being finalised. The conclusions adopted by the European Council in 2006 are still in force. According to these conclusions, negotiations will not be opened on eight chapters relating to Turkey’s restrictions regarding the Republic of Cyprus. It is given to the fact that Turkey refuses to open its ports to Greek Cypriot vessels before the Union ends its isolation of Turkish Cypriots. These eight chapters consist of free movement of goods, right of establishment and freedom to provide services, financial services, agriculture and rural development, fisheries, transport policy, customs union and external relations. These are the most important components of the European single market. In addition to that, no chapter will be provisionally closed until the Commission confirms that Turkey has fully implemented the Additional Protocol and the Association Agreement.

When we consider the current situation of the EU-Turkey relations, there are two main issues coming forward. One of them is Customs Union and the other one is readmission and visa liberalisation.

2- Customs Union

Decision No 1/95 of the Association Council¹ imposed stronger obligations than the ones stated in the Ankara Agreement. According to Article 10 of the Agreement, customs duties on imports and exports and all charges having equivalent effect, quantitative restrictions and all other measures having equivalent effect which are designed to protect national production in a

¹ According to Article 6 of the Ankara Agreement, the Association Council is responsible for ensuring the implementation and the progressive development of the Association. It consists of members of the Governments of the Member States and members of the Council and of the Commission on the one hand and of members of the Turkish Government on the other.

manner contrary to the objectives of this Agreement between member states of the Community and Turkey shall be prohibited. Also Turkey commits to adopt the Common Customs Tariff of the Community in its trade with third countries and approximate to the other Community rules on external trade.

According to Decision No. 1/95 of the Association Council, customs union not only covers abolition of customs duties and all other measures having equivalent effect and adoption of Common Customs Tariff of the Community, but also stipulates the abolition of all distortive mechanisms that results unfair advantage over the other party. In line with this approach, Turkey is obliged to approximate its laws to the EU *acquis* in competition, intellectual property and common trade policy areas as well as free movement of goods.

Decision No 1/95 of the Association Council comprises the following chapters:

- Free movement of goods and commercial policy
- Agricultural products
- Customs provisions
- Approximation of laws
- Institutional provisions
- General and final provisions

Customs Union's dynamic effects positively contributed to competitiveness and productivity of Turkish manufacturing industry and were influential on the foreign direct investments in Turkey. Moreover, the structural changes and the competitiveness approach diversified production patterns and also ensured safe and high quality products. The infrastructure for technical legislation established in conformity with the EU system and adoption of EU's intellectual property and competition rules increased Turkey's competitiveness in global markets, thus enhanced its integration with the world economy.

However, there are also some problems stemming from the implementation of the Customs Union. The main difficulties could be summarised as; risks of trade diversion and unfair competition due to the reluctance of some of EU's free trade agreement (FTA) partner countries to conclude similar agreements with Turkey by taking into account the advantage of entering into Turkish market through the EU, lack of adequate participation in decision making mechanisms of the EU in areas relevant to the Customs Union, and also technical

barriers due to road quotas imposed by some EU Member States and visas applied for Turkish businessmen and truck drivers.

At the request of the European Commission, the World Bank conducted a study concerning the problems encountered during the implementation of the Customs Union. The report of this study was officially announced to the public in April 2014. In the report, the negative and positive effects of the Customs Union were evaluated, resolution of the problems stemming from asymmetric structure of the Customs Union was underlined and as a result it was proposed that facilitating the integration of trade between Turkey and EU would be beneficial for both sides.

On the other hand, economic developments and changes both in Turkey and the global trade since its introduction also necessitated the revision of the current status of the Customs Union. In this context, upon mutual understanding between the parties, Turkey and the EU held a series of technical meetings and a report determining the framework of negotiations was adopted. Accordingly, the update package includes subject areas for better implementation of the Customs Union and also foresees extending Customs Union's scope to services, public procurement together with furthering agricultural concession bilaterally.

Turkey's main approach for this process is that the revision of the Customs Union should proceed without creating an alternative path to Turkey's EU membership.² The European Commission asked the Council for a mandate to launch talks with Turkey to modernise the Customs Union. Soon after the mandate, actual negotiation process was expected to start by second half of 2017. However, the re-energised relations between the EU and Turkey have lost momentum after the last year's failed coup attempt and the following governmental measures. The European Parliament voted, by 479 votes to 37, to freeze accession negotiations with Turkey, condemning the Turkish government's "disproportionate repressive measures".³ Recently, on 16 August German Chancellor Merkel said, when asked about ties with Turkey during a live interview on You Tube "We are not opening new chapters in

² http://www.ab.gov.tr/customs-union_46234_en.html.

³ The procedure for suspending EU accession negotiations is set out in Article 5 of the Negotiating Framework for Turkey. This stipulates that "in the case of a serious and persistent breach in Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption."

Turkey accession bid and we have lowered membership preparation aid to a minimum. Also, for the time being the customs union deal with Turkey will not be changed or updated.’⁴

3- Readmission and Visa Liberalisation

Turkey provides both sea and land borders for the EU, which extend nearly 10.000 km in the EU’s southeast, in proximity to one of the world’s most conflicted regions. As a consequence, the recent refugee crisis and human tragedy rebooted EU-Turkey relations, which have been in a long period of stagnation. Turkey hosts the largest number refugees in the world (only Syrian refugees are more than 3 million), and thus an urgent need for cooperation on migration issues has marked a turning point in EU-Turkey relations. Under the slowly progressing, if not at all, and challenged negotiation framework, migration and asylum issues are dealt with under Chapter 24, titled ‘Justice, Freedom and Security’, which has been blocked by Cyprus since 2009. The main topics of this chapter involve Turkey’s adoption of the EU *acquis* in migration and asylum issues, in particular to develop a fully-fledged national status determination process, adopt the Schengen visa regime, develop integrated border management, develop legislation and institutional capacity to process asylum seekers and grant local protections for recognised refugees.

In this respect, the most crucial development relates to the signature of the EU-Turkey readmission agreement in 2013 and the following launch of visa liberalisation dialogue, which aims to end the visa requirement for Turkish citizens entering the Schengen area for short visit. The agreement covers both Turkish nationals and third-country citizens who have entered the EU illegally via Turkey. Asylum seekers and refugees would be exempted in line with international agreements. According to the joint action plan of November 2015 the agreement was going to become fully applicable in June 2016. However, it did not happened as the agenda of Turkish Government were full of other more urgent issues in the second half of 2016.

For the EU, completing the visa liberalisation process with Turkey is conditional on the progress of Turkey in fulfilling the requirements of the agreed roadmap and ensuring the application of readmission provisions. For Turkey, the full and effective implementation of the readmission agreement is highly dependent on the EU’s incentives to be clear and credible

⁴ <http://www.hurriyetdailynews.com/no-update-to-turkey-eu-customs-deal-for-now-german-chancellor-merkel.aspx?pageID=238&nID=116833&NewsCatID=344>.

on visa liberalisation and on concrete cooperation on migration and asylum issues.⁵ However, since the accession negotiations have been suspended, the EU's credibility and influence in Turkish politics is low and the EU has failed to enhance trust. Nevertheless, in the light of the refugee crisis in the Mediterranean and the increase in issues of concern to both parties, the EU-Turkey deal was agreed on 18 March 2016. Declared as EU-Turkey statement, it committed financial assistance of six billion euros in order for Turkey to strengthen its capacity to manage migration and refugees, organise joint return operations, open refugee reception centres, combat migrant smuggling and implement policies that will help refugees integrate into Turkish society.

At this point, it should be noted that Art. 41 of the Additional Protocol to the Association Agreement contains a standstill clause, which indicates that contracting parties are not allowed to introduce any new restrictions on the freedom of establishment and the freedom to provide services. Many decisions of the European Court of Justice involving Turkish citizens refer this Article, as demonstrated in the milestone Soysal case of February 2009. From Turkish perspective, actually Turkish citizens already possess rights that they are however unable to enjoy because of EU Member States' political resistance.

4- Alternatives for EU-Turkey Relations Other than Membership

Although the main choice and official standing of the Turkish government is to pursue accession negotiations to the full EU membership, under the current circumstances it might be useful to consider other options or alternatives for the future of EU-Turkey relations. One option could be a membership of the European Economic Area (EEA), which links Norway, Iceland and Liechtenstein to the EU. In EEA, members are fully integrated into the EU's single market for most of goods and services, but not for agriculture and fisheries. They are not in customs union with the EU, which allows them to strike free-trade deals with third countries, although this means their exports are also subject to rules-of-origin inspection. On the other hand, single market rules require them to accept the EU's four freedoms of movement of goods, services, capital and persons. They also have to observe laws which they have no authority in making and which (at least implicitly) are enforced by European judges. Members of the EEA make contributions to the EU budget on per-person basis.

⁵ Yildiz, Ayselin Gözde. "The European Union's Immigration Policy- Managing Migration in Turkey and Morocco". Palgrave Macmillan, 2016, pp.120-122.

The second option which is also being considered for the UK after the Brexit, is a Swiss model. Along with Norway, Iceland and Liechtenstein, Switzerland is a member of the European Free Trade Association (EFTA), but it is not in the EEA. It has two sets of complex bilateral deals with the EU that give privileged access to the single market for goods, though not for agriculture. On the other hand, it is outside the market for most services (including financial services). It is also outside the customs union. It has to observe the free movement of persons, and to accept most single-market laws. Switzerland makes a significant contribution to the EU budget.

The third and more realistic option for Turkey is the revision of Customs Union. All Member States are part of the same customs union and follow the same customs rules and procedures. This requires legislative alignment, adequate implementing and enforcement capacity, and access to the common computerised customs systems. Like San Marino and Andorra, Turkey is not EEA or EFTA or the single market, but it has formed a customs union with the EU for non-agricultural trade goods. This forces Turkey to apply common external tariffs fixed by the EU, but that brings the advantage that there are no barriers or rules-of origin checks on exports to the EU. As to the revision of the customs union, Turkey and EU could negotiate to include freedom of establishment and provide services in addition to the free movement of persons. In exchange for that, Turkey should make additional efforts improve risk-based controls and simplified procedures to facilitate legitimate trade, while ensuring security and safety and remove import and exports restrictions preventing the effective free movement of goods as indicated 2016 progress report of the Commission. The main disadvantages of the customs union in comparison with full membership are it dispenses with EU's four freedoms, although it could be negotiated, prevents access to the Court of Justice of the European Union and precludes free-trade deals for goods with third countries. On the other hand, no budget contribution is required.

5- Conclusion

Turkey has not been awarded the full membership status envisaged in the Ankara Agreement and it seems very unlikely that she will ever be which is very obvious from the halted negotiations years ago. Hence, the Customs Union is the only functioning institution between EU and Turkey and the only remaining reliable instrument that gives hope for future of the relations. Therefore, it should be improved and revised when both sides are ready to discuss the new terms. The maintenance of good relations between EU and Turkey seems more

essential than ever at a time of rapid and widespread global uncertainty and the unpredictable legal and economic consequences of the Brexit.

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